



## Agenda Report for Decision

**Meeting Date: 1 May 2025**

<b>Item Name</b>	Minor Variations Practice Direction 19 for approval	
<b>Presenters</b>	Tom Victory and Cassia Byrne	
<b>Purpose of Report</b>	Decision	
<b>Item Number</b>	5.3	
<b>Strategic Plan Reference</b>	4 Discharging Statutory Obligations	
<b>Work Plan Reference</b>	4.3. Ensure the Commission operates in line with governance best practice	
<b>Confidentiality</b>	Agenda report, <b>Attachments 1-4</b> Not Confidential (Release Delayed) – to be released following publication of the final version of the Practice Direction <b>Attachment 5</b> is designated as Confidential	
<b>Related Decisions</b>	1 August 2024 and 15 August 2024 meetings – Endorsement to release for targeted engagement	
<b>Conflicts Declared</b>	Nil	
<b>Is the Report author aware of any potential undeclared conflict?</b>		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 Delayed) – to be released following publication of the final version of Practice Direction 19 (Minor Variations) (PD19), with Attachment 5 designated as Confidential.
2. Endorse the Engagement Report at **Attachment 1**.
3. Approve Practice Direction 19 (Minor Variations) at **Attachment 2**
4. Authorise the Chair to sign the notice in **Attachment 3** for publication in the South Australian Government Gazette pursuant to section 42(4)(a) of the Act.
5. Authorise the Chair to sign the stakeholder letter in **Attachment 4**.
6. Authorise the Chair to send the stakeholder letter to the contact list in **Attachment 5**.
7. Authorise the Chair of the Commission to make any minor amendments to **Attachments 1 to 5**.

## Background

Planning and Land Use Services (PLUS), on behalf of the Commission, has been preparing a new Minor Variations Practice Direction 19 (Practice Direction 19). This is to address the inconsistent application of minor variations in development applications which has been a well-known issue in the planning system for some time.

This also seeks to implement the Expert Panel's Recommendation 6 from the Planning System Implementation Review that sought:

*"The Government, through Planning and Land Use Services, works with Assessment Managers to identify, and develop guidelines for minor variations that may be implemented by the State Planning Commission."*

At the meeting on 1 August 2024, the Commission considered an initial draft of Practice Direction 19. Following feedback from members, PLUS then presented an updated draft to the Commission on 15 August 2024 meeting which was endorsed to be released for targeted engagement.

## Discussion

Targeted engagement occurred between 12 November 2024 and 31 January 2025. The engagement activities included:

- four workshops with planning accredited professionals
- one workshop with peak industry body representatives, and
- a workshop with representatives from Community Alliance SA.

As a result of consultation, 20 submissions were received from the following stakeholders:

- 10 from Councils
- 5 from industry/community bodies
- 3 from private professionals
- 2 from state agencies

## Consultation Outcomes

Overall, there was support for a practice direction that will help provide better clarity on a long-standing point of contention in the planning system. The workshops involved productive and collegiate discussions, and the written submissions provided many well considered and useful suggestions that were considered in drafting the final version of the document.

PLUS has recorded and considered both verbal feedback from the workshops and written submissions. Key feedback received from both formats can be summarised into the following:

1. the introductory section of the Practice Direction is too long and detailed.
2. concern with councils not issuing Development Approval where a private certifier has granted a minor variation.
3. the need for definitions to provide clarity to terms used within the Practice Direction including 'insignificant' and 'materially apparent'.
4. the exclusion related to notification triggers could unnecessarily reduce powers of private professionals.

5. the implications of multiple minor variations in an application for planning consent should be addressed.
6. incremental changes through ongoing variations post planning consent should be addressed.
7. greenfield type land divisions should be considered for exclusion from the practice directions. This is due to the practical nature of greenfield land division consents often being varied in an iterative fashion through detailed design of matters such as road layouts, lot sizes and configurations.
8. requirements regarding the speed in which a determination for a minor variation should be made.
9. certain clauses allowing a minor variation to be justified in documentation for 'other reasons', should be deleted.
10. new elements being added through a minor variation should be precluded.
11. variations being made by a different relevant authority post planning consent should be precluded.

Copies of all written submissions received are provided in **Appendix A**.

Response to Feedback

A marked-up version of the practice direction, displaying the recommended changes made in response to engagement feedback is provided in **Appendix B**.

The following table summarises how the key issues have been responded to in the final version of the Practice Direction:

	<b>Issue</b>	<b>Response</b>
1	Introductory section is too long and detailed	Certain paragraphs which are considered superfluous have been deleted.
2	Councils not issuing Development Approval where a private professional has granted a minor variation	A new paragraph has been added to the additional context section of the Practice Direction as a reminder of councils' obligations to issue Development Approval once determining all consents are consistent.
3	The need for additional definitions to provide clarity (particularly the terms 'insignificant' and 'materially apparent')	The following changes have been made as a result of the feedback: <ul style="list-style-type: none"> <li>• the term 'materially apparent' and its definition have been deleted from the practice direction. The term has been replaced by 'contextually important' with an accompanying definition.</li> <li>• a new definition of 'variation' has been included.</li> <li>• no change has been made to the definition of 'insignificant' given it references the Macquarie Dictionary definition.</li> </ul>

<p>4</p>	<p>The exclusion related to assessing a minor variation of a public notification trigger could unnecessarily reduce powers of private professionals</p> <p><i>Concerns were raised during workshops in relation to the practice direction's proposal to preclude variations to deemed-to-satisfy criteria, that would otherwise trigger public notification, to be considered as 'minor'. The view was that this may result in a significant loss of work for private professionals as such applications may previously have been processed under the Deemed-to-Satisfy pathway but now would default to being performance assessed by the Council Assessment Manager.</i></p> <p><i>The example given was that dwelling walls or garages located on side boundaries often just exceed 3m in height due to the concrete slab/ footing of 10-20cm in height resulting in a total wall height of 3.1m to 3.2m.</i></p> <p><i>The perception is that the Code only excludes walls up to a total height of 3m from requiring public notification.</i></p>	<p>There has been no change to the Practice Direction as a result of this feedback.</p> <p>Whilst it is acknowledged that there might be some applications that can no longer be processed by a private professional as deemed to satisfy as a result of the proposed subclause 6(4)(a)(ii), it is considered appropriate that <u>only</u> Council Assessment Managers should have the power to determine whether an application should be publicly notified or not.</p> <p>It is noted that another recommendation 5 of the Expert Panel (Phase 2) potentially seeks to preclude private professionals from determining minor variations at all.</p> <p>The proposed subclause 6(4)(a)(ii) is therefore considered an appropriate balance in comparison to that much more significant recommendation that is not being pursued at this point in time.</p> <p>In any event, it is important to note that the concern raised appears to be based on a mistaken interpretation of the Code notification triggers.</p> <p>Of eight (8) residential type zones in the Code, six (6) zones nominate that public notification is only required where wall/post height exceeds 3.2 metres. Only two zones (General Neighbourhood and Suburban Neighbourhood Zone) require public notification for wall/post height exceeding 3 metres. However, in any event the height can be measured from <u>above</u> any footings, as follows:</p> <p><i>"the height of the proposed wall (or post height) exceeds 3m measured from the top of footings (other than where the proposed wall (or post) abuts an existing wall or structure of greater height on the adjoining allotment)".</i></p> <p>It is therefore likely to be rare that boundary walls exceed any of these notification triggers. Only negligible numbers of applications may therefore be affected by the proposed subclause 6(2)(a) in the practice direction.</p>
<p>5</p>	<p>Multiple variations in a development application should be addressed</p>	<p>A new note has been included which references the <i>Legislation Interpretation Act 2021</i> and the relevant law in statutes regarding singular also meaning plural.</p>
<p>6</p>	<p>Incremental changes through ongoing variations post planning consent should be addressed</p>	<p>A new subclause 7(2) which requires the consideration of any variation to be compared to the original planning consent (not to any previous variations that may have occurred since the planning consent was granted).</p>
<p>7</p>	<p>Greenfield type land divisions should be considered for exclusion from the practice directions due to the practical</p>	<p>A new sub-clause 5(2) included to exclude the division of land of more than 20 allotments from the practice direction (including combined applications where associated works such earthworks are proposed).</p>

	nature of greenfield land division consents often being varied in an iterative fashion in ongoing detailed design	
8	Requirements regarding speed in which a determination should be added	A new Part 3 has been included requiring expedient and concise determinations to be made under the practice direction.
9	Sub-clause (d), which allows a minor variation to be documented for 'other reasons', should be deleted	<p>The following changes were made:</p> <ul style="list-style-type: none"> <li>The sub-clause in question has been deleted from the practice direction in relation to variations to deemed-to-satisfy criteria.</li> </ul> <p>The following changes were not made:</p> <ul style="list-style-type: none"> <li>The sub-clause has however been retained in relation to variations to previously authorised planning consents, to enable any rare or unforeseen circumstances to still qualify to be a minor variation where appropriate.</li> </ul> <p>This is however subject to a new requirement that such variation still cannot contravene any of the standard tests to be minor under the practice direction.</p>
10	New elements being added by a minor variation should be precluded	A new subclause 7(3)(d) has been included to ensure that any variation that introduces a new element that requires a planning consent cannot be determined to be minor.
11	Variations being made by a different relevant authority post planning consent should be precluded	<p>The determination of the relevant authority is a matter for the <i>Planning, Development and Infrastructure (General) Regulations 2017</i> and should not be managed through the Practice Direction.</p> <p>It is noted that there is a current requirement that variations to conditions must be assessed by the original relevant authority and that there are further proposed amendments requiring minor variations to consents granted by accredited professionals to be assessed by the relevant assessment manager.</p>

Addressing Compliance with Practice Direction 19

It should be noted that there are four other recommendations from the Expert Panel that are of relevance to (and in some cases dependent on) the outcomes of the implementation of the proposed Practice Direction 19. This leads to the need to monitor the effectiveness of the practice direction following its implementation to determine the necessary approaches to addressing the other recommendations.

The following table summarises the other Expert Panel recommendations and their connection to the outcomes of PD19:

Expert Panel Recommendation	Discussion
<p><b>Recommendation 5</b></p> <ul style="list-style-type: none"> <li>Phase 1 - The Accredited Professionals Scheme and associated Regulations should be amended to remove the ability for building professionals to issue planning consents.</li> <li>Phase 2 - Only Planning Accredited Professional Level 1 (Assessment Manager) practitioners may determine minor variations.</li> </ul>	<ul style="list-style-type: none"> <li>Phase 1 - This recommendation was supported in the Government response and is currently being addressed through a proposed change to Regulation 25 in the <i>Planning, Development and Infrastructure (General) Regulations 2017</i>.</li> </ul> <p>No action required by the Commission.</p> <ul style="list-style-type: none"> <li>Phase 2 - This recommendation was supported in principle in the Government response however it was suggested to be placed on hold for a period of 12 months after the implementation of Phase 1, to allow an assessment of whether the number of erroneous minor variations has reduced.</li> </ul> <p>The implementation of Practice Direction 19 is directly relevant to Phase 2, and applications involving minor variations are proposed to be audited for a 12-month period to assess its effectiveness in improving the decision making of some private accredited professionals.</p>
<p><b>Recommendation 7</b></p> <p>The e-Planning system should require a Relevant Authority to record when a minor variation has occurred.</p>	<p>This recommendation has already been implemented in the ePlanning system and will be critical in identifying the applications to be audited in relation to PD19.</p>
<p><b>Recommendation 21</b></p> <p>The State Planning Commission investigate the cumulative impact of multiple minor variations and provide further guidance as to when a minor variation should and should not occur.</p>	<p>Proposed PD19 includes a new clause Part 2 subclause 7(2) which is intended to partly address this issue.</p> <p>This recommendation will be considered in more detail, following a review of the findings of the 12-month auditing period discussed above.</p>
<p><b>Recommendation 22</b></p> <p>Minor variations to a planning consent once Development Approval has been issued should only be assessed by the relevant council.</p>	<p>This recommendation was supported in the Government response and is currently being addressed through a proposed change to Regulation 65 in the <i>Planning, Development and Infrastructure (General) Regulations 2017</i>.</p> <p>No action required by the Commission.</p>

The PLUS Audit and Investigations Team has advised of the following intended approach to auditing of applications in relation to minor variations over the next 12-months:

- following an initial 6-week period after the implementation of the practice direction, a benchmarking exercise will involve the team auditing applications against the criteria in Practice Direction 19 where there was a minor variation recorded in the ePlanning system.

- a spot check of other applications may also occur at this point to determine whether compliance with Practice Direction 19 was required for such applications and should have been recorded in the system
- dependent on the initial findings, communications and other educational materials may be released by PLUS to the industry or directly to certain professionals as a reminder of their obligations and/or to clarify the requirements of Practice Direction 19
- further monitoring and auditing of applications will then occur at intervals with a final audit and summary report being produced at the end of the 12-month period.

PLUS will then report on the findings and make recommendations to the Commission to determine the next steps in relation to PD19 and the other relevant Expert Panel recommendations.

### **Next Steps**

It is recommended that:

- The Commission endorse the Engagement Report in **Attachment 1**.
- The Commission approve Practice Direction 19 (Minor Variations) in **Attachment 2**.
- Planning and Land Use Services (PLUS) will then lodge the Gazette Notice in **Attachment 3** and publish the Practice Direction on the Portal (with it becoming operational on that day).
- At the same time, it is recommended that the stakeholder letter in **Attachment 4** be sent to all planning accredited professionals and peak industry bodies (noting these were the stakeholders that were included in the targeted engagement) and Councils generally, as provided in the contact list in **Attachment 5**.
- Note - it is not intended that the Engagement Report will be published on the Portal (as the targeted engagement was not a statutory consultation process), however, a summary of the feedback and responses has been provided in the stakeholder letter to ensure stakeholders understand the updates made in the final version of Practice Direction 19 in response to feedback received.
- PLUS, will monitor and audit the effectiveness of the practice direction for a 12-month period and report back to the Commission in relation to other related Expert Panel recommendations relevant to minor variations.

### **Attachments:**

1. Engagement Report (#22984899)
2. Practice Direction 19 – Minor Variations for approval (#22984397)
3. Government Gazette Notice (#22938695)
4. Stakeholder letter (#22968557)
5. Contact list for stakeholder letter (#23052298)

**Appendices:**

- A. Copies of engagement submissions (#22968477)
- B. Marked up version of Practice Direction 19 showing post-consultation changes (#22788170)

Prepared by: Tom Victory / Cassia Byrne

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Endorsed by: Ben Sieben and Jane Trotter

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Date: 15 April 2025

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# **MINOR VARIATIONS PRACTICE DIRECTION ENGAGEMENT REPORT**

Prepared For:  
Department for Housing and Urban Development

By: Future Urban

Date:  
**21.03.2025**

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V2	Review	BM	19.03.2025
V3	Update	EN	20.03.2025 & 21.03.2025
V4	Final	EN	21.03.2025

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## APPENDICES

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## 1. PURPOSE

This report has been prepared by Future Urban for the Department for Housing and Urban Development ('DHUD') and the State Planning Commission ('Commission') in respect of the engagement undertaken for the *draft Practice Direction 19 Minor Variations 2024* (the 'draft practice direction').

The report details the engagement that has been undertaken for the draft practice direction and the outcomes of the engagement, including:

- a summary of the feedback received;
- the response to the feedback;
- recommendations in relation to the content of the practice direction; and
- other recommended improvements to the planning system.

The report also evaluates the effectiveness of the engagement and whether the principles of the Community Engagement Charter have been achieved.

## 2. INTRODUCTION

DHUD has prepared the draft practice direction to provide direction to relevant authorities in determining whether a variation is minor in the context of Deemed-to-Satisfy assessments and in relation to variations to planning consents.

DHUD undertook initial consultation on the practice direction in November 2023. This engagement broadly consisted of:

- Numerous discussions and workshops with internal development assessment staff;
- A workshop with six council assessment managers representing the Local Government Assessment Managers Forum (LGAMF) on 16 November 2023; and
- A workshop on 28 November 2023 with industry representatives from:
  - » Property Council of Australia
  - » Master Builders Association
  - » Local Government Association
  - » Australian Institute of Architects
  - » Urban Development Institute of Australia
  - » Planning Institute of Australia
  - » Housing Industry Association
  - » South Australian Accredited Professionals Association

Further targeted engagement was undertaken in November/December 2024 following further refinement of the draft practice direction.

## 3. ENGAGEMENT APPROACH

Future Urban prepared an Engagement Plan to apply the principles of the Community Engagement Charter.

The purpose of this engagement for the draft practice direction was to:

- inform stakeholders of the background to the draft practice direction;
- inform stakeholders of the draft practice direction and how it will operate; and

- seek feedback from stakeholders on the draft practice direction.

The key objectives of the engagement were to:

- create an understanding of the reasons for the draft practice direction;
- understand the views of stakeholders;
- inform and improve the quality of the draft practice direction prior to adoption; and
- comply with the Community Engagement Charter.

The Engagement Plan detailed the various engagement activities proposed for each engagement level<sup>1</sup>.

The stakeholders were assigned a 'consult' level of participation. As such, the engagement goals were to:

- obtain feedback;
- keep stakeholders informed;
- ensure stakeholders are listened to;
- ensure stakeholders concerns and aspirations are acknowledged; and
- provide feedback on how stakeholder participation influenced the practice direction.

The engagement activities included the following:

- Four workshops with accredited professionals on the practice direction that included:
  - » introduction of the draft practice direction and how it had reached its current form;
  - » case studies demonstrating how the draft practice direction would apply in practice; and
  - » opportunity for stakeholders to provide feedback.
- Two briefing sessions, one with Industry Bodies and one with Community Alliance South Australia (CASA).
- The opportunity to provide a written submission to [plansasubmissions@sa.gov.au](mailto:plansasubmissions@sa.gov.au) until 31 January 2025 giving feedback on the draft practice direction.

A copy of the email notice sent to stakeholders is included in **Appendix 1**.

### **3.1 Engagement Activities**

The engagement activities were selected to ensure that the method of engagement was appropriate for achieving the objectives and level of influence of the engagement.

Each of the engagement activities are summarised below.

#### **3.1.1 Written Submissions**

Stakeholders were provided with a copy of the draft practice direction and invited to attend a workshop and/or make a written submission providing their feedback on the draft practice direction. Written submissions were invited from 12 November 2024 to 31 January 2025.

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<sup>1</sup> The levels of engagement were informed by the IAP2 Spectrum of Public Participation (see section 3 of the Engagement Plan).

The period to provide a written submission was intentionally extended to the end of January 2025 to ensure stakeholders were provided with adequate time to make a submission noting the Christmas and New Year period.

A total of 21 written submissions were received. One of which was a duplicate submission.

While there was general acknowledgement that guidance on minor variations was needed and support for the intent of the draft practice direction, there were also specific areas of interest that require consideration prior to endorsement of the final practice direction.

A summary of key matters raised are as follows:

- **Ambiguity in Terminology:** There is potential inconsistency over the interpretation of "minor variation," particularly in the context of Deemed-to-Satisfy assessments. The term "insignificant" is also seen as problematic due to its subjective nature, which could lead to inconsistent interpretations. A clearer definition for terms like "minor variation," "insignificant," "materially apparent," and "adjacent land impact" is needed.
- **Guidance and Consistency:** As drafted, the practice direction lacks sufficient clarity, which may lead to variability in decisions. Clearer guidance and examples to help assess minor variations consistently across authorities is needed. A decision tree (flow chart) could streamline the process.
- **Role of Professionals and Documentation:** There remains some concern over the discretion given to accredited professionals to assess minor variations. The record keeping recommended by the practice direction is welcomed. The portal can be used more effectively to manage documentation and allow authorities access to information about decisions.
- **Cumulative Impact and Variation Limits:** There remains concerns that multiple minor variations can still be submitted for a single application and the cumulative effect of these variations. Consideration could be given to setting limits on the number of variations that can be submitted per development and conducting a review to understand the cumulative impact of multiple minor variations.
- **Public Notification and Appeal Rights:** There are concerns that variations triggering public notification cannot be treated as "minor".
- **Clarity in the Process:** A clearer, more streamlined process for assessing minor variations is desired. This includes defining criteria for assessment, standardising documentation and potentially using a tick-box system for recording reasons on the portal.
- **The practice direction should distinguish / provide a different process for assessment of minor variations for Deemed-to-Satisfy and Performance Assessed developments.**
- **Need for Transparency and Accountability:** Transparency in decision making for minor variations was welcomed. The practice direction could clarify the relationship between different authorities and their roles and responsibilities.

Written submissions also made specific recommendations in relation to wording in the practice direction. A more detailed summary of written submissions is provided in **Appendix 2**.

### 3.1.2 Workshops

Four workshops were held where stakeholders could attend to find out information about the draft practice direction, ask questions and provide feedback. The workshops were available for stakeholders

to attend in person and online. Morning and afternoon sessions were offered with a total of 74 people registered to attend the workshops. Attendance could be online or in person.

The general feedback during the workshops was supportive of the draft practice direction with acknowledgement that something was needed to provide greater consistency on the application of minor variations. There were some concerns about the introduction of the practice direction and its limiting nature. There were specific areas of interest that require consideration prior to endorsement of a final practice direction.

A summary of key matters raised are as follows:

- Inconsistency in decision-making between different relevant authorities.
- “Materially Apparent” and confusion over what it means. Participants queried whether this is needed at all. If it is retained if it should be redefined as "materially important" or "contextually significant".
- The practice direction should include clear numerical criteria and departure thresholds.
- Finding the right balance between flexibility and clear guidelines.
- Inclusion of an impact consideration test on adjacent land may be problematic and bring in considerations that should not be included for minor variations.
- Increasing accountability of private certifiers i.e. should private certifiers be responsible for granting development approval if they granted planning consent.
- Greater clarification in relation to the role of private certifiers and councils, particularly in terms of enforcing regulations and handling inconsistencies.
- Improvements to the Planning Portal in relation to lodgement, record keeping and transparency in relation to decisions for minor variations.
- There is an overall desire for better documentation of minor variation decision-making processes, especially to improve record-keeping and transparency.
- Consider formatting and layout of the practice direction to include procedural steps at the beginning and move legislative context to the rear.

A summary of notes taken during the workshops is provided in **Appendix 3**.

### **3.2 Response to What We Heard?**

The breadth and quality of the feedback received from stakeholders during the engagement is welcomed and should be commended. The respect shown between various stakeholder groups is also commended as it fostered an environment that supported input and conversation. Overall, the feedback provided excellent insight into potential issues that may arise and how these could be addressed through amendment in the practice direction.

There was general acknowledgement through the workshops that the practice direction is a first step in addressing concerns around minor variations. That depending on the success of the practice direction, there were additional triggers that could be pulled to further control the processing of minor variations.

Having regard to the feedback received, the key matters calling for a response are:

- Layout and format of the practice direction;

- Wording, terminology and tests in the practice direction;
- Role and responsibilities of relevant authorities;
- Exclusions from the practice direction;
- Record keeping and the Portal; and
- Supporting materials.

Each of these matters are discussed under the relevant headings below.

### 3.2.1 Layout and Format of the practice direction

A number of practice directions have been prepared and published on PlanSA. Existing practice directions all have a similar layout and format, generally including:

- Introduction;
- Preliminary matters such as citation, commencement, interpretation and the like; and
- The procedural requirements that are being established by the practice direction.

The draft practice direction is generally consistent in layout and format, with the exception of 'Additional context' that is provided after the introduction.

The feedback in relation to the format of the practice direction could generally be summarised as 'there being too much information at the beginning of the draft practice direction before it gets into the procedural steps'. Conversely there was feedback received that the draft practice direction did not provide enough information and guidance.

Having regard to the feedback received, it is considered that the 'Additional context' is appropriate information to be retained within the practice direction. It is recommended that the 'Additional context' be retained subject to amendments and deletion of wording detailed in Part 3.3 of this Engagement Report and **Appendix 4**.

Deletion of some wording from the Introduction has also been recommended to reduce information at the front end of the document. However, the wording could be retained should it be needed from a legal perspective or preferred by the Commission.

Wholesale changes to the format and layout of the practice direction are not recommended. Doing so could cause more confusion and create inconsistency in form and layout between the various published practice directions.

### 3.2.2 Wording, terminology and tests in the practice direction

A range of feedback was received in relation to wording, terminology and tests being introduced by the draft practice direction. A table below summarised the concerns and includes how they have been addressed.

**Table 3.1** *Wording, terminology and tests in the draft Practice Direction and Response*

Draft practice direction	Response
The meaning of "materially apparent" was a concern among stakeholders in relation to how broadly it could be interpreted.	Remove "materially apparent" from practice direction and replace with "contextually important" with a new definition as follows:

	<p><b>Contextually important</b> means of some importance taking into account the context of the site and adjacent land.</p>
<p>Feedback received recommended that a definition for variation as it applies in the context of the practice direction should be included.</p>	<p>A definition is proposed as follows:</p> <p><b>Variation</b> means, either a variation with DTS criteria or to vary an existing planning consent, as the particular case may be.</p> <p>A condition of this nature also assists in clarifying the scope of the practice direction.</p>
<p>General comment about wording being singular or plural.</p>	<p>A note has been added to confirm that terms in the practice direction can be read as singular or plural in accordance with the <i>Acts Interpretation Act 2021</i>.</p>
<p>The number of variations that can be considered at any given time.</p> <p>Feedback was received that there were still concerns about the number of variations that could be submitted and “incremental creep” that may result from this. As well as the number of variations that can be considered in a minor variation.</p>	<p>A minor variation can consider multiple variations. However, each variation must all achieve the tests set out by the practice direction to be considered minor. A footnote has been added to clarify this.</p> <p>An additional clause has been added to the “Minor variation to DTS criteria” test at clause (6)(1)(d) regarding variations that offend more than one DTS criteria.</p> <p>An additional clause has been added to the “Minor variation to planning consent” criteria has been added requiring variations to be considered against the original planning consent and not subsequent variations.</p>
<p>The exclusion of a variation being considered minor where is triggers public notification was of concern as it could unnecessarily reduce powers of accredited professionals acting as private certifiers.</p> <p>Conversely feedback welcomed the notification and referral trigger exclusions as an appropriate mechanism to confine what can be considered a “minor variation”.</p>	<p>Retention of the excluding clauses for notification and referrals in the practice direction is recommended.</p> <p>The intent of the practice direction is to limit the scope of and provide a process for determining minor variations.</p> <p>While the exclusion clauses will naturally exclude some variations from being considered minor (for example boundary walls exceeding 3 metres in height will, depending on the relevant zone, offend a notification trigger), this:</p> <ul style="list-style-type: none"> <li>• is the explicit purpose of the exclusion clauses and more broadly the practice direction; and</li> </ul>

	<ul style="list-style-type: none"> <li>ensures that community expectation regarding notified developments is upheld.</li> </ul>
<p>Further exclusion to what can be considered minor have been suggested through the feedback including:</p> <ul style="list-style-type: none"> <li>variations that would change the assessment pathway of a development;</li> <li>introduction of a new elements being added; and</li> <li>variations of conditions that had not been imposed by the relevant authority determining the variation. For example, a condition imposed by the EPA should not be varied through a minor variation by a relevant planning authority.</li> </ul>	<p>The additional exclusionary clauses are supported and recommended for inclusion in the practice direction. New clauses have been included at clause 7(2)(a), (d) and (e).</p>
<p>Clauses 10(1)(d) and 10(2)(e) in the draft practice direction (contained in <b>Appendix 4</b>) were confusing to a majority of stakeholders. There is a genuine concern that it will lead to improper application of the practice direction.</p>	<p>In relation to these clauses it is recommended that:</p> <ul style="list-style-type: none"> <li>sub-clause 10(1)(d) which relates to DTS criteria be deleted; and</li> <li>sub-clause (10)(2)(e) which relates to planning consents be retained to enable consideration of rare or unforeseen circumstances with additional wording that such cannot contravene any of the tests in the practice direction.</li> </ul>

### 3.2.3 Role and responsibilities of relevant authorities

Feedback was received regarding the different responsibilities of relevant authorities, in particular:

- the timeframes for relevant authorities (i.e. assessment managers) to process minor variations once submitted as there is currently no legislated timeframe for relevant authorities to determine minor variations; and
- relevant authorities (i.e. assessment managers) refusing to issue development approval where the relevant authority does not agree that a variation is minor.

The feedback is noted. To address the concerns raised, it is recommended that the practice direction be amended to include:

- under ‘Additional context’, reference to section 53 of the Regulations that provides the timeframe within which a relevant authority must issue development approval upon receipt of consistent relevant consents; and
- inclusion of “Part 3 – Making a determination” that includes clauses regarding expediency of determination for minor variations.

More generally and as acknowledged by some participants, the practice direction, which provides parameters on what constitutes a “minor variation”, is likely to reduce the incidence of relevant authorities refusing to issue development approval.

It is understood that as part of the ongoing review of the planning system the practice direction will be reviewed to:

- measure its success in resolving concerns around the processing of minor variations; and
- determine if further measures are required. For example, inclusion of a timeframe in the Regulations to process minor variations.

This approach is supported.

### **3.2.4 Exclusions from the practice direction**

One of the reasons for undertaking consultation on the draft practice direction was to understand if it would have any unintended consequences. Feedback was received that, as drafted, the practice direction could limit the processing of minor variations to large greenfield land divisions. This in turn could cause unnecessary delays to the delivery of allotments. This is not a desired outcome of the practice direction, particularly noting the housing crisis and providing relevant authorities with the ability to deal with variations of this nature as quickly as possible.

To address this, clause 5(2) has been added that excludes the practice direction from applying to variations of land divisions for 20 or more allotments and ancillary development. Together with a note under “Part 7 – Minor variation to planning consent”.

### **3.2.5 Record keeping and the Portal**

The inclusion of record keeping processes for minor variations was welcomed by stakeholders, particularly relevant authorities responsible for issuing development approval. Who requested that they be provided with access to these determinations through the Portal.

There was also feedback that the practice direction did not go far enough to assist in matters relating to complaints against accredited professionals or address root cause which is individual different tolerances to what’s minor.

Generally, the record keeping process was accepted, considered to be a positive inclusion in the practice direction and could be supported by updates to the Development Assessment Portal (DAP).

The feedback is noted and in response it is recommended that:

- the DAP be updated to enable inputs to the relevant criteria as set out in the practice direction; and
- access to determination on minor variations be made available to relevant authorities issuing development approval through the DAP.

In terms of enforcement around accreditation and different tolerances, the feedback is noted. The practice direction will go quite a long way on limiting the extent (or tolerance) of minor variations. It is recommended that this be reviewed as part of the 12-month review of the practice direction to determine whether further measures are required to address this.

### **3.2.6 Supporting materials**

To support the implementation of the practice direction, some stakeholders requested supporting documentation such as diagrams to demonstrate how the practice direction is intended to be applied. The feedback is noted.

While it is not considered essential to prepare additional information to support the practice direction, this could be considered.

### 3.3 Recommended Changes to the Practice Direction

Based on the feedback that was received, the following changes are recommended to the practice direction (refer **Appendix 4** for draft practice direction showing recommended changes):

- delete wording from paragraph 4 of the “Introduction”;
- delete and make alterations to wording under “Additional Context”;
- include an additional clause referring to regulation 53(5) of the Regulations and the timeframe to issue development approval upon receipt of consistent relevant consents;
- remove “materially apparent” from practice direction and replace with “contextually important” and a definition for same;
- add a definition for “variation” as it applies in the context of the practice direction;
- add note regarding terms being read as singular and plural;
- add a clause 5(2) that excludes variations to planning consents for land divisions creating 20 or more allotments;
- add a footnote to clarify how multiple variations are to be considered in the context of the practice direction;
- add additional clause 6(1)(d) to the “Minor variation to DTS criteria’ test that speaks to assessing variations against all relevant DTS criteria;
- amend the wording at clause 6(2)(a) to reflect the wording from Table 5 in the Code;
- add a note under Part 7 regarding the exclusion of variations to planning consents for land divisions of 20 or more allotments;
- add additional exclusion clauses 7(2)(a), (d) and (e) to exclude variations that change assessment pathway, introduced new elements or change conditions imposed by an authority that was not the relevant authority for determining the variation;
- add “Part 3 – Making the determination” that speaks to expediency of processing minor variations;
- delete clause 9(1)(d); and
- add clause 9(2)(d) regarding documentation requirements for amending conditions and amend clause 9(2)(e) for clarity purposes.

The following additional actions are recommended to support the implementation of the practice direction:

- The DAP be updated to require inputs for determining minor variations as set out by the practice direction.
- Relevant authorities for issuing development approval be provided with access to minor variation determinations through the DAP.
- Consider the preparation of a practice guideline or supporting information to assist relevant authorities and accredited professionals in applying the practice direction.
- Consider introducing a timeframe into regulation 53 of the Regulations for the determination of a minor variations.



**APPENDIX 1. NOTICE SENT TO STAKEHOLDERS**

## Emily Nankivell

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**From:** DHUD:PlanSA No Reply <DHUD.PlanSANOReply@sa.gov.au>  
**Sent:** Tuesday, 12 November 2024 4:53 PM  
**Subject:** Minor Variations Practice Direction – Targeted Engagement  
**Attachments:** Draft Minor Variations PD19 for consultation.pdf

### OFFICIAL

Dear Planning Accredited Professionals,

Future Urban has been engaged by Planning and Land Use Services (PLUS) to undertake stakeholder engagement on the draft Minor Variations Practice Direction ('draft Practice Direction').

A copy of the draft Practice Direction is **attached**.

Guidance on minor variations has been sought from various areas of the planning and development sector for some time. Most recently it was identified as an action arising from the Expert Panel's Review.

Following further review by PLUS and the State Planning Commission, the draft Practice Direction has been prepared.

PLUS is now seeking your feedback on the draft Practice Direction.

Feedback on the draft Practice Direction is being invited until **5pm on Friday, 31 January 2025**.

Written submissions can be sent to [plansasubmissions@sa.gov.au](mailto:plansasubmissions@sa.gov.au).

You are also invited to attend a workshop on the draft Practice Direction. The workshops will provide:

- a brief history on the Practice Direction;
- explanation about what is in the Practice Direction;
- case studies to put the Practice Direction into practice; and
- an opportunity to provide direct feedback on the draft Practice Direction.

Workshops will be held at the following dates and times:

	Date	Time	Accessibility	Register
<b>Workshop 1</b>	28 November 2024	9:30am – 12pm	In Person and online upon request	<a href="#">Register Here</a>
<b>Workshop 2</b>	28 November 2024	2pm – 4:30pm	In Person and online upon request	<a href="#">Register Here</a>
<b>Workshop 3</b>	4 December 2024	9:30am – 12pm	In Person and online upon request	<a href="#">Register Here</a>
<b>Workshop 4</b>	4 December 2024	2pm – 4:30pm	In Person and online upon request	<a href="#">Register Here</a>

The workshops are designed to be interactive so attendance in person is recommended, however we understand that this may not be possible for everyone. If you are needing to attend online please contact Future Urban at [engagement@futureurban.com.au](mailto:engagement@futureurban.com.au) or on (08) 8221 5511.

Kind regards,

Planning and Land Use Services  
Department for Housing and Urban Development



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. This practice direction does not limit the operation of these provisions and does not limit or prevent the Commission from acting under section 43(2)(b) of the Act with respect to making a practice guideline to specify variations that will, in relation to deemed-to-satisfy development, constitute minor variations (recognising in such a case the Commission is making specific provision with respect to a particular kind or class of variation or variations).

The relevant requirements of sections of the Act and the Regulations as they relate to this practice direction are outlined below:

### **Planning, Development and Infrastructure Act 2016**

#### **106—Deemed-to-satisfy assessment**

(1) *If a proposed development is classified as deemed-to-satisfy development, the development must be granted planning consent.*

(2) *If a relevant authority is satisfied that development is deemed-to-satisfy development except for 1 or more minor variations, the relevant authority must assess it as being deemed-to-satisfy (and that determination will then have effect for the purposes of this Act).*

...

(5) A condition under subsection (4) may provide that a proposed development assessed under subsection (2) will be undertaken so as to address any minor variation in order to make it consistent with the deemed-to-satisfy requirement.

**128—Variation of authorisation**

(1) Subject to subsection (2), a person may seek the variation of a development authorisation previously given under this Act (including by seeking the variation of a condition imposed with respect to the development authorisation).

(2) An application to which subsection (1) applies—

(a) may only be made if the relevant authorisation is still operative; and

(b) will, for the purposes of this Part, but subject to any exclusion or modification prescribed by the regulations and any other provision made by the regulations, to the extent of the proposed variation (and not so as to provide for the consideration of other elements or aspects of the development or the authorisation), be treated as a new application for development authorisation;

...

**Planning, Development and Infrastructure (General) Regulations 2017**

**65—Variation of authorisation (section 128)**

(1) For the purposes of section 128(2)(b) of the Act, if a person requests the variation of a development authorisation previously given under the Act (including by seeking the variation of a condition imposed with respect to the development authorisation) and the relevant authority is satisfied that the variation is minor in nature—

(a) the relevant authority may approve the variation; and

(b) the request is not to be treated as a new application for development authorisation;

...

**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 assessment manager, an assessment panel or, in some situations, the State Planning Commission, is able to act as the relevant authority for both the assessment of deemed-to-satisfy development and performance assessed development (including where a person is seeking the variation of a development authorisation). 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:
  - (a) the development is within a class of development excluded from the operation of subsections (3) and (4) of section 107 by the Code; or

- (b) the relevant authority has determined that there is a variation to 1 or more corresponding exclusions prescribed in Column B of Table 5 – Procedural Matters (PM) – Notification in the relevant Zone in the Code that is minor in nature and does not require notification.
- (3) In some situations (typically in relation to heights of buildings), the Code notification requirements 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.
- (5) In some situations, the Code excludes the requirement to undertake referrals if:
  - (a) certain deemed-to-satisfy criteria (operating as designated performance features) are met; or
  - (b) in the opinion of the relevant authority, the development is minor in nature and would not warrant a referral when considering the purpose of the referral.
- (6) The authority to make a determination referred to in subclause (2), (3) or (5) is the relevant authority for the purposes of assessing the relevant application for planning consent, including in the case of an application for the variation of a development authorisation. These applications do not include applications relating to deemed-to-satisfy development.

## **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:

- (a) matters to be considered by a relevant authority when it is determining whether a variation is:
  - (i) a minor variation from any Deemed-to-Satisfy criteria in the Code; or
  - (ii) a minor variation of a planning consent for the purposes of section 128(2)(b) of the Act; and
- (b) 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.

**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.

*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.*

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

Pursuant to section 42(2) of the Act, a relevant authority is required, in acting under section 106(2), or 128(2)(b) and regulation 65(1), to consider the provisions and principles set out in Part 2.

### Part 2 - Principles for determining a minor variation

#### 6 – Minor variation to DTS criteria

- (1) Subject to subclause (2), a relevant authority may consider that a variation 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 materially apparent.
- (2) 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 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 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. the 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 exemption to a referral by virtue of it being minor in nature).

### **7 – Minor variation to planning consent**

- (1) Subject to subclause (2), 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 materially apparent.
- (2) A variation cannot be considered to be minor in nature under this clause if the variation:
- (a) 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
  - (b) 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).

## **Part 3 - Documenting decision making for a minor variation**

### **8 – 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 materially apparent.
  - (d) in relation to a determination that has been made on some other basis – a brief explanation as to the reasons for why the relevant authority has determined that the variation constitutes a minor variation.
- (2) If a relevant authority determines a variation to a planning consent is minor in nature as provided by section 128(2) 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 – a brief explanation as to why it is satisfied that:
    - i. 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 materially apparent.
  - (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.

**This practice direction is made by the State Planning Commission on xx yyy 2024 with the approval of the Minister given to the Commission on aa bbb 2024.**

**APPENDIX 2. SUMMARY OF WRITTEN SUBMISSIONS**

## SUMMARY OF SUBMISSIONS

Number	Name / Organisation	Summary of Feedback
1	C1 – feedback from Matthew Baillie Yorke Peninsula Council and response	<ul style="list-style-type: none"> <li>• Don't think the term 'minor variation' should be used for DTS assessment.</li> <li>• "Historically a minor variation is only used in relation to a DA that already has development consent".</li> </ul>
2	IB1 (Part 1) – PIA initial feedback and response (Ben Victory -URPS)	<ul style="list-style-type: none"> <li>• Minor variations are not mentioned in the Guide to Development Assessment. Instead, only mentions variations in the sense of amending an application.</li> <li>• Should include a guide before a formal practice direction.</li> <li>• Section 106, 128 and Reg 65 are relevant references.</li> <li>• Context on the MV is relevant and the consequences of the variation as well as an explanation document.</li> <li>• Council needs to be more proactive in verifying / accepting requests for minor variations in the portal. They had one that took 4 weeks to accept.</li> <li>• In documenting the consequences of the variation it will need to be assessed and have explanation documentation.</li> </ul>
3	A1 – Feedback from Audit Team on Minor Variations PD	<ul style="list-style-type: none"> <li>• Does not address the root cause of the issue which is individuals' different tolerances.</li> <li>• It does not provide the clarity necessary to define minor variations that will prevent accredited professionals from attempting to achieve undesirable outcomes.</li> <li>• The practise direction reduces the scope of what a 'mv' can be applied to.</li> <li>• Think we will still see disparity between the planning consent decisionmaker and the final DA decision-maker.</li> <li>• Need to make considerations to building level 1 who are permitted to make DTS planning consent decisions.</li> <li>• 60m of adjacent land radius could be up to 30 sites.</li> </ul>

		<ul style="list-style-type: none"> <li>• Insignificant is not a clear definition and still creates a level of each individuals threshold tolerance and judgement.</li> <li>• Removed the problem of minor variations by putting them as insignificant variations.</li> <li>• Auditing will be difficult as it relates to 'reasonableness' of the decisions-makers application of 'insignificant' and 'immaterial'.</li> <li>• People will have different tolerances for a departure from a measurable feature.</li> <li>• A "full concrete backyard" will not impact adjacent land as it is my backyard.</li> <li>• What is materially apparent? Should this be Materially and visually apparent?</li> <li>• Having required documentation keeps professionals responsible and ensures quality documentation.</li> <li>• This information will be it clear about how the decision was made and the justifications behind it.</li> <li>• Does not seem to provide classification of what is a minor variation.</li> <li>• Seems to close the opportunity for council and assessment managers to challenge an accredited professional.</li> <li>• Don't feel this PD will do anything to address the differing opinions and tolerance within industry.</li> </ul>
4	C2 – Feedback from Julie Vanco of City of Charles Sturt	<ul style="list-style-type: none"> <li>• Remove the implementation of a practise guideline.</li> <li>• Change the formatting of the Practice Direction to include the main structure of the PD at the beginning and the legislation and background information at the end.</li> <li>• Add quotes from caselaw judgments on MV.</li> <li>• Clarify whether Panels assess DTS assessments.</li> <li>• Add definition for materially apparent and include "to whom" the variation will be materially apparent.</li> <li>• "Impact adjacent land" criteria should be removed because this measurability is more towards performance assessed</li> <li>• Add in - Performance Assessed Development to the heading DTS that has already been approved. Minor variation should not be able to be continually amended after approval as the various changes are likely to result in the need for a performance assessment.</li> </ul>

		<ul style="list-style-type: none"> <li>include DTS then there needs to be clarification about extent of variation from the standard being limited.</li> <li>Include a documentation section on the portal instead of a file not uploaded to the Portal. Also suggest that the applicant can't apply for a variation if the consent is no longer operative.</li> <li>Development Approval Authority should be able to view the declaration.</li> <li>Clarify the explanation rights of the DTS and add viewing right by the Relevant authority issuing the development authorisation.</li> </ul>
5	PP1 – Feedback from David Storey – HTC Planning	<ul style="list-style-type: none"> <li>Change of phrasing – “the variation is insignificant” and include the word negligible “negligible in consequence”.</li> <li>Include examples explaining what a minor variation is. For example, the size, location, design of a window or door. Or modifications to interior floor plans that don't affect the POS, parking or minimum site area.</li> </ul>
6	C3 – Feedback from Tony Travaglione – City of Charles Sturt	<ul style="list-style-type: none"> <li>Clear definition on what a minor variation is in regard to both DTS criteria and planning consent. All factors included such as significance of the variation, impact on adjacent land and material appearance.</li> <li>Clear documentation of the decision-making process of MV's.</li> <li>References to the PDI Act and Planning Regs 2017.</li> <li>Clarity on the term “insignificant” in determining minor variations.</li> <li>Change of the practice direction based on the specific project's context.</li> <li>Appropriate public engagement should be included in cases of minor variations as well as the relevant authority decisions.</li> <li>More clarity on notification and referral exemptions.</li> </ul>
7	IB2 – HIA Submission – Draft practice direction No 19 minor variations	<ul style="list-style-type: none"> <li>The primary objective of the draft should be to offer clear and concise advice.</li> <li>Interpretation of a minor variable can be subjective by accredited professionals in both the public and private realm.</li> <li>Insignificant is the wrong wording choice to describe a minor variation, while they agree more context and guidance is needed.</li> <li>Still supports allowable tolerances.</li> </ul>

		<ul style="list-style-type: none"> <li>• Rather than specifying a quantity of variance for each element, a maximum value could be nominated for certain building aspects. Places a level of constraint on the adjudicator.</li> <li>• A variation may be determined as minor provided it does not exceed 5% variance to the DTS numerical provision for the elements of – building height, roof pitch, wall length, floor configuration, building setback, room dimensions, finished floor levels, allotment size, open space and site storage.</li> <li>• Acknowledges other building elements associated with car parking, landscaping, materials overlooking, plants, tanks and excavations can be difficult to quantify for the purpose of determining minor.</li> <li>• The phrase materially apparent should be reconsidered as it can be argued that any variation may be materially apparent. Changed to “will not be materially important or significant with regard to appearance”.</li> <li>• Include additional wording to make it clear that a change to a description of development can also be considered a minor variation. For example, <i>with regard to Section 128 of the PDI Act, an application to alter the description of a Development Authorisation may be considered as a minor variation provided the nature of the application has not been significantly changed by the alteration. Building elements listed within Schedule 7 of the PDI (General) Regulations may be included or removed within a development description as part of a minor variation.</i></li> <li>• To resolve potential conflicts between legislation the Practice Direction should establish guidance on the hierarchy of responsibility as set out in the PDI Act (refer sections 91 and 118 of the PDI Act). For example, <i>with regard to Section 118(8) of the PDI Act, minor variations determined in accordance with this practice direction must be accepted by a relevant authority where building rules is certified by a building certifier.</i></li> </ul>
8	<p>C4 – City of West Torrens submission on draft Practice Direction 19</p> <p>PP2 – Submission from Ted Byrt in support of West Torrens submission</p>	<ul style="list-style-type: none"> <li>• Change the wording of “insignificant” to avoid confusion.</li> <li>• Rename the Practice Direction to Minor (insignificant) Variation. This action would help the PD to be considered distinctly different to the current informal minor variation process.</li> <li>• Two separate practice directions should be considered for DTS assessment and the other a variation to consent (post-approval). Each addressing the distinct aspects, pathways and accredited professionals. There is currently a similar approach to building inspections with three different practice directions.</li> </ul>

		<ul style="list-style-type: none"> <li>• Incorporate a decision-making tree diagram to guide users through the process and to ensure that each decision gate is considered. Tree could be mapped into the portal.</li> <li>• Portal updates to manage version control so the relevant authority can see the latest amended plans [for an application].</li> <li>• Need to be aware of the impact of multiple minor variations and impact of deviation from Code Policy.</li> <li>• After a minor variation decision there needs to be some consideration as to whether the assessment pathway, nature or relevant authority has changed.</li> </ul>
9	A2-EPA submission on Minor Variations Practice Direction	<ul style="list-style-type: none"> <li>• Do the minor variations apply to the planning consent conditions that are directed to be imposed by referral bodies?</li> <li>• Only accredited professional planning level 3 or planning level 4 able to be the relevant authority for the assessment of a DTS.</li> </ul>
10	IB3 – Property Council Submission – Practice Direction 19 – Minor Variation	<ul style="list-style-type: none"> <li>• Supports the practice direction.</li> <li>• Using quantitative data such as percentages or fixed criteria would have the same effect as changing the DTS criteria.</li> <li>• Should go no further than reinforcing the need for subjective assessment on whether something is “trifling or insignificant”.</li> <li>• The biggest problem with minor is whether the council disagrees with a decision by an Accredited Professional to treat a variance from DTS criteria.</li> <li>• Should be noted that the decision to treat something as minor is a subjective opinion formed by the relevant authority.</li> <li>• Two types of variations, the terms of an existing approval and variance from the relevant DTS criteria.</li> <li>• The prevention for a request for a minor variation from being approved for application when subjected to public notification would take away the discretion of planning authorities.</li> <li>• Add the term variation in interpretation as it means “a development which is at variance with DTS criteria or an application to vary an existing development authorisation, as the context requires”.</li> <li>• (b) the extent (if any) to which the variation will impact adjacent land is insignificant compared to a DTS compliant development; and</li> </ul>

		<ul style="list-style-type: none"> <li>• (c) the effect of the variation will not be materially apparent (to whom? compared to what?).</li> <li>• 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) where the development authorisation being varied was not subject to public notification; or [Not agree with this clause as drafted - it will prevent any minor variations from being approved for applications which were subject to public notification].</li> </ul>
11	IB4 – Community Alliance Submission to Practice Guideline No 19	<ul style="list-style-type: none"> <li>• Cover sheet explains the main features of practice direction for the general public to make it a more accessible form due to the sensitivity and complexity of the topic.</li> <li>• “Narrow” view on minor variations.</li> <li>• Supports the view that minor variations do not include changes to DA’s that require public notification or a referral body.</li> <li>• ‘Significant’ variations should be used for layer types of variations to clarify and distinguish from other variations.</li> <li>• All three criteria to be met for a variation should be:             <ul style="list-style-type: none"> <li>» the extent (if any) to which the variation departs from a assumable feature of the DTS criteria is insignificant and the extent (if any) to which the variation will impact adjacent land is insignificant; and</li> <li>» the effect of the variation will not be materially apparent, as outlined in Part 2 s6(1).</li> </ul> </li> <li>• Case studies and examples may assist officers in interpreting these tests.</li> <li>• Appreciates the documentation process as it brings a new level of transparency and accountability.</li> <li>• Different approaches should be used for MV’s to DTS and PA.</li> <li>• No limits to the number of variations permitted to a single DA</li> <li>• Should be a limit to how many minor variations in a DA and consequently the application should request higher fees.</li> <li>• No Appeal rights are incorporated in the process.</li> <li>• Some private professionals have lost their interpretation as to what is “minor”.</li> <li>• Conduct a one-year study to review the effectiveness of the PD.</li> <li>• Only Assessment Manager practitioners may determine minor variations.</li> </ul>

		<ul style="list-style-type: none"> <li>• The government works with Assessment Manager to create guidelines for minor variations that may be implemented by the State Planning Commission.</li> <li>• E-planning system should require a record when a minor variation has occurred.</li> <li>• Need further investigation on the cumulative impacts of the minor variation.</li> </ul>
12	C5 – City of Unley submission – Draft Practise Direction 19 – Minor Variations	<ul style="list-style-type: none"> <li>• “Insignificant” is a difficult word to quantify, the context of the minor variation will need to be considered based on the situation at hand.</li> <li>• Any attempt of an arbitrary percentage to quantify the variation will not be supported.</li> <li>• More clarity on the term “adjacent land” which is supported.</li> <li>• The term “materially apparent” needs to be reconsidered as it may be interpreted as clearly visible. A MV may be visible but has no consequences.</li> <li>• Alternative term “materially important” which is a better term to use. Would allow the importance of the variation to be considered against the intent of the policy instead of the locality.</li> <li>• DTS criteria to be put forward for minor variation to planning consent.</li> <li>• The declaration documentation should be provided in a consistent format.</li> <li>• This should form part of any prescribed form or DAP functionality.</li> <li>• It is unclear what other bases could be used as a determination of minor that isn't already available in Part 2, section 6 or 7. This is very open and may be interpreted more widely than intended.</li> <li>• It should not be possible to record a minor variation to a planning consent that is no longer operative.</li> <li>• A minor variation should not be able to be considered or completed without a declaration.</li> </ul>
13	IB5 – Submissions from Local Government Assessment Manager Forum – Draft Practise	<ul style="list-style-type: none"> <li>• The development approval authority (Councils) should be able to view the records of MV determinations to better understand the determinations.</li> <li>• There should be a limit on multiple variations permitted per criterion. More than two in total it should not fall into DTS but instead performance assessed.</li> <li>• Examples of what is a minor variation should be included.</li> <li>• The review and acceptance of a minor variation assessment at the verification stage should be included.</li> </ul>

		<ul style="list-style-type: none"> <li>• Should be made clear that minor variations are against the original criteria and not that already verified, to avoid incremental creep.</li> <li>• Unnecessary to include variations for performance assessed development. This type is more subjective by nature and is more flexible.</li> <li>• Attempting to provide guidance on variations too broadly and should focus on DTS development.</li> <li>• A variation to DTS development should not change the assessment pathway.</li> <li>• Two practice direction for two different assessment pathways.</li> <li>• Legislative context and background could be rescued or separated in the PD.</li> <li>• The definitions should come before the context for clarity of terms used.</li> <li>• Be clear Assessment Panel do not assess DTS and Accredited Professionals do not assess Performance Assessed developments.</li> <li>• Be clear the P &amp; D Code excludes some development from Public Notification in Table 5 only for Performance Assessed development. It is recommended that the words "by the Code" are moved to follow "excluded".</li> <li>• Change the word "subclause" to "items listed above".</li> <li>• Amend definition of "insignificant" to include "in consideration of scale and size of the development".</li> <li>• "Requirement to consider Practice Direction when acting under relevant provisions" - This clause 5 is part of the object of the Practice Direction and it is recommended this is moved to earlier in the document following the Introduction.</li> <li>• At clause 6(1) add in variations to any DTS criteria is a minor variation under section 106(2) of the Act if it satisfies the "3-point test". It is recommended that the alpha numbering is changed to numerals</li> <li>• There are mixed views on whether the extent a variation will impact adjacent land is relevant for DTS development. DTS requirements are measurable and the impact on adjacent land is moving towards performance assessment and therefore goes beyond the scope of a minor variation. It is recommended clause 6(1)(b) is reviewed.</li> <li>• At point (7) is it recommended that a definition of "materially apparent" is included so it is clear it means apparent to any person and regardless of where the development is viewed from.</li> </ul>
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		<ul style="list-style-type: none"> <li>• At clause 6(2) it is recommended that the words “cannot be considered to constitute a minor variation” are underlined.</li> <li>• At clause 7 add in Performance Assessed Development Only to the heading.</li> <li>• Justification as well as a declaration should be uploaded to the PlanSA portal.</li> <li>• Reasons for the variation should be visible to the relevant authority.</li> <li>• At clause 8(1)(d) where a determination that the variation is minor on some other basis, clarity is required whether it also needs to meet the 3-criteria test. The reasons for the “other basis” are also requested to be visible to the relevant authority issuing Development Approval.</li> </ul>
14	C6 – City of Norwood PSP submission – Minor Variations Practice Direction	<ul style="list-style-type: none"> <li>• Minor Variations have three uses: minor departures from DTS criteria; minor changes made after consent / approval; and ‘minor in nature’ variations from public notification triggers. Use different wording which distinguishes between the different types of variations and departures.</li> <li>• Different practice directions for DTS criteria and minor variations for planning consent to clarify the two different processes.</li> <li>• The formatting of the document should be changed and the principles for determining a minor variation should be set out earlier.</li> <li>• The definition for materially apparent should be defined under interpretation for the perspective of the public realm.</li> <li>• Change the definition of insignificant to include “in consideration of scale and size of the development”.</li> <li>• Changing the DTS criteria makes it more likely that it will change the assessment pathway.</li> <li>• Variations to a planning consent the applicant seeks to make an inconsequential change to their development that would otherwise require a new application.</li> <li>• Any variation should not result in an assessment on impact for neighbours, streetscape or broader locality. Any assessment or impact should be undertaken during a performance assessment pathway as it involves more judgement.</li> <li>• Clause 6(2)(a) outlines that a minor variation should not be applied to a departure from a DTS criteria, where the failure to meet the criteria would trigger public notification. This clause is supported; however, clarification should be provided as to whether this applies to boundary walls. In some zones, Table 5 sets out public notification triggers relating to boundary walls.</li> </ul>

		<ul style="list-style-type: none"> <li>• Requirements to record the reasons for minor variations to DTS criteria is supported and should be kept as a record and transparency. This should also be a requirement of the MV.</li> <li>• The portal should include a tick box or comment box system to record a brief explanation.</li> <li>• A variation should not be processed as a minor variation if it relates to public notification triggers. Would benefit from some clarification as to whether this applies to any change relating to an element which could be a trigger for notification.</li> <li>• Changes to an assessment pathway should not result in a minor variation.</li> <li>• Any minor variation that has a trigger should not be treated as minor.</li> <li>• Each variation should be reviewed as a variation to the original consent rather than any preceding variations.</li> </ul>
15	C7 – City of Tea Tree Gully submission – Minor Variations Practice Direction 19	<ul style="list-style-type: none"> <li>• Can a minor variation include a change to the elements of an application?</li> <li>• How are variation processed – procedural matters around variations that are not 'development' such as public notification and referrals.</li> <li>• Record keeping of the minor variation is recommended with plans and clearly identified where changes are proposed.</li> <li>• Should include template for Level 3 and Level 4 Planning relevant authorities to use in making their determinations.</li> <li>• Access to the assessment of a minor variation should be available to relevant authority who issues development approval.</li> </ul>
16	PP3 – Andrew Houlihan – Submission on Minor Variations Practise Direction	<ul style="list-style-type: none"> <li>• Consistent application between Accredited Professionals is key. Will this address without clear examples.</li> <li>• A definition should be provided for materially apparent.</li> <li>• Confirmation of adding an element cannot be minor.</li> <li>• Resolving consistency checks at development approval to support minor variations – same process.</li> <li>• Removal of (b) the extent if any to which the variation will impact adjacent land is insignificant. On face value this is at odds with planning system as significant impact matters should be notified</li> </ul>

		<p>development. Recommend including significant departure from the relevant PO or DTS provisions as part of the assessment criteria.</p> <ul style="list-style-type: none"> <li>• How to manage variations of variations of variations etc.</li> <li>• Consider procedural consistency vs typical application – seek more measurable criteria but allow flexibility.</li> <li>• How could this apply to large scale land division.</li> <li>• Should the same test be applied to public notification principles</li> </ul>
17	IB1 (Part 2) – PIA submission – Minor Variation Practise Direction 19	<ul style="list-style-type: none"> <li>• “materially apparent” is highly subjective and open to interpretation.</li> <li>• Replace the term with “contextually important” which is used as a guide for the relevant authority to consider the effect of the variation.</li> <li>• Agree with the intent and content of clause 8 to ensure greater consistency throughout relevant authorities.</li> <li>• Timeframes should be ensure greater expediency for applicant and to increase consistency.</li> </ul>
18	C8 – City of Mitcham Submission - Minor Variation Practise Direction 19	<ul style="list-style-type: none"> <li>• Using distinct language to provide clarity around what is being determined as “minor” may assist.</li> <li>• -DTS development criteria, the term “minor departure” might be used;</li> <li>• An approved planning consent, the term “minor variation” might be used;</li> <li>• Public notification requirement, the term “minor exclusion” might be used.</li> <li>• Consider preparing a Practice Guideline to support the Practice Direction to provide examples/scenarios of each type of “minor”.</li> <li>• The term “insignificant” requires a value judgement to be made by the relevant authority.</li> <li>• The definition of insignificant is highly determined by its context, the professional experience and personal opinion of the relevant authority. The term does not provide clarity and certainty.</li> <li>• Materially apparent requires direction in terms of its intended interpretation</li> <li>• Consider including a definition of “materially apparent” in Part 1(4) of the Practice Direction to provide greater certainty of its meaning.</li> <li>• Consider including a definition of “materially apparent” in Part 1(4) of the Practice Direction to provide greater certainty of its meaning.</li> </ul>

		<ul style="list-style-type: none"> <li>• Does not provide principles relating to the determination of “minor” in context of public notification requirements.</li> <li>• “Insignificant” will not provide clarity and certainty to relevant authorities or applicant with different interpretation likely to occur between relevant authorities.</li> <li>• If an assessment of the impact has to be taken, then shouldn’t it be undertaken as part of a performance assessment and not a MV.</li> <li>• Consider including a definition of “materially apparent” in Part 1(4) of the Practice Direction to provide greater certainty of its meaning.</li> <li>• Need to understand the cumulative impacts of minor changes to a development proposal</li> <li>• Consider including an additional Part 2(8) – minor variation in relation to exclusion from public notification requirements – to the Practice Direction.</li> <li>• Ensure that the Practice Direction is consistent with existing planning case law and that the Practice Direction is updated as relevant case law is published to remain contemporary.</li> <li>• Restrict the use of “minor” to measurable quantitative aspects of a development proposal.</li> <li>• Limiting the number of “minor” changes/variations allowed for an individual development proposal to avoid any negative cumulative impact.</li> <li>• Support the requirement of a relevant authority to formally document its decision on the SA planning portal.</li> <li>• We consider that the proposed Practise Direction is unlikely to achieve the desired objectives of providing clarity and certainty to relevant authorities.</li> </ul>
19	C9 – Rural City of Murray Bridge Submission - Minor Variation Practise Direction	<ul style="list-style-type: none"> <li>• Clarify the term “materially apparent” and throughout the document use it in context of determining whether a variation can be considered minor (examples)</li> <li>• This term is subjective to both quantitative and qualitative changes.</li> <li>• The term insignificant is also too subjective and needs classification.</li> <li>• Documenting the process is important and should be relatively straight forward and not detail oriented.</li> <li>• A tick box approach on the portal could be included instead of uploading a report or provide an additional document</li> </ul>

		<ul style="list-style-type: none"> <li>• The practise direction does not make it clear how many variations can be considered application.</li> <li>• How will many minor variations affect each other and alter the intent of the original consent.</li> </ul>
20	C10 –Light Regional Council Submission - Minor Variation Practise Direction	<ul style="list-style-type: none"> <li>• The definition for minor variations which considers whether the change is insignificant to the proposal is supported.</li> <li>• Outlines that it does not prevent the commission from making a practise guideline</li> <li>• The PD is sufficient but unnecessary to also create a guideline.</li> <li>• Assessment panels so not assess Deemed-to-satisfy proposal</li> <li>• Additional wording should reference that only 1 variation on an assessment criterion should be allowed.</li> <li>• If multiple variations to the planning consent are proposed, then the PD should outline that the application should process through a performance assessment pathway.</li> <li>• Recommend revised wording so (a) reads as follows “the development is within a class of development <b>by the code</b> excluded from the operation of subsections (3) and (4) of section 107 by the <b>Act</b>”</li> <li>• Recommend that an additional word ‘above’ is inserted within subclause 6 to read as follows: (6) The authority to make a determination referred to in subclause (2), (3) or (5) <b>above</b> is the relevant authority for the purposes of assessing the relevant application for planning consent, including in the case of an application for the variation of a development authorisation. These applications do not include applications relating to deemed-to-satisfy development.</li> <li>• Define ‘materially apparent’ - means something is so visibly or clearly noticeable that it is considered significant or important enough to have a substantial impact regardless of where the development is viewed from.</li> <li>• The definition of ‘insignificant’ to include scale and size.</li> <li>• Remove the word ‘including’ and replace with ‘excluding’ – conditions should not be minor in nature in Subclause 1.</li> <li>• Add elements to the portal that allow documentation to be filled out and uploaded.</li> <li>• Councils issuing Dev approval should have access to the explanation</li> <li>• If any variation is considered minor it must not impact another element of assessment.</li> </ul>

**APPENDIX 3. NOTES FROM WORKSHOP SESSIONS**

March 19, 2025

## **MINOR VARIATION PRACTICE DIRECTION WORKSHOP NOTES**

### **Workshop 1: Feedback**

- Won't change council assessment of inconsistency.
- Have a PD around consistency check / not agree with decision.
- Councils don't like dealing with it where AC has issued approval.
- Materially Apparent – what's the purpose, get applications for dwellings to change from render to façade, changing materials, why have it in context of something that doesn't get assessed, dependent of zone
- PD will push variation assessment to councils time + delay
- Is this something that needs to be defined / given greater consideration in to respect of codes.
- Impact of use of 'adjacent land' – should it state adjoining.
- Should it state adjoining – 2 practise directions, identified key issues
- Scope to be flexible.
- More to it than a number and criteria
- Fundamental criteria that's not achieved not minor
- Measurable criteria – numerical component, there or not/provided or not
- Reg 65 – Variation of authorisation (section 128) test different to DTS test for minor
- Policy position around notification – 1 / 3 DTS pushed to councils.
- Does legislation need to be looked at?

### **Workshop 2: Feedback**

- Too much context up front – could be simplified, section legislation moved to back
- Materially apparent – what does that look like
- Portal Structured – bounces back and forth
- Background include expert panel information.
- Include examples in the PD (case studies)
- “ well aware of the differences of what every different council will let through to the keeper when they see a PC variance and this set a great framework for that situation and reading the document gave me hope that record keeping will be better which is the greatest problem now’
- Has the opportunity to bog down application
- Might not be considered minor
- Doesn't talk about scale of DA – how does scale play in
- Don't think we need to consider impact on adjacent land
- If its going to impact it will be notified
- Should ref department from Performance Outcome / consideration of PO
- Different considerations / assessment for reg 65 v DTS

- Potential confusion between clauses
- Disappointing or would be good to have DTS criteria enabling front setback to be considered in that instance – issue in Code Policy
- Wall height 3.05m – never be DTS
- One of the frustration parapets are common
- Strikes out a massive amount of applications for DTS
- Additional PD or include clarification about consistency check
- Adding additional elements or change in nature
- Accreditation review process is onerous and no one uses it for that reason
- Protect public to ensure approvals ok = approvals granted over wastewater etc
- Accountability of Councils when things go wrong
- Increase powers of private certifiers to grant development approvals – more accountability
- Confidence to make decision + getting tripped up at DA
- Enforcement – AA taking action on AP's who don't do the right thing
- PD languages is singular – Clarification around this.

### Scenario

We have had a PC approve a garage that has a floor area of 108m<sup>2</sup> and a wall height of 3.6m.

The Neighbourhood Zone DTS/DPF 10.2 seeks for a floor area of 80m<sup>2</sup> and wall height of 3m. .

We are refusing to issue DA as this is not considered minor in our opinion and is a significant departure from the DTS policy.

The PC is arguing its consistent with the character of the locality.

Without some way of measuring what is minor, it is then the opinion of the PC vs the opinion of the RA.

### Workshop 3: Feedback

- Assessment managers have looked at reducing up front info
- Flow chart
- Process for superseding + updating plans – more onerous
- Fee for assessing request for Minor Variation not approving – will this be changed
- System design and process
- Difference between DTS and Performance Assessment – Subjectivity
- What's the goal – be clear about difference between DTS (desk top, private and more rigorous) and Performance Assessment (more detailed different assessment / AM should be more flexible)
- Nothing in PD that talks about cumulative departures
- Check and Balance in system. May add additional complexity

- Could land divisions be separate in PD
- Two different scopes for two different assessments
- Reordering wording – if procedural aspect no point in continuing
- Definition for materially apparent
- Materially apparent kicks things out that could be minor – example: retaining wall being moved back within property where it has been damaged by tree
- Decision of Court – Statutory role to do a consistency check
- You could have a streetscape with reduced setbacks and no longer housing setbacks
- Tension between authorities – not role of council to police private certifiers. Up to accreditation authority to deal with inconsistencies
- PD still has some layers inconsistency
- DTS minor variations scope should be expanded
- Ability to see decision process – transparency between relevant authorities i.e Councils can view the determination of private certifier
- Consider different process for DTS v PC
- Previous wording from regulations – rather than compartmentalising it's a collective consideration
- Adjacent land x abutting for DTS
- Portal – regulation 65 minor variation
- DTS – it may not be materially apparent but may impact neighbours

#### **Workshop 4: Feedback**

- Exchanging species of trees – in my mind adding / subtracting landscaping is barely development. Should be excluded from any consideration.
- Materially apparent – to who though, change to building not already built no considerations
- Materially apparent to locality
- Materially apparent – effect of variation, would you have approved it anyways, “materially important” rather than “materially apparent”
- Needs to be a level of flexibility in PD
- Black + white important – line in sand
- Might say 10cm over but have to justify that council will check anyway. Create work anyway. So no actual change.
- From private planners perspective there is an additional layer of consideration and risk management
- Adjacent land = in lots of instances locality, should wording be adjoining land
- “if I have to think about it too much it's not minor”
- PD should establish what extent of numerical departure is acceptable
- Minor and suitability of departure in context of site relevant

### **Industry Bodies Workshop**

- Doesn't need to go further than insignificant
- HIA – about 50% there. Concerns around measurable criteria
- Consent – description important as to whether minor. Description doesn't change – minor to development
- Consistent approach to describing development
- Sound rational judgement
- Materially apparent – is this test necessary, more subjective than minor variation
- Contextually or materially important
- Put in another clause – does not change the nature of development
- Reg 52 consistency, portal upgrade, exclude “not development” or accepted development
- BC being unable to process very minor changes e.g. internal to proposals
- Bringing consistency and empowering lesser skilled planners to make decisions S102

**APPENDIX 4. PROPOSED CHANGES TO PRACTICE DIRECTION**

## Practice Direction: No. 19

### Minor Variations

#### Post - engagement proposed changes:

xxxxxxx = new text

xxxxxx = text to be deleted

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. ~~This practice direction does not limit the operation of these provisions and does not limit or prevent the Commission from acting under section 43(2)(b) of the Act with respect to making a practice guideline to specify variations that will, in relation to deemed-to-satisfy development, constitute minor variations (recognising in such a case the Commission is making specific provision with respect to a particular kind or class of variation or variations).~~

The relevant requirements of sections of the Act and the Regulations as they relate to this practice direction are outlined below:

**Planning, Development and Infrastructure Act 2016**

**106—Deemed-to-satisfy assessment**

(1) *If a proposed development is classified as deemed-to-satisfy development, the development must be granted planning consent.*

(2) *If a relevant authority is satisfied that development is deemed-to-satisfy development except for 1 or more minor variations, the relevant authority must assess it as being deemed-to-satisfy (and that determination will then have effect for the purposes of this Act).*

...

(5) *A condition under subsection (4) may provide that a proposed development assessed under subsection (2) will be undertaken so as to address any minor variation in order to make it consistent with the deemed-to-satisfy requirement.*

**128—Variation of authorisation**

(1) *Subject to subsection (2), a person may seek the variation of a development authorisation previously given under this Act (including by seeking the variation of a condition imposed with respect to the development authorisation).*

(2) *An application to which subsection (1) applies—*

*(a) may only be made if the relevant authorisation is still operative; and*

*(b) will, for the purposes of this Part, but subject to any exclusion or modification prescribed by the regulations and any other provision made by the regulations, to the extent of the proposed variation (and not so as to provide for the consideration of other elements or aspects of the development or the authorisation), be treated as a new application for development authorisation;*

...

**Planning, Development and Infrastructure (General) Regulations 2017**

**65—Variation of authorisation (section 128)**

(1) *For the purposes of section 128(2)(b) of the Act, if a person requests the variation of a development authorisation previously given under the Act (including by seeking the variation of a condition imposed with respect to the development authorisation) and the relevant authority is satisfied that the variation is minor in nature—*

*(a) the relevant authority may approve the variation; and*

*(b) the request is not to be treated as a new application for development authorisation;*

...

### **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 assessment manager, an assessment panel or, in some situations, the State Planning Commission, is able to act as the relevant authority for both the assessment of deemed-to-satisfy development and performance assessed development (including where a person is seeking the variation of a development authorisation). 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.~~
  - ~~(a) the development is within a class of development excluded from the operation of subsections (3) and (4) of section 107 by the Code; or~~
  - ~~(b) the relevant authority has determined that there is a variation to 1 or more corresponding exclusions prescribed in Column B of Table 5—Procedural Matters (PM)—Notification in the relevant Zone in the Code that is minor in nature and does not require notification.~~
- (3) In some situations (typically in relation to heights of buildings), the Code notification ~~requirements~~ ~~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.
- (5) In some situations, the Code excludes the requirement to undertake referrals if:
  - ~~(a) certain deemed to satisfy criteria (operating as designated performance features) are met; or~~
  - ~~(b) in the opinion of the relevant authority, the development is minor in nature and would not warrant a referral when considering the purpose of the referral.~~
- (5) The authority to make a determination referred to in subclause (2), (3) or (54) above is ~~only~~ the relevant authority for a performance assessed

~~the purposes of assessing the relevant application for planning consent, including in the case of an application for the variation of a development authorisation. These applications do not include applications relating to deemed-to-satisfy development.~~

- (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, via a scheme applying under the SA planning portal, 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) a minor variation of a planning consent for the purposes of section 128(2)(b) of the Act; 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.

## Part 2 - Principles for determining a minor variation

### 6 – Minor variation to DTS criteria

- (1) Subject to subclause (2), a relevant authority may consider that a variation (or multiple variations)<sup>1</sup> 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 ~~materially apparent~~ contextually important; and
- (d) if a variation also inadvertently causes a departure from another DTS criteria, then that departure also constitutes a variation and must meet the criteria under sub-clauses (a), (b) and (c) to be considered a minor variation.

- (2) -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~~

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<sup>1</sup> A relevant authority can consider more than one variation to DTS criteria, but each variation must achieve the relevant tests in the Practice Direction to be considered a minor variation. Any variation that does not achieve the test for a minor variation will not be minor and will need to be performance assessed.

being minor in nature exclusion by virtue of item 1 in Colum A of Table 5 in the relevant Zone in the Code); 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. the 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 exemption to a referral by virtue of it being minor in nature).

## 7 – Minor variation to planning consent

*Note – 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 including a combined application for related ancillary development such as earthworks, retaining walls or other similar works fundamentally associated with the division of land.*

(1) Subject to subclause (2), 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 materially apparent contextually important; and

(d) if the particular aspect of a planning consent has already previously been varied (either under section 128(2)(b) of the Act or as a minor variation), the variation now being considered is minor in nature under sub-clauses (a), (b) and (c) when compared to the original planning consent.

(2) 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 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 a planning consent; or
- (e) in the case of a variation to a condition of planning consent, the determination is being made by a relevant authority which did not originally impose the condition (except where express written permission has been provided from the original relevant authority or in the case of a condition directed by a referral body – that referral body), as the circumstance requires.

### **Part 3 – Making the determination**

#### **8 – Expediency**

- (1) A relevant authority must make its determination under this practice direction as expeditiously as possible.
- (2) In making its determination under this practice direction, a relevant authority must remain cognisant that an extensive or detailed consideration is not in keeping with the intent of the principles for determining a minor variation in Part 2.

### **Part 34 - 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 materially apparent contextually important; and

~~(d) in relation to a determination that has been made on some other basis – a brief explanation as to the reasons for why the relevant authority has determined that the variation constitutes a minor variation.~~

(2) If a relevant authority determines a variation to a planning consent is minor in nature as provided by section 128(2) 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 – 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 materially apparent contextually important; and

(d) in the case of a condition of consent, evidence that the determination is being made by the same relevant authority who originally imposed the condition, or otherwise that express written permission is recorded on the SA Planning Portal from that relevant authority or referral body regarding the proposed variation.

(e) 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).

**This practice direction is made by the State Planning Commission on xx yyy 2024 with the approval of the Minister given to the Commission on aa bbb 2024.**

DRAFT AND CONFIDENTIAL

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.

## 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).*

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## 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).

**Issued by the State Planning Commission on 23 May 2025**

PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016

NOTICE UNDER 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)(a) of the *Planning, Development and Infrastructure Act 2016*, I, **Craig Holden**, Chair, State Planning Commission:

- a. issue *State Planning Commission Practice Direction 19 (Minor Variations)*; and
- b. fix the day on which the *State Planning Commission Practice Direction 19 (Minor Variations)* is published on the SA Planning Portal as the day on which the practice direction will come into operation.

Dated: 22 May 2025



CRAIG HOLDEN  
CHAIR  
STATE PLANNING COMMISSION

23 May 2025

Dear Accredited Professional

**New Practice Direction 19 (Minor Variations)**

The inconsistent application and consideration of minor variations in development applications are a long-standing area of contention in the planning system (and the former planning system under the *Development Act 1993*).

I am pleased to advise that on 23 May 2025 the State Planning Commission (the Commission) published a new Practice Direction 19 (Minor Variations) to address this contention. The new practice direction is now operational and can be viewed on the [Practice Direction's page](#) on the PlanSA website.

The publication of Practice Direction 19 (Minor Variations) also addresses a recommendation from the Expert Panel in their 2023 Planning System Implementation Review. Minor variations were an area of the planning system that generated several submissions due to issues related to:

- delays in issuing development approvals, as councils were 'checking' planning consents granted by Accredited Professionals;
- the incorrect and unreasonable application of 'minor variations' to deemed-to-satisfy planning requirements; and
- the lack of a definition of minor variation in the legislative framework.

Practice Direction 19 will clarify and specify the steps that must be followed by any Accredited Professional (planning level 3 or higher) when determining:

1. a variation to deemed-to-satisfy criteria; or
2. a variation to a previously authorised planning consent.

The practice direction outlines the procedural steps to guide better and more consistent determinations, including:

- clarifying the jurisdiction of authorities to make determinations;
- defining terms used;
- principles for determining a minor variation;

- precluding private Accredited Professionals from making decisions on minor variations when connected to public notification or referral triggers; and
- requiring appropriate justification to be documented in the SA planning portal.

The publishing of the practice direction follows on from targeted engagement of planning accredited professionals and peak industry bodies in 2024 and early 2025. The Commission thanks all those involved for your input and submissions.

A Frequently Asked Questions document is attached to assist practitioners understand the background and intent of the practice direction.

The Commission will monitor the effectiveness of the practice direction for a 12-month period to inform other related Expert Panel recommendations such as Recommendation 5 (Phase 2) that *“only Planning Accredited Professional Level 1 (Assessment Manager) practitioners may determine minor variations”*.

Should you require further information about the new practice direction, please do not hesitate to contact PlanSA via email [plansa@sa.gov.au](mailto:plansa@sa.gov.au) or on 1800 752 664.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Craig Holden', with a long horizontal flourish extending to the right.

**Craig Holden**  
Chair

24 January 2025

Ms Sally Smith  
Deputy Chief Executive  
Department for Housing and Urban Development  
GPO Box 1815  
**ADELAIDE SA 5001**

Dear Ms Smith,

**RE: West Torrens Comments on the Draft Practice Direction 19 - Minor Variations**

Thank you for providing the opportunity to comment on the draft Practice Direction 19 – Minor Variations (Practice Direction). We appreciate the intention behind the Practice Direction, which seeks to standardise and codify the long-established norm within planning circles for minor variations during an assessment which has typically been a percentage deviation of a measurable feature within an assessment.

We strongly support the newly proposed definition for minor variations which considers whether the change is insignificant to the proposal, the site or locality and the assessment process.

To assist the Department for Housing and Urban Development (DHUD) we would like to provide the following feedback and recommendations for your consideration in the further refinement and implementation of the Practice Direction:

1. Renaming the Practice Direction:

We acknowledge that the word minor cannot be replaced in the title of the Practice Direction due to its use in the *Planning, Development and Infrastructure Act (PDI Act)*. However, as the draft Practice Direction introduces the major test for the process being the definition of "*insignificant*" this should be reflected in the title of the Practice Direction. To avoid confusion with previous considerations of minor variations, we recommend renaming the Practice Direction to Minor (Insignificant) Variation. This would be effective in establishing and reinforcing the insignificant nature of the changes while clarifying:

- a. that this is a new consideration and distinctly different to the informal minor variation process that was undertaken through the Development Act. This effectively acknowledges the introduction of the term 'insignificant' and associated process under the Deemed-to-Satisfy (DTS) pathway, which was introduced through the PDI Act, and
- b. that this process is distinctly different from other considerations of minor departures, such as those related to public notification requirements (Zones, Table 5) and the Procedural Matters – Referrals table in certain Overlays, both within the Planning and Design Code (Code).

## 2. Splitting the Practice Direction:

The Practice Direction outlines two different minor variations processes, one during DTS assessment and the other a variation to consent (post-approval). It is suggested that this warrants two separate Practice Directions, each addressing the distinct aspects, pathways and accredited professionals for minor variations. This separation would reinforce the difference between the other minor departure considerations already present in the Code, as highlighted in point 1. We note there is currently a similar approach to building inspections with three different Practice Directions covering the gamut of inspection processes.

## 3. Improving Readability:

To enhance clarity, we recommend including a decision-making tree diagram, like those attached to this letter. Such diagrams would guide users through the process, ensuring that each decision gate is considered. As a future enhancement the decision-making tree could be mapped into the portal.

## 4. Other Considerations:

- To assist in the implementation of the Practice Directions we suggest that the portal is updated to manage version control so that relevant authorities can easily identify the latest amended plan/s.
- The impact of multiple minor variations over the course of a development's assessment and approval, particularly in terms of its cumulative significance and deviation from Code policy.
- For minor variations after a decision (Part 2 – 7 of the Practice Direction), there is the need to consider whether the assessment pathway, essential nature or relevant authority for the application has changed. This would occur in circumstances where a measurable feature (e.g. floor area or site coverage) is the determining factor for an application being considered as DTS, Performance Assessed or Restricted development (and subsequently the relevant authority).

We are keen to further discuss, provide feedback and contribute in any way possible to aid in this review process. We believe that, through collaborative efforts and careful consideration, an appropriate mechanism can address the issues outlined above.

If you require any additional information or clarification, please contact Steven Mudge, Manager Strategy and Sustainability, at [smudge@wtcc.sa.gov.au](mailto:smudge@wtcc.sa.gov.au) or on (08) 8416 6388.

Yours sincerely,

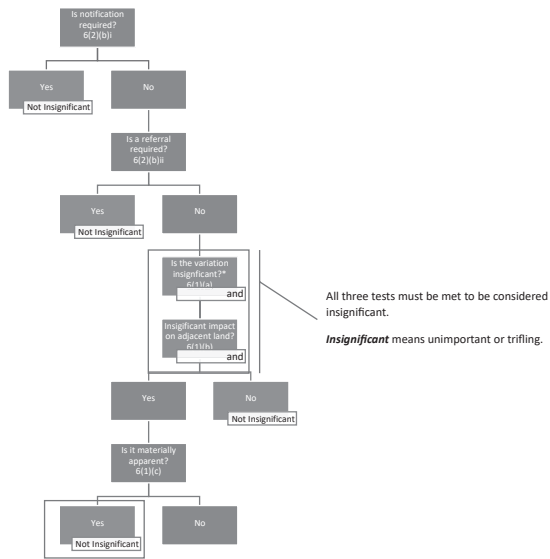


**Shanti Ditter**  
**General Manager Communities**  
**City of West Torrens**

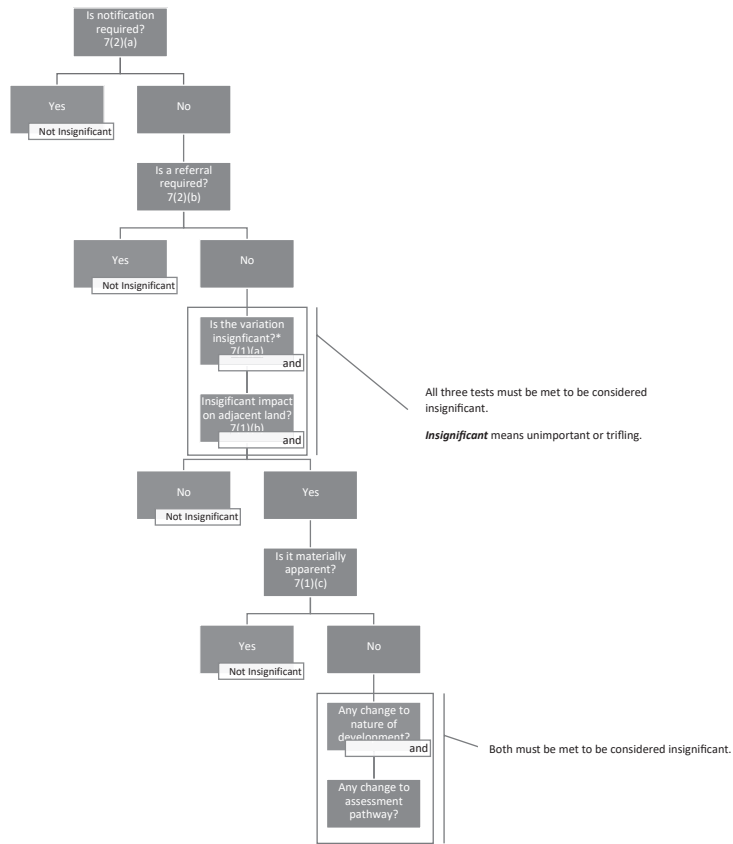
Encl

- Suggested decision tree for inclusion in Practice Direction/s

Decision making process for insignificant variation to DTS criteria



Decision making process for insignificant variation to planning consent



31 January 2025



Ms Sally Smith  
Deputy Chief Executive  
Department for Housing and Urban Development  
GPO Box 1815  
**ADELAIDE SA 5001**

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Kapunda SA 5373

**Kapunda Public Library  
and Visitor Information Centre**  
51-53 Main Street  
Kapunda SA 5373

**Freeling Public Library  
and Customer Service Centre**  
7 Hanson Street  
Freeling SA 5372

**Planning and  
Development Services**  
12 Hanson Street  
Freeling SA 5372

**Operations Centre**  
11 Stephenson Street  
Freeling SA 5372

Dear Ms Smith,

**Draft Practice Direction 19 - Minor Variations – Response by Light Regional Council**

Thank you for providing the opportunity to comment on the *Draft Practice Direction 19 – Minor Variations*.

Council management appreciates the intention of the Practice Direction to standardise the process for the consideration of minor variations.

The proposed definition for ‘minor variations’ which considers whether the change is insignificant to the proposal, the site or locality and the assessment process, is supported.

It is our intent that the feedback and recommendations provided will assist the Department for Housing and Urban Planning to undertake refinement to the *Draft Practice Direction 19 - Minor Variations*.

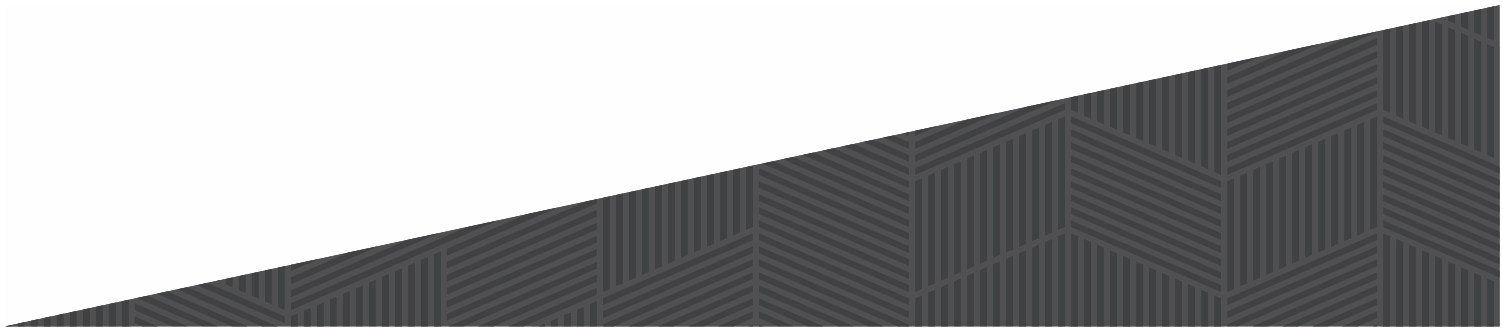
If you require any additional information please contact Council’s Manager Development Services, Ms. Lisa Sapio on 85253200.

Yours sincerely,

A handwritten signature in black ink that reads "C Doyle".

**Craig Doyle**  
**General Manager – Strategy & Development**

Enc - DRAFT PRACTICE DIRECTION 19 Minor Variations – draft for consultation



Practice Direction 19 – Minor Variations	
Discussion/Topic	Comments/Solutions
<p><b>Page 1 – Introduction</b> 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 per:</p> <p><i>This practice direction does not limit the operation of these provisions and does not limit or prevent the Commission from acting under section 43(2)(b) of the Act with respect to making a practice guideline to specify variations that will, in relation to deemed-to-satisfy development, constitute minor variations (recognising in such a case the Commission is making specific provision with respect to a particular kind or class of variation or variations)</i></p>	<p>The draft Practice Direction (PD) outlines that it does not prevent the Commission from making a practice guideline. It is considered that the PD is sufficient and it is unnecessary to also create a guideline. This reference in the guidelines should be removed from the PD19.</p>
<p><b>Page 2 - Additional Context</b> 1. The text states that <i>“An assessment manager, an assessment panel or, in some situations, the State Planning Commission, is able to act as the relevant authority for both the assessment of deemed-to-satisfy development and performance assessed development (including where a person is seeking the variation of a development authorisation). 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).”</i></p>	<p>Assessment Panels as a relevant Authority do not assess Deemed-to-Satisfy proposals. Clause 1 should be amended to remove the reference to Assessment Panels.</p> <p>Additional wording should reference that only 1 variation on an assessment criteria should be allowed. For example: If a variation to increase a wall height is deemed minor then no additional increases in wall height should be deemed minor into the future. The PD should make it clear that only one variation should be allowed on that particular assessment criteria, such as height. This seeks to avoid incremental creep. If multiple variations to the planning consent are proposed, then the PD should outline that the application should proceed through a performance assessment pathway.</p>
<p><b>Page 2 – Additional Context</b> 2. <i>An application for planning consent for performance assessed development is subject to public notification under section 107 of the Act unless:</i> <i>(a) the development is within a class of development excluded from the operation of subsections (3) and (4) of section 107 by the Code; or</i></p>	<p>Recommend revised wording so (a) reads as follows:</p> <p>a. the development is within a class of development <b>by the code</b> excluded from the operation of subsections (3) and (4) of section 107 by the <b>Act</b>; or</p>
<p><b>Page 3 – Additional Context</b> <i>(6) The authority to make a determination referred to in subclause (2), (3) or (5) is the relevant authority for the purposes of assessing the relevant application for planning</i></p>	<p>Recommend that an additional word ‘above’ is inserted within subclause 6 to read as follows:</p>

<p><i>consent, including in the case of an application for the variation of a development authorisation. These applications do not include applications relating to deemed-to-satisfy development.</i></p>	<p>(6) The authority to make a determination referred to in subclause (2), (3) or (5) <b>above</b> is the relevant authority for the purposes of assessing the relevant application for planning consent, including in the case of an application for the variation of a development authorisation. These applications do not include applications relating to deemed-to-satisfy development.</p>
<p><b>Page 4 – 6 Minor variation to DTS criteria</b>  (1) <i>Subject to subclause (2), a relevant authority may consider that a variation 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:</i>  (a) <i>the extent (if any) to which the variation departs from a measurable feature of the DTS criteria is insignificant; and</i>  (b) <i>the extent (if any) to which the variation will impact adjacent land is insignificant; and</i>  (c) <i>the effect of the variation will not be materially apparent</i></p>	<p>Recommend that a definition of ‘materially apparent’ should be included in the PD 19 – example:</p> <p><i>means something is so visibly or clearly noticeable that it is considered significant or important enough to have a substantial impact regardless of where the development is viewed from.</i></p> <p>It is also suggested that the definition of ‘insignificant’ to include scale and size.</p>
<p><b>Page 5 - 7 – Minor variation to planning consent</b></p> <p>(1) <i>Subject to subclause (2), 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</i></p>	<p>Remove the word ‘including’ and replace with ‘excluding’ – conditions should not be minor in nature. Subclause 1 should read as follows:</p> <p>Subject to subclause (2), a relevant authority may consider that a variation to a planning consent (<b>excluding</b> 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:</p> <p>It is considered sufficient to allow a minor of a matter but not to extend this to include conditions of consent.</p> <p>If this proceeds, a condition should only be able to be removed or altered by the authority that imposed it.</p> <p>That is, other relevant authorities must be excluded from varying/removing a condition not imposed by them.</p>
<p><b>Page 5 - Part 3 - Documenting decision making for a minor variation</b>  8 – Documentation</p> <p>(d) in relation to a determination that has been made on some other basis – a brief explanation as to the reasons for why the</p>	<p>Consideration to an enhancement within the Development Assessment Portal that documentation be a field that is filled out within the Portal, rather than a file note that is uploaded to the portal.</p>

<p>relevant authority has determined that the variation constitutes a minor variation.</p>	<p>Additional to this, Councils as the relevant authority that issue a Development Approval should have access to the explanation supplied by the relevant authority giving reasons for a minor variation.</p>
<p><b>Additional Comments</b></p>	
<p><b>1 or more minor variations</b></p>	<p>If any variation that is considered minor , it must not impact another element of assessment, if it does impact another element, it cannot be considered minor. For example:</p> <p>A minor variation is submitted for the finished floor level (FFL) of a dwelling to be reduced by 200mm. On its own, it could have considered to be minor. However, the reduction on the FFL changes the gradient of the driveway so significantly that the variation was no longer minor. Additional clause should be added to <b>6 Minor variation to DTS criteria and 7 Minor variation to planning consent</b> – that stipulates the following: 6(1)(d) and 7(1)(d) that no one variation can impact another assessment criteria other than the one being assessed as minor.</p>
<p><b>Case Law inclusion</b></p>	<p>Whilst it could be considered favourable to include examples of minor variations judgements into the practice direction it is not necessary. Case law may change and complicate matters.</p> <p>PD19 can direct readers to case law for reference and understanding, but not provide direct quotes from judgements.</p>

## Victory, Tom (DHUD)

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**From:** Andrew Houlihan <ahoulihan@mountbarker.sa.gov.au>  
**Sent:** Friday, 31 January 2025 3:40 PM  
**To:** DHUD:PlanSA No Reply  
**Cc:** Victory, Tom (DHUD)  
**Subject:** RE: Reminder - Minor Variations Practice Direction

Hi Tom,

Hope all is well,

Thank you for the opportunity to make comment on the Draft Practice Direction 19 (Minor Variations).

Minor variations has always been challenging and it's pleasing to see the State Planning Commission look further at this matter. The proposed practice direction and alterations to the planning portal for recording is supported. I also appreciate the engagement session held on the 28 November 24.

I offer the following comments;

1. Consistent application between Accredited Professionals is key. Will this address without clear examples.
2. A definition should be provided for materially apparent
3. Confirmation of adding an element cannot be minor
4. Resolving consistency checks at development approval to support minor variations – same process
5. Removal of *(b) the extent if any to which the variation will impact adjacent land is insignificant*. On face value this is at odds with planning system as significant impact matters should be notified development. Recommend including significant departure from the relevant PO or DTS provisions as part of the assessment criteria.
6. How to manage variations of variations of variations etc.
7. Consider procedural consistency vs typical application – seek more measurable criteria, but allow flexibility.
8. How could this apply to large scale land division.
9. Should the same test be applied to public notification principles.

Please feel free to contact me to discuss further.

Yours Sincerely

**Andrew Houlihan**  
Manager City Development  
D 08 8391 7277

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**From:** DHUD:PlanSA No Reply <DHUD.PlanSANOReply@sa.gov.au>  
**Sent:** Tuesday, 21 January 2025 10:25 AM  
**Subject:** Reminder - Minor Variations Practice Direction

OFFICIAL

Dear Planning Accredited Professionals,

A reminder that feedback on the draft Minor Variations Practice Direction is being invited until **5pm on Friday 31 January 2025**.

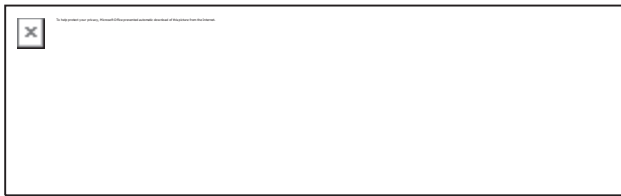
A copy of the draft Practice Direction is **attached**.

Written submissions can be sent to [plansasubmissions@sa.gov.au](mailto:plansasubmissions@sa.gov.au).

Kind regards,

Planning and Land Use Services  
Department for Housing and Urban Development

**Andrew Houlihan**  
Manager City Development



**D** 08 8391 7277 | **T** 08 8391 7200 | **F** 08 8391 7299  
6 Dutton Road, Mount Barker, South Australia, 5251  
PO Box 54, Mount Barker, South Australia, 5251  
**E** [ahoulihan@mountbarker.sa.gov.au](mailto:ahoulihan@mountbarker.sa.gov.au) | **W** [www.mountbarker.sa.gov.au](http://www.mountbarker.sa.gov.au)

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Community Alliance SA Inc  
PO Box 520  
Goodwood, SA 5034

Engaging for Reform



29 January 2025

Mr Tom Victory  
Project Lead – Strategic Projects  
Department for Trade and Investment  
Planning and Land Use Services

Email [planSAsubmissions@sa.gov.au](mailto:planSAsubmissions@sa.gov.au)

Dear Tom

**RE: Consultation for SPC Practice Direction 19 on Minor Variations 2024**

Thank you for the opportunity for representatives of Community Alliance SA (CASA) to attend the consultation on the draft State Planning Commission Practice Direction 19 on Minor Variations 2024 (Practice Direction 19). Our Committee members, Elizabeth Rushbrook and Evonne Moore participated in the consultation on 5 December 2024. They appreciated the time the Panel took to explain the draft document's implications and details.

Many of our members made submissions to the *Expert Panel for the Planning System Implementation Review*. CASA notes that this consultation covered areas outlined by the Expert Panel in addition to the issues identified by CASA which were brought to the attention of the State Planning Commission (Appendix 1).

Following consideration by our members, CASA is pleased to provide the following comments on the draft document.

- CASA suggests that a cover sheet explaining the main features of Practice Direction 19 be developed for the general public in a more accessible form due to the sensitivity and complexity of the topic.
- CASA supports a 'narrow' view be taken on minor variations. As pointed out during the consultation, the purpose of minor variations is to facilitate development by enabling operational changes or corrections only.
- CASA also supports the view that minor variations do not include changes to development applications:
  - that require public notification, or
  - that require referral to another body as outlined in Part 2 s6(2).
- Minor variations that do not require a new application should be distinguished from other variations which may. CASA suggests that the term 'significant' variations should be used for the later types of variations to clarify this distinction and lessen confusion.
- CASA agrees that the applicable test for minor variations which are operational in nature will require all three of the criteria to be met

- the extent (if any) to which the variation departs from a measurable feature of the DTS criteria is insignificant and
  - the extent (if any) to which the variation will impact adjacent land is insignificant; and
  - the effect of the variation will not be materially apparent, as outlined in Part 2 s6(1). Case studies and examples may assist officers in interpreting these tests.
- CASA notes that Practice Direction 19 defines 'insignificant' as a matter which is 'trifling or unimportant' in Part 1 s4.
  - CASA appreciates the documentation process outlined in Part 3 s8 (1) and (2), which brings a new level of transparency and accountability to minor variations.
  - CASA notes the different approaches for Deemed to Satisfy and the Development and Performance Assessed Development and their relation to minor variations.
  - CASA has some concerns about the Practice Direction 19.
    - There appear to be no limits to the number of variations permitted to a single development application. The term used in the paper is 'one or more minor variations.' CASA believes there should be a limit to minor variations in any development application, or alternatively, there should be higher fees incurred for more than two applications made for minor variations.
    - CASA notes there are no appeal rights regarding the process or interpretation of the Practice Direction 19.
    - CASA notes that many of our members hold the view that there is a risk that some private professionals may have a loose interpretation of what is 'minor'. In this regard, CASA welcomes the suggestion to conduct a one-year study to review the effectiveness of Practice Direction 19 in improving the planning processes and its outcomes.

Should you wish to clarify any matters raised in this email, please do not hesitate to contact me.

Yours sincerely

*Sandy Wilkinson*

**President**

**Community Alliance SA (CASA)**

***Final Report and Recommendations 2023 Expert Panel for the Planning System Implementation Review.***

There was considerable discussion of minor variations throughout the Expert Panel report and some examples of the resultant recommendations are shown below.

*Minor variations undertaken by Accredited Professionals were a 'hot topic' and one the Panel received substantial feedback on. This namely arose in connection with:*

- *from a private certifier perspective, the delay (and oftentimes, the refusal) occasioned by councils in issuing Development Approval as a result of 'checking' consents issued by Accredited Professionals that contain minor variations pursuant to section 106 of the PDI Act;*
- *from a local government perspective, the incorrect or unreasonable application of 'minor variations' to development consents issued by private Accredited Professionals; and*
- *universally, the lack of a definition of 'minor variation' in the legislative framework.*

**RECOMMENDATION 5** (abbreviated)<sup>1</sup>

Only Planning Accredited Professional Level 1 (Assessment Manager) practitioners may determine minor variations.

**RECOMMENDATION 6**

The Government, through Planning and Land Use Services, works with Assessment Managers to identify, and develop guidelines for minor variations which may be implemented by the State Planning Commission.

**RECOMMENDATION 7**

The e-Planning system should require a Relevant Authority to record when a minor variation has occurred

**RECOMMENDATION 21**

The State Planning Commission investigate the cumulative impact of multiple minor variations and provide further guidance as to when a minor variation should and should not occur. The Panel has identified a need for further investigations to be undertaken in relation to the cumulative impact of minor variations made pursuant to regulation 65.

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<sup>1</sup> From page 49 of the Report.

## DHUD:PlanSA Submissions

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**From:** David Storey <david@htcplanning.com.au>  
**Sent:** Tuesday, 21 January 2025 11:26 AM  
**To:** DHUD:PlanSA Submissions  
**Subject:** Minor Variation Practice Direction - Feedback

You don't often get email from david@htcplanning.com.au. [Learn why this is important](#)

Hello

My comments/feedback on the Minor Variation Practice Direction:

Where its says "*(a) the variation is insignificant:*" include the words *or negligible*

Provide additional commentary including (my examples underlined)

Minor variations include modifications that are submitted are often so minor as to be insignificant or negligible in consequence and resulting in essentially the same qualitative and quantitative overall project detailed in the original plans

Or

Any change in design or construction so insignificant that there is no foreseeable impact on site layout or building design

I consider that the inclusions of examples would assist in explaining what is a minor variation.

Examples (generic) -

The reduction or enlargement in the size of a window or door (size, location, design), provided that the wall, if existing, matches the surrounding wall.

Modifications to interior floor plans provided the changes do not increase the parking requirements or change expressly approved uses which have the effect of increasing parking requirements.

Hope this is of assistance.

Kind regards,  
David

David Storey RPIA  
Director  
Ph: 0404 855 784  
Email: david@htcplanning.com.au

**Registered Planner**

**PIA**  
Registered  
Planner

Planning  
Institute  
Australia



## Practice Direction: No. 19



### Minor Variations

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. This practice direction does not limit the operation of these provisions and does not limit or prevent the Commission from acting under section 43(2)(b) of the Act with respect to making a practice guideline to specify variations that will, in relation to deemed-to-satisfy development, constitute minor variations (recognising in such a case the Commission is making specific provision with respect to a particular kind or class of variation or variations).

The relevant requirements of sections of the Act and the Regulations as they relate to this practice direction are outlined below:

**Planning, Development and Infrastructure Act 2016**

**106—Deemed-to-satisfy assessment**

(1) *If a proposed development is classified as deemed-to-satisfy development, the development must be granted planning consent.*

(2) *If a relevant authority is satisfied that development is deemed-to-satisfy development except for 1 or more minor variations, the relevant authority must assess it as being deemed-to-satisfy (and that determination will then have effect for the purposes of this Act).*

...

(5) *A condition under subsection (4) may provide that a proposed development assessed under subsection (2) will be undertaken so as to address any minor variation in order to make it consistent with the deemed-to-satisfy requirement.*

**128—Variation of authorisation**

(1) *Subject to subsection (2), a person may seek the variation of a development authorisation previously given under this Act (including by seeking the variation of a condition imposed with respect to the development authorisation).*

(2) *An application to which subsection (1) applies—*

*(a) may only be made if the relevant authorisation is still operative; and*

*(b) will, for the purposes of this Part, but subject to any exclusion or modification prescribed by the regulations and any other provision made by the regulations, to the extent of the proposed variation (and not so as to provide for the consideration of other elements or aspects of the development or the authorisation), be treated as a new application for development authorisation;*

...

**Planning, Development and Infrastructure (General) Regulations 2017**

**65—Variation of authorisation (section 128)**

(1) *For the purposes of section 128(2)(b) of the Act, if a person requests the variation of a development authorisation previously given under the Act (including by seeking the variation of a condition imposed with respect to the development authorisation) and the relevant authority is satisfied that the variation is minor in nature—*

*(a) the relevant authority may approve the variation; and*

*(b) the request is not to be treated as a new application for development authorisation;*

...

### **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 assessment manager, an assessment panel or, in some situations, the State Planning Commission, is able to act as the relevant authority for both the assessment of deemed-to-satisfy development and performance assessed development (including where a person is seeking the variation of a development authorisation). 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:
  - (a) the development is within a class of development excluded from the operation of subsections (3) and (4) of section 107 by the Code; or
  - (b) the relevant authority has determined that there is a variation to 1 or more corresponding exclusions prescribed in Column B of Table 5 – Procedural Matters (PM) – Notification in the relevant Zone in the Code that is minor in nature and does not require notification.
- (3) In some situations (typically in relation to heights of buildings), the Code notification requirements 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.
- (5) In some situations, the Code excludes the requirement to undertake referrals if:
  - (a) certain deemed-to-satisfy criteria (operating as designated performance features) are met; or
  - (b) in the opinion of the relevant authority, the development is minor in nature and would not warrant a referral when considering the purpose of the referral.
- (6) The authority to make a determination referred to in subclause (2), (3) or (5) is the relevant authority for the purposes of assessing the

relevant application for planning consent, including in the case of an application for the variation of a development authorisation. These applications do not include applications relating to deemed-to-satisfy development.

## **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:

- (a) matters to be considered by a relevant authority when it is determining whether a variation is:
  - (i) a minor variation from any Deemed-to-Satisfy criteria in the Code; or
  - (ii) a minor variation of a planning consent for the purposes of section 128(2)(b) of the Act; and
- (b) 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  metres from the other land.

**Code** means the Planning and Design Code.

**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.

*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.*

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

Pursuant to section 42(2) of the Act, a relevant authority is required, in acting under section 106(2), or 128(2)(b) and regulation 65(1), to consider the provisions and principles set out in Part 2.

## Part 2 - Principles for determining a minor variation

### 6 – Minor variation to DTS criteria

- (1) Subject to subclause (2), a relevant authority may consider that a variation 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 materially apparent.
- (2) 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 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 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. the 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 exemption to a referral by virtue of it being minor in nature).

## **7 – Minor variation to planning consent**

(1) Subject to subclause (2), 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 materially apparent.

(2) A variation cannot be considered to be minor in nature under this clause if the variation:

(a) 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

(b) 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).

### Part 3 - Documenting decision making for a minor variation




#### 8 – 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 materially apparent.
  - (d) in relation to a determination that has been made on some other basis – a brief explanation as to the reasons for why the relevant authority has determined that the variation constitutes a minor variation.
- (2) If a relevant authority determines a variation to a planning consent is minor in nature as provided by section 128(2) 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 – a brief explanation as to why it is satisfied that:
    - i. 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 materially apparent.

(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.

 This practice direction is made by the State Planning Commission on xx  
yy 2024 with the approval of the Minister given to the Commission on  
aa bbb 2024.

DRAFT AND CONFIDENTIAL

30 January 2024

The Chair  
State Planning Commission  
GPO Box 1815  
Adelaide SA 5001

*Sent by email*

Dear Craig

**CITY OF UNLEY SUBMISSION:  
DRAFT PRACTICE DIRECTION 19 – MINOR VARIATIONS**

Thank you for the opportunity to contribute to the Draft Practice Direction 19.

The intent of Practice Direction to specify:

- steps that must be taken by a relevant authority when considering minor variations for deemed to satisfy development and performance assessed development, and
- matters to be considered by a relevant authority when it is determining whether a variation is a minor variation and how a relevant authority must document a decision that a variation is minor,

is fully supported.

The following comments on the draft are aimed to clarify and guide the final document.

**Part 2 - Principles for determining a minor variation**

**6 – Minor variation to DTS criteria**

(1) (a) – “*insignificant*” is a difficult term to quantify and its interpretation of *too small or unimportant to be worth consideration* will continue to differ from person to person, and the situation at hand. For example, a 500mm variation to a setback of 5m may not be insignificant but a 500mm variation on a 25m setback is very likely to be insignificant.

Any attempt of an arbitrary percentage to quantify the variation, however, would not be supported.

Further clarity regarding this term is warranted in Part 4 – Interpretation via a definition.

(b) – *adjacent land*” – wholly supported.

(c) – the term “*materially apparent*” needs reconsideration as it may be interpreted as being clearly visible. A minor variation may be visible, i.e. a change in front window size, but still of no consequence.

An alternative term would be “*materially important*” or similar. This would allow the importance of the variation to be considered against the intent of the policy rather than just whether it is visible or apparent to the locality. For example, a change in materials would be of different importance in a General Neighbourhood Zone versus an Established Neighbourhood Zone with a Historic Area Overlay.

(2) (a) and (b) – wholly supported.

## **7 – Minor variation to planning consent**

The same comments made above for minor variations to DTS criteria is put forward for minor variations to planning consent.

## **Part 3 - Documenting decision making for a minor variation**

### **8 – Documentation**

- (1) (a) - this section is generally supported however it is important that the declaration is provided in a consistent format.  
This should be facilitated either via a prescribed form included in the Schedules of the Regulations or via the DAP with simple proforma entry points including drop down menus and the like to ensure the process is clear and simple.
- (b) – this should form part of any prescribed form or DAP functionality
- (c) – this should form part of any prescribed form or DAP functionality and be unable to be skipped
- (d) – It is unclear what other bases could be used as a determination of minor that isn't already available in Part 2, section 6 or 7.  
This is very open and may be interpreted more widely than intended.  
Reconsideration as to whether this part is necessary should be considered.
- (2) (a) – it should not be possible to record a minor variation to a planning consent that is no longer operative.  
Functionality in the DAP that prevents applying for a variation if the consent has lapsed should be included.
- (b) – without a declaration a minor variation should not be able to be considered or completed.  
Functionality in the DAP that prevents applying for a variation without the declaration should be included.

(c) – as above, functionality in the DAP should be included to ensure a minor variation application cannot be completed without the required considerations.

(d) – as noted under 1(d) above.

### **Summary**

The City of Unley appreciates the opportunity to contribute to the draft Practice Direction 19 and generally supports the intent of the document. Council is of the opinion that some elements in the draft require reconsideration. Importantly, such reconsideration would not diminish from the intent and outcomes sought by the Practice Direction.

Council requests a reconsideration of the practice direction to address our noted concerns and would welcome being advised of intended action in response to those comments.

Your officers should feel free to contact me if further detail or clarification is required.

Yours sincerely

A handwritten signature in black ink, appearing to read 'T. Bourner', with a long horizontal flourish extending to the right.

Tim Bourner  
Team Leader Planning – Assessment Manager



**Environment Protection Authority**  
GPO Box 2607 Adelaide SA 5001  
211 Victoria Square Adelaide SA 5000  
T (08) 8204 2000 F (08) 8204 2020  
Country areas 1800 623 445

29 January 2025

Department for Housing and Urban Development  
Level 10, 83 Pirie Street  
ADELAIDE SA 5000  
Attention: Tom Victory

[PlanSA@sa.gov.au](mailto:PlanSA@sa.gov.au)

Dear Tom Victory

#### **Feedback on Draft Practice Direction 19: Minor Variations**

Thank you for the opportunity to comment on the *Draft Practice Direction 19: Minor Variations* (PD19).

The EPA has reviewed the document and provides the following observations for your consideration.

Under the proposed provisions of PD19, a variation that:

*“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...”*

cannot be considered a minor variation.

However, while draft PD19 would allow a variation to a planning consent condition to be treated as a minor variation, it does not explicitly clarify whether this applies to planning consent conditions that are directed to be imposed by referral bodies. This ambiguity leaves it to the discretion of the relevant authority to determine whether a change to such a condition qualifies as a minor variation. This uncertainty could potentially impact developments that subsequently require EPA licensing. Such ambiguity may reduce the EPA's ability to effectively prevent or minimise environmental, human health, and amenity impacts, as supported by the objects of the *Environment Protection Act 1993*.

To address this issue and ensure the original intent and integrity of conditions directed to be imposed by referral bodies are preserved, the EPA recommends including explicit wording in PD19 to clarify that any variation to a condition imposed by a referral body cannot be treated as a minor variation.

This clarification would help ensure consistency with the referral process, eliminate ambiguity, preserve the intent and clarity of original conditions, and provide greater certainty for relevant authorities.

Any queries relating to this matter, please contact Tudor Taylor on (08) 8204 9402 or [tudor.taylor@sa.gov.au](mailto:tudor.taylor@sa.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Melissa Chrystal', written in a cursive style.

Melissa Chrystal

**ACTING PRINCIPAL ADVISER DEVELOPMENT ASSESSMENT  
ENVIRONMENT PROTECTION AUTHORITY**



Cnr Port Road and Station Place  
Hindmarsh SA 5007  
PO Box 151, Welland SA 5007  
08 8340 5900

20 January 2025

Planning and Land Use Services  
GPO Box 1475  
ADELAIDE SA 5001

Attention Sir/Madam,

### **Draft Practice Direction: No. 19 - Minor Variations**

The Housing Industry Association (HIA) appreciates the opportunity to provide comments on Draft Practice Direction: No. 19 for minor variations (herein referred to as *the draft*). HIA supports the work undertaken by the Planning and Land Use Services Department (PLUS) in giving guidance to relevant authorities when processing minor variations.

We understand the scope of this draft is to establish procedural requirements when managing Development Applications. HIA supports the implementation of a new practice direction to improve efficiency within the planning system. Allowing a relevant authority to use minor variations provides much needed flexibility within the Code, potentially saving time and money for all stakeholders.

It should be noted that Section 43(2)(b) of the Planning, Development and Infrastructure (PDI) Act stipulates the following.

*'a practice guideline may specify variations that will, in relation to deemed-to-satisfy development, constitute minor variations'.*

### **Opening Comment**

To meet the intent of the Act, it may be necessary to establish a practice guideline in conjunction with a practice direction. If this was to occur, our comments contained in this submission are suitable for each document. Regardless, HIA believes the current draft ought to be expanded to facilitate further directives.

Discussions on minor variations have been ongoing for several years. HIA provided feedback on *Practice Guideline: No. 1 of 2021* and was disappointed a resolution on appropriate wording could not be reached at that time.

Difficulties associated with minor variations are best summed up in past Government consultation papers, identifying a “*lack of ability for a relevant authority to allow minor variations*” (Miscellaneous Technical Enhancement Code Amendment 2022) in certain situations. Even though the subject topic is complex in nature, it is vital a practice direction and/or guideline is established to bring consistency amongst relevant authorities.

The draft addresses two components within the PDI Act, one is specific to variation(s) applied to existing Development Applications, and the other involves assessment against Deemed-to-Satisfy (DtS) provisions under the Planning and Design (P&D) Code.

HIA is pleased to see both aspects dealt with concurrently but is aware the use of minor variations can vary substantially. In this regard, the term ‘minor’ may require a broad definition.

### **Clearer definitions required**

The primary objective of the draft should be to offer clear and concise advice. Because the interpretation of minor can be subjective, accredited professionals in the public and private realm are sometimes left bickering with each other when dealing with the same Development Application. This is costly to the end consumer, who may wait weeks for the conflict to be settled. **The draft has the potential to resolve these situations.**

Under the current wording, ‘insignificant’ is used when describing minor variation; clause 4 states ‘*insignificant means unimportant or trifling*’. HIA agrees with this but believes more context and guidance is needed in its interpretation.

Having participated in previous stakeholder engagements, much work was performed on establishing values for allowable tolerances. The theory was that values are indisputable, thus tempering potential conflicts. An extract of this is shown within Appendix A.

During conversations, a counterargument for fixed values (numerical or percentage based) suggested such tolerances would ultimately become the benchmark, making minimum figures in the P&D Code irrelevant.

Although we understand this viewpoint, **HIA still supports allowable tolerances.** Rather than specifying a quantity of variance for each element i.e. roof pitch  $\pm 5\%$ , a maximum value could be nominated for certain building aspects.

Limiting the prescribed variance values not only assists accredited professionals making a decision, but it also places a level of constraint on the adjudicator.

### **Recommendations/ideas for improvement**

Acknowledging minor variations can be applied differently to existing Development Applications (variation of authorisation) when compared to DtS assessments, HIA would like to see the following statement adopted.

***With Regard to Section 106(2) of the PDI Act, a variation may be determined as minor provided it does not exceed 5% variance to the Deemed-to-Satisfy numerical provisions for the following elements***

- ***Building height***
- ***roof pitch***
- ***Wall length***
- ***Floor configuration***
- ***Building setback***
- ***Room dimensions***
- ***Finished floor levels***
- ***Allotment size***
- ***Open space***
- ***Site storage***

Under this directive, discretion is left to the accredited professional when determining the extent of a variation within the confines of the percentage value.

HIA acknowledges other building related elements associated with car parking, landscaping, materials (in general), obscured glazing/screening (overlooking), fixed plant/equipment, tanks and excavations can be difficult to quantify for the purpose of determining minor. In many regards, the scale of a project and/or its primary purpose dictates the significance of each element.

With that said, the development authorisation description for proposed works is a critical part when evaluating minor variations. Difficulties can be experienced when the description is altered, potentially requiring completely new Development Applications for the inclusion or subtraction of building elements.

To ensure minor variations can be utilised where a development description is altered, the draft and/or practice guideline should make it clear that variations can be accepted as minor by including the following statements.

***With regard to Section 128 of the PDI Act, an application to alter the description of a Development Authorisation may be considered as a minor variation provided the nature of the application has not been significantly changed by the alteration. Building elements listed within Schedule 7 of the PDI (General) Regulations may be included or removed within a development description as part of a minor variation.***

Furthermore

***Where a minor variation is applied to a development authorisation, the variation may be considered consistent with previous consents provided the nature of***

***the application has not significantly changed and is not at major variance to the original authorisation.***

Where a conflict does arise with interpretation, the draft must establish guidance on the hierarchy of responsibility. This can be easily achieved by referring to the obligations set out under the PDI Act. The acceptance of building rules (consent) from an accredited professional is clear.

### **Section 118**

- (8) subject to this act, **a relevant authority must accept that proposed building work complies with the building rules to the extent that—**
  - (a) such compliance is certified by the provision of technical details, particulars, plans, drawings or specifications prepared and certified in accordance with the regulations; **or**
  - (b) **such compliance is certified by a building certifier.**

It is conclusive that the intent of the Act is to place the burden of responsibility onto the shoulders of the authorising building certifier. Furthermore, an accredited professional working for a relevant authority is compelled to follow the directions listed under the Act.

### **Section 91**

- (2) An accredited professional **must not—**
  - (a) perform any act or make any omission that results in a failure to comply with this Act;

The draft can eliminate potential conflict between accredited professionals by making the following statement.

***With regard to Section 118(8) of the PDI Act, minor variations determined in accordance with this practice direction must be accepted by a relevant authority where building rules is certified by a building certifier.***

In addition to the statements above, HIA wishes to make comment on the current wording in the draft. A relevant authority may consider a variation as minor if *the effect of the variation will not be materially apparent*, spelt out in clauses 6(1)(c), 7(1)(c), 8(1)(c)(iii) and 8(2)(c)(iii)

It could be argued that any variation, whether significant or insignificant, may be materially apparent. This is especially the case should the variation be evident on the front façade of a building. HIA strongly urges PLUS to either remove the clause or re-word it so that all minor variations, whether obvious or not, are not excluded from being classified as such. Any re-wording of the clause should be as follows.

***the effect of the variation will not be materially important or significant with regard to appearance.***

In summary, a new practice direction must consider cost/benefit outcomes for any proposed change and accomplish sensible planning provisions in line with consumer affordability. The purpose of new legislation should be to improve development efficiencies; the draft has the capacity to do this.

Prior to the Code Amendment being ratified, HIA would appreciate the opportunity to discuss with the Commission the full range of applicable HIA Policy Statements. In particular, *Principles of a Good Planning System* shown within Appendix B of this submission.

Above all, the planning system relies on the speed of delivery and quality outcomes. The points we have raised are an effort to assist both.

We thank you for the opportunity to provide feedback; HIA welcomes further discussion on these matters and waits for your subsequent response. Do not hesitate to contact myself on 8340 5900 or at [s.knight@hia.com.au](mailto:s.knight@hia.com.au) .

**Yours sincerely**  
**HOUSING INDUSTRY ASSOCIATION LIMITED**

A handwritten signature in black ink, appearing to read 'S Knight', written in a cursive style.

**Stephen Knight**  
**HIA Executive Director – South Australia**

## APPENDIX A – ORIGINAL DRAFT DISCUSSION TEMPLATE

### Practice Guideline: No. 1 of 2021

This practice guideline is issued by the State Planning Commission under section 43 of the *Planning, Development and Infrastructure Act 2016*

#### **Introduction**

Section 43(1) of the *Planning, Development and Infrastructure Act 2016* allows the State Planning Commission (the “Commission”) to issue practice guidelines with respect to the interpretation, use or application of the Planning Rules or the Building Rules (as those terms are defined under the Act).

In addition, section 43(2)(b) of the Act provides that a practice guideline may specify variations that will, in relation to deemed-to-satisfy development, constitute minor variations.

A practice guideline is made by the Commission with the approval of the Minister.

#### **Practice guideline**

##### **Part 1 – Preliminary**

###### **1 – Citation**

This practice guideline may be cited as the *State Planning Commission Practice Guideline (Minor Variations – Deemed-to-Satisfy Development) 2021*.

###### **2 – Commencement of operation**

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

###### **3 – Object of practice guideline**

The purpose of this practice guideline is to specify variations that will, in relation to deemed-to-satisfy development, constitute minor variations for the purposes of section 106(2) of the Act.

###### **4 – Interpretation**

In this practice guideline, unless the contrary intention appears –

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

**Code** means the Planning and Design Code.

*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 – Minor variations in relation to deemed-to-satisfy development

### 5 – Specified variations

Pursuant to section 43(2)(b) of the Act, the following variations are specified as variations that will, in relation to deemed-to-satisfy development, constitute minor variations for the purposes of section 106(2) of the Act:

- (a) a variation from a deemed-to-satisfy provision in the Code that, in the opinion of the relevant planning consent authority, is **trifling or insignificant**
- (b) a variation from a Technical and Numerical Variation that applies to the site of the proposed development that, in the opinion of the relevant planning consent authority, is **trifling or insignificant**.

For the purposes of this section, the following is not considered to be **trifling or insignificant**:

- (a) Where a failure to satisfy a DTS provision in the Code if the departure (or departures) would result in the development needing to be publicly notified, for reasons specified in the Procedural Matters of the relevant Zone, if the development was categorised as performance assessed
- (b) A determination that the proposed development is minor in nature and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development.
- (c) The variations set out in table 1:

## EXAMPLES ONLY

(we have used generic terms in column 1, but these will specifically reference the Code)

Table 1

Zone/Subzone/Overlay/General	Assessment Provision	Variation	Exceptions
Floor levels in Flood Areas	DTS x.x	Failure to satisfy the DTS requirement	Where the Assessment Manager of the Council has written to the Accredited Professional advising that a different floor

<b>Zone/Subzone/Overlay/General</b>	<b>Assessment Provision</b>	<b>Variation</b>	<b>Exceptions</b>
			levels should be applied
Urban Tree Canopy requirements	DTS x.x	Failure to satisfy the DTS requirement	
Water tank requirements	DTS x.x	Failure to satisfy the DTS requirement	
Site Coverage	DTS x.x	Failure to satisfy the DTS requirement	Where all boundary setbacks are met, and this is the only departure from the DTS provisions; or  Within a tolerance of 5% of the DTS standard
Setback from primary street frontage	DTS x.x	Failure to satisfy the DTS requirement	Within a tolerance of 5% of the DTS standard,
Garages / Carports setback from primary street frontage	DTS x.x	Failure to satisfy the DTS requirement	Floor area exceeds with a tolerance of 5% of the DTS standard
Passive surveillance (include habitable room minimum dimension 2.4)	DTS x.x	Failure to satisfy the DTS requirement	
Overlooking / visual privacy	DTS x.x	Failure to satisfy the DTS requirement	
Car parking and access	DTS x.x	Failure to satisfy the DTS requirement	
Allotment frontage width	DTS x.x	Failure to satisfy the DTS requirement	Within a tolerance of 5% of the DTS standard where the DTS standard is greater than 8 metres
Allotment size	DTS		Within a tolerance of 5% of the DTS Standard for

Zone/Subzone/Overlay/General	Assessment Provision	Variation	Exceptions
			allotments greater than 300 square metres

Note(s)

1. matters that are publicly notified must default to performance assessed.
2. the assessment of a minor variation is to consider the variation / departure from the planning rules.
3. the assessment of a minor variation must not consider the setting of other developments (either existing or proposed) within the locality of the site of the proposed development.

**This practice guideline is made by the State Planning Commission on xx yyy 2021 with the approval of the Minister given to the Commission on aa bbb 2021.**



## Principles of a Good Planning System

### HIA's Position Statement

#### 1. Certainty

- a. The planning system must provide certainty to those utilising it.
- b. Planning codes and policy must be clearly written to provide certainty to the users and planning authorities of the items that are required to be addressed and the available scope for discretion in decision making.
- c. Assessment and determination processes must be reasonable, efficient and relevant to the zoning of the land and other known constraints on the land.
- d. The planning system should seek to eliminate repetition and duplication of information requests and assessments.
- e. Planning application requirements must not overlap or exceed building application requirements.
- f. Planning systems must support truth in zoning by facilitating the development of permitted land uses within each zone.
- g. Planning systems should not permit the retrospective application of 'new' requirements or constraints unless compensation is provided to property owners who lose a development right.
- h. Fees and charges for planning services should reflect the cost of assessment, be readily calculated and be disclosed prior to lodgement of any application.
- i. Planning codes and policies should not incorporate technical building requirements.
- j. Planning systems should not include or support discretionary taxes, such as: windfall gains tax, value uplift, etc.

#### 2. Consistency

- a. Policies developed to guide planning decisions must be written in concise language and be readily and consistently interpreted.
- b. The planning system should support consistency of outcomes by providing adequate guidance for design development and decision making and avoid the application of retrospective planning guidelines.
- c. Planning design codes should be applied at the highest level (i.e. state government) to avoid ad-hoc design standards across individual local council areas.

#### 3. Flexibility

- a. Planning codes and policy should include both performance objectives and prescriptive standards to provide a degree of flexibility and support changing housing market trends and innovation in housing design and technology.

**4. Transparency**

- a. The planning system should be transparent to the community and the development industry.
- b. Planning decisions should be easily understood and have limited potential for real or perceived intervention or influence.

**5. Simple, clear processes**

- a. The planning system should provide processes that do not create undue regulatory burdens for users.
- b. Information requirements should be concise, with clear obligations, steps and timelines for the provision of details to the planning authority by an applicant.
- c. Planning assessment and determination processes must be reasonable, efficient and relevant to the zoning of the land and type of development proposed.
- d. The planning and building systems must provide a single approval pathway for single dwellings and dual occupancy dwellings on land zoned for residential development.

**6. Strategically led planning**

- a. The planning system should embed a strategic approach to spatial planning which balances competing priorities and requires planning authorities to take a holistic approach to achieving planning outcomes, recognising a balance between economic, social and environmental factors.

**7. Independent, merit based decisions**

- a. Planning decisions should be made by informed, independent parties and be merit based, determined purely in accordance with compliance to the relevant statutory planning instruments applicable to the application as at the time of lodgement of the application.

**8. Accountability for decisions**

- a. A planning system should provide clear accountability for the decision making processes and the decisions made on behalf of the community.
- b. All planning decisions (zoning, subdivision, development) should be provided with a right of appeal for the applicant to an independent administrative body.
- c. The planning system should not allow multiple planning authorities or agencies to be responsible for overlapping requirements or the duplication of requirements and approval obligations.

**9. Outcome oriented decisions**

- a. Decisions in an effective planning system must be focused on the outcomes, rather than details that have little bearing on the impact of development on the community.
- b. The planning system should facilitate:
  - i. The development of land in an economically viable manner in accordance with its zoning.
  - ii. The timely zoning of land for residential purposes based on a transparent strategic assessment involving all relevant agencies with clear roles and responsibilities for all stakeholders.

- iii. Governments managing land supply, in consultation with the residential development industry, to ensure there is an adequate supply of land at each stage of the land supply pipeline.
- iv. The delivery of public infrastructure that supports residential land zoning and development in a timely manner for the social and environmental benefit of the whole community.

**10. Timely decision making**

- a. Timely decision making means compliance with statutory timeframes where they exist, recognition of the importance of economic investment that results from development approvals and agreement between decision makers and applicants on a program to decision making.

**Background**

- In 2001, HIA launched a national position statement on planning systems, known as Better Living Environments. The position statement focused on three core tenants – flexibility, predictability and affordability. Within these tenants, various case studies and examples of good planning practices that would assist in the delivery of new land and housing were identified.
- Following Better Living Environments HIA has developed a series of policy statements that address individual elements of the planning system, covering issues such as 'truth in zoning', managing urban land supply, development contributions, subsidised affordable housing and more. Today these planning policy statements form the basis of HIA's advocacy for an improved planning system.
- It was agreed there would be benefit in creating a statement that concisely sets out the fundamentals of a good planning system that can serve as a foundation statement on the planning system and the delivery of land and residential developments.
- In the absence of other regulatory levers, the planning system is now seen as the panacea for any matter that governments believe warrants oversight, making the system extremely complex for all parties to navigate.
- Over the last decade, policy makers have sought to address a growing list of social and environmental issues that have not traditionally been matters for consideration in the planning system.
- A planning system must recognise the importance of delivering housing affordable outcomes. This can only be achieved where the planning system manages the zoning of land and the development of that land in a timely manner balancing the social, economic and environmental benefit of the whole community.

## DHUD:PlanSA Submissions

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**From:** Julie Vanco <jvanco@charlessturt.sa.gov.au>  
**Sent:** Thursday, 2 January 2025 10:59 AM  
**To:** DHUD:PlanSA Submissions  
**Subject:** RE: Minor Variations Practice Direction – Targeted Engagement  
**Attachments:** Julie Vanco - Draft Minor Variations Practice Direction 20 September 2024 with comments.pdf

You don't often get email from jvanco@charlessturt.sa.gov.au. [Learn why this is important](#)

### OFFICIAL

Thank you for forwarding the draft document for Practice Direction 19, aiming to provide guidance on how to consider whether a change from a DTS standard is minor during the initial assessment and also after a decision on an application has been issued, for comment.

I have voiced my concern about allowing variations from the standard for a DTS assessment on numerous occasions and appreciate that this would require a change to legislation to bring about the change. I believe that this is the only way to get certainty and consistency in the assessment of DTS applications and to streamline the issue of Development Approval.

I have provided comment on the practice direction in the attached version. I understand that this is an initial step to try and improve this long running issue and that if it does not bring about the recommended outcome from the expert panel then the legislation will be amended.

Thank you and kind regards

**Julie Vanco**  
Assessment Manager  
City of Charles Sturt

72 Woodville Road, Woodville 5011  
T: (08) 8408 1187, F: (08) 8408 1122  
[www.charlessturt.sa.gov.au](http://www.charlessturt.sa.gov.au)

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**From:** DHUD:PlanSA No Reply <DHUD.PlanSANOReply@sa.gov.au>  
**Sent:** Tuesday, 12 November 2024 4:53 PM  
**Subject:** Minor Variations Practice Direction – Targeted Engagement

### OFFICIAL

Dear Planning Accredited Professionals,

Future Urban has been engaged by Planning and Land Use Services (PLUS) to undertake stakeholder engagement on the draft Minor Variations Practice Direction ('draft Practice Direction').

A copy of the draft Practice Direction is **attached**.

Guidance on minor variations has been sought from various areas of the planning and development sector for some time. Most recently it was identified as an action arising from the Expert Panel’s Review.

Following further review by PLUS and the State Planning Commission, the draft Practice Direction has been prepared.

PLUS is now seeking your feedback on the draft Practice Direction.

Feedback on the draft Practice Direction is being invited until **5pm on Friday, 31 January 2025**.

Written submissions can be sent to [plansasubmissions@sa.gov.au](mailto:plansasubmissions@sa.gov.au).

You are also invited to attend a workshop on the draft Practice Direction. The workshops will provide:

- a brief history on the Practice Direction;
- explanation about what is in the Practice Direction;
- case studies to put the Practice Direction into practice; and
- an opportunity to provide direct feedback on the draft Practice Direction.

Workshops will be held at the following dates and times:

	Date	Time	Accessibility	Register
<b>Workshop 1</b>	28 November 2024	9:30am – 12pm	In Person and online upon request	<a href="#">Register Here</a>
<b>Workshop 2</b>	28 November 2024	2pm – 4:30pm	In Person and online upon request	<a href="#">Register Here</a>
<b>Workshop 3</b>	4 December 2024	9:30am – 12pm	In Person and online upon request	<a href="#">Register Here</a>
<b>Workshop 4</b>	4 December 2024	2pm – 4:30pm	In Person and online upon request	<a href="#">Register Here</a>

The workshops are designed to be interactive so attendance in person is recommended, however we understand that this may not be possible for everyone. If you are needing to attend online please contact Future Urban at [engagement@futureurban.com.au](mailto:engagement@futureurban.com.au) or on (08) 8221 5511.

Kind regards,

Planning and Land Use Services  
Department for Housing and Urban Development



**The City of Charles Sturt acknowledges and pays respect to the traditional custodians of the land, the Kurna people of the Adelaide plains.**

**Warning - This email message is intended only for the addressee(s) and may contain information that is confidential, subject to legal or other professional privilege, or protected by copyright. If you have received this in error, please notify the sender by reply email and delete this email from your system. You are not permitted to use, reproduce or disclose the contents of this email. No representation is made that this email is free of viruses. Virus scanning is recommended and is the sole responsibility of the recipient. Thank you.**

## Practice Direction: No. 19

### Minor Variations

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. This practice direction does not limit the operation of these provisions and does not limit or prevent the Commission from acting under section 43(2)(b) of the Act with respect to making a practice guideline to specify variations that will, in relation to deemed-to-satisfy development, constitute minor variations (recognising in such a case the Commission is making specific provision with respect to a particular kind or class of variation or variations).

The relevant requirements of sections of the Act and the Regulations as they relate to this practice direction are outlined below:

It is suggested that a Practice Direction is all that is needed and it would be overkill to have a guideline as well. Remove the whole second sentence. referring to a practice guideline.

**Planning, Development and Infrastructure Act 2016**

**106—Deemed-to-satisfy assessment**

*(1) If a proposed development is classified as deemed-to-satisfy development, the development must be granted planning consent.*

*(2) If a relevant authority is satisfied that development is deemed-to-satisfy development except for 1 or more minor variations, the relevant authority must assess it as being deemed-to-satisfy (and that determination will then have effect for the purposes of this Act).*

...

*(5) A condition under subsection (4) may provide that a proposed development assessed under subsection (2) will be undertaken so as to address any minor variation in order to make it consistent with the deemed-to-satisfy requirement.*

**128—Variation of authorisation**

*(1) Subject to subsection (2), a person may seek the variation of a development authorisation previously given under this Act (including by seeking the variation of a condition imposed with respect to the development authorisation).*

*(2) An application to which subsection (1) applies—*

*(a) may only be made if the relevant authorisation is still operative; and*

*(b) will, for the purposes of this Part, but subject to any exclusion or modification prescribed by the regulations and any other provision made by the regulations, to the extent of the proposed variation (and not so as to provide for the consideration of other elements or aspects of the development or the authorisation), be treated as a new application for development authorisation;*

...

**Planning, Development and Infrastructure (General) Regulations 2017**

**65—Variation of authorisation (section 128)**

*(1) For the purposes of section 128(2)(b) of the Act, if a person requests the variation of a development authorisation previously given under the Act (including by seeking the variation of a condition imposed with respect to the development authorisation) and the relevant authority is satisfied that the variation is minor in nature—*

*(a) the relevant authority may approve the variation; and*

*(b) the request is not to be treated as a new application for development authorisation;*

...

## **Additional context**

Add quotes from caselaw judgements on minor variations

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 assessment manager, an assessment panel or, in some situations, the State Planning Commission, is able to act as the relevant authority for both the assessment of deemed-to-satisfy development and performance assessed development (including where a person is seeking the variation of a development authorisation). 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:
  - (a) the development is within a class of development excluded by the Code from the operation of subsections (3) and (4) of section 107 of the Act; or
  - (b) the relevant authority has determined that there is a variation to 1 or more corresponding exclusions prescribed in Column B of Table 5 – Procedural Matters (PM) – Notification in the relevant Zone in the Code that is minor in nature and does not require notification.
- (3) In some situations (typically in relation to heights of buildings), the Code notification requirements 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.
- (5) In some situations, the Code excludes the requirement to undertake referrals if:
  - (a) certain deemed-to-satisfy criteria (operating as designated performance features) are met; or
  - (b) in the opinion of the relevant authority, the development is minor in nature and would not warrant a referral when considering the purpose of the referral.
- (6) The authority to make a determination referred to in subclause (2), (3) or (5) above is the relevant authority for the purposes of assessing the

Amend/clarify  
Panels do not  
assess DTS as  
these are not  
notifiable.

relevant application for planning consent, including in the case of an application for the variation of a development authorisation. These applications do not include applications relating to deemed-to-satisfy development.

## **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:

- (a) matters to be considered by a relevant authority when it is determining whether a variation is:
  - (i) a minor variation from any Deemed-to-Satisfy criteria in the Code; or
  - (ii) a minor variation of a planning consent for the purposes of section 128(2)(b) of the Act; and
- (b) 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.

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

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**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. Add in definition of materially apparent

**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.

*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.*

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

Pursuant to section 42(2) of the Act, a relevant authority is required, in acting under section 106(2), or 128(2)(b) and regulation 65(1), to consider the provisions and principles set out in Part 2.

## Part 2 - Principles for determining a minor variation

### 6 – Minor variation to DTS criteria

- (1) Subject to subclause (2), a relevant authority may consider that a variation 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 materially apparent.

- (2) 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 in Column B of Table 5 – Procedural Matters (PM) – Notification in the relevant Zone in the Code; and

(b) should be removed  
DTS requirements are  
measurable and the  
impact on adjacent land is  
moving towards performance  
assessment and goes beyond  
the scope of a minor variation.

Add details of "to whom" the  
variation will not be materially  
apparent. It is suggested this  
should be to a person in the public  
realm or adjoining neighbour

- 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 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. the 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 exemption to a referral by virtue of it being minor in nature).

**7 – Minor variation to planning consent** Add in - Performance Assessed Development to the heading DTS that has already been approved with minor variation should not be able to be continually amended after approval as the various changes are likely to result in the need for a performance assessment. If this is to include DTS then there needs to be clarification about extent of variation from the standard being limited

(1) Subject to subclause (2), 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 materially apparent.

(2) A variation cannot be considered to be minor in nature under this clause if the variation:

(a) 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

(b) 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).



### Part 3 - Documenting decision making for a minor variation

#### 8 – Documentation

Request for there to be an enhancement to the Portal to have this as a field that is filled out by the relevant authority, rather than having to be a file note that is uploaded to the Portal.

(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

Point ii. should only apply to Performance Assessed Development and should be worded to say the effect of the variation to adjacent land will be insignificant . To allow this for DTS implies a merit review is warranted

iii. the effect of the variation will not be materially apparent.

(d) in relation to a determination that has been made on some other basis – a brief explanation as to the reasons for why the relevant authority has determined that the variation constitutes a minor variation.

(2) If a relevant authority determines a variation to a planning consent is minor in nature as provided by section 128(2) 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 (this should be able to be viewed by the Development Approval Authority)

(c) in relation to the application of this practice direction – a brief explanation as to why it is satisfied that:

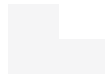
i. variation is insignificant; and

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 materially apparent.

(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. Clarification sought on what is meant by (d). This seems to provide opportunity to not adhere to the parameters outlined. Add wording - with viewing rights by the Relevant Authority issuing the Development Authorisation if it is retained



**This practice direction is made by the State Planning Commission on xx yyy 2024 with the approval of the Minister given to the Commission on aa bbb 2024.**

Further Portal change suggested so that an applicant can't apply for a variation if the consent is no longer operative, i.e. should first trigger an extension of time request if consent is not operative

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## Victory, Tom (DHUD)

---

**From:** Victory, Tom (DHUD)  
**Sent:** Thursday, 28 November 2024 1:33 PM  
**To:** Matthew Baillie  
**Subject:** RE: Minor Variations Workshop 1 - In person attendance

Hi Matthew. Thanks for your feedback.

The PDI Act uses the term in the following section for planning assessments for DTS applications:

### 106—Deemed-to-satisfy assessment

- (1) If a proposed development is classified as deemed-to-satisfy development, the development must be granted planning consent.
- (2) If a relevant authority is satisfied that development is deemed-to-satisfy development except for 1 or more minor variations, the relevant authority must assess it as being deemed-to-satisfy (and that determination will then have effect for the purposes of this Act).

The Practice Direction is largely being prepared to respond to the Expert Panel recommendation #6 from the recent planning system review. This relates to the issues which have been found in relation to planning consent (not for building rules consent). As such there are no plans at this stage to including building rules consent minor variations in the Practice Direction or a future one however if there are key concerns regarding that process feel free to put in a written submission highlighting what there are.

Regards  
Tom

---

**From:** Matthew Baillie <Matthew.Baillie@yorke.sa.gov.au>  
**Sent:** Thursday, 28 November 2024 11:15 AM  
**To:** Victory, Tom (DHUD) <Tom.Victory@sa.gov.au>  
**Subject:** RE: Minor Variations Workshop 1 - In person attendance

OFFICIAL

Hi Tom

Thankyou for organising the session today.

In response to today's session from a Building Surveyor perspective, there appears to be wording in the Practice Direction that may cause confusion by using the term "minor variation" in regard to an initial assessment against DtS.

Historically a minor variation is only used in relation to a DA that already has development consent.

I don't think the term 'minor variation' should be used for an initial planning assessment against DtS.

Regulation 65 appears to be about minor variations to existing consents, not new assessments.

The term 'minor variation to DtS' could be reworded to avoid confusion.

A suggestion is 'marginally at variance to DtS'.

Apologies if I have my interpretation skewed as not being a planning accredited professional.

Are there any plans for a Practice Direction regarding building rules assessments of minor variations, in particular when it is a structure does not require planning consent (Building Code Only).

Kind regards

**Matt Baillie | Manager Building & Compliance**

Yorke Peninsula Council | Principal Offices – Yorketown and Maitland

Ph: 08 - 8832 0000

E: [Matthew.Baillie@yorke.sa.gov.au](mailto:Matthew.Baillie@yorke.sa.gov.au) | W: [www.yorke.sa.gov.au](http://www.yorke.sa.gov.au)



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---

**From:** Victory, Tom (DHUD) <[Tom.Victory@sa.gov.au](mailto:Tom.Victory@sa.gov.au)>

**Sent:** Monday, 25 November 2024 1:20 PM

**To:** Matthew Baillie <[Matthew.Baillie@yorke.sa.gov.au](mailto:Matthew.Baillie@yorke.sa.gov.au)>

**Subject:** RE: Minor Variations Workshop 1 - In person attendance

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OFFICIAL

Hi Matthew. Yes sure- just sent you the link

---

**From:** Matthew Baillie <[Matthew.Baillie@yorke.sa.gov.au](mailto:Matthew.Baillie@yorke.sa.gov.au)>  
**Sent:** Monday, 25 November 2024 12:30 PM  
**To:** Victory, Tom (DHUD) <[Tom.Victory@sa.gov.au](mailto:Tom.Victory@sa.gov.au)>  
**Subject:** RE: Minor Variations Workshop 1 - In person attendance

Hi Tom

Would this happen to be a Teams meeting so I can attend online?

Thanks

**Matt Baillie | Manager Building & Compliance**  
Yorke Peninsula Council | Principal Offices – Yorketown and Maitland  
Ph: 08 - 8832 0000  
E: [Matthew.Baillie@yorke.sa.gov.au](mailto:Matthew.Baillie@yorke.sa.gov.au) | W: [www.yorke.sa.gov.au](http://www.yorke.sa.gov.au)



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-----Original Appointment-----

**From:** Victory, Tom (DHUD) <[Tom.Victory@sa.gov.au](mailto:Tom.Victory@sa.gov.au)>  
**Sent:** Monday, 25 November 2024 11:15 AM  
**To:** Nitsan Taylor; Matthew Baillie; [hello@westapprovals.com.au](mailto:hello@westapprovals.com.au); Deryn Atkinson; Doug Samardzija; [garth@heyneplanning.com.au](mailto:garth@heyneplanning.com.au); [boneil@ahc.sa.gov.au](mailto:boneil@ahc.sa.gov.au); [tmason@ahc.sa.gov.au](mailto:tmason@ahc.sa.gov.au); James Booker; [sparaskevopoulos@ahc.sa.gov.au](mailto:sparaskevopoulos@ahc.sa.gov.au); [clare.wright@alexandrina.sa.gov.au](mailto:clare.wright@alexandrina.sa.gov.au); [fiona.barr@onkaparinga.sa.gov.au](mailto:fiona.barr@onkaparinga.sa.gov.au); Lou

Fantasia; [tedbyrt@outlook.com](mailto:tedbyrt@outlook.com); Alex Wright; [nick@saurp.com.au](mailto:nick@saurp.com.au); [h.videka@murraybridge.sa.gov.au](mailto:h.videka@murraybridge.sa.gov.au); [azollo@light.sa.gov.au](mailto:azollo@light.sa.gov.au); [l.pohlinger@murraybridge.sa.gov.au](mailto:l.pohlinger@murraybridge.sa.gov.au); Emily Nankivell; Jason Cattonar; Ashley Rowan

**Subject:** Minor Variations Workshop 1 - In person attendance

**When:** Thursday, 28 November 2024 9:30 AM-12:00 PM (UTC+09:30) Adelaide.

**Where:** 83 Pirie Street, Level 7, Elsie Jackson Conference Room 2

**Caution:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe. When in doubt, please contact the Council's IT Team.

We look forward to your attendance at the Minor Variations Workshop this Thursday morning at the PLUS offices at 83 Pirie Street, Adelaide.

You will receive a Sine fast track QR Code to use at the security desk to obtain a security pass. That pass will then allow you through the gates to the lifts and then head up to Level 7 – Conference Room 2 (Elsie Jackson).

Please advise via email if you have any queries or if you wish to revert to online attendance instead.

Regards

Tom



CITY OF  
TEA TREE GULLY  
*Naturally Better*

Planning and Land Use Services  
Department for Housing and Urban Development  
[plansasubmissions@sa.gov.au](mailto:plansasubmissions@sa.gov.au)

30 January 2025

Dear PLUS

**Draft Minor Variations Practice Direction – City of Tea Tree Gully Feedback**

Thank you for the opportunity to review the draft Practice Direction for Minor Variations.

Upon review of the document, we have the following comments which we would like to be considered:

- As the draft document has considered both DTS and Performance Assessed applications, we believe there is benefit in the scope of the PD being expanded to include variations generally. This is because there are a lot of inconsistencies in this space. In particular, it would be helpful to clarify the following with respect to a variation request:
  - Whether a minor variation can include a change to the elements of an application (either adding or removing elements)
  - How variations are processed, for example looking at the scope of procedural matters around variations that are not ‘development’ in their own right such as public notification and referrals
- In addition to the proposed record keeping of the authority for a minor variation, it is recommended the minor variation submission include plans (where applicable) that clearly identify what changes are being proposed in the request.
- The PD should include template for Level 3 and Level 4 Planning relevant authorities to use in making their determinations.
- Access to the assessment of a minor variation should be made available to the relevant authority responsible with issuing full Development Approval. This is critical information required to determine if all consents granted are valid in order to issue full DA.

If you wish to clarify any of the above matters, please contact me on 8397 7223.

Yours sincerely

A handwritten signature in black ink, appearing to read 'CTully', with a stylized flourish at the end.

Chelsea Tully  
**Team Leader Planning**

30 January 2025

Planning and Land Use Services  
Department of Housing and Urban Development  
GPO Box 1045  
Adelaide SA 5001

Email: [plansasubmissions@sa.gov.au](mailto:plansasubmissions@sa.gov.au)

Dear Sir/Madam

### **Feedback – Minor Variations Practice Direction 19**

This submission is made by the Local Government Assessment Manager Forum (LGAMF). The LGAMF represents Accredited Professionals Planning (level 1) who perform the duties as a local government Assessment Manager under the *Planning, Development and Infrastructure Act 2016* (PDI Act).

As a key group of accredited professionals within the planning system, the members of the LGAMF have a strong interest in facilitating the delivery of a system that serves the diverse needs of the community. This submission is focused on specific matters of interest to the LGAMF that are considered to require further consideration.

The LGAMF appreciates the opportunity share its views with the State Planning Commission in the consultation on the draft Practice Direction 19. This submission first shares observations and general comments of the LGAMF in the local government sector and secondly, requests the Commission considers a range of changes under the following themes:

- Recommendation - Scope of Practice Direction
- Recommendation - Structure of the Practice Direction and Case law on minor variations
- Recommendations for amendment to the Draft Practice Direction
- Recommendation - Enhancement to the PlanSA Portal for minor variations

### **Observations and general comments**

The following matters are raised to share an understanding of current experiences and views of members of the LGAMF regarding the draft Practice Direction:

- Going from no framework for minor variations for deemed-to-satisfy (DTS) development to having one is supported, and it should provide for better record keeping. It is requested that as the development approval authority Councils should be able to view the records of minor variation determinations by accredited professionals to allow better understanding of these determinations.
- It is the view of the LGAMF that there should not be multiple variations permitted for DTS development but it is recognized that the current legislation does not pose any limit. It is

however strongly suggested that there should only be one minor variation permitted per criterion to avoid incremental creep. It is further suggested if there are more than two minor variations in total for DTS development at the verification stage, that the development should default to the performance assessed pathway.

- Examples of what is acceptable as a minor variation and what is not acceptable may also enhance the content of the draft Practice Direction.
- The mechanics of review and acceptance of minor variations in assessment occur at the verification stage and it should be clear in the Practice Direction that a minor variation to DTS criteria is a 3-point test (as reflected in the draft Practice Direction).
- If a minor variation is permitted at verification to DTS/DPF assessment criteria, such as building height, and a further variation is considered post consent approval, it should be made clear the further variation must be assessed against the original criteria i.e. not assessed against the varied height assessed. This will avoid incremental creep.
- Local government already has checks and balances for performance assessed developments and the Assessment Managers Forum considers it is unnecessary to include variations for performance assessed development in the Practice Direction. Performance Assessment is more subjective by nature and there is concern that a Practice Direction may take away current flexibility. In most cases, local government planners already include file notes for minor determinations in relation to public notification exemptions and acceptance of variations as minor.

### **Recommendation - Scope of Practice Direction**

It is considered the draft Practice Direction is attempting to provide guidance on variations too broadly and that the initial Practice Direction should only focus on minor variations for DTS development to simplify the content. It is considered that a guideline should not be necessary in addition to a Practice Direction and reference to this could be deleted from the draft Practice Direction.

Performance assessment matters inherently have more varied considerations, and unlike the variations to DTS development, a variation will not change the assessment pathway or relevant authority. The Practice Direction could limit the relevant authority's consideration of variations for performance assessed developments. For example, minor variation to land divisions in relation to a 100-lot land division will be different to what is minor in relation to a two-lot land division or a boundary realignment. The Practice Direction will not be able to adequately distinguish these considerations. However, if the State Planning Commission determine it is necessary to have a Practice Direction for Performance Assessed development, it is recommended that land divisions need to be addressed separately with reference to land division scale.

The focus of DTS is on measurable criteria and assessment is based on a checklist rather an on-merits assessment. Assessment Panels do not assess DTS development and Accredited Professionals do not assess Performance Assessed development. This is an argument for separation of the two types of variations. Not-with-standing the suggestion that variations for Performance Assessed developments do not need to be in a Practice Direction, should the State Planning Commission determine it is necessary it is recommended there are two practice

directions for the different assessment pathways in a similar way that there are two practice directions for building inspections.

### **Recommendation - Structure of the Practice Direction and caselaw on minor variations**

There are four (4) pages of introduction in the draft Practice Direction before you get to the principles for determining a minor variation. It is recommended that the legislative context and background could be reduced if there is separation of the minor variations for DTS and Performance Assessed developments. It is further recommended this legislative extract is placed in an appendix at the rear of the Practice Direction and the definitions should come before the context for clarity of terms used in the additional context section.

Case-law has already established a basis for minor variations for performance assessment and it would be useful to have references in the Practice Direction to this, by way of examples.

### **Recommendations – Amendments to the draft Practice Direction**

#### Page 3 Additional Context

- (1) At point 1 amend wording to be clear Assessment Panel do not assess DTS and Accredited Professionals do not assess Performance Assessed developments.
- (2) At point (2) (a) tidy up the wording to be clear the P & D Code excludes some development from Public Notification in Table 5 only for Performance Assessed development. It is recommended that the words “by the Code” are moved to follow “excluded”.
- (3) At point (6) change the word “subclause” to “items listed above”

#### Interpretation

- (4) Add in a definition of “materially apparent”.
- (5) Amend definition of “Insignificant” to include “in consideration of scale and size of the development”.
- (6) Add in definition of “materially apparent” – that this is apparent to any person regardless of where the development is viewed from.

#### Requirement to consider Practice Direction when acting under relevant provisions

- (7) This clause 5 is part of the object of the Practice Direction and it is recommended this is moved to earlier in the document following the Introduction.

#### Part 2 Principles for determining a minor variation

- (8) At clause 6 (1) add in variations to any DTS criteria is a minor variation under section 106(2) of the Act if it satisfies the “3-point test”. It is recommended that the alpha numbering is changed to numerals.

- (9) There are mixed views on whether the extent a variation will impact adjacent land is relevant for DTS development. DTS requirements are measurable and the impact on adjacent land is moving towards performance assessment and therefore goes beyond the scope of a minor variation. It is recommended clause 6(1) (b) is reviewed.
- (10) As mentioned at forementioned point (7) is it recommended that a definition of “materially apparent” is included so it is clear it means regardless of where the development is viewed from.
- (11) At clause 6 (2) it is recommended that the words “cannot be considered to constitute a minor variation” are underlined.
- (12) At clause 7 add in Performance Assessed Development Only to the heading
- (13) At clause 7(2) it is recommended that the same words “cannot be considered to constitute a minor variation”, are used and underlined.

### **Recommendation - Enhancement to the PlanSA Portal for minor variations**

#### Documentation

- (14) The uploading of a file note for a minor variation is considered onerous by some. Assessment Managers request that there be an enhancement to the Portal to have the declaration that the Practice Direction has been considered added as a field, with the reasons for the variation being minor then populated as comments by the relevant authority and, made visible to the relevant authority issuing Development Approval.
- (15) It is requested that the reasons for the variation being minor are visible to the relevant authority issuing Development Approval.
- (16) At clause 8 (1) (d) where a determination that the variation is minor on some other basis, clarity is required whether it also needs to meet the 3-criteria test. The reasons for the “other basis” are also requested to be visible to the relevant authority issuing Development Approval.

Thank you for the opportunity to provide feedback.

Yours sincerely

**Local Government Assessment Manager Forum**

31 January 2025

Planning and Land Use Services  
Department for Housing and Urban Development

e: [plansasubmissions@sa.gov.au](mailto:plansasubmissions@sa.gov.au)



Dear Sir/Madam

### **DRAFT PRACTICE DIRECTION 19 – MINOR VARIATIONS**

Thank you for the opportunity to provide feedback on the draft Practice Direction 19 Minor Variations (“draft Practice Direction”). Council acknowledges the Department’s responsiveness to previous feedback received from practitioners in relation to minor variations and recognises the intent of the draft Practice Direction.

Council is supportive of the concept of providing greater direction and clarity in relation to how minor variations are determined and processed within the planning system. We suggest, however, that this draft Practice Direction may not provide the certainty being sought by practitioners when determining “minor variations”.

#### **Language**

The term “minor” is used throughout the planning system in various contexts and for differing purposes, including to describe the scale of:

- a departure from Deemed-to-Satisfy development criteria, to determine the assessment pathway of the proposal;
- a variation to an approved planning consent, to determine if a new development application is required; and
- a variation to an exclusion set out in Table 5 Notification tables, to determine whether public notification is required.

To this end, the term “minor” is used and understood differently and inconsistently across the planning industry by practitioners and applicants alike. We suggest that using distinct language to provide clarity around what is being determined as “minor” may assist.

#### **Recommendation**

- *Consider using distinct language to describe the context in which the term “minor” is being used. For example, in reference to:-*
  - *DTS development criteria, the term “minor departure” might be used;*
  - *an approved planning consent, the term “minor variation” might be used;*
  - *public notification requirement, the term “minor exclusion” might be used.*
- *Consider preparing a Practice Guideline to support the Practice Direction to provide examples/scenarios of each type of “minor”.*

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MITCHAM

## **Part 1(4) – Interpretation**

*“Insignificant means unimportant or trifling.”*

This definition in and of itself requires a value judgement to be made by the relevant authority determining whether a variation is minor in nature.

Whether a variation is “unimportant” or “trifling” will be strongly influenced by its context, the professional experience and personal opinion of the relevant authority undertaking the determination. As such, the proposed definition of “insignificant” does not provide clarity and certainty to relevant authorities or applicants.

The term “*materially apparent*” is used in Part 2(6) and (7) of the Practice Direction, to describe principles for determining a minor variation to DTS criteria (2(6)) and planning consent (2(7)). It is suggested that the term is open to interpretation and may require direction in terms of its intended interpretation.

### ***Recommendation:***

- *Consider including a definition of “materially apparent” in Part 1(4) of the Practice Direction to provide greater certainty of its meaning.*
- *Consider whether a less value-laden meaning can be provided to the term “insignificant”.*

## **Part 2(6) and (7) – Principles for Determining a Minor Variation**

The separation of Part 2 of the Practice Direction provides distinction between two of the key applications of “minor”. This distinction is considered important and is supported.

It is noted that the Practice Direction does not provide Principles relating to the determination of “minor” in the context of public notification requirements and that sections (6) and (7) specifically exclude this scenario. A separate section in Part 2 of the Practice Direction pertaining to “minor” in the context of exemption to public notification requirement would be of benefit.

The principles for determining a minor variation rely upon the definition of “insignificant” and therefore put the relevant authority in the position of making a value judgement. As described above this will not provide clarity and certainty to relevant authorities or applicants with different interpretations likely to occur between relevant authorities thereby creating less certainty.

The principles also require the relevant authority to undertake an assessment of the impact of the proposed variation on the adjacent land. It is suggested that making such an assessment would ordinarily be undertaken as part of a Performance Assessment, not a minor variation determination.

Limiting minor variations to explicit qualitative, rather than quantitative, assessments may reduce the reliance on individual interpretation of “minor”.

Part 2 of the Practice Direction that describe principles for determining a minor variation should be consistent with relevant planning case law.

It is also suggested that consideration should be given to the cumulative impact of minor changes to a development proposal. Cumulative impacts of minor changes can arise by:-

- multiple changes being made to the same element of a development proposal over time; or
- numerous departures from DTS criteria across a range of elements of a development proposal.

The cumulative impact of numerous minor changes has potential to have a significant impact on a development proposal and how it ought to be assessed.

**Recommendation:**

- *Consider including an additional Part 2(8) – minor variation in relation to exclusion from public notification requirements – to the Practice Direction.*
- *Ensure that the Practice Direction is consistent with existing planning case law and that the Practice Direction is updated as relevant case law is published to remain contemporary.*
- *Restrict the use of “minor” to measurable quantitative aspects of a development proposal.*
- *Limiting the number of “minor” changes/variations allowed for an individual development proposal to avoid any negative cumulative impact.*

**Part 3 – Documenting a Decision**

We strongly support the requirement of a relevant authority to formally document its decision that a variation has been determined to be minor in nature, in the SA Planning Portal.

**Conclusion**

We acknowledge the challenges and complexities of providing direction to practitioners on how the concept of “minor” should be determined in respect of variations to deemed-to-satisfy developments and planning consents.

While we support and acknowledge the Department’s efforts in this regard, we consider that the proposed Practice Direction is unlikely to achieve the desired objective of providing clarity and certainty to relevant authorities when determining the nature of a variation and the term “minor” remains open to interpretation.

Please note these comments are made by the Administration and have not been endorsed by the Council.

Should you have any queries relating to this matter, please do not hesitate to contact me on 8272 8203 or by email at [rrutschack@mitchamcouncil.sa.gov.au](mailto:rrutschack@mitchamcouncil.sa.gov.au).

Your sincerely,



Rebecca Rutschack

**MANAGER DEVELOPMENT SERVICES**

File Number: qA1752  
Enquiries To: Emily McLuskey  
Direct Telephone: 8366 4561



**City of  
Norwood  
Payneham  
& St Peters**

30 January 2025

Ms Sally Smith  
Deputy Chief Executive  
Department for Housing and Urban Development  
By email: [plansasubmissions@sa.gov.au](mailto:plansasubmissions@sa.gov.au)

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Dear Ms Smith

### **DRAFT MINOR VARIATIONS PRACTICE DIRECTION**

Thank you for the opportunity to provide comment on the draft Minor Variations Practice Direction. The Council's submission is attached for your consideration.

The attached submission highlights the following:

- potential confusion arising from different applications of the term 'minor variation';
- our view on the purpose and scope of minor variations;
- recommended changes to terminology definitions;
- suggested improvements to the wording and criteria relating to minor variations (both DTS criteria and planning consent); and
- suggested improvements to the Portal for processing minor variations.

Should you require any additional information or clarification, please contact Emily McLuskey on 8366 4561 or [emcluskey@npsp.sa.gov.au](mailto:emcluskey@npsp.sa.gov.au)

Yours sincerely

Emily McLuskey  
**SENIOR URBAN PLANNER**

Encl. Submission on Minor Variations Practice Direction



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# NPSP Submission

## Minor Variations Practice Direction



City of  
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& St Peters

### Distinction between types of minor variations

The use of the term 'minor variation' or similar language is currently used in relation to:

- minor departures from DTS criteria;
- minor changes made after consent / approval; and
- 'minor in nature' variations from public notification triggers.

This overlap is confusing. It is understood that the draft Practice Direction does not propose to change this language so it remains consistent with language used in the legislation. However, it is recommended that at the next available opportunity, the legislation is amended to use different wording which distinguishes between the different types of variations and departures.

Consideration should also be given to having separate Practice Directions for minor variations from DTS criteria and minor variations from planning consent, to clearly distinguish between these two distinct processes.

### Practice Direction Format

It is recommended that the format be adjusted so the principles for determining a minor variation are set out earlier in the document and the headings make it easier to identify, given this is the primary purpose of the practice direction.

### Interpretation

Recommend that 'materially apparent' is defined under 'interpretation', including that it is from the perspective of neighbouring occupants as well as anyone in the streetscape / public realm.

Recommend that the definition of "Insignificant" is amended to include "in consideration of scale and size of the development".

### Purpose of Minor Variations

As a guiding principle, minor variations should serve the purpose of reducing 'red tape' in relation to inconsequential or trifling departures or changes. In relation to DTS criteria, this is when an inconsequential departure(s) from DTS criteria would otherwise change the assessment pathway of the application. In relation to variations to a planning consent, it should be applied when the applicant seeks to make an inconsequential or trifling change to their development that would otherwise require a new application.

In either case, it should not involve an assessment as to whether the departure would result in an acceptable impact on neighbours, streetscape, or broader locality. This is even the case where any impact would be mitigated by current site circumstances (e.g. where there is an adjacent boundary structure or vegetation that blocks views to the development), or otherwise justified by the context of the development. Any assessment of impact (beyond what is clearly insignificant) should be undertaken during a performance assessment pathway as it involves a greater level of discretion and professional judgement. This provides a clear distinction between process and assessment, avoids different outcomes based on differences in opinion, and will help to provide greater consistency amongst decision makers.

# NPSP Submission

## Minor Variations Practice Direction



City of  
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### Minor Variations to DTS Criteria

#### The extent of impact – Clause 6(1)(b)

(b) the extent (if any) to which the variation will impact adjacent land is insignificant; and

In light of the above commentary it is considered reasonable to include Clause 6(1)(b) as it reiterates that any impact beyond what is 'insignificant' requires an assessment through a performance assessed pathway.

#### Departures from site area and frontage

In *Mundy v City of West Torrens [2016] SAERDC 30* the matter of a departure from the minimum site frontage criteria was discussed, specifically, it was not possible for the development to comply with the frontage width criteria on the subject land. The Court determined that a minor variation in relation to frontage width should not be permitted where it was not possible to have a fully compliant development in the first place.

Assessing the extent of acceptable departure from many DTS criteria is a matter of fact and degree. However, it is often the case that a departure from frontage width or site area minimums occurs when it is not otherwise possible to achieve a land division / more than one dwelling on a site as was the case in *Mundy*. (The exception being, perhaps, where one site is slightly larger or wider than another, for example to accommodate site constraints such as placing driveways around a street tree.) While it could be argued that a frontage or site area shortfall in and of itself is imperceptible in the streetscape, in circumstances where the site does not have sufficient frontage width or site area, there is a substantial difference between developing one dwelling versus two on the site and achieving a good design outcome. In some cases, site area and frontage width minimums have been set intentionally to maintain the rhythm of allotment frontages in the street and it is not considered reasonable to allow a land division to occur through a minor variation process in these circumstances. It is recommended that minor variations are not permitted in circumstances where it is not possible for the development to meet the relevant criteria. This would still allow a genuinely minor variation to site frontage / area for one of the proposed sites to accommodate site constraints, as outlined above, but would require a performance assessment in circumstances where the proposed departure means the difference between a division or no division.

#### Variations from public notification triggers

(2) 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 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

Clause 6 (2)(a) outlines that a minor variation should not be applied to a departure from a DTS criteria, where the failure to meet the criteria would trigger public notification. This clause is supported, however, clarification should be provided as to whether this applies to boundary walls. In some zones, Table 5 sets out public notification triggers relating to boundary walls, without referring specifically to the relevant zone's boundary wall DTS (noting that the boundary wall DTS often includes additional parameters beyond the public notification triggers in Table 5). As drafted, the PD would presumably allow a departure from the

# NPSP Submission

## Minor Variations Practice Direction



City of  
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boundary wall DTS even if the proposed boundary wall height / length would trigger public notification in a performance assessed development. An example from the General Neighbourhood Zone is given below:

### DTS/DPF 7.1

Except where the building is a dwelling and is located on a central site within a row dwelling or terrace arrangement, side boundary walls occur only on one side boundary and satisfy (a) or (b) below:

- (a) side boundary walls adjoin or abut a boundary wall of a building on adjoining land for the same or lesser length and height
- (b) side boundary walls do not:
  - (i) exceed 3m in wall height
  - (ii) exceed 11.5m in length
  - (iii) when combined with other walls on the boundary of the subject development site, exceed a maximum 45% of the length of the boundary
  - (iv) encroach within 3m of any other existing or proposed boundary walls on the subject land.

### Public Notification Exemptions

Except development that:

1. does not satisfy General Neighbourhood Zone DTS/DPF 4.1  
or
2. involves a building wall (or structure) that is proposed to be situated on (or abut) an allotment boundary (not being a boundary with a primary street or secondary street or an excluded boundary) and:
  - (a) the length of the proposed wall (or structure) exceeds 11.5m (other than where the proposed wall abuts an existing wall or structure of greater length on the adjoining allotment)  
or
  - (b) the height of the proposed wall (or post height) exceeds 3m measured from the top of footings (other than where the proposed wall (or post) abuts an existing wall or structure of greater height on the adjoining allotment).

Clarification as to whether Clause 6 (2)(a) applies to boundary walls would be appreciated.

### Recording Minor Variations to DTS Decisions

The requirement to record the reasons for minor variations to DTS criteria is supported, as this will assist with record keeping and transparency. In addition to responding to points (i), (ii) & (iii), it should also be a requirement to clearly document which DTS criteria have not been met and the extent of the departure. The Portal should make this as efficient as possible, such as a tick box noting the practice direction has been considered and a comment box / field (with an option to upload a document if preferred) to record the brief explanation. Ideally the comments made in the comment box would be available as a downloadable document in the documents tab for efficient auditing or review. It is important for this declaration to be available to the relevant authority issuing Development Approval so it is easy to identify the application has been processed with minor variations, and the extent and nature of those variations.

It is not clear in what circumstances a minor variation could be processed on the basis of Clause 8(1)(d):

- (d) in relation to a determination that has been made on some other basis – a brief explanation as to the reasons for why the relevant authority has determined that the variation constitutes a minor variation.

Clarification on this point is required, as it appears to allow a departure from the principles set out in the practice direction.

**NPSP Submission**  
**Minor Variations Practice Direction**



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**Minor Variations to Planning Consent**

Public Notification triggers

(2) A variation cannot be considered to be minor in nature under this clause if the variation:

- (a) 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

Clause 7(2)(a) is supported on the basis that a variation should not be processed as a minor variation if it relates to public notification triggers. However, this would benefit from some clarification as to whether this applies to any change relating to an element which could be a trigger for notification e.g. a reduction in the height or length of a wall that was previously a trigger for public notification.

Changes to Assessment Pathway

The Practice Direction should also clarify that any change which would ordinarily trigger changes in assessment pathway or processing, such as an increase in commercial floor area which would change an application from performance assessed to restricted, cannot be processed as a minor variation.

Recording Minor Variations to Planning Consents

The comments above in relation to minor variations to DTS decisions are also relevant to recording minor variations to planning consent, with respect to suggested functionality in the Portal, the comments being viewable by the relevant authority for Development Approval, and in what circumstances Clause 8(2)(d) is applicable given this appears to depart from the principles set out in the practice direction.

Cumulative impacts of minor variations

The Practice Direction should clarify that each minor variation should be reviewed as a variation to the original consent rather than any preceding variations. That is, if the first minor variation increases a wall height by 100mm, and a second minor variation increases the wall by an additional 100mm, the second minor variation should be considered as an increase of 200mm compared to the original planning consent.

State Planning Commission  
Department for Trade and Investment  
GPO Box 1815  
ADELAIDE SA 5001

**VIA EMAIL: [plansasubmissions@sa.gov.au](mailto:plansasubmissions@sa.gov.au)**

Mr Craig Holden, Chair and Members

Dear Mr Holden,

**PIA SA SUBMISSION – DRAFT PRACTICE DIRECTION: NO. 19 –  
MINOR VARIATIONS**

PIA SA welcomes the opportunity to make a submission on the above Draft Practice Direction.

The consideration of minor variations under section 106(2) of the Planning, Development and Infrastructure Act 2016 and regulation 65 of the Planning, Development and Infrastructure (General) Regulations 2017 can often be the source of disagreement between applicants and relevant authorities as well as between relevant authorities.

The opportunity to have clear guidance through a Practice Direction is therefore encouraged and supported.

PIA SA offers the following feedback on the Draft Practice Direction for your consideration:

- Use of the term “materially apparent” in clauses 6(1)(c), 7(1)(c) 8(1)(c)(iii) and 8(2)(c)(iii)
  - It is considered that this term is highly subjective and open to interpretation.
  - We propose that consideration be given to replacing this term with “contextually important” on the basis that the intent of the clauses mentioned above is to guide a relevant authority to consider the effect of the variation not to be of importance in the context of the proposed development, the site and locality.
- We applaud the intent and content of clause 8 (subject to our comments on the term “materially apparent”) so as to ensure that greater consistency is achieved by relevant authorities when considering and determining minor variations. This requirement will also provide for greater understanding of and transparency concerning minor variation decisions, providing an opportunity for disputes concerning same to be avoided.
- We suggest that guidance be provided as to timeframes for the determination of minor variations to ensure greater expediency for

applicants and to increase consistency across relevant authorities in this regard.

PIA appreciates the opportunity to comment on the draft Practice Direction.

Yours sincerely,

A handwritten signature in black ink that reads "Jane E. Strange". The signature is written in a cursive, flowing style.

Jane Strange RPIA  
**STATE MANAGER SA**



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29 January 2025

Mr Craig Holden, Chair  
State Planning Commission  
GPO Box 1815  
Adelaide SA 5001

[plansasubmissions@sa.gov.au](mailto:plansasubmissions@sa.gov.au)

Re: Minor Variations Practice Direction

Dear Craig,

The Property Council of Australia is the leading advocate for Australia's largest industry – property.

Our industry represents 13 per cent of Australia's GDP and employs 1.4 million Australians. Property Council member organisations are investors, owners, developers, builders, and managers of real estate across all major asset classes including commercial, office, residential, retirement communities, purpose-built student accommodation, industrial, hotels and more.

The property sector directly accounts for almost 11 per cent of South Australia's economic activity. In South Australia, the Property Council is focused on advocating for:

- A competitive tax, planning and business environment.
- Accelerating the supply and diversity of built assets.
- Increasing transparency between the private sector and all levels of Government.

Our members therefore have a direct interest in ensuring planning reform delivers outcomes that are practical and workable in their operation across a range of asset classes.

We thank you for your consideration of this submission.

A handwritten signature in black ink, appearing to read "Bruce Djite", written in a cursive style.

**Bruce Djite**  
SA Executive Director,  
Property Council

## General

The Property Council generally supports the drafting of the Practice Direction and encourages the Commission to avoid the temptation to set quantitative parameters around what may be considered to be “minor” (whether in the Practice Direction or by separate Practice Guideline).

The Commission should avoid “planning by numbers” for what is in reality a subjective opinion required to be formed by decision makers on a case-by-case basis. Any attempt to use percentages or other fixed criteria for determining what is “minor” would just have the effect of changing the DTS criteria.

The Practice Direction should go no further than reinforcing the need for a subjective assessment of whether something is “trifling or insignificant” in the circumstances, reflecting the approach historically taken by the Courts.

The most common issue arising from decisions around what is “minor” is where a council disagrees with a decision by an Accredited Professional to treat a variance from DTS criteria as minor. The Practice Direction should acknowledge that a decision to treat something as minor is a subjective opinion to be formed by the relevant authority for the purposes of granting planning consent. The Practice Direction should not condone any attempt by councils to perform a supervisory role where they disagree with the subjective opinion of the relevant authority as to whether something is “minor”.

## Specific

The terminology of the Act and the Practice Direction is prone to cause confusion because the term “variation” is used interchangeably in two different contexts:

1. An application to vary the terms of an existing approval; and
2. A proposed development which is at variance from the relevant DTS criteria;

In *Mundy v West Torrens* [2016] SAERDC 30, the Council sought (mischievously) to argue that a “variation” could only be a variation to something already approved, not a variance from (in that case) the “complying development” criteria. That case resulted in changes to the *Development Regulations* which were not properly carried through to the PDI Act and Regulations.

This confusion could be addressed by including a definition of “variation” or using the terminology of “variance” rather than “variation”.

It is also necessary to be clear about what the reference point is for assessing a minor variance. E.g.:

1. Insignificant impacts compared to what? (presumably a DTS compliant development)
2. Will not be materially apparent to whom? (presumably the occupiers of adjoining land?) and compared to what? (presumably a DTS compliant development?)

We also raise concern about the potential effect of clause 7(2) of the Practice Direction which would, on its terms, prevent any request for a minor variation from being approved for applications which were subject to public notification. That would be an unnecessarily burdensome approach

which would take away the discretion of planning authorities to permit appropriate minor variations.

### **Suggested edits**

Please see enclosed a marked-up copy of the Draft Practice Direction with our suggested edits and comments.



# Draft Practice Direction: No. 19

## Minor Variations

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. This practice direction does not limit the operation of these provisions and does not limit or prevent the Commission from acting under section 43(2)(b) of the Act with respect to making a practice guideline to specify variations that will, in relation to deemed-to-satisfy development, constitute minor variations (recognising in such a case the Commission is making specific provision with respect to a particular kind or class of variation or variations).

The relevant requirements of sections of the Act and the Regulations as they relate to this practice direction are outlined below:

**Planning, Development and Infrastructure Act 2016**

**106—Deemed-to-satisfy assessment**

(1) *If a proposed development is classified as deemed-to-satisfy development, the development must be granted planning consent.*

(2) *If a relevant authority is satisfied that development is deemed-to-satisfy development except for 1 or more minor variations, the relevant authority must assess it as being deemed-to-satisfy (and that determination will then have effect for the purposes of this Act).*

...

(5) *A condition under subsection (4) may provide that a proposed development assessed under subsection (2) will be undertaken so as to address any minor variation in order to make it consistent with the deemed-to-satisfy requirement.*

**128—Variation of authorisation**

(1) *Subject to subsection (2), a person may seek the variation of a development authorisation previously given under this Act (including by seeking the variation of a condition imposed with respect to the development authorisation).*

(2) *An application to which subsection (1) applies—*

*(a) may only be made if the relevant authorisation is still operative; and*

*(b) will, for the purposes of this Part, but subject to any exclusion or modification prescribed by the regulations and any other provision made by the regulations, to the extent of the proposed variation (and not so as to provide for the consideration of other elements or aspects of the development or the authorisation), be treated as a new application for development authorisation;*

...

**Planning, Development and Infrastructure (General) Regulations 2017**

**65—Variation of authorisation (section 128)**

(1) *For the purposes of section 128(2)(b) of the Act, if a person requests the variation of a development authorisation previously given under the Act (including by seeking the variation of a condition imposed with respect to the development authorisation) and the relevant authority is satisfied that the variation is minor in nature—*

*(a) the relevant authority may approve the variation; and*

*(b) the request is not to be treated as a new application for development authorisation;*

...

### ***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 assessment manager, an assessment panel or, in some situations, the State Planning Commission, is able to act as the relevant authority for both the assessment of deemed-to-satisfy development and performance assessed development (including where a person is seeking the variation of a development authorisation). 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:
  - (a) the development is within a class of development excluded from the operation of subsections (3) and (4) of section 107 by the Code; or
  - (b) the relevant authority has determined that there is a variation to 1 or more corresponding exclusions prescribed in Column B of Table 5 – Procedural Matters (PM) – Notification in the relevant Zone in the Code that is minor in nature and does not require notification.
- (3) In some situations (typically in relation to heights of buildings), the Code notification requirements 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.
- (5) In some situations, the Code excludes the requirement to undertake referrals if:
  - (a) certain deemed-to-satisfy criteria (operating as designated performance features) are met; or
  - (b) in the opinion of the relevant authority, the development is minor in nature and would not warrant a referral when considering the purpose of the referral.

- (6) The authority to make a determination referred to in subclause (2), (3) or (5) is the relevant authority for the purposes of assessing the relevant application for planning consent, including in the case of an application for the variation of a development authorisation. These applications do not include applications relating to deemed-to-satisfy development.

## 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:

- (a) matters to be considered by a relevant authority when it is determining whether a variation is:
  - (i) a minor variation from any Deemed-to-Satisfy criteria in the Code; or
  - (ii) a minor variation of a planning consent for the purposes of section 128(2)(b) of the Act; and
- (b) 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.

**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 a development which is at variance with DTS criteria or an application to vary an existing development authorisation, as the context requires.

*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.*

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

Pursuant to section 42(2) of the Act, a relevant authority is required, in acting under section 106(2), or 128(2)(b) and regulation 65(1), to consider the provisions and principles set out in Part 2.

## Part 2 - Principles for determining a minor variation

### 6 – Minor variation to DTS criteria

(1) Subject to subclause (2), a relevant authority may consider that a variation 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 compared to a DTS compliant development; and

(c) the effect of the variation will not be materially apparent (to whom? compared to what?).

(2) 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 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 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. the 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 exemption to a referral by virtue of it being minor in nature).

## 7 – Minor variation to planning consent

(1) Subject to subclause (2), 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 compared to a DTS compliant development; and

(c) the effect of the variation will not be materially apparent (to whom? compared to what?).

(2) A variation cannot be considered to be minor in nature under this clause if the variation:

(a) 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) where the development authorisation being varied was not subject to public notification; or [Not agree with this clause as drafted - it will prevent any minor variations from being approved for applications which were subject to public notification]

- (b) 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).

### **Part 3 - Documenting decision making for a minor variation**

#### **8 – 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 materially apparent.
  - (d) in relation to a determination that has been made on some other basis – a brief explanation as to the reasons for why the relevant authority has determined that the variation constitutes a minor variation.
- (2) If a relevant authority determines a variation to a planning consent is minor in nature as provided by section 128(2) 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 – a brief explanation as to why it is satisfied that:
  - i. 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 materially apparent.
- (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.

**This practice direction is made by the State Planning Commission on xx yyy 2024 with the approval of the Minister given to the Commission on aa bbb 2024.**

Planning and Land Use Services  
Department for Housing and Urban Development  
GPO Box 1815  
Adelaide SA 5001

Email: [plansasubmissions@sa.gov.au](mailto:plansasubmissions@sa.gov.au)

**Response to Engagement on Minor Variations Practice Direction:**

Council thanks PLUS for the opportunity to comment on the Practice Direction and offers the following feedback:

**Comments specific to sections within the document:**

Additional context:

- (1) This paragraph requires amendment/clarification as Assessment Panels do not make decisions on DTS applications.
- (6) This paragraph could be further clarified by adding the word 'above' after the number (5).

Part 1 Section 4 – Interpretation

Council believes that the Practice Direction should include a definition for the term “*materially apparent*” which is utilised throughout the document as a means of assisting in determining whether a variation can be considered minor. Materially apparent is a subjective term, changes to a roofing type for example may be materially apparent yet may still be minor. The term ‘insignificant’ is also problematic, for the same reason, it is too subjective, and further clarity should be provided as to what can be considered insignificant.

Part 3 – Documenting decision making for minor variation.

Given that the nature of a minor variation is such that they should require no real ‘assessment’ in order to be considered minor, Council believes that documenting of such should also be relatively straightforward and does not necessarily require a detailed explanation. As such consideration should be given to making changes within the Portal so that a simple tick box approach can be applied, with the opportunity to provide additional comments should this be considered necessary. The uploading of additional paperwork is considered unnecessarily onerous.

**General comments:**

The Practice Direction does not make it clear as to the number of variations that may be considered appropriate for a development. As it currently stands there is no restriction on the number of variations that can be made to a development. There needs to be some consideration as to how many variations (minor or otherwise) are appropriate before the cumulative effect has altered the intent of the original consent.

The Practice Direction also needs to make clear that the minor variation being considered is assessed against the original planning consent and not any previous variation.

Council is more than happy to discuss any element of this response and looks forward to continued engagement with the Department.

Yours sincerely,

A handwritten signature in black ink that reads "Sally Roberts". The signature is written in a cursive, slightly slanted style.

Sally Roberts,  
Manager Development and Regulation  
**Rural City of Murray Bridge**

## DHUD:PlanSA Submissions

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**From:** Ted Byrt <tedbyrt@outlook.com>  
**Sent:** Friday, 24 January 2025 1:01 PM  
**To:** DHUD:PlanSA Submissions  
**Cc:** gsearle@wtcc.sa.gov.au; Caitlin Rorke-Wickins; Hannah Bateman  
**Subject:** FW: CWT Comments regarding draft Practice Direction 19  
**Attachments:** 24.01.2025 Correspondence to Deputy Chief Executive, Sally Smith regarding West Torrens Comments on the Draft Practice Direction 19 - Minor Variations.pdf

You don't often get email from tedbyrt@outlook.com. [Learn why this is important](#)

To whom it may concern – I wish to add my support for the considered submission from the City of West Torrens.

Ted Byrt.  
Presiding Member  
West Torrens CAP.

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**From:** Glenn Searle <gsearle@wtcc.sa.gov.au>  
**Date:** Friday, 24 January 2025 at 10:24 AM  
**To:** plansasubmissions@sa.gov.au <plansasubmissions@sa.gov.au>  
**Cc:** Ted Byrt <tedbyrt@outlook.com>, Caitlin Rorke-Wickins <crorke-wickins@wtcc.sa.gov.au>, Hannah Bateman <HBateman@wtcc.sa.gov.au>  
**Subject:** CWT Comments regarding draft Practice Direction 19

To whom it may concern,

Thank you for providing the opportunity to provide comments on draft Practice Direction 19. Please find attached comments from the City of West Torrens administration, if you would like to discuss this matter further or require any clarification on the matter please contact Mr Steven Mudge, Manager Strategy and Sustainability on 8416 6388.

Regards,

**Glenn Searle** | Policy Planner | Strategy and Sustainability  
**City of West Torrens** | 165 Sir Donald Bradman Drive, Hilton SA 5033  
Phone: +61 (08) 8416 6322 | Email: [gsearle@wtcc.sa.gov.au](mailto:gsearle@wtcc.sa.gov.au) | [www.westtorrens.sa.gov.au](http://www.westtorrens.sa.gov.au)



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## DHUD:PlanSA Submissions

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**From:** Tony Travaglione <ttravaglione@charlessturt.sa.gov.au>  
**Sent:** Tuesday, 21 January 2025 1:50 PM  
**To:** DHUD:PlanSA Submissions  
**Cc:** Tony Travaglione  
**Subject:** Comments on the proposed draft minor variation practice direction PD19

You don't often get email from ttravaglione@charlessturt.sa.gov.au. [Learn why this is important](#)

Hi,

Please find below comments on the proposed draft practice direction.

The draft variations practice direction clarifies the procedures for determining minor variations to Deemed-to-Satisfy (DTS) criteria and planning consent. Here are some key points and potential feedback areas :

### Positive Aspects

- **Clear definition of minor variations:** The practice direction provides specific criteria for determining whether a variation is minor for both DTS criteria and planning consent. This includes factors like the insignificance of the variation, its impact on adjacent land, and its material appearance.
- **Emphasis on documentation:** The practice direction mandates clear documentation of the decision-making process for minor variations, ensuring transparency and accountability.
- **Alignment with existing legislation:** The document explicitly references and integrates relevant sections of the Planning, Development and Infrastructure Act 2016 and the Planning, Development and Infrastructure (General) Regulations 2017.

### Potential Areas for Feedback

- **Clarity of "insignificant":** The term "insignificant" is central to determining minor variations but may be open to interpretation. Providing further guidance or examples could enhance consistency in application.
- **Consideration of context:** While the criteria for minor variations are clearly defined, the practice direction could benefit from acknowledging the potential need for flexibility based on specific project contexts. For instance, a seemingly minor variation in one context could have significant implications in another.
- **Public engagement:** The practice direction focuses on the relevant authority's decision-making process but doesn't explicitly address public engagement in cases of minor variations.

It might be worth considering whether some level of public input is appropriate, especially for variations that, while technically "minor," could still have community impacts.

•**Guidance on exemptions:** The practice direction mentions exemptions from notification and referrals for minor variations. Providing more detailed guidance on the circumstances warranting such exemptions would be beneficial.

Overall, the draft variations practice direction offers valuable clarity regarding minor variations. However, refining the definition of "insignificant," considering contextual factors, potentially incorporating public engagement, and providing clearer guidance on exemptions could further enhance its effectiveness and ensure consistent and appropriate application.

I hope these comments help in the preparation of this practice direction.

Regards

Tony Travaglione

**Development Officer – Building Surveyor**

**Development Services**

Ph 08 84081202

Email address: [ttravaglione@charlessturt.sa.gov.au](mailto:ttravaglione@charlessturt.sa.gov.au)

[www.charlessturt.sa.gov.au](http://www.charlessturt.sa.gov.au)



The City of Charles Sturt acknowledges and pays respect to the traditional custodians of the land, the Kurna people of the Adelaide plains.

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# Matt Cowdrey OAM MP

MEMBER FOR COLTON



Hon Nick Champion MP  
Minister for Planning  
GPO Box 11032  
ADELAIDE SA 5001

**By email:** [MinisterChampion@sa.gov.au](mailto:MinisterChampion@sa.gov.au)

17 December 2024

Dear Minister, *Nick.*

I am writing on behalf of my constituent, Mr Nick Simos of Henley Beach. Mr Simos is the Principal Planner at SA Urban and Regional Planning.

Today, I met with Mr Simos and his colleague Mr Lou Fantasia, the Director and Principal of Lou Fantasia Planning regarding the Draft Practice Direction 19 (the **Practice Direction**) issued by the State Planning Commission under section 42 of the *Planning, Development and Infrastructure Act 2016*.

As accredited professional planners, Mr Simos and Mr Fantasia are concerned about the impact that the Practice Direction will have on their industry if it is approved. I have **enclosed** a copy of a letter I received from Mr Simos which outlines his concerns.

As you will be aware consultation on the Practice Direction closes on 20 January 2025. Mr Simos is seeking a meeting with you and/or a representative from your office as soon as possible to discuss this matter. Mr Simos can be contacted via email [nick@sarup.com.au](mailto:nick@sarup.com.au) or on 0411 096 597.

Yours sincerely,

**MATT COWDREY OAM MP**  
Member for Colton

*Enc.*



[colton@parliament.sa.gov.au](mailto:colton@parliament.sa.gov.au)



08 8353 1111



[www.mattcowdrey.com.au](http://www.mattcowdrey.com.au)



[/MattCowdreyColton](https://www.facebook.com/MattCowdreyColton)



PO Box 135, Fulham Gardens SA 5024



Shop 2A, 130 Valetta Rd, Fulham Gardens SA 5024

# SA URBAN AND REGIONAL PLANNING

ACN43 600 857 154  
PO Box 601  
HENLEY BEACH SA 5022  
Mobile 0411 096 597  
[nick@saurp.com.au](mailto:nick@saurp.com.au)



6 December 2024

Dear Mr Cowdrey,

As per my discussion this morning with your admin staff Jack, he has requested that I provide you with some dot points on the Draft Practice Direction: No. 19 that is under consultation with the Councils and accredited professionals (AP).

The Draft Practice Direction: No. 19 is stating that APs will not be able to assess a garage wall height that exceeds 3 metres. If so, this application must be publicly notified by the Council.

Currently, **Planning, Development and Infrastructure Act 2016—19.9.2024** states:

### **93—Relevant authority—panels**

(2) *This section does not apply in a case where—*

*(a) an assessment manager; or*

*(b) an accredited professional,*

*may act as a relevant authority under a scheme prescribed by the regulations for the purposes of this section.*

### **106—Deemed-to-satisfy assessment**

(2) *If a relevant authority is satisfied that development is deemed-to-satisfy development except for 1 or more minor variations, the relevant authority must assess it as being deemed-to-satisfy (and that determination will then have effect for the purposes of this Act).*

And the **Planning, Development and Infrastructure (General) Regulations 2017—16.5.2024** states:

### **Part 5—Relevant authorities and accredited professionals**

#### **22—Prescribed scheme (section 93)**

(1) *For the purposes of section 93 of the Act—*

*(b) an Accredited professional—planning level 3 may act as a relevant authority for the purposes of giving planning consent in relation to development that may be assessed as deemed-to-satisfy development under section 106 of the Act (including where there may be 1 or more minor variations under section 106(2) of the Act); and*

As an accredited professional, we have the authority to consider a wall height that is greater than 3 metres to be a minor variation, within justifiable reason.

I believe that this Draft Practice Direction: No. 19 is removing our powers as APs to assess applications as a minor variation, given that over 90% of the applications will have a garage exceeding the 3-metre mark, i.e. wall heights or parapet walls.

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The following are some of the matters of concerns with this the Draft Practice Direction: No. 19:

- The removal of the powers of the AP to assess a minor variation that triggers public notification; however, Councils still have their authority to consider an element of the application minor without going to public notification.
- Currently, APs have the same powers as Councils to determine minor variations, as stated above.
- Part 3 of the Draft Practice Direction: No. 19 is proposing to restrict the APs powers of assessing a DTS (Deemed-to-Satisfy) application by imposing:
  - (c) in relation to the application of this practice direction – a brief explanation as to why it is satisfied that:
    - i. 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 materially apparent.
  - (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.
- APs already provide justifications for their reasoning of determining a DTS minor variation in their file notes.
- The new PDI Act 2016 was implemented to allow accredited professionals to assess DTS developments. This Draft Practice Direction: No. 19 is attempting to take the powers away from accredited professionals.
- Originally, planning consultants were advised by the Department that if you were a Level 1 Accredited Professional, you would be able to assess Deemed-to-Satisfy and Performance Assessed applications - in effect, operating as an assessment manager for the Council. However, the Department and the government of the day backflipped on this matter after all the consultants that applied for their Level 1 Accreditation were advised that they could now only assess DTS applications – another form of weakening the South Australian planning system. This was not the intent of the new PDI Act.
- Accredited professionals currently have decided not to assess DTS applications due to the restrictions imposed by the Code and interference by the Councils. Some accredited professionals are considering handing in their registrations. For example,
  - AP minor variations not accepted by Councils, which the legislation states that they do not have authority override the APs assessments, pursuant to ***Planning, Development and Infrastructure (General) Regulations 2017—16.5.2024 - Part 7—Assessment—processes and assessment facilitation - Division 4—Determination of application***

*(5) Despite a preceding subregulation, where a Council is acting as the relevant authority for the purpose of granting the final development approval under the Act*

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*and the Council has received notice, via a scheme applying under the SA planning portal, that all relevant consents have been granted under Part 7 of the Act (and that 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.*

*(6) If or when the Council is satisfied that the consents are consistent with each other after taking steps under subregulation (5)(b), the Council must grant the final development approval within 5 business days.*

- The landscaping restrictions in the Code mandating a percentage of landscaping (which was not previously legislated under the Act 1993 for a Rescode development).
- Providing a tree for each dwelling (which was not previously legislated under the Act 1993 for a Rescode development).
- The new definition of the natural ground levels (see attachment).
- The Department has requested for APs to provide data on how many Rescode applications were approved prior to the new Code's implementation, and the data on how many DTS applications have been approved since the new Code's implementation. I am of the understanding that the new Portal was designed to provide all this data.
- As per our meeting last year, the Department advised APs that they had concerns on how many DTS applications were assessed by APs – their data indicated only 15%. The Department and the Government were expecting approximately 60-70% of DTS applications to be approved. This could not be achieved due to the restrictions around assessing DTS applications.

I believe that the Practice Direction should be considering for APs to be able to assess Performance Assessed and DTS applications, as the PDI Act 2016 was originally envisioned. This would be in accordance with other states and territories around Australia.

This would also relieve the pressure off the Council planning officers, given the shortage of planning staff.

My fellow colleagues will provide me with some dot-points over the weekend, which I will send to you for your further consideration.

Kind Regards

**Nick Simos**

Principal Planner  
Accredited Professional Planning (APP 20190058)  
Bachelor of Urban & Regional Planning  
Honours, MPIA

## Practice Direction: No. 19

### Minor Variations

#### Post - engagement proposed changes:

xxxxxxx = new text

xxxxxx = text to be deleted

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. ~~This practice direction does not limit the operation of these provisions and does not limit or prevent the Commission from acting under section 43(2)(b) of the Act with respect to making a practice guideline to specify variations that will, in relation to deemed-to-satisfy development, constitute minor variations (recognising in such a case the Commission is making specific provision with respect to a particular kind or class of variation or variations).~~

~~The relevant requirements of sections of the Act and the Regulations as they relate to this practice direction are outlined below:~~

### **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 assessment manager, an assessment panel or, in some situations, the State Planning Commission, is able to act as the relevant authority for both the assessment of deemed-to-satisfy development and performance assessed development (including where a person is seeking the variation of a development authorisation). 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.
  - ~~(a) the development is within a class of development excluded from the operation of subsections (3) and (4) of section 107 by the Code; or~~
  - ~~(b) the relevant authority has determined that there is a variation to 1 or more corresponding exclusions prescribed in Column B of Table 5—Procedural Matters (PM)—Notification in the relevant Zone in the Code that is minor in nature and does not require notification.~~
- (3) In some situations (typically in relation to heights of buildings), the Code notification requirements ~~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.
- ~~(5) In some situations, the Code excludes the requirement to undertake referrals if:~~
  - ~~(a) certain deemed to satisfy criteria (operating as designated performance features) are met; or~~
  - ~~(b) in the opinion of the relevant authority, the development is minor in nature and would not warrant a referral when considering the purpose of the referral.~~

- (5) Only the relevant authority has the authority to make a determination referred to in subclause (2), (3) or (54) above for a performance assessed the purposes of assessing the relevant application for planning consent, including in the case of an application for the variation of a development authorisation. These applications do not include applications relating to deemed-to-satisfy development.
- (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) a minor variation of a planning consent 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.

## 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 materially apparent 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. the 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 exemption to a referral by virtue of it being minor in nature) 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 – 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 including a combined application for related ancillary development such as earthworks, retaining walls or other similar works fundamentally associated with the division of land.*

(1) Subject to subclause (3), 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 materially apparent 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) 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 a planning consent.

### **Part 3 – Making the determination**

#### **8 – Expediency**

- (1) A relevant authority must make its determination under this practice direction as expeditiously as possible.
- (2) In making its determination under this practice direction, a relevant authority must remain cognisant that an extensive or detailed consideration is not in keeping with the intent of the principles for determining a minor variation in Part 2.

### **Part 34 - 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 materially apparent contextually important.

~~(d) in relation to a determination that has been made on some other basis – a brief explanation as to the reasons for why the relevant authority has determined that the variation constitutes a minor variation.~~

(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 – 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 materially apparent 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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