



## Agenda Report for Decision

Meeting Date: 1 February 2024

Item Name	Practice Direction 12 – Community Title Land Divisions	
Presenters	Ben Sieben	
Purpose of Report	Decision	
Item Number	4.2	
Strategic Plan Reference	4 Discharging Statutory Obligations	
Work Plan Reference	4.3. Ensure the Commission operates in line with governance best practice	
Confidentiality	Not Confidential (Release Immediately)	
Related Decisions	5 October 2023	
Conflicts Declared	N/A	
Is the Report author aware of any potential undeclared conflict?		NO

### Recommendation

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

1. Approve the designation of this item as Not Confidential (Release Immediately).
2. Note the feedback at **Appendix A** and **Appendix B** received in relation to the amendments made to Practice Direction 12 on 13 October 2023.
3. Approve the amended *State Planning Commission Practice Direction 12 (Conditions) 2020* at **Attachment 1**.
4. Authorise the Chair of the Commission to sign the draft Gazette Notice at **Attachment 2** to give notice of amendments to *State Planning Commission Practice Direction 12 (Conditions) 2020*.
5. Authorise the Chair of the Commission to sign the letter at **Attachment 3** to the Minister for Planning advising that further amendments have been made to *State Planning Commission Practice Direction 12 (Conditions) 2020*.
6. Authorise the Chair of the Commission to sign the letter at **Attachment 4** advising that further amendments have been made to *State Planning Commission Practice Direction 12 (Conditions) 2020* and send it to the following stakeholders:
  - o Local Government Association;
  - o Planning Institute of Australia (SA);
  - o Housing Industry Association;

- Master Builders Association;
  - Property Council of Australia;
  - Urban Development Institute of Australia (SA);
  - Consumer and Business Services; and
  - All local councils.
7. Authorise the Chair of the Commission to make any amendments to the Attachments as required to finalise.
8. Note the status of the new draft *State Planning Commission Practice Direction 19 (Community Title Land Divisions) 2024*.

## **Background**

### *Amendments to Practice Direction 12*

At its meeting on 5 October 2023, the State Planning Commission (the Commission) approved amendments to *State Planning Commission Practice Direction 12 (Conditions) 2020* (Practice Direction 12) to require a mandatory condition that common driveways (including access points to and from the common driveway) be constructed before the Commission issues its land division certificate under section 138 of the *Planning, Development and Infrastructure Act 2016* (PDI Act). The condition must be applied to development authorisations for developments involving the division of land under the *Community Titles Act 1996* (CT Act) where more than six community lots are created.

In approving the amendments on 5 October 2023, the Commission resolved:

- 6) *Note the Department will, following publication of the updated Practice Direction, seek the views of a broader range of stakeholders on changes regarding community titled land divisions, and the Department will return to the Commission with further refinements to the Practice Direction as required.*

The amendments to Practice Direction 12 subsequently commenced on 13 October 2023, with letters sent to the following stakeholders advising of the changes:

- Local Government Association;
- Planning Institute of Australia (SA);
- Housing Industry Association;
- Master Builders Association;
- Property Council of Australia;
- Urban Development Institute of Australia (SA);
- Consumer and Business Services; and
- All local councils.

The letter sent to the above-mentioned stakeholders advising of the amendments to Practice Direction 12 also sought feedback on the changes regarding community titled land divisions.

**Discussion**

Feedback Received

The letter inviting feedback was sent to stakeholders on 13 October 2023, with feedback requested by close of business on Friday, 10 November 2023. The City of West Torrens requested an extension to this timeframe, with its submission received on 30 November 2023.

In addition to the letter, the Department also presented at the Local Government Assessment Managers Forum (the Forum) on 3 November 2023. The amendments to Practice Direction 12 was an item on the agenda and the Chair of the Forum invited the Department to provide further context behind the reasons for the changes.

The following feedback was received on the community titled land division amendment to Practice Direction 12:

Entity	Summary of Feedback
The Barossa Council	<ul style="list-style-type: none"> <li>• Amendments to require the common driveway be constructed before the Commission issues its land division certificate are supported</li> <li>• The condition need not be restricted to more than six community lots, noting the same concern arises in respect for division of any scale</li> <li>• The condition should extend to the requirement to construct common infrastructure within the driveway (eg stormwater infrastructure)</li> <li>• The development sector has concerns that the driveway and associated infrastructure may be damaged during construction</li> </ul>
The City of West Torrens	<ul style="list-style-type: none"> <li>• The changes made appear to fall short of achieving its intended aim</li> <li>• The failure of developers to properly construct driveway is an issue of significance, albeit uncommon</li> <li>• Amended Practice Direction 12 does not achieve its aim for the following reasons:               <ul style="list-style-type: none"> <li>○ It will create inefficiencies in having to wait for titles to be issued</li> <li>○ It inadvertently captures residential flat buildings</li> <li>○ It may impact the developer's or builder's ability to obtain finance</li> <li>○ Damage will occur to driveways throughout construction will necessitate repairs once construction is complete</li> <li>○ There are resource implications given a council will need to inspect to confirm the driveway has been constructed, noting there is no compliance fee for land division applications</li> </ul> </li> <li>• It is suggested the following alternative mechanisms be considered further:               <ul style="list-style-type: none"> <li>○ Common infrastructure should be included within the building indemnity insurance policy</li> <li>○ Councils should be able to seek security or bonding for common infrastructure</li> <li>○ Design Standards for the construction of common driveways to ensure that they are of a standard design and are fit for purpose</li> </ul> </li> </ul>

Entity	Summary of Feedback
Discussion at the Local Government Assessment Manager's Forum	<ul style="list-style-type: none"> <li>• On 3 November 2023, there was discussion on the following at the Local Government Assessment Manager's Forum:               <ul style="list-style-type: none"> <li>○ There should also be a requirement to construct other necessary infrastructure (e.g. stormwater)</li> <li>○ Whether it would be more appropriate for the condition to apply where the common driveway exceeds a specified length</li> <li>○ The changes appear to shift responsibility to councils, who will have to sign off on the construction</li> <li>○ Scheme descriptions should be required for all community titled land divisions (noting this is a matter for the <i>Community Titles Act 1996</i>)</li> <li>○ There should be a requirement to provide technical designs of the common driveway to ensure it is appropriately constructed</li> <li>○ Councils should be able to seek security or bonding for common infrastructure</li> </ul> </li> </ul>

Consideration of Feedback

While the Barossa Council was largely supportive of the amendment to Practice Direction 12, the City of West Torrens identified some unintended consequences of the amendment (such as capturing apartment buildings and damage will occur to driveways during the construction phase of the dwellings). The alternative mechanisms that have been suggested include:

- Expanding the scope of the Building Indemnity Insurance Policy Scheme to common property;
- Councils require bonding or security for common property; and
- A design standard for the construction of common driveways.

It is understood that Consumer and Business Services (as the agency responsible for the administration of the *Building Work Contractors Act 1995*) is investigating amendments to the Building Indemnity Insurance Policy scheme so that it covers common property going forward.

In relation to councils seeking security or bonding for construction of common property, there are two legislative mechanisms (under either the PDI Act or CT Act) that would allow security or bonding for common infrastructure to be collected. Both mechanisms would require amendments to the respective regulations made under each Act, and this would be a matter for the Government and the relevant Minister responsible for administering each Act (the Minister for Planning in relation to the PDI Act and the Minister for Consumer and Business Affairs in relation to the CT Act).

With respect to the PDI Act:

- Section 102(1)(d) of the PDI Act specifies several requirements that a land division under the CT Act must satisfy in order for land division consent to be granted, with one of them being any requirements set out in regulations.
- Section 138 of the PDI Act then provides that the Commission is required to issue a land division certificate when it is satisfied that the prescribed conditions as to development have been satisfied, or that the applicant has, by virtue of an entitlement under the regulations, entered into a binding agreement, supported by adequate security, for the satisfaction of any such condition.

- The *Planning, Development and Infrastructure (General) Regulations 2017* already prescribe that the Commission may issue the land division certificate where the requirements of section 102(1)(d) of the PDI Act have not been satisfied if the council advises the Commission that the applicant has entered into a binding arrangement with the council for the satisfaction of those requirements (and that the arrangement is supported by adequate security).
- This means that in order to allow councils to seek security or bonding for the construction of common driveways, it would need to be a requirement of section 102(1)(d) of the PDI Act that the common driveway be constructed.
- While it is ultimately a matter for the Minister for Planning, advice from some councils has previously suggested that given common driveways remain private property, councils are hesitant to accept increased responsibility for their construction. Such a change would likely require minimum standards to apply to the construction of common driveways that councils would need to verify have been met, as well as possibly require councils to construct the common driveway where the developer or builder fails to do so.

With respect to the CT Act:

- Section 47(6) of the CT Act provides that the regulations may require a developer to provide security of a specified kind to a community corporation in respect of a developer's obligations under a development contract.
- A development contract is required where a scheme description indicates that a developer is to (or is likely to) erect buildings or other improvements on common property. It is noted a scheme description is only required where more than six community lots are created.
- There are currently no circumstances prescribed in the *Community Titles Regulations 2011* where a developer is required to provide security for the development of common property. If circumstances were to be prescribed, it is unclear how such a scheme would be administered and enforced, but it would likely fall to the Registrar-General.
- In any event, the CT Act is committed to the Minister for Consumer and Business Affairs and so it would be a matter for that Minister to progress any regulations under that Act.

While a design standard for the construction of common driveways would help to ensure their construction is of an appropriate standard and quality, it would not ensure the construction occurs before the individual community lots are sold.

#### Amendments to Practice Direction 12

While there has been limited feedback received from stakeholders in relation to the amendments made to Practice Direction 12, it is considered appropriate to make further changes given the scope of developments captured by the initial amendments and the consequences of this.

The intent of the further changes should be to ensure that the following developments do not require the mandatory condition to construct the common driveway before the Commission issues its land division certificate:

- Multistorey apartment buildings; and
- Community title complexes with more than six community lots, where access is provided to those community lots by what is clearly a driveway (as opposed to a driveway that functions as a road).

It is therefore recommended that further changes be made to Practice Direction 12 so that the mandatory condition is required in the following circumstances:

- Where the application involves the division of land under the *Community Titles Act 1996* and access will be provided to the community lots by common property (being a common

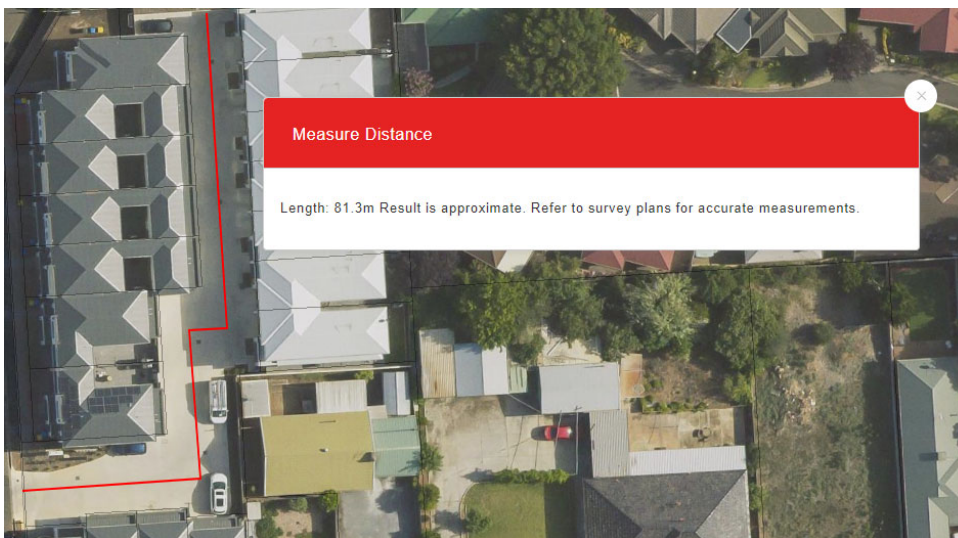
driveway) that exceeds 100 metres in length when all stages of the development are complete (including the subsequent division of development lots under the *Community Titles Act 1996*, if applicable).

The distance of 100 metres is considered reasonable as it will capture larger developments, such as the Felmeri Development at O'Halloran Hill, where the common driveway functions as a road (see example at Figure 1). It will, however, not capture smaller developments across metropolitan Adelaide where more than six community lots are created, and the common driveway still functions as a driveway (see example at Figure 2).

A change of this nature will resolve some of the concerns raised by the City of West Torrens. In particular, it will mean that residential flat buildings are not captured by the mandatory condition, and it will also mean that damage does not occur to the common driveway during construction of the dwellings for developments such as those in Figure 2.



**Figure 1: Main South Road, O'Halloran Hill**



**Figure 2: La Scala Court, Paradise**

Community Title Land Division

On 25 October 2023, the Minister for Planning wrote to the Commission requesting that it develop a new practice direction to provide considerations for councils in determining whether division under the CT Act is appropriate having regard to the nature and extent of the common property that would be established.

The Department for Trade and Investment has been progressing a draft *State Planning Commission Practice Direction 19 (Community Title Land Divisions) 2024* (see **Appendix C**), which seeks to provide guiding principles that a relevant authority should turn their mind to in making this determination. In addition to this, there are several examples provided in the new draft Practice Direction where the division of land under the CT Act is both appropriate and not appropriate.

At its last meeting on Monday, 6 November 2023, the Minister's Liaison Group (MLG) agreed that this matter should also be considered by a smaller subset of MLG.

A meeting has been arranged for Wednesday, 7 February 2024, at which the following stakeholders will consider the draft *State Planning Commission Practice Direction 19 (Community Title Land Divisions) 2024*:

- Housing Industry Association
- Local Government Association
- Master Builders Association
- Property Council of Australia
- Urban Development Institute of Australia
- Planning Institute of Australia

Once the subset of MLG has considered the draft *State Planning Commission Practice Direction 19 (Community Title Subdivisions) 2024*, it is expected that consultation will occur with Local Government Assessment Managers before it is presented back to the Commission for final approval.

It is expected that the development and implementation of the *State Planning Commission Practice Direction 19 (Community Title Subdivisions) 2024* will reduce the number of land divisions occurring under the CT Act, thereby reducing the number of developments requiring the mandatory condition under Practice Direction 12 discussed above.

**Attachments:**

1. *State Planning Commission Practice Direction 12 (Conditions) 2020* (#21006694)
2. Gazette Notice (#21006697)
3. Letter to the Minister (#21006698)
4. Letter to Stakeholders (#21006700)

**Appendices:**

- A. City of West Torrens Submission (#21006705)
- B. The Barossa Council Feedback (#21006706)
- C. Draft *State Planning Commission Practice Direction 19 (Community Title Land Divisions) 2024* (#20846959)

OFFICIAL

Prepared by: Ben Sieben

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Endorsed by: Chelsea Lucas / Jane Trotter

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Date: 22 December 2023

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30 November 2023

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

Dear Mr. Holden,

**RE: State Planning Commission Practice Direction 12 (Conditions) 2020.**

I am writing to express Council's observations regarding the recent update to Practice Direction 12 (Conditions) that was recently implemented. Specifically Council wishes to provide feedback on the changes to the mandatory condition to common driveways. We appreciate the intention behind this change is to manage the risk posed to those purchasing homes when access is not provided before the community lot is sold and improve certainty and security for those purchasing homes within community title developments. In particular there is a need to protect future residential owners in the unfortunate circumstance that the developer/builders goes into liquidation. Unfortunately the changes made appear to fall short of achieving its intended aim.

The failure of developers to properly construct driveway is an issue of significance, albeit uncommon, as it creates a substantial financial burden for landowners and has also has wider impacts on street amenity and stormwater if not addressed in a timely manner.

Several reasons underlie Council's belief that the current Practice Direction is not achieving its aim:

- The new requirements outlined in the practice direction will create inefficiencies in delivering new dwellings as potential home owners will need to wait until the driveway is constructed prior to receiving titles and commencing the construction of dwellings. It is noted that constructing the driveway after the dwellings are substantially completed is the current practice of many developers undertaking residential flat building developments, including the below examples constructed in the City of West Torrens within the past 3 years:
  - 24 Warwick Avenue, Kurralta Park
  - 36 Daly Street Kurralta Park
  - 38-40 Garfield Avenue, Kurralta Park
  - 214 Anzac Highway, Kurralta Park

Often these developments are presold and new owners can access construction finance which enable the developer to proceed with construction. It is unclear whether the requirement to construct driveways before dwellings will impact the

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developer/builder's ability to obtain construction finance. It is of significant concern that developers currently planning new developments are unaware of this 'tweak' to the mandatory conditions that Councils are required to implement and the substantial implications for the staging of their developments.

It is suggested that further consultation with the building industry and the banking sector is urgently required to understand the implications of these changes.

On a practical level, the driveways-first approach may also necessitate repairs to be undertaken to common driveways after dwelling construction to rectify any damage. Many common driveways in the City of West Torrens are unlikely to be built to a standard for the large trucks accessing a site during construction. This is likely to cause conflict between builders and owners, contribute to additional housing costs and is also an unsustainable approach due to the high likelihood of rework and rectifications required.

Many of the residential flat building examples in the City of West Torrens are created as the Community Title legislation is intended, with shared driveways accessing less than approximately 10 dwellings in a townhouse type arrangement. The driveways are built to a driveway standard construction which may be pavers or concrete rather than bitumen. However further consideration needs to be given to the mechanisms used for larger developments where the 'driveway' is more akin to a private road, particularly in greenfield scenarios. It is suggested that a different approach is required in these circumstances.

- **Resourcing Implications:** The Practice Direction requires Relevant Authorities to undertake a site inspection of the driveway and then to update the Portal. This places an extra burden on practitioners in terms of time, resources, and administrative overhead, without a commensurate benefit to the delivery of new dwellings. It is noted that Councils receive a Compliance Fee for development applications requiring Building Consent, however Councils do not receive a Compliance Fee for land division applications. This condition requires additional requirement for Councils to undertake compliance monitoring and inspections to ensure driveways are constructed, for which Councils are not currently funded and this cost burden would fall to the ratepayer.

While practice directions can be effective in certain situations, they are not the only tool for driving positive change and a combination of mechanisms may be more effective, as they can complement and reinforce one another. The following alternative mechanisms may be more effective in addressing this issue:

- The inclusion of common infrastructure within the requirements of building indemnity insurance.
- Amendments to the legislation be implemented to enable Councils to seek security or bonding for common infrastructure;
- Design Standards for the construction of common driveways to ensure that they are of a standard design and are fit for purpose; and

In light of these comments, Council respectfully requests that the State Planning Commission consider a thorough review and revision of not only the current Practice Direction but also the Planning, Development Infrastructure Act, the Community Titles Act

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and Building Work Contractors Act in conjunction with Consumer and Business Services. This review should aim to address the aforementioned issues and ensure that the outcomes align with its intended purpose more effectively.

Council is willing to engage in discussions, provide feedback, or contribute in any way possible to aid in this review process. Council believes that, through collaborative efforts and careful consideration, the appropriate mechanism can address the issues outlined above.

If you require any additional information or clarification, please contact [REDACTED] Manager City Development on [REDACTED] or phone [REDACTED].

Yours sincerely,



Celine Luya  
**General Manager Business and Community Services**

## Sieben, Ben (DTI)

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**From:** DTI:PlanSA Submissions  
**Sent:** Monday, 16 October 2023 9:36 AM  
**To:** [REDACTED]  
**Subject:** FW: Feedback regarding Community Titled common driveways  
**Attachments:** SIGNED BY ED PLUS - Letter\_from\_Sally\_Smith\_-\_Practice\_Direction\_12.pdf; Practice Direction 12 (v3).pdf

### OFFICIAL

Hi team –

For your attention.

Thanks  
[REDACTED]

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**From:** [REDACTED]  
**Sent:** Monday, October 16, 2023 9:13 AM  
**To:** DTI:PlanSA Submissions <plansasubmissions@sa.gov.au>  
**Subject:** RE: Feedback regarding Community Titled common driveways

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

Dear Sir/Madam,

Thank you for confirming amendments to Practice Direction 12 as outlined within attached correspondence.

In respect to the amendment regarding Community Titled common driveways, as the Assessment Manager for The Barossa Council, I support the proposed change to require a mandatory condition that the common driveway be constructed before the Commission issues its land division certificate.

Notwithstanding, it is suggested that the condition need not be restricted to more than six community lots, noting the same situation/concern arises in respect to a Community Titled division of any scale where common driveways are required/proposed and as such it is suggested that the reference to six community lots be removed.

Other matters for consideration include:

- Common infrastructure may include need for stormwater infrastructure within the common driveway as well as car parking spaces and landscaping. Does the mandatory condition extend to such works;
- A concern of developers in being requested to build a common driveway before clearance is that the infrastructure may be damaged during construction. What options exist to enable clearance but provide assurance that the driveway will be built.

Thank you for opportunity to make common in respect to this amendment.

Please do not hesitate to contact me if you would like to discuss.

Regards



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We acknowledge the Ngadjuri, Peramangk and Kurna people and their ancestral connection to land and pay respects to Elders past, present and emerging.

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