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29 January 2025

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

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".

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.