

Agenda Report for Decision

Meeting Date: 15 December 2022

Item Name	Regional Planning – Complying Changes to the Planning and Design Code
Presenters	Paul Bennett, Brett Steiner and Nick Kretschmer
Purpose of Report	Decision
Item Number	5.1
Strategic Plan Reference	1. Planning for Growth and Change
Work Plan Reference	1.1 Lead the development of Regional Plans across South Australia
Confidentiality	Approve the designation of this item as Not Confidential (Release Immediately)
Related Decisions	SPC Meeting – 24 November 2022 – Workshop Item No. 1

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 Commission will be presented with draft amendments to *Practice Direction 2 – Preparation and Amendment of Designated Instruments* (Practice Direction 2) at a future meeting in 2023.
3. Approve the Principles for Complying Changes (the Principles) to the Planning and Design Code (the Code).

Background

On 24 November 2022, the Commission workshopped the Principles for Complying Changes, pursuant to section 75 of the *Planning, Development and Infrastructure Act 2016* (the Act) (**Appendix A**). The Commission agreed to the following Principles:

1. Facilitation of Strategic Land Use Matters
2. Phase Two (Rural Areas) Consistency Rezoning
3. Families of Zones

4. Facilitation of Growth Strategies
5. Anomalies will not be identified and addressed via a Regional Plan.

Further, it was identified that amendments were required to Practice Direction 2 to incorporate specific Code Amendment information requirements for stakeholders. It was recognised that the additional content also needed to include detail regarding complying initiations. The current Practice Direction is silent on complying initiations and the information requirements needed to propose a complying change. The draft amendments to Practice Direction 2 will be provided for the Commission's review and consideration at a future meeting.

Discussion

Section 75 of the Act

Section 75 of the Act specifies that the Minister for Planning (the Minister) may, after seeking the advice of the Commission, initiate or agree to an amendment to the Code, if:

- (a) *the amendment comprises a change to –*
 - i. *the boundary of a zone or subzone; or*
 - ii. *the application of an overlay; and*
- (b) *the amendment is consistent with a recommendation in the relevant regional plan that, through the use of –*
 - i. *specific maps or other spatial information; and*
 - ii. *specific information about the changes are being proposed,*

clearly and expressly identifies (in the opinion of the Minister) the changes that are considered to be appropriate.

To ensure a complying change does not subvert or undermine community expectations, and to safeguard public transparency, an amendment under section 75 of the Act must be the subject of consultation under the Community Engagement Charter (the Charter).

Section 75 further stipulates that complying changes are not subject to referral to the Environment, Resources and Development Committee of the Parliament of South Australia, nor are such changes subject to parliamentary disallowance.

Section 11 of Practice Direction 2 details the types of information that must be presented to the Minister when undertaking a section 75 complying *change* (**Appendix B**). However, no detail is provided regarding the types of information that must be presented to the Minister in the instance of a complying *initiation*. The Practice Direction will be amended to include this detail.

Principles of Complying Changes and Initiations

As workshopped with the Commission, Planning and Land Use Services (PLUS) will establish and apply principles to identify which amendments fall within the designated rezoning categories. As mentioned previously, these Principles are:

1. Facilitation of Strategic Land Use Matters
2. Phase Two (Rural Areas) Consistency Rezoning
3. Families of Zone
4. Facilitation of Growth Strategies
5. Anomalies will not be identified and addressed via a Regional Plan.

Principle 1 will provide a mechanism for councils to identify the parcels of land they consider critical to their short-, medium- and long-term strategic interests (for the purposes of identifying in the respective Regional Plan). In the instance where a council progresses with detailed investigations and are willing to undertake targeted consultation separate to, and in conjunction with, the Regional Plan consultation, the identified parcel(s) for rezoning could be considered for a recommended complying change or initiation. The nominating council will be required to sufficiently demonstrate the parcel(s) is fundamental to a long-term strategic use, which the current zoning determination does not envisage. Matters which may fall under this principle include emerging industries or residential growth fronts.

Principle 2 will ensure the Code is spatially applied across Phase Two (Rural Areas) councils in a manner which maintains compatibility and consistency across the Code's policy suite. The transition of Development Plan policy to the Code resulted in a number of zoning errors, where new zoning did not transition to the zone typology which best aligned to the context or intent of a particular setting (as described in the *Guide to the Planning and Design Code – June 2022*).

An example of this is evident in the City of Whyalla, where broad hectare land was transitioned to General Neighbourhood Zone, whereby the Master Planned Neighbourhood Zone should be retrospectively applied given the opportunity to do so. Section 75 of the Act affords this opportunity at a State-wide level and highlights to stakeholders the immediate value and benefits the Regional Planning Program could bring to their region.

Principle 3 will seek to identify and facilitate rezonings within a zone family where the current zoning application is considered to inhibit strategic directions sought by the respective Regional Plan. The scope of this Principle will be clearly articulated to stakeholders, to ensure a rigid framework for all complying changes or initiations processed under this pathway. This Principle extends to subzone applications when sought by a council or key stakeholder (i.e. landowner who can expressly demonstrate deficiency in current zoning application). It is envisaged most of the complying changes identified under this Principle will require a greater level of tailored consultation, separate to that undertaken for the Regional Planning Program.

Principle 4 will align the Regional Plans with council and/or PLUS growth strategies by considering the spatial implications and envisaged outcomes of each strategy. The inclusion of this Principle will encourage local authorities to progress council-led growth management strategies. Principle 4 differs from Principle 1, in that Principle 1 affords council the opportunity to identify parcels that have not been identified in growth strategies. Principle 4 is particularly relevant to those councils who have not progressed comprehensive land use strategies.

Principle 5 will ensure the Regional Plans do not consider minor anomalies in Zone or Overlay application, as these matters are not considered within the strategic high-level interests of the Regional Plan. The process to facilitate such Code Amendments sits with the relevant agency, council or private entity. This position will be communicated to stakeholders.

The application of sub-zones and overlays, in addition to zones, will be considered through the s75 process. Agencies, councils, and/or landowners may express a demonstrated need in specific areas for an overlay to be applied, expanded, recessed, or removed. The Regional Plans are a suitable mechanism to consider such requests. Furthermore, requests for the application or removal of a sub-zone will be considered in areas within the associated zone category.

Complying changes will be limited to when Code Amendments are considered critical to the achievement of a 0–5-year action within the Regional Plan. A complying initiation can be proposed over an extended time duration, where such amendments align with medium- and long-term objectives of a Regional Plan.

Endorsement of a Regional Plan incorporating Complying Changes

Where the Commission endorses a Regional Plan which has included a recommendation for a complying change (and is accompanied by specific maps, spatial information, and other specific information), the Minister, upon receipt, will need to be satisfied that two criteria have been met. Firstly, the Minister must be satisfied that the proposed amendment is consistent with a recommendation identified within the relevant Regional Plan. Secondly, the Minister must be satisfied that the relevant Regional Plan clearly and expressly identifies the proposed changes.

Appendices:

- A. Workshop Presentation – 24 November 2022 (#19518419).
- B. Extract from *Practice Direction 2 – Preparation and Amendment of Designated Instruments* (#19463268).

Prepared by: Nicholas Kretschmer _____

Endorsed by: Jessica Porter _____

Date: 5 December 2022 _____

Regional Plans

Complying Changes to the Planning and Design Code

State Planning Commission
Workshop

24 November 2022



Purpose

For the Commission to consider the nature and scope of Section 75 Complying Changes which will feature in the regional plans.

Commission to consider:

1. Adopting principles that provide a clear framework of what matters will be considered for both recommended complying changes and complying initiations to the Code.
2. Noting that these principles will be communicated to the Minister for Planning and stakeholders in relation to the Regional Planning Program at a later stage.



Section 75 of the *Planning, Development and Infrastructure Act 2016*

Section 75 of the Act enables a Regional Plan to recommend complying changes and initiations to the Planning and Design Code.

The Minister may, after seeking the advice of the Commission, initiate or agree to an amendment to the Code if the amendment comprises a change to –

- i. The boundary of a zone or subzone; or
- ii. The application of an overlay



The amendment must be consistent with a recommendation in the relevant regional plan, that, through the use of -

- i. Specific maps or other spatial information; and
- ii. Specific information about the changes that are being proposed,

Clearly and expressly identifies (in the opinion of the Minister) the changes that are considered to be appropriate.

- The amendment must be subject to consultation in accordance with the Community Engagement Charter

Practice Direction 2 – Preparation and Amendment of Designated Instruments

Section 11 of Practice Direction 2

Details what information must be furnished to the Minister to **agree** to a s75 complying change:

- Description of the relevant recommendations, including specific maps or other specific information which clearly and expressly identify the changes relevant to the amendment
- Summary of any consultation which has occurred in accordance with the Charter in relation to the proposed amendment or the relevant Regional Plan.

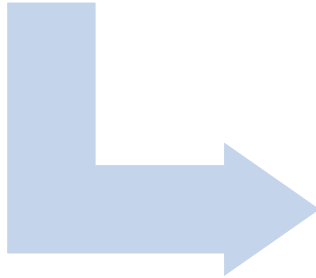
No detail is provided regarding required information for complying initiations



Regional Plans – Complying Changes to the Code

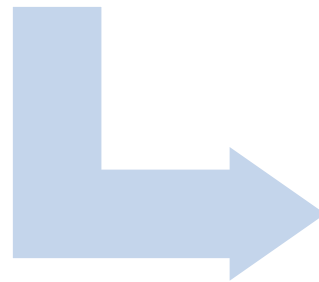
Regional
Plan

- Regional Plan ‘clearly and expressly’ identifies a recommended complying amendment or initiation to the Code



Minister

- Minister either agrees (adopts), initiates or declines/takes no action on recommended amendment



Effect

- Amendment effected by an instrument deposited on SA planning portal



Questions

Principle 1

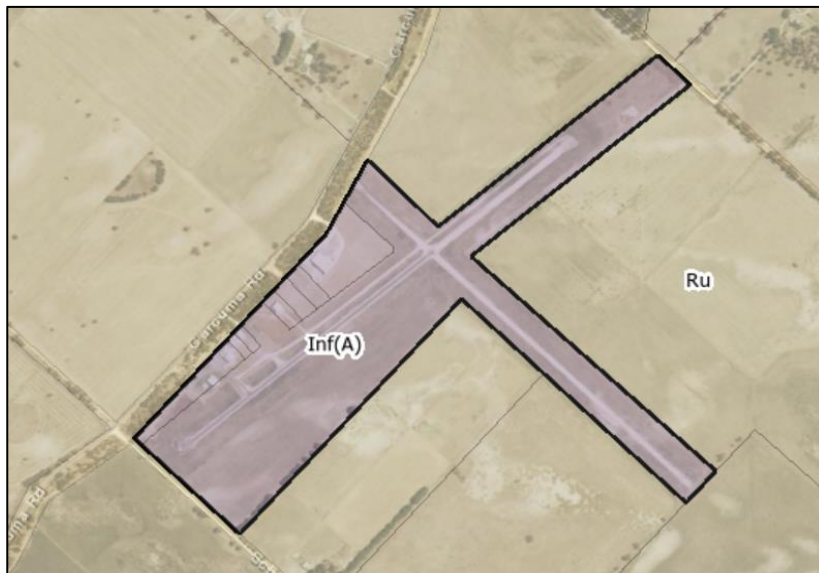
Phase Two (Rural Areas) Consistency Rezoning

The Principle would ensure the Code is spatially applied across those areas of the State which fell within the Phase Two (Rural Areas) Code Amendment in a manner which maintains compatibility and consistency across the policy suite.

- Code transition did not necessarily adopt most suitable zoning arrangement in regard to the ‘policy neutral’ approach undertaken. The Principle will seek to retrospectively apply more suitable zoning typologies to these areas.

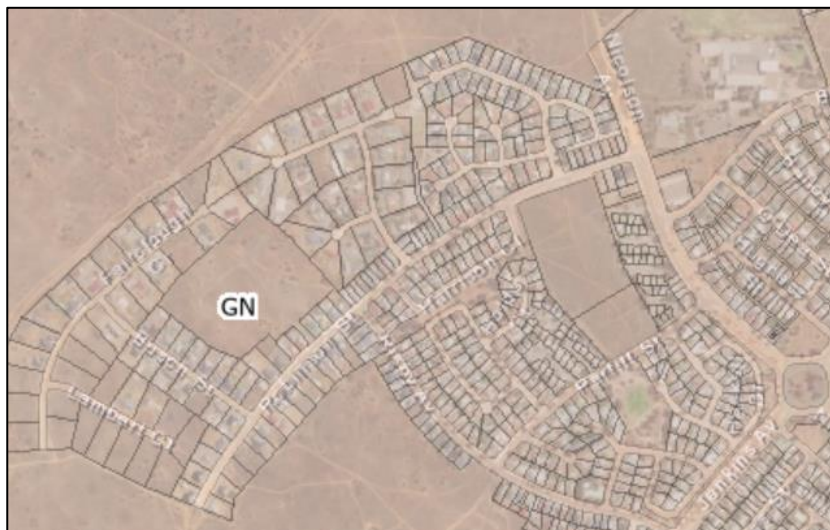


Regional Plans – Complying Changes to the Code



Tintinara Airport

- Bespoke Development Plan policy in the form of a Concept Plan which envisaged adjacent residential development did not transition to Code
- Phase Three Code Amendment introduced **Residential Aviation Estate Subzone**, which aligns with previous policy position
- Council are required to undertake a full Code Amendment to introduce Subzone, an intensive undertaking for a small Council to return to previous policy arrangement



Whyalla

- Development Plan applied one zoning typology across residential areas
- Code transitioned in accordance with principles to **General Neighbourhood Zone**.
- Included broad hectare land which, in retrospect, is more suited to **Master Planned Neighbourhood Zone**

Principle 2

Families of Zones – (e.g. employment > employment)

The Principle would identify and facilitate changes where the current zoning is considered to inhibit strategic directions sought by the respective Regional Plan.

- The Regional Plan would identify areas where the current zoning represents an impediment to achieving housing or employment land objectives (i.e., an amendment may increase residential densities in appropriate areas) .
- Councils would be afforded the opportunity to provide the necessary level of investigation and detail about specific changes, for consideration as a recommended complying change.



Regional Plans – Complying Changes to the Code

	Term	Meaning
Land Use	Neighbourhood	Residential areas primarily envisaging housing.
	Employment	Primarily envisages commercial and industrial activities, as well as supporting employment-generating uses.
	Activity Centre	Centres providing shopping, business, entertainment and recreation facilities (depending on intensity/location of the centre).
	Main Street	A centre in a main street or high street context, providing a mix of land uses such as retail, office, commercial and community facilities (depending on intensity/location of the main street).
	Corridor	Seeking higher density development focussed along a particular road, typically mixed use development with active ground-floor uses.
	Innovation	Mixed use areas promoting research, health, education and technology.
	Infrastructure	Area for the provision of infrastructure such as electricity, landfill/waste, water treatment/supply, airports, marinas.
Intensity/Location	City	City of Adelaide (CBD, North Adelaide and Park Lands).
	Strategic	Areas of State-level importance.
	Urban	Redeveloping areas serving a broad urban catchment within South Australia.
	Suburban	Lower density areas within an urban area.
	Township	Towns within a regional or rural area.
	Settlement	Rural settlements, of a smaller scale than townships.
	Rural	Areas in a countryside or remote location.

Principle 2

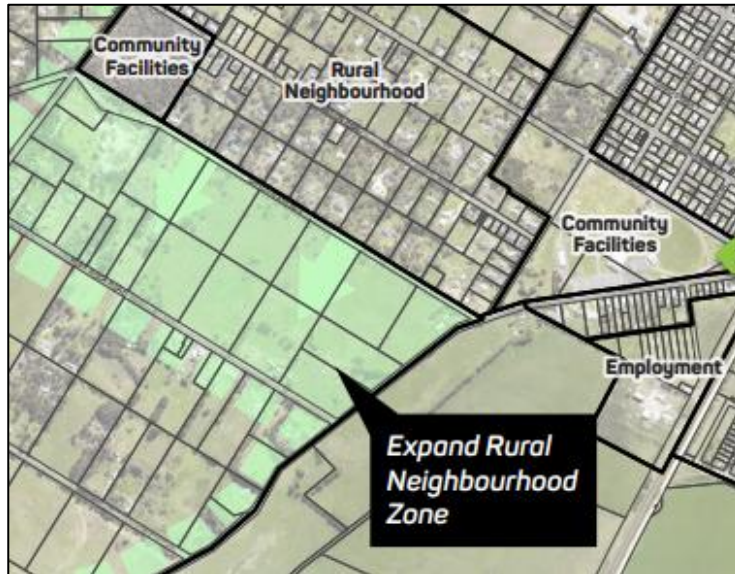
- Examples may include General Neighbourhood Zones adjacent Urban Activity Centre Zone – i.e. consider rezoning to enable greater densities (Housing Diversity Neighbourhood Zone)

Principle 3

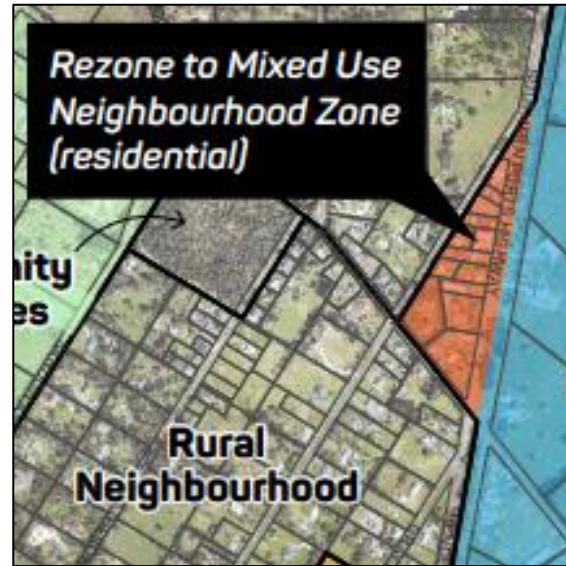
Facilitation of Growth Strategies

- Align the Regional Plans with Council and/or PLUS growth strategies which are currently under preparation or published.
- In instances where the growth strategy outlines specific zone changes, and the strategy has undergone consultation in accordance with the Charter, PLUS will determine on a case-by-case basis whether:
 - The nature and extent of the zoning change is precise and supported by relevant material
 - The specific change has undergone adequate consultation in accordance with the Charter

Example – Wattle Range Strategic Land Use Plan (2022)



Millicent – Existing Rural Living Zone



Millicent – Strategic Employment



Penola - Deferred Urban Zone

Principle 4 – Anomalies will not be identified and addressed via a Regional Plan

Identified Anomalies

Zoning anomalies are expected to be identified by Councils and landowners during engagement.

It is **not considered** within the scope or strategic interests of the Regional Plan to identify and address these minor matters.

- Process to facilitate such amendments would sit with the relevant Agency, Council or private entity.
- Communication strategy to outline Code Amendment options for these matters will be distributed to stakeholders.

Key considerations

Complying Changes

- Limited to instances where such Code Amendments are considered central to the achievement of a 0–5-year action within a Regional Plan

Complying Initiations

- Instigation of a complying initiation can be entertained over an extended time duration, including where such amendments align with medium- and long-term objectives of the Regional Plan.
- *Practice Direction 2* requires additional content to outline necessary initiation detail

Next Steps

- Refine Principles based on Commission's feedback
- Present Section 75 Principles for endorsement on 8th December 2022 meeting
- Draft amendments to *Practice Direction 2* to provide stakeholders with information requirements to nominate complying change. Further, information requirements for complying initiations will be developed.



Questions

Appendix B: Regional Plans - Complying Changes to the Planning and Design Code

Practice Direction 2 - Preparation and Amendment of Designated Instruments

Section 11 Excerpt

11–Complying Changes to the Code

- (1) A request for the Minister to agree to a complying change to the Code under section 75 of the Act must be provided to the Department and must include the following information:
 - (a) description of the relevant recommendations in the Regional Plan which relate to the proposed Code Amendment, including any specific maps or other specific information which clearly and expressly identify the changes relevant to the proposed Code Amendment;
 - (b) a summary of any consultation which has occurred in accordance with the Charter in relation to the proposed Code Amendment or the relevant Regional Plan. This should include a copy of the engagement report prepared for the relevant Regional Plan and any additional consultation that has occurred for the proposed Code Amendment;
 - (c) written instructions (in a form acceptable to the Department) that set out the intent of the proposed Code Amendment for the purposes of the Department writing the draft policy for inclusion in the draft Code Amendment; and
 - (d) mapping instructions or a description of the Affected Area (in a form acceptable to the Department) in order to enable the Department to prepare and provide to the Designated Entity, mapping which is suitable for inclusion in the draft Code Amendment.