

Agenda Report for Decision

Meeting Date: 15 September 2022

Item Name	Environment and Food Production Areas (EFPA) Review – Delegation required for a notice to bring the variations to the EFPA boundaries into operation
Presenters	Chair
Purpose of Report	Decision
Item Number	5.4
Strategic Plan Reference	N/A
Work Plan Reference	N/A
Confidentiality	Not Confidential (Release Immediately)
Related Decisions	SPC Agenda Report – Item 4.1 – EFPA Review: Draft Outcomes Report for Approval – 14 October 2021

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. Agree to delegate its powers and functions under section 7(16) of the *Planning, Development and Infrastructure Act 2016* (the Act) to the Ex Officio Member of the Commission to sign and publish a notice on the SA Planning Portal, fixing a day (21 October 2022) that the variations to the Environment and Food Production Areas (EFPA) boundaries will come into operation.

Background

On 14 October 2021, the Commission resolved to approve the Outcomes Report for the inaugural EFPA Review, along with a number of delegations to the Ex Officio Member to finalise legislated procedures and other administrative matters. This included the publication of a *Government Gazette* Notice regarding the approved variations to the EFPA boundaries, as well as sending correspondence to affected stakeholders to advise of the outcomes of the EFPA Review.

A copy of the Agenda Report from the 14 October 2021 meeting is provided at **Appendix A** for reference.

Discussion

Following the completion of the abovementioned procedures, the Minister for Planning subsequently tabled the *Government Gazette* Notice and EFPA Review Outcomes Report before both Houses of Parliament in May 2022. This was to fulfil a legislative procedure for Parliament to consider these documents for a 14 sitting day period in which a motion of disallowance could be made.

This 14 sitting day period expired on 8 September 2022, and there was no motion of disallowance made. Accordingly, section 7(16) of the Act provides that the Commission may fix a day, via a notice published on the SA Planning Portal, for the variations to the EFPA boundaries to come into operation:

If or when a notice laid before both Houses of Parliament under subsection (12) can take effect after taking into account the operation of subsections (13) and (14), the Commission may, by notice published on the SA planning portal, fix a day on which the notice will come into operation.

It has come to the attention of Planning and Land Use Services (PLUS) staff that no delegation has yet been made by the Commission to enable the publishing of this final notice on the SA Planning Portal. Accordingly, it is recommended the Commission delegate its powers and functions under section 7(16) of the Act to the Ex Officio Member of the Commission who will then publish the notice on the SA Planning Portal that the varied EFPA boundaries will come into operation on 21 October 2022.

Appendices:

- A. SPC Agenda Report – 14 October 2022 – EFPA Review – Draft Outcomes Report for Approval (#17763893).

Prepared by: Tom Victory

Endorsed by: Patrick Hansen

Date: 13 September 2022

Agenda Report for Decision

Meeting Date: 14 October 2021

Item Name	Environment and Food Production Areas (EFPA) Review – Draft Outcomes Report for Approval
Presenters	Tom Victory
Purpose of Report	Decision
Item Number	4.1
Confidentiality	Not Confidential (Release Delayed) – to be released following final graphic design of document and furnishing of the Report to the Minister for Planning and Local Government
Related Decisions	Workshop Discussion on 30 September 2021

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 final graphic design of documents and furnishing of final Review Report to the Minister for Planning and Local Government (the Minister).
2. Approve the variations to the Environment and Food Production Areas (EFPA) for four sites as noted in in green in the Assessment Spreadsheet, prepared by the Attorney-General's Department (the Department), for Review Sites in **Attachment 1**;
3. Approve the Technical Mapping Corrections to the EFPA for the 20 sites as shown and recommended in **Attachment 2**;
4. Approve the draft EFPA Review Outcomes Report (the Report) in **Attachment 3**, subject to amendments as required to finalise the Report, as authorised by the Commission;
5. Authorise the Ex Officio Member to approve the final graphic designed Report, including any formatting, editorial or structural changes which do not affect the substance of the Report;
6. Delegate to the Ex Officio Member the power to approve and authorise publication of a notice under section 7(8) of the *Planning, Development and Infrastructure Act 2016* (the Act) which varies the EFPA as approved by the Commission;
7. Authorise the Chair to sign the covering letter to the Minister in **Attachment 5**, enclosing the final Report; and
8. Authorise the Department to publish the final Report and notify relevant stakeholders who participated in the consultation process.

Background

Section 7(9)(b) of the Act sets out that the Commission may only vary an EFPA if it has conducted a review and furnished a report on the outcome of the review to the Minister.

The Department has prepared a draft Review Outcomes Report to address this section and is now seeking the Commission's approval so that it can be finalised and then furnished to the Minister. Once the above has occurred, this would then essentially mark the end of the EFPA Review process, and the Department will then (if authorised) publically release the Report and notify stakeholders who participated in the consultation process, along with other external communications.

Key Points from the Workshop

On 30 September 2021, the Commission participated in a workshop regarding the decisions and recommendations which were proposed to form the basis of the final Report. The Department's recommendations were largely endorsed with some exceptions, where matters were not settled. Those outstanding matters are addressed in this Agenda Report for the Commission's further consideration and final determination.

The Commission made the following key points as part of the discussions:

1. That the Review Outcomes Report should only focus on EFPA boundary variations. All other potential recommendations, suggestions or observations the Commission may have about the operation of the EFPA review process or the legislation should be addressed via separate correspondence to the Minister. This Agenda Report provides further analysis and recommendations with respect to that site, for the Commission's consideration.
2. That it is generally comfortable with the recommendations that were presented in relation to boundary variation requests, but that it wishes to consider the Goolwa Airport site further, following a paper being drafted for the meeting on 14 October 2021. This Agenda Report provides further analysis and recommendations from the Department regarding that site.
3. That it wishes to review the Department's spreadsheet and information provided to the Department's Code Control Group regarding assessment of each site against Test 3 and the Commission's guiding principles.

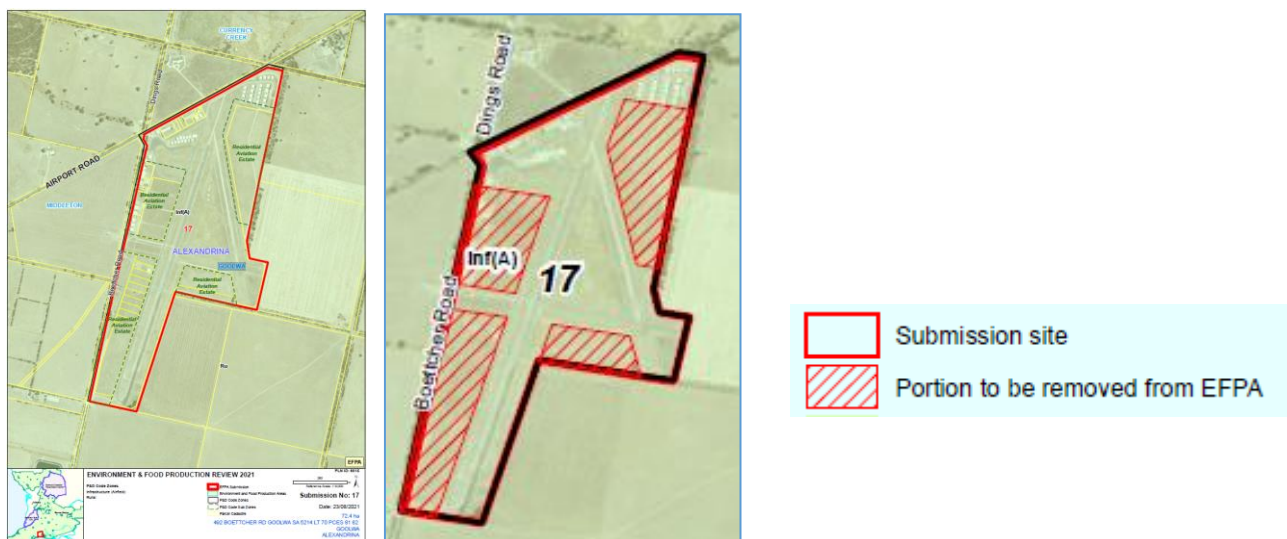
Discussion

The Department's Assessment Spreadsheet relating to all sites in the Review is provided in **Attachment 1**. This Spreadsheet provides recommendations on amendments to the EFPA for four sites. In addition, the Department's recommendations on technical mapping corrections to the EFPA for 20 sites are included in **Attachment 2**.

A draft Review Outcomes Report has been structured and finalised in accordance with the Commission's directions from the workshop and is provided in **Attachment 3**.

Assessment Sheets for each site considered as part of the Review and as presented to the Department's Code Control Group is also provided in **Attachment 4** for the Commission's information.

Goolwa Airport Site



Background

Prior to the EFPA Review, representations from the owner of Goolwa Airport to the Department sought that the EFPA be removed from the land. This will allow the land zoned for residential airpark development to be subdivided for development in line with the zoning framework, which was introduced via a Council Development Plan Amendment on 27 June 2013.

A land division was granted Development Approval on 14 July 2014 (prior to EFPA controls commencing in 2017), allowing for the development of 57 residential allotments to be completed over six stages. At this point in time, only Stages 1 and 2 have been issued Certificates of Clearance. The Development Approval has however recently lapsed, preventing further clearances of remaining stages.

Assessment

The subject land is in the Infrastructure (Airfield) Zone, and a unique subzone was created in the Planning and Design Code (the Code) for the site being the Residential Aviation Estate Subzone. The Residential Aviation Estate Subzone only applies to this site, and supports low density residential development (together with an aircraft hangar). It is applied over those parts of the Infrastructure (Airfield) Zone for which the land division had previously been approved.

A new development application would be required to gain Development Approval for the remaining stages; however, the EFPA controls would now preclude this being approved as it would involve 'the creation of additional allotments for residential development'.

The removal of the EFPA is therefore seen to be addressing a clear and problematic anomaly that exists between the intent of the Subzone and the intent of the EFPA legislation. The removal of EFPA would also be viewed as trivial given:

- The land has clearly been set aside for a residential land use (which is already part way through being developed). The original DPA and Code Transition were subject to consultation. Therefore, there is now a reasonable expectation that the land will be developed for this purpose.
- Whilst the area to be removed is some 32 hectares in area, it is considered trivial in the context of being around one-third of the area of the airport, and negligible in terms of the whole EFPA.

- It should not set a precedent for removal of the EFPA in other locations across Greater Adelaide, given the bespoke nature of the matter, with the Subzone not being located anywhere else in the State.

Additional information and assessment documentation can also be viewed in **Attachments 1 and 4**, by referring to Submission no. 17.

Recommendation

Vary the EFPA to remove it from the land where the Residential Aviation Estate Subzone applies.

Implementation of Boundary Variations in Outcomes Report

It is noted that in order for the Commission to implement any changes to the boundaries of the EFPA arising from the outcomes of the Review, section 7(8) and subsections 7(12) to 7(17) of the Act set out the statutory processes that needs to occur after the completion of the Review, should the Commission agree to vary the EFPA.

This involves publication of a notice in the *Government Gazette* and on the SA Planning Portal of the proposed boundary variations, followed by a Parliamentary review process. The Minister must table the notice (and the Commission’s report with parliament within six sitting days of receipt. Either House of Parliament then has 14 sitting days to disallow the notice.

Due to the number of days available in the Parliament sitting program between 14 October 2021 and the end of 2021 (maximum of nine days sitting days remaining), the implementation of variation of the EFPA boundaries will likely not occur until early to mid-2022. However, it is noted that this timing generally corresponds to the five year anniversary of the inception of the EFPA—being, 1 April 2022.

The following table summarises the process involved to implement the EFPA boundary variations, following approval of variations to the EFPA by the Commission:

DATE	EVENT
14 October 2021	Commission approves draft Review Outcomes Report (the Report) (subject to graphic design finalisation by the Department and Ex Officio Member).
Late October/early November 2021	Completion of graphic design of the Report and furnishing of the Report and cover letter to Minister by the Commission.
Early November 2021	Department publically releases the Report on behalf of the Commission and notifies all relevant stakeholders. At this stage, the EFPA Review is complete.
Early-mid November 2021	The Department (acting under delegation from the Commission) publishes a notice in the <i>Government Gazette</i> and on the SA Planning Portal, which defines the proposed variations to EFPA boundaries (based on Review Outcomes Report). Notice states a later date to become operational following the Parliamentary Review process.

November 2021 to April 2022	<p>Minister tables the notice and the Report in Parliament, within six sitting days after publication of the notice (either November 2021 or April 2022).</p> <p>14 sitting day period commences on the day the Minister tables the notice and Report (commences either November 2021 or April 2022, depending on when notice and Report are tabled).</p>
Mid 2022	<p>Completion of 14 sitting day period (assuming no disallowance of notice).</p> <p>New EFPA boundaries become operational.</p> <p>Technical amendment to the Planning and Design Code EFPA Overlay to reflect new EFPA boundaries.</p>

Attachments:

1. Attorney-General's Department Assessment Spreadsheet of Review Sites (#16317698).
2. Recommended Technical Corrections to EFPA Boundaries (#17630644).
3. Draft Environment and Food Production Areas Review Outcomes Report (#17564932).
4. Assessment Sheets for Code Control Group Assessment (#17545061).
5. Draft Letter to Minister enclosing Review Outcomes Report (#17833522).

Prepared by: Tom Victory

Endorsed by: Chelsea Lucas

Date: 8 October 2021
