PRACTICE DIRECTION 2

Preparation and Amendment of Designated Instruments

STATE PLANNING COMMISSION

This practice direction is issued by the State Planning Commission under section 42 of the *Planning, Development and Infrastructure Act 2016*.

Introduction

Section 42 of the *Planning, Development and Infrastructure Act 2016* (the Act) allows the State Planning Commission (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.

This practice direction is made by the Commission to support the operation of Part 5, Division 2, Subdivision 5 of the Act and sets out the requirements for amendments to designated instruments (a state planning policy, regional plan, the planning and design code or design standard).

The practice direction does not apply to Minor operational changes under section 76 of the Act.

Practice Direction

Part 1 – Preliminary

1 – Citation

This practice direction may be cited as the *State Planning Commission Practice Direction 2 – Preparation and Amendment of Designated Instruments*.

2 – Commencement of operation

This version of the practice direction comes 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 –

(a) to specify requirements under section 73, 75 and 78 of the Act for the amendment of a designated instrument including procedures and requirements for:

(i) initiating an amendment.

(ii) engagement and reporting in accordance with the Charter.

(iii) lodging an amendment for final determination.

(iv) complying changes to the Code.

(v) early commencement; and

(vi) joint amendment processes involving multiple instruments.

4 – Interpretation

In this practice direction, unless the contrary intention appears –

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

Affected Area means an area of land to which a proposed amendment applies.

Amendment refers to an amendment to a designated instrument under section 73 of the Act. The terms Code Amendment, Regional Plan Amendment or similar may be used to specify the statutory instrument proposed for amendment.

Charter means the Community Engagement Charter.

Code means the Planning and Design Code.

Code Amendment means an amendment to the Code under section 73 of the Act.

Complying Change means an amendment to the Code under section 75 of the Act.

Department means the Department of the Minister responsible for the administration of the Act.

Designated Instrument means the instruments set out in section 70 of the Act.

Designated Entity means a person or entity authorised or approved to prepare a draft of a proposal to prepare or amend a designated instrument under section 73 of the Act.

Joint Amendment means an amendment process that applies to two or more designated instruments simultaneously, as provided for under section 73(13) of the Act.

Local Heritage Criteria means the criteria for designation as a place of local heritage value in the Code, as provided under section 67(1) of the Act.

Proponent means–

(a) in the case of a proposed Code Amendment– the Chief Executive of the Department, another agency or instrumentality of the Crown, a joint planning board, a council, a provider of essential infrastructure, a scheme coordinator, or a person who has an interest in land, as listed in section 73(2)(b) of the Act.

(b) in the case of a proposed Complying Change – any person or body requesting that the Minister agree to a Complying Change; or

(c) in the case of a regional plan the Chief Executive of the Department, another agency or instrumentality of the Crown, a joint planning board, or a council, as listed in section 73(2)(b) of the Act.

Note – pursuant to section 73(2)(b)(vii) of the Act a person who has an interest in land cannot initiate proposals for Regional Plan Amendments (unlike Code Amendments).

Proposal to Initiate means a document prepared in accordance with this practice direction for the purpose of initiating amendments to Designated Instruments under section 73 of the Act.

Private Proponent means–

(a) in the case of a proposed Code Amendment – a provider of essential infrastructure or a person who has an interest in the land, as listed in section 73(2)(b)(v) or (vii) of the Act; or

(b) in the case of a proposed Regional Plan Amendment – a provider of essential infrastructure; or

(c) in the case of a proposed Complying Change – any person or body requesting that the Minister agree to a Complying Change, other than:

(i) the Commission; or

(ii) the Chief Executive of the Department.

Significant Tree Criteria means the criteria for declaration of a tree or stand of trees as significant tree(s) in the Code, as provided under section 68(1) of the Act.

Strategic directions means relevant strategic directions sourced primarily from State Planning Policies and Regional Plans but may be sourced from other State policies or strategies.

Regional Plan Amendment means an amendment to the Regional Plan under section 73 of the Act.

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.

Part 2 – Initiating an Amendment

5 – Required documentation

(1) To initiate an Amendment to a Designated Instrument, the Proponent must lodge the following documents with the Department via the SA Planning Portal:

(a) a Proposal to Initiate; and

(b) SA Planning Portal Publication Instructions – for Initiation.

(2) The following supporting documents must be lodged with a proposed Amendment to the Code:

(a) for proposals involving the listing or removal of a heritage item: a Heritage Report including relevant datasheets and an analysis of historic themes; and

(b) for proposals involving the listing or removal of a Significant Tree: Significant Tree Report including detailed descriptions and assessments.

(3) A Joint Amendment process involving multiple instruments may be initiated by the Minister under section 73(13) of the Act. In such cases, the documentation required to request the initiation of an Amendment must meet the applicable requirements for each designated instrument, as outlined in this Part. For the avoidance of doubt, a single Proposal to Initiate or set of Publication Instructions may cover proposed Amendments to more than one instrument.

6 – Proposal to Initiate

(1) The Proposal to Initiate must include the following:

Designated Entity

(a) With respect to proposals from Private Proponents, a request for either the Private Proponent or the Chief Executive of the Department to be the Designated Entity responsible for undertaking the Amendment process.

Professional Expertise

(b) Where the Private Proponent will be the Designated Entity responsible for undertaking the Amendment process, the name, qualifications and experience of practitioner/s that will undertake the Amendment process (including any engagement) for or on behalf of the Private Proponent. In this case, the relevant practitioner(s) must have the following qualifications and experience:

(i) A relevant planning qualification, as set out in Schedule 1 of the *Accreditation Authority's Qualifications, Skills & Experience Requirements for Accredited Professionals;*

(ii) A minimum 5-years full time or equivalent experience in role(s) using any one or more of the following skills:

a. plan making, including strategic planning, master planning and structure planning;

b. planning policy development, review and/or policy interpretation and advice.

c. plan implementation including development assessment and statutory planning; or

d. place-making and urban design.

Strategic Alignment

(c) Identification of the relevant principles or objectives of applicable State Planning Policies, Regional Plan, or other strategic directions, along with an assessment of how the proposed Amendment aligns with those strategies and policies.

Scope of the Amendment

(d) An outline of the scope of the proposed changes to the designated instrument.

(e) For Code Amendments an outline of:

(i) any overlay, general development policy, zone, subzone or technical or numeric variation in the Code being proposed for amendment; and/or

(ii) the intended spatial application of an overlay, zone, subzone or technical or numeric variation in the Code over an identified area.

(f) For Regional Plan Amendments:

(i) an outline of any existing text, policies, actions/recommendations or other content in the Regional Plan that is proposed to be amended or inserted; and/or

(ii) details of any proposed changes to existing spatial layers, or the inclusion of new spatial layers.

(g) A map or description of the Affected Area.

Consultation requirements

(h) In the case where a Private Proponent is the Designated Entity, evidence that the Private Proponent has undertaken preliminary consultation with the Chief Executive Officer (or delegate) of the relevant council and/or with a relevant Joint Planning Board (or delegate) on the Proposal to Initiate and details of any matters raised on the Proposal to Initiate as a result.

(i) If details on any matters for the Proposal to Initiate are not received by the Private Proponent within 15 business days after the request is made in (h), the Private Proponent may presume that the Chief Executive Officer and/or relevant Joint Planning Board does not desire to provide comment on the Proposal to Initiate.

(j) Information regarding any consultation that has already occurred with respect to the proposed Amendment.

(k) Details of further consultation proposed to be undertaken with respect to the proposed Amendment.

Planning Merit Statement

(l) A statement detailing how the proposed Amendment relates to strategic directions and outlines desired policy / development outcomes and anticipated residential / employment yields.

Investigation Information

(m) Information regarding any investigations which have already been undertaken with respect to the proposed Amendment.

(n) For the purposes of a Code Amendment, or where a Regional Plan is proposing a recommendation to alter spatial application of Zones, Overlays or Subzones:

(i) infrastructure (road, civil, corridor).

(ii) service infrastructure (water, wastewater, stormwater, electricity, gas, telecommunications).

(iii) cultural and heritage significance (search of the Register of Aboriginal Sites and Objects).

(iv) hazard risk (analysis of relevant policy and site conditions); and/or

(v) the extent to which there are social, economic, land use, built form or environmental features that present a barrier to the outcomes sought.

(o) High-level details of any infrastructure required to support development arising through the proposed Amendment and how that infrastructure will be provided (for example potable water and sewerage connection requirements).

(p) Where known, details of any infrastructure agreement (or agreements) or infrastructure scheme which will need to be established or entered into in connection with the proposed Amendment.

7 – Special Listing Requirements – Code Amendments

(1) To initiate a Code Amendment which is intended to designate or remove a place as a place of local heritage value, the Proponent must provide a Heritage Report which includes:

(a) a heritage datasheet for each proposed Local Heritage Place, which includes:

(i) all relevant property details and descriptions (including images).

(ii) historical background and thematic analysis.

(iii) a statement of heritage value.

(iv) an assessment against the Local Heritage Criteria; and

(v) the extent of listing (including any exclusions).

(b) an analysis of historic themes of importance to the area.

(c) is prepared by a heritage architect, historian or person with similar qualifications, skills or experience; and

(d) is otherwise prepared in accordance with any guidelines prepared and published by the Commission under section 67(2)(c) of the Act.

(2) To initiate a Code Amendment which is intended to designate or remove a tree (or stand of trees) as a significant tree (or trees), the Proponent must provide a Significant Tree Report which:

(a) includes relevant details and descriptions of the tree or stand of trees (including images as necessary).

(b) includes an assessment of the tree (or stand of trees) against the Significant Tree Criteria; and

(c) is prepared by an urban planner, arborist or person with qualifications, skills or experience relevant to the assessment in the report.

8 – Publication Instructions

(1) The SA Planning Portal Publication Instructions – for Initiation must set out the following:

(a) a plain English summary of the proposed Amendment, which will be published on the SA Planning Portal; and

(b) where possible, an indicative timeframe for the commencement of public consultation.

Part 3 – Preparing an Amendment for Consultation Release

9 – Investigations and preparing a draft Amendment

(1) Where the Designated Entity is any party other than the Commission or the Chief Executive of the Department, then prior to consultation occurring on a draft Amendment, the Designated Entity must:

(a) carry out investigations and obtain such information:

(i) as provided in the Proposal to Initiate approved by the Minister.

(ii) as required under any conditions imposed by the Minister under section 73(5)(b) of the Act; and

(iii) as specified by the Commission under sections 73(6)(e) or 73(6)(f) of the Act.

(b) prepare the draft Amendment in accordance with the approved Proposal to Initiate and any conditions imposed by the Minister under section 73(5)(b) of the Act and the requirements of this Practice Direction.

10 – Required documentation

(2) Where the Designated Entity is any party other than the Commission or the Chief Executive of the Department, then prior to consultation occurring on a draft Amendment, the Designated Entity must provide the Department with the following:

(a) to support the preparation of the Amendment:

(i) where new policy content is proposed for a designated instrument, written instructions (in a form acceptable to the Department) that set out the intent of the proposed Amendment for the purposes of the Department writing draft policy for inclusion in the draft Amendment; and/or

(ii) mapping instructions or a description of the Affected Area (in a form acceptable to the Department) to enable the Department to prepare and provide to the Designated Entity, mapping which is suitable for inclusion in the draft Amendment.

(b) for publishing on the SA Planning Portal:

(i) draft Amendment which describes the proposed changes, including an overview of the investigations.

(ii) publication instructions (in a form acceptable to the Department) to prepare the SA Planning Portal for consultation on the draft Amendment, including any supporting material; and

(iii) the engagement plan prepared (and approved, if required) under these Practice Directions, for the purpose of the Department publishing the engagement plan on the SA Planning Portal.

(3) Where a Joint Amendment process involving multiple designated instruments is being undertaken, the required documentation must satisfy the applicable requirements for each designated instrument, as outlined in this Part. For the avoidance of doubt, a single draft Amendment may address proposed changes to more than one instrument.

(4) Where an engagement plan is amended by a Designated Entity during any period of consultation or at any time prior to finalisation of the engagement report under these Practice Directions, the Designated Entity will provide the Department with the engagement plan (as updated) for the purpose of the Department publishing the updated engagement plan on the SA Planning Portal.

11 – The draft Amendment

(1) A draft Amendment must be supported by the following additional information:

(a) an explanation of the current policy as it applies to the Affected Area (at the time of preparation of the draft Amendment).

(b) an explanation of the Amendments proposed for the Affected Area.

(c) an assessment of the strategic planning outcomes intended to be achieved through the draft Amendment, including:

(i) for Code Amendments, an analysis of the consistency of the draft Code Amendment with the relevant provisions of State Planning Policies, the Regional Plan and an assessment against any other relevant strategic plans or policies; or

(ii) for Regional Plan Amendments, an analysis of the consistency of the draft Regional Plan Amendment with the relevant provisions of State Planning Policies, the remainder of the Regional Plan and any other relevant strategic plans or policies.

(d) a summary and explanation of the investigations undertaken and how these support the draft Amendment; and

(e) where relevant, an explanation of any infrastructure or services required to support development facilitated by the proposed Amendment, and an explanation of how and when the infrastructure will be provided.

(2) Where an amendment to a Regional Plan contemplates a complying change under section 75(1) of the Act, any recommendation in the Regional Plan Amendment must include, where applicable:

(a) any existing overlay, zone, subzone in the Code within the Affected Area which is proposed to be amended; and

(b) where relevant to the proposed change, an indication of development density and minimum and maximum building heights that may be applied to the Affected Area.

12 – Preparation of an Engagement Plan

(1) The Designated Entity is responsible for preparing an engagement plan that:

(a) meets the principles and performance outcomes of the Charter.

(b) describes the persons or bodies to be consulted on the proposed amendment of the Designated Instrument, which must include any persons or bodies:

(i) required to be consulted with under a condition imposed by the Minister under section 73(5) of the Act.

(ii) specified by the Commission under section 73(6)(e) of the Act; and

(iii) who must be consulted with under the Charter.

(c) outlines any relevant previous engagement undertaken to inform the proposal; and

(d) describes the evaluation framework for the engagement.

(2) An engagement plan does not need to be approved by the Commission or the Minister, unless a condition has been imposed by the Minister under section 73(5) of the Act which requires such approval (in which case the condition will apply) or where an outline consent is being assessed against a relevant amendment in accordance with Practice Direction 18 - Outline Consent.

Part 4 – Final determination by the Minister

13 – Required documentation

(1) At the completion of engagement on a proposal to prepare or amend a Designated Instrument, the Designated Entity must provide the Department with:

(a) if amendments to the proposal are required:

(i) written instructions (in a form acceptable to the Department) that set out any changes to the draft Designated Instrument for the purposes of the Department updating and providing the draft policy for inclusion in the draft Designated Instrument; and/or

(ii) 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 Designated Instrument(s).

(b) the updated draft Designated Instrument(s) or amendment to the Designated Instrument(s) in the form of amendment instructions (once finalised by the Designated Entity, incorporating any amendments); and

(c) a final engagement report as required under section 73(7) of the Act and prepared in accordance with these Practice Directions, for the purpose of the Department arranging for the engagement report and draft Designated Instrument(s) to be furnished to the Minister.

(d) Where a Joint Amendment process involving multiple designated instruments is being undertaken, the required documentation must satisfy the applicable requirements for each designated instrument, as outlined in this Part. For the avoidance of doubt, a single engagement report may address proposed changes to more than one instrument.

14 – Objectors to local heritage listings

(1) In the case of a Code Amendment that proposes to designate a place as a Local Heritage Place under section 67(1) of the Act, the Commission will give the owner of the land (if an objection was received) reasonable opportunity to make a submission to the Commission on the proposed designation.

15 – Engagement Report

(1) An engagement report required under section 73(7) of the Act must set out:

(a) details of the engagement undertaken and how that engagement met the engagement plan and reasons for variations (if any) to the engagement plan.

(b) the outcome of the engagement including a summary of the written submissions or feedback received.

(c) any proposed changes to the proposal to prepare or amend a Designated Instrument(s) (when compared with the proposal that was engaged on) and the reasons for those proposed changes. This should specifically indicate:

(i) where changes are proposed to a Designated Instrument(s) based on or as a result of the engagement; and

(ii) any other changes which are proposed based on or as a result of additional investigations or information which was not available when the proposal was released for engagement.

(2) The engagement report must also include an evaluation of the effectiveness of the engagement that considers whether:

(a) the principles of the Charter have been achieved; and

(b) all mandatory requirements identified in the Charter have been met (where the consultation category is applicable).

(3) The engagement report will be published on the SA Planning Portal by the Department:

(a) in relation to a regional plan, the Code or a design standard – five business days after the Minister has made a decision on the proposal to prepare or amend the Designated Instrument under section 73(10) of the Act; or

(b) in relation to a State Planning Policy – five business days after the Governor has approved the preparation or amendment of a State Planning Policy under section 73(12)(a) of the Act.

Part 5 – Special Provisions relating to Complying Changes to the Code

15 – Commission Advice

(1) The Minister must seek the advice of the Commission prior to agreeing to a Complying Change.

(2) The Commission will only provide advice to the Minister to agree to a proposed Complying Change where:

(a) the proposed Complying Change is supported by the required information in accordance with this Practice Direction; and

(b) consultation in accordance with the Community Engagement Charter has taken place.

16 –-Lodgement Documentation

(3) To commence the process for a proposed Complying Change, the Proponent must submit a completed Lodgement Form with the Department via the SA Planning Portal.

(4) The Lodgement Form must set out:

Responsible Entity

(a) with respect to proposals from Private Proponents, a request for that Private Proponent or the Chief Executive of the Department to be the Proponent responsible for undertaking the required procedures for the proposed Complying Change;

Affected Area

(b) a map of the Affected Area (confirming its consistency with the boundaries of the map(s) relating to the relevant Regional Plan recommendation);

Code Mapping

(c) an outline of:

(i) any existing overlay, zone, subzone, concept plan or technical and numeric variation in the Code within the Affected Area which is proposed to be amended.

(ii) the proposed spatial application of an overlay(s) and/or amendment(s) to the boundary of a zone or subzone; and

(iii) any associated proposed application of a concept plan(s) and/or all relevant technical or numeric variation/s within the Affected Area in connection with the proposed change outlined in (ii).

Regional Plan Recommendation

(d) a description of the relevant recommendation/s in the Regional Plan;

(e) confirmation that the details outlined in sub-paragraph (c)(ii) and (iii) are consistent with the recommendation in the Regional Plan (where relevant); and

(f) confirmation that a time period of not more than two years has elapsed since the relevant recommendation in the Regional Plan was given effect pursuant to section 73(12) of the Act (unless the Commission considers that a longer period shall apply for the purposes of this clause).

(5) Where the Department is satisfied that all information has been provided as required by the Lodgement Form in sub-paragraph (4) and that the proposal demonstrates:

(a) the Complying Change satisfies section 75(1)(a) and (b) of the Act.

(b) it is consistent with the relevant recommendation in the Regional Plan; and

(c) that the relevant recommendation in the Regional Plan was given effect within the relevant time period outlined in sub-paragraph 5(f);

the proposal may then proceed to consultation.

17 – Consultation requirements

(1) Pursuant to section 75(2) of the Act, the Proponent must undertake consultation in accordance with the minimum mandatory requirements set out in the relevant part of the Charter that relates to a proposed Complying Change.

Note: Section 75(2) of the Act requires all amendments under s 75(1) to be the subject of consultation under the Charter.

18 – Final Determination of the Minister

(1) When consultation on a proposed Complying Change is complete, a Proponent must provide the Department with:

(a) if amendments to the proposal are required:

(i) written instructions (in a form acceptable to the Department) that set out any changes to the Complying Change as it was initially proposed; and/or

(ii) mapping instructions or a description of the Affected Area (in a form acceptable to the Department) in order to enable the Department to prepare mapping which is suitable for inclusion in the Code.

(b) the updated draft proposed Complying Change in the form of amendment instructions (once finalised by the Proponent, incorporating any changes); and

(c) if any submissions were received, a consultation report to be furnished to the Commission.

(2) The consultation report in clause 18(1)(c) must set out all the following:

(a) the outcome of the consultation, including a summary of the written submissions or feedback received.

(b) any proposed changes to the proposed Complying Change (when compared with the proposal that was consulted on) and the reasons for those proposed changes. This should specifically indicate:

(i) where changes are proposed to the Complying Change as a result of the consultation; and

(ii) any other changes proposed as a result of additional investigations or information that was not available when the proposal was released for consultation.

(3) Where the Commission is satisfied the Proponent has appropriately addressed any concerns identified in written submissions and feedback, the Commission may provide advice to the Minister recommending agreement to the proposed Complying Change.

(4) If the Minister agrees to the proposed Complying Change, it will be given effect in accordance with requirements established by the Chief Executive of the Department published on the SA Planning Portal.

Part 6 – Special Requirements for Early Commencement

19 – Lodgement requirements

(1) A request for early commencement of a Code Amendment under section 78 of the Act must be provided as soon as practical to the Department and must include:

(a) explanation, justification and evidence as necessary to demonstrate how early commencement of the Amendment is:

(i) in the interest of the orderly and proper development of an area of the state; or

(ii) for a Code Amendment, that it is required in order to counter applications for undesirable development (which should identify possible future development that

would detract from or negate the object of the proposed Code Amendment) ahead of the outcome of consideration of the Code Amendment.

(b) written instructions (in a form acceptable to the Department) that set out the intent of the proposed Amendment for the purposes of the Department writing the draft policy for inclusion in the draft Amendment; and

(c) 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 Amendment.

Issued by the State Planning Commission

Note: This Practice Direction commences operation in accordance with clause 2 ‘Commencement of operation’.

Version 8: Commences operation on 1 July 2025

Version 7: Commences operation on 10 February 2025

Version 6: Commenced operation on 22 November 2024

Version 5: Commenced operation on 3 June 2022

Version 4: Commenced operation on 27 May 2021

Version 3: Commenced operation on 1 April 2021

Version 2: Commenced operation on 28 November 2019

Version 1: Commenced operation on 9 August 2018