



Agenda Report for Decision

Meeting Date: 11 November 2021

Item Name	Principles for drafting Practice Guidelines
Presenters	Nick Buick, Ben Sieben and Rhiannon Hardy
Purpose of Report	Decision
Item Number	4.1
Confidentiality	Not Confidential (Release Immediately)
Related Decisions	N/A

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), with the exception of paragraph four under the *Discussion* heading of this Agenda Report, which is to be designated as Confidential (Legal Advice or Obligations) and redacted, and **Attachment 1** of this Agenda Report, being designated Confidential (Legal Advice or Obligations) and not to be released.
2. Endorse the Fact Sheet on Practice Guidelines under the *Planning, Development and Infrastructure Act 2016* (the Act) as included in **Attachment 2**.
3. Authorise the Attorney-General's Department (the Department) to undertake any minor or editorial changes to the Fact Sheet and to publish it on the PlanSA Portal.

Background

A number of State agencies and other stakeholders have expressed interest in establishing Practice Guidelines under section 43 of the *Planning, Development and Infrastructure Act 2016* (the Act) in order to support policies in the Planning and Design Code.

Initial discussions have been undertaken regarding the following potential Practice Guidelines:

- Environment Protection Authority – Neutral or Beneficial Effect on Water Quality (Mount Lofty Ranges Water Protection Area overlays)
- Council/Accredited Professionals – Minor Variations from deemed-to-satisfy criteria
- Department for Infrastructure and Transport – Transport Overlays
- Department for Environment and Water – Stormwater runoff/quality
- Country Fire Service – Bushfire overlays.

Based on these discussions, and receipt of draft content for Practice Guidelines, it has been observed that external stakeholders would benefit from greater clarity on the role of Practice Guidelines in the new planning system, and principles on how to draft appropriate content.



Practice Guidelines

under the *Planning, Development and Infrastructure Act 2016*

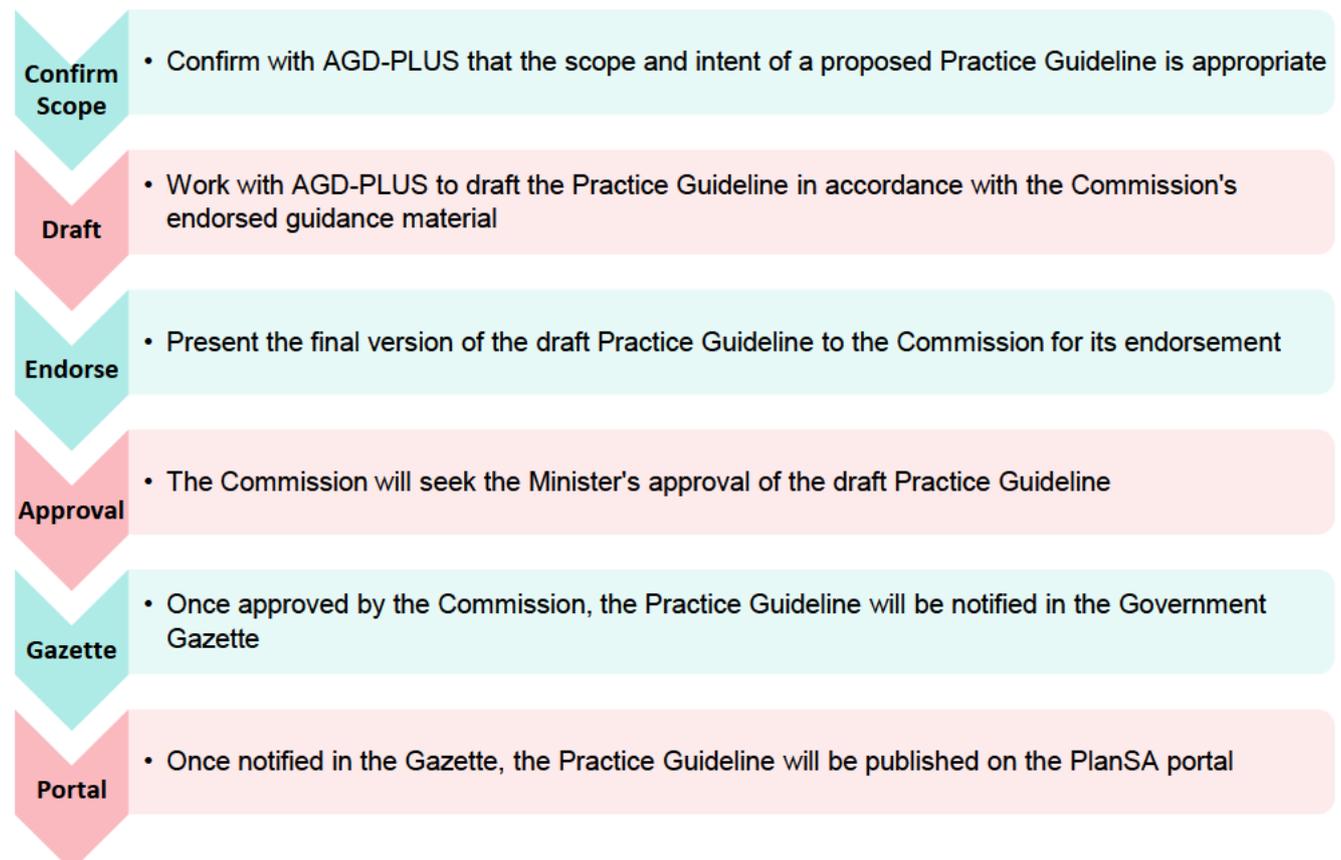
Section 43 of the *Planning, Development and Infrastructure Act 2016* (the Act) establishes the process for making Practice Guidelines. Practice Guidelines provide for the **interpretation, use or application** of:

- the Planning Rules (the Planning and Design Code or Design Standards) or
- the Building Rules (the Building Code of Australia, regulations or Ministerial Building Standards).

Practice guidelines are made by the State Planning Commission (the Commission) with the approval of the Minister, and must be notified in the Gazette and published on the PlanSA portal.

A Practice Guideline may also make a declaration as to the effect of a provision of the Planning Rules or Building Rules in a particular set of circumstances, or it may specify variations that will, in relation to deemed-to-satisfy development, constitute a minor variation. A Practice Guideline may be a short-term solution to an issue that is later addressed through a future amendment to the Planning and Design Code.

The Planning and Land Use Services Division of the Attorney General's Department (AGD-PLUS) confirm the appropriateness of the scope and intent of a proposed Practice Guideline prior to the commencement of the drafting process. The Commission has endorsed the below guidance material for drafting Practice Guidelines, as well as the attached template.



Below is a list of Do and Do Nots when creating a Practice Guideline:

DO

- Make a specific reference to a particular provision of the Planning Rules or Building Rules
- Clarify an incorrect or misconstrued interpretation
- Make clear the meaning of a word or phrase within a provision
- Clarify the purpose of a particular provision
- Respond to case law and legal advice around interpretation

Examples

- In PO 2.2 of the Character Area Overlay 'prevailing building and wall heights' means the heights of buildings and walls located within four properties of the relevant land upon which the proposed development is to take place.
- In DTS/DPF 1.1 of the Airport Building Heights (Aircraft Landing Areas) Overlay, the 'runway centreline' is a line drawn down the middle of a runway that identifies the centre.
- The purpose of PO 1.1 of the Aircraft Noise Exposure Overlay is to ensure applicants undertaking development within this particular Overlay consider the following:
 - thickness of glass used for windows
 - insulation around window and door frames
 - insulation within roofing
 - insulation within walls.

DO NOT

- Prescribe or require additional documentation or information to be lodged with an application - if required, additional information may be requested by a relevant authority or referral agency following the lodgement or referral of an application
- Confuse a Practice Guideline with a Practice Direction, which specifies procedural steps
- Include what is effectively Deemed-to-Satisfy Criteria/Designated Performance Features (e.g. one way to meet a Performance Outcome)

Examples

- To meet PO1.1 of the Historic Shipwrecks Overlay, an applicant must provide a report from an accredited historian detailing that the proposed development is located and designed to avoid potential impacts on historic shipwrecks and historic relics.
- In relation to PO 1.3 of the Adelaide Dolphin Sanctuary Overlay, stormwater runoff will be considered to be disposed of in a manner that avoids pollution or other detrimental impacts to the Adelaide Dolphin Sanctuary when:
 - there is no identifiable potential impacts on water quality; or
 - stormwater runoff is contained on the site of the proposed development.



This practice guideline is issued by the State Planning Commission under section 43 of the *Planning, Development and Infrastructure Act 2016*.

Introduction

Section 43(1) of the *Planning, Development and Infrastructure Act 2016* allows the State Planning Commission (the “Commission”), with the approval of the Minister for Planning and Local Government, to make practice guidelines with respect to the interpretation, use or application of the Planning Rules or the Building Rules (as those terms are defined under the Act).

Section 43(1) of the *Planning, Development and Infrastructure Act 2016* allows the State Planning Commission (the “Commission”), with the approval of the Minister for Planning and Local Government, to make practice guidelines with respect to the interpretation, use or application of the Planning Rules or the Building Rules (as those terms are defined under the Act).

Practice guideline

Part 1 – Preliminary

1 – Citation

This practice guideline may be cited as the State Planning Commission Practice Guideline X (NAME) YEAR.

2 – Commencement of operation

This practice guideline will come into operation on the day on which it is published on the SA planning portal.

3 – Object of practice guideline

The purpose of this practice guideline is to [OBJECT]

4 – Interpretation

In this practice guideline, unless the contrary intention appears –

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

Code means the Planning and Design Code.

Note: Section 14 of the *Acts Interpretation Act 1915* 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 – [HEADING]

5 – [CLAUSE HEADING]

- (1) Pursuant to [policy number, module] of the Code, [DESCRIBE THE INTERPRETATION, USE OR APPLICATION OF THE PLANNING RULE]

This practice guideline is made by the State Planning Commission on [xx yyy 2021] with the approval of the Minister on [aa bbb 2021].