Local Design Review Code Amendment

By the State Planning Commission (the Designated Entity)

For Consultation

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HAVE YOUR SAY

This Code Amendment is on consultation from **Thursday 12 August 2021** to **Monday 27 September 2021** (six weeks).

During this time you are welcome to lodge a written submission about the proposed Code Amendment.

You may provide a submission via:

Email
LocalDesignReview@sa.gov.au

Post
Attention: Brad McCormack
Office for Design and Architecture SA
Level 1, 28 Leigh Street
Adelaide SA 5000

PlanSA Portal
plan.sa.gov.au/have_your_say/general_consultations/public_feedback_on_initiated_code_amendment?aid=Local_Design_Review_Code_Amendment

YourSAy
yoursay.sa.gov.au/local-design-review-code-amendment

If you would like to discuss this proposed Amendment please contact:

Office for Design and Architecture SA
P: (08) 8402 1884
E: LocalDesignReview@sa.gov.au

1. WHAT IS THE PLANNING AND DESIGN CODE?

The Planning and Design Code (the Code) sets out the rules that determine what landowners can do on their land.

For instance, if you want to build a house, the Code rules will tell you how high you can build and how far back from the front of your land your house will need to be positioned. The Code will also tell you if any additional rules apply to the area where your land is located. For example, you might be in a high bushfire risk area or an area with specific rules about protecting native vegetation.

1.1. Planning and Design Code Framework

The Code is based on a framework that contains various elements called overlays, zones, sub zones and general development policies. Together these elements provide all the rules that apply to a particular parcel of land. An outline of the Code Framework is available on the SA Planning Portal.

1.2. Overlays

Overlays contain policies and maps that show the location and extent of special land features or sensitivities, such as heritage places or areas of high bushfire risk.

They may apply across one or more zones. Overlays are intended to be applied in conjunction with the relevant zone. However, where policy in a zone conflicts with the policy in an overlay, the overlay policy trumps the zone policy.

1.3. Zones

Zones are areas that share common land uses and in which specific types of development are permitted. Zones are the main element of the Code and will be applied consistently across the state.

For example, a township zone for Andamooka can be expected to apply to similar townships like Carrieton. Each zone includes information (called classification tables) that describes the types of development that are permitted in that zone and how they will be assessed.

1.4. Subzones

Subzones enable variation to policy within a zone, which may reflect local characteristics. An example is Port Adelaide centre, which has many different characteristics to typical shopping centres due to its maritime activities and uses.

1.5. General Development Policies

General development policies outline functional requirements for development, such as the need for car parking or wastewater management. While zones determine what development can occur in an area, general development policies provide guidance on how development should occur.

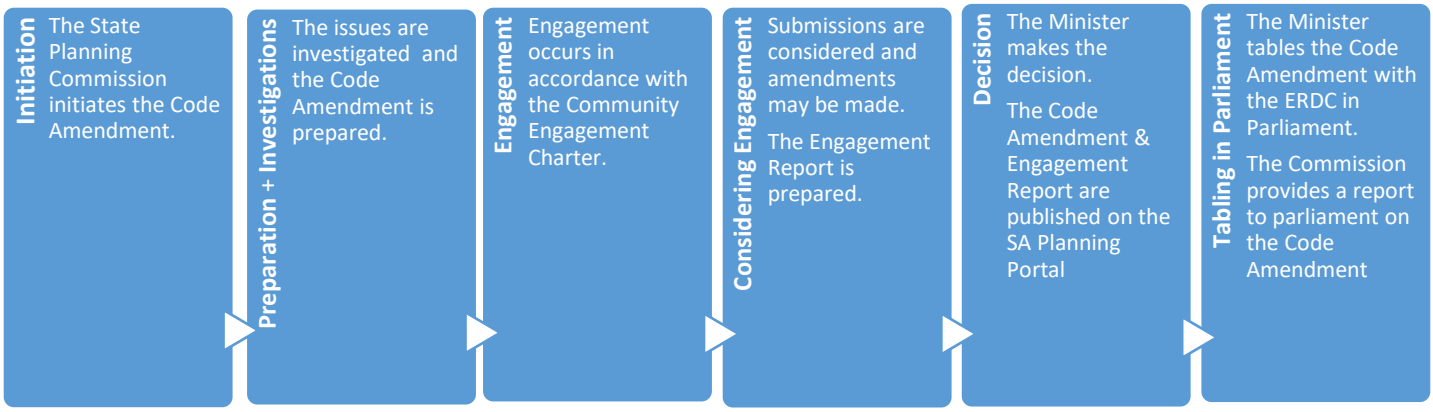
1.6. Amending the Planning and Design Code

The Planning, Development and Infrastructure Act 2016 (the Act) provides the legislative framework for undertaking amendments to the Code. The State Planning Commission (the Commission) may initiate an amendment to the Code and undertake a Code Amendment (the Amendment).

A Proposal to Initiate will define the scope of the Amendment and prescribe the investigations which must occur to enable an assessment of whether the Amendment should take place and in what form.

The Commission is responsible under the Act for ensuring the Code is maintained, reflects contemporary values relevant to planning, and readily responds to emerging trends and issues.

As designated entity for this Amendment, the Commission has undertaken investigations and will run the engagement process. The Commission will also provide a report on this Amendment (including compliance with the Community Engagement Charter) at the final stage of the Amendment process.



2. WHAT IS PROPOSED IN THIS CODE AMENDMENT?

2.1. Need for the amendment

Section 121 of the Act enables the Minister to establish a design review scheme, where a person who is considering undertaking types of development specified in the Code may apply to a design panel for design advice.

In February 2021, the Minister approved the Local Design Review Scheme for South Australia (the Scheme) to come into effect on 1 July 2021. The approved Scheme can be accessed via the PlanSA Portal:

- https://plan.sa.gov.au/__data/assets/pdf_file/0006/804075/Local_Design_Review_Scheme_for_South_Australia.pdf

The purpose of this Amendment is to enable operation of the Scheme to support high-quality design for the benefit of their communities.

The Amendment proposes to include new content in the Code to specify classes of development eligible for design review. Doing so will enable proponents of the eligible development classes to apply for Local Design Review under section 121 of the Act.

This will work in conjunction with a notice published by the Chief Executive of the Attorney-General's Department to enable councils who register to participate in the Scheme to select classes of development eligible for Local Design Review in their area. This will result in the publication of a register of participating councils and their selected classes of development on the PlanSA Portal.

2.2. Affected Area

The proposal seeks to amend the Code to give effect to the Local Design Review Scheme across the State by specifying eligible classes of development under section 121(1) of the Act.

2.3. Summary of proposed policy changes

2.3.1. Current Code Policy

There is currently no policy within the Code that relates to Local Design Review or the Scheme.

2.3.2. Proposed Code Policy

The Amendment proposes to insert new content to Part 5 of the Code, 'Table 2 – Specified matters and areas identified under the *Planning, Development and Infrastructure Act 2016'* as follows:

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(1) Development within the ambit of subclause (2) is specified as a class of development for the purposes of section 121(1) of the Act.

(2) Development that is—
   (a) within the area of a council that has determined to make design review available in its area by participating in the scheme determined by the Minister for the purposes of section 121 of the Act; and
   (b) a form of development that is—
      i. either restricted development or performance assessed development that has been selected by the council as a class of development for the purposes of this clause; and
      ii. specified by the Chief Executive by a notice published on the SA planning portal for the purposes of this clause.

(3) A council may from time to time vary the classes of development applying in its area under this clause by a further notice published by the Chief Executive on the SA planning portal at the request of the council.

The proposed policy changes are shown in **Attachment A**.

It is envisaged that the process established by this Amendment to specify eligible classes of development for Local Design Review would be completed by a council when they register under the Scheme.

Section 2.3 of the Scheme details the registration process for councils to offer Local Design Review in their area. Specifically, section 2.3.4 of the Scheme requires that an application for registration be made to the Chief Executive in the approved form and include any specified information.

It is proposed that this registration form include a method for councils to specify their eligible classes of development. A guiding list of development classes that the Chief Executive may consider is provided in **Attachment B.**

3. WHAT ARE THE NEXT STEPS FOR THIS CODE AMENDMENT?

3.1. Engagement

Engagement on the Code Amendment must occur in accordance with the Community Engagement Charter principles, which required that:

- engagement is genuine
- engagement is inclusive and respectful
- engagement is fit for purpose
- engagement is informed and transparent
- engagement processes are reviewed and improved.

An Engagement Plan has been prepared for this Code Amendment to ensure that engagement will be conducted and measured against the principles of the Charter.

For more information on the Community Engagement Charter please visit the PlanSA Portal:
https://plan.sa.gov.au/our_planning_system/instruments/community_engagement_charter

Engagement for this Amendment is focussed on providing information to all relevant stakeholders and ensuring they have the opportunity to provide feedback. A summary of the engagement that is occurring for this Amendment is as follows:

- Code Amendment Portal (via the PlanSA Portal)
- YourSAy consultation website
- Letters to all South Australian councils
- Letters to industry stakeholders
- Social media campaign
- Newsletter articles

Staff from the Office for Design and Architecture SA (ODASA) are also available to discuss this Amendment and answer any questions.

3.2. Engagement Already Undertaken

ODASA prepared the draft Scheme on behalf of the Minister in collaboration with the Commission, council staff from across the State, representatives from peak industry bodies and interstate government agencies with experience in Local Design Review.

Between December 2019 and February 2020, the ODASA team met with over 50 staff from 24 councils across the state and representatives from the local divisions of peak industry bodies to understand the needs and expectations in relation to Local Design Review. This early feedback guided the development of the draft Scheme.

The draft Local Design Review Scheme was available for public comment for eight weeks from 26 June to 21 August 2020. The opportunity to provide feedback was

open to everyone, with a particular focus on councils and the design, planning and development industries as future users of the Scheme.

ODASA received 39 submissions in response to the draft Scheme from councils, industry groups and community members. This feedback was used to refine and update the Scheme.

In early 2021, ODASA requested additional feedback on the updated Scheme through a targeted engagement process with staff from eight councils and representatives from six peak industry bodies.

ODASA prepared and released the Local Design Review Scheme Engagement Summary Report to document the collaborative process to develop and consult on the Scheme.

In May 2021, the Commission endorsed ODASA to undertake pre-engagement meetings with council staff and industry groups to help inform this Amendment. Two workshops were held, which highlighted:

- suggestions for various classes of development for which Local Design Review could be used across the State
- a desire for the process established by this Amendment to allow for flexibility between council areas and their various planning contexts
- the importance of ensuring the design review process can be successfully resourced by providing a focussed rather than extensive list of development eligible for design review
- the need for design review to focus on developments of concern to the community (e.g. infill development)
- a desire for the process established by this Amendment to be timely, simple and efficient for users to manage and adapt over time.

3.3. How can I have my say on the Code Amendment?

You may provide a submission about this Amendment via:

Email
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Attention: Brad McCormack
Office for Design and Architecture SA
Level 1, 28 Leigh Street
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YourSAy
yoursay.sa.gov.au/local-design-review-code-amendment

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P: (08) 8402 1884
E: LocalDesignReview@sa.gov.au

3.4. What changes to the Code Amendment can my feedback influence?

Your feedback can influence the classes of development specified in the Code in order to be eligible for design review through the Local Design Review Scheme.

Feedback cannot influence instruments which are separate to the Code, such as the Act, regulations and the Local Design Review Scheme. This means that feedback cannot influence:

- How the Local Design Review Scheme operates
- The fact that design review is a voluntary process, as the Act establishes that design review is a voluntary process available to applicants prior to lodgement of a development application.

3.5. What will happen with my feedback?

The Commission is committed to undertaking consultation in accordance with the principles of the Community Engagement Charter and is genuinely open to considering the issues raised by people in the community.

All formal submissions will be considered by the Commission when determining whether the proposed Amendment is suitable and whether any changes should be made.

Each submission will be entered into a register and you will receive an email acknowledging receipt of your submission. Your submission will be published on the PlanSA Portal. Personal addresses, email and phone numbers will not be published, however company details will be.

The Commission will consider the feedback received when finalising the Amendment and will prepare an Engagement Report that will outline what was heard during consultation and how the proposed Amendment was changed in response to submissions.

The Engagement Report will be forwarded to the Minister, and then published on the PlanSA Portal.

3.6. Decision on the Code Amendment

Once the Engagement Report is provided to the Minister, the Commission may provide further advice to the Minister at the Minister's request, if the Code Amendment is considered significant.

The Minister will then either adopt the Code Amendment (with or without changes) or determine that the Code Amendment should not proceed. The Minister's decision will then be published on the PlanSA Portal.

If adopted, the Code Amendment will be referred to the Environment Resources and Development Committee of Parliament (ERDC) for their review. The Commission will also provide the Committee with a report on the Code Amendment, including the engagement undertaken on the Code Amendment and its compliance with the Community Engagement Charter.

4. ANALYSIS

4.1. Strategic Planning Outcomes

4.1.1. Consistency with the State Planning Policies

State Planning Policies define South Australia's planning priorities, goals and interests. They are the overarching umbrella policies that define the state's interests in land use. There are 16 State Planning Policies and six special legislative State Planning Policies.

These policies are given effect through the Code, with referral powers assigned to relevant Government Agencies (for example, the Environmental Protection Agency for contaminated land). The Code (including any Code Amendments) must comply with any principle prescribed by a State Planning Policy.

This Code Amendment is considered to be consistent with the State Planning Policies as shown in **Attachment C**.

4.1.2. Consistency with the Regional Plan

The directions set out in Regional Plans provide the long term vision and set the spatial patterns for future development within a region. This can include land use integration, transport infrastructure and the public realm.

The Commission has identified that the existing volumes of the South Australian Planning Strategy, prepared under the *Development Act 1993*, will apply until such time as the new Regional Plans are prepared and adopted. Refer to the SA Planning Portal for more information on the Commission's program for implementing Regional Plans throughout South Australia.

Where there is conflict between a Regional Plan and the State Planning Policies, the State Planning Policies will prevail.

This Code Amendment is considered to be consistent with the Regional Plan as shown in **Attachment C**.

4.1.3. Consistency with other key strategic policy documents

This Amendment aligns with and gives effect to the Local Design Review Scheme, as required by section 121(1) of the Act.

ATTACHMENT A – PROPOSED CODE POLICY

This Amendment proposes the following changes be inserted into Part 5 of the Code, 'Table 2 – Specified matters and areas identified under the *Planning, Development and Infrastructure Act 2016*':

(1) Development within the ambit of subclause (2) is specified as a class of development for the purposes of section 121(1) of the Act.

(2) Development that is—
   (a) within the area of a council that has determined to make design review available in its area by participating in the scheme determined by the Minister for the purposes of section 121 of the Act; and
   (b) a form of development that is—
      i. either restricted development or performance assessed development that has been selected by the council as a class of development for the purposes of this clause; and
      ii. specified by the Chief Executive by a notice published on the SA planning portal for the purposes of this clause.

(3) A council may from time to time vary the classes of development applying in its area under this clause by a further notice published by the Chief Executive on the SA planning portal at the request of the council.

ATTACHMENT B – CLASSES OF DEVELOPMENT WHICH MAY BE ELIGIBLE FOR DESIGN REVIEW

The following classes of development may be considered by the Chief Executive as suitable for Local Design Review, subject to the context of an area where a design panel is established and the anticipated resourcing available to service the design panel.

This list is for guidance only and was informed through consultation with council staff and industry representatives.

Location Aligned with spatial layers within the Code	**Class of Development**
All	• Buildings of 3 or more building levels • Dwellings of a density exceeding medium net residential density (i.e. greater than 70 dwelling units per hectare) • Development which exceeds the maximum density or does not meet the minimum site area specified in the relevant DTS/DPF criteria • Development which exceeds the maximum building height in levels specified in the relevant DTS/DPF criteria • Development which encroaches into the public realm • Development with a development cost exceeding $3 million • Division of land for residential purposes creating 2 or more additional allotments • Construction of 3 or more dwellings • Supported accommodation • Student accommodation
Historic Area Overlay Character Area Overlay Local Heritage Place Overlay Heritage Adjacency Overlay Hills Face Zone Significant Landscape Protection Overlay	• Any building (except an ancillary building)
Urban Corridor (Boulevard) Zone Urban Corridor (Main Street) Zone	• Development utilising incentives in ‘Significant Development Sites’ policy

Urban Corridor (Living) Zone Urban Corridor (Business) Zone	
Activity Centre	• Buildings with a gross leasable floor area exceeding 1000m^2
Master Planned Neighbourhood Zone Master Planned Township Zone	• Land division proposing more than 20 additional allotments • Land division involving the creation of a public road or public open space
Suburban Main Street Zone Township Main Street Zone	• Any building which is visible from the primary street frontage (except an ancillary building)
Affordable Housing Overlay	• Affordable housing

ATTACHMENT C – STRATEGIC PLANNING OUTCOMES

1. State Planning Policies

The State Planning Policies (SPPs) require that the Principles of Good Planning are considered in the preparation of any designated instrument, including a Code Amendment.

SPP Key Principles

There are 16 SPPs that include Objectives, Policies and Principles for Statutory Instruments (including the Planning and Design Code). The most critical SPPs in the context of this Code Amendment are:

State Planning Policy (SPP)	Code Amendment Alignment with SPPs
SPP 2 – Design Quality 2.1 Promote best practice in the design of buildings, places and the public realm by applying the principles of Good Design. 2.4 Design advice should be obtained early in the planning process for complex developments, and utilise consistent and credible processes (such as Design Review) to ensure improved outcomes. 2.6 Maximise opportunities for the Principles of Good Design and community engagement to inform future policy creation and improve design outcomes. 2.7 Promote a culture of good design to foster creative thinking, innovation and effective design processes within the planning industry, built environment professions and general public. 2.9 Respect the characteristics and identities of different neighbourhoods, suburbs and precincts by ensuring development considers	The Local Design Review Scheme provides for the practical application of a number of objectives and policies from the State Planning Policies. Design Review under the Scheme and the resulting design advice must be guided by South Australia's Principles of Good Design as published in the design quality policy under section 59 of the Act. In addition, section 1.5 of the Scheme outlines the objects of this Scheme, which are to— 1. Support development that demonstrates high-quality design. 2. Improve access to independent and expert design advice early in the planning and design process. 3. Support consistent and informed planning decisions. 4. Facilitate collaboration between allied professionals. 5. Support South Australia's planning system to meet the objects of the Act in section 12, including to— a) support and enhance the State's liveability and prosperity in ways that are ecologically sustainable and meet the needs and expectations, and reflect the diversity, of the State's communities by creating an effective, efficient and enabling planning system; and b) promote certainty for people and bodies proposing to undertake development while at the same time providing scope for innovation; and

existing and desired future context of a place. The Scheme and subsequent Amendment will also support other related SPPs, including: • **SPP3 – Adaptive Reuse** • **SPP5 – Climate Change** • **SPP7 – Cultural Heritage**	c) promote high standards for the built environment through an emphasis on design quality in policies, processes and practices, including by providing for policies and principles that support or promote universal design for the benefit of people with differing needs and capabilities. 6. Demonstrate practical application of the Principles of Good Planning identified in section 14 of the Act, particularly— a) high-quality design; and b) activation and liveability; and c) sustainability.

2. Regional Plans

The Regional Plan

While all future regional plans should give consideration to the value of Local Design Review, the 30-Year Plan for Greater Adelaide (2017 Update) is of particular relevance to this Amendment.

The key policies and targets that are most relevant are:

Regional Plan Identified Priorities or Targets	Code Amendment Alignment with Regional Plan
Theme: Design quality A.12 Reinforce and expand the role of the design review process for strategic urban infill and other priority developments. A.15 Investigate how best to encourage and measure design quality in the new planning system.	As detailed in relation to alignment with the State Planning Policies, the Local Design Review Scheme (and therefore this Amendment) also provides for the practical application of actions and policies from the 30-Year Plan for Greater Adelaide (2017 Update) by bringing the design review process under section 121 of the Act into operation.