

## Agenda Report for Decision

**Meeting Date: 5 October 2023**

<b>Item Name</b>	Policy for referring applications for variations of a development authorisation to the Government Architect
<b>Presenters</b>	Margaret Smith (PLUS) and Brad McCormack (ODASA)
<b>Purpose of Report</b>	Decision
<b>Item Number</b>	5.2
<b>Strategic Plan Reference</b>	N/A
<b>Work Plan Reference</b>	N/A
<b>Confidentiality</b>	Not Confidential (Release Immediately)
<b>Related Decisions</b>	Item 4.2 – 15 December 2022 – Miscellaneous Technical Enhancements Code Amendment – For approval

### 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. Approve that the Chair sign the policy for referring applications for variations of a development authorisation to the Government Architect (**Attachment 1**).

### Background

On 15 December 2022, the Commission approved the finalisation of the Miscellaneous Technical Enhancements Code Amendment (MTE Code Amendment), and for it to be provided to the Minister for Planning (the Minister) for consideration.

On 6 April 2023, the Minister adopted the MTE Code Amendment, which came into effect on 3 June 2023.

The MTE Code Amendment introduced a change to the Design Overlay within the Planning and Design Code (the Code), which specifies the triggers for referring development applications to the Government Architect. This change to the Design Overlay enables the relevant authority to refer variations of a development authorisation to the Government Architect. Prior to the MTE Code Amendment, variations were exempt from this referral.

This Agenda Report seeks the Commission's approval of the policy document provided in **Attachment 1**, which outlines an efficient consultation process between the relevant authority and the Office for Design and Architecture SA (ODASA) to determine which variations should be referred to the Government Architect with minimal impact on the development assessment process and timeframes.

## Discussion

Design quality not only relates to the 'look and feel' of buildings and places, but also to how successfully they meet the needs of the people who use and experience them. High-quality well considered design helps to make buildings and places better for people, our environment and the economy.

Sections 12(2)(d) and 14(c) of the *Planning, Development and Infrastructure Act 2016* (the Act) recognise the importance of, and requirement to support, high-quality design within the planning system.

State Planning Policy Two, entitled Design Quality, is established by the Minister under section 59 of the Act and identifies design quality as a matter of State interest.

The statutory referral to the Government Architect supports the intent of the Act and State Planning Policies by providing the State Commission Assessment Panel (SCAP) or their delegate (e.g. State Assessment) with independent and expert design advice. This advice assists with the assessment of the following larger-scale developments as prescribed by the Design Overlay within the Code:

- a) *development within the area of the overlay located within the Corporation of the City of Adelaide where the total amount to be applied to any work, when all stages of the development are completed, exceeds \$10,000,000*
- b) *development within the area of the overlay located within the City of Port Adelaide Enfield where the total amount to be applied to any work, when all stages of the development are completed, exceeds \$3,000,000*
- c) *development within all other areas of the overlay that involves the erection or construction of a building that exceeds 4 building levels.*

Prior to the MTE Code Amendment, variations to the above classes of development were exempt from referral to the Government Architect. ODASA has advised that the former exemption led to situations where variations were assessed without consideration of independent and expert design advice, even where design quality was significantly impacted. Approved development applications may have also been subject to incremental change over multiple variations. This has led to approvals, and ultimately built outcomes, that fall short of the design intent of the originally approved scheme.

The Australian Institute of Architects, Australian Institute of Landscape Architects, Planning Institute of Australia and ODASA have advocated for removal of the exemption of variations since February 2020 (**Appendix B**). In response to feedback and acknowledging that variations can have a range of impacts on design quality, the Commission resolved to amend the Code through the MTE Code Amendment to enable the referral of eligible variations to the Government Architect, except where the relevant authority determines them to be 'minor in nature'.

Following finalisation of the MTE Code Amendment, it was agreed that a Commission policy for internal use be prepared to outline a consultation process between the relevant authority and ODASA. This policy is intended to support decisions on whether a variation is 'minor' in relation to design quality, as ODASA specialises in interpreting architectural drawings to identify potential built impacts.

The proposed policy is provided for your consideration in **Attachment 1** and has been prepared collaboratively between State Assessment (PLUS) and ODASA.

## Key considerations

The consultation outlined in the policy is not a formal referral and would not impose a referral fee on the applicant.

The policy relates only to variations where the original application was referred to the Government Architect (located within the Design Overlay and over a certain value or height).

In recent years, the following number of referrals to the Government Architect were received:

- **2021/22:** 47 referrals
- **2022/23:** 33 referrals

Of these referrals, only a percentage of applications is varied. ODASA has the resourcing capacity to manage this volume of reviews.

The policy also states that ODASA will provide their opinion to the relevant authority within two business days, a commitment supported by the Government Architect. This turnaround time is achievable as the ODASA team will already have a detailed understanding of the project through the original referral to the Government Architect and State Design Review program.

Assisting the relevant authority with technical advice may in-turn reduce their time spent considering the detailed impacts of a variation on design quality. Whether a proposed variation is “minor” is a matter of fact and degree, whereby the individual circumstances of the development in the context of the proposed change, must be considered and the proposed approach considers this.

Seeking ODASA’s preliminary advice will not adversely impact the assessment timeframes or unduly burden ODASA. Ultimately, the relevant authority reserves the right to exercise its discretion on whether a variation is ‘minor in nature’, as prescribed in the Code.

However, if the Commission is of the view that the internal policy should contain specific guidance about what constitutes a minor variation and, therefore, where a further referral to the Government Architect is not required, clarification could be added to section 5.2 of the policy, such as:

*A variation is considered **minor** and therefore, does not need to be referred to the Government Architect, where it does not result in a substantially different development and where any proposed change does **not**:*

- *involve a new use;*
- *change the built form in terms of scale, bulk and intensity;*
- *affect the character or appearance of the development or erode the quality of the approved materials or finishes;*
- *remove a component that is integral to the operation of the development;*
- *introduce a new impact or increase the severity of known impacts;*
- *remove an incentive or offset component; or*
- *cumulatively result in a significant change from the original proposed development where there have been previously approved variations to the original development authorisation.*

**Attachment:**

1. State Planning Commission Policy for referring applications for variations of a development authorisation to the Government Architect (#20325706)

**Appendices:**

- A. Excerpts from various submissions supporting removal of the exemption clause from the Design Overlay (#20688968)

Prepared by: Brad McCormack (Senior Planning and Design Officer, ODASA)

Kirsteen Mackay (Government Architect, ODASA) and

Endorsed by: Margaret Smith (Director, State Assessment, PLUS)

Date: 25 September 2023



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## Policy for Referring Variation Applications for Development Authorisation to the Government Architect

Classification	State Planning Commission Policy
Policy Name	Policy for Referring Applications for Variations of a Development Authorisation to the Government Architect
First Approved	17 May 2024
Next Review	May 2025
KNet ref	Document no. 20325706
Responsible Officer(s)	Senior Planning and Design Officer (ODASA) and Manager Commission Assessment (PLUS)
Relevant Legislation	<i>Planning, Development and Infrastructure Act 2016</i> and <i>Planning, Development and Infrastructure (General) Regulations 2017</i>
Related Documents	N/A

### 1. Introduction

Section 128 of the *Planning, Development and Infrastructure Act 2016* (the Act) establishes that a person may seek the variation of a development authorisation previously given under the Act. This Policy has been prepared by the State Planning Commission (the Commission) to guide the State Commission Assessment Panel (the SCAP) and their delegates on which variation applications to refer to the Government Architect for advice.

### 2. Strategic Plan Desired Outcomes

- 2.1. In its [Strategic Plan](#), the Commission commits to ‘act in the best interests of South Australians, to achieve the objectives of the *Planning, Development and Infrastructure Act 2016*’.
  - 2.2. The objects and principles of the Act are outlined in Part 2, which includes sections 12(2)(d) and 14(c) that highlight the importance of high-quality design in the built environment.
  - 2.3. State Planning Policy Two, entitled Design Quality, is established by the Minister for Planning under section 59 of the Act and recognises design quality as a matter of State interest.
  - 2.4. The Commission recognise the importance of the statutory referral to the Government Architect, which provides independent and expert design advice to the State Commission Assessment Panel (the SCAP) for consideration during the development assessment process for larger scale development projects.
  - 2.5. This Policy upholds the intent of the Act and State Planning Policies by maintaining the provision of design advice from the Government Architect through the variation process.
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### 3. Legislative and Policy Context

- 3.1. Pursuant to section 30(3) of the Act, the Commission has delegated its functions and powers as a relevant authority with respect to determining whether to grant a planning consent to the SCAP.
- 3.2. Under section 30(5) of the Act, the SCAP has further delegated some of its functions and powers as a relevant authority to the Department for Trade and Investment, Planning and Land Use Services Division (PLUS).
- 3.3. Section 128 of the Act establishes that a person may seek the variation of a development authorisation previously given under the Act.
- 3.4. Pursuant to section 122 of the Act, Schedule 9 of the *Planning, Development and Infrastructure (General) Regulations 2017* prescribes the Government Architect as a referral body for advice on development that is—
  - a) *in the Design Overlay under the Planning and Design Code; and*
  - b) *specified by the Planning and Design Code as development of a class to which this item applies.*
- 3.5. The Design Overlay within the Planning and Design Code specifies the following classes of development for referral to the Government Architect:

*Except where the development comprises a variation to an application that has either been:*

- a) *previously referred to the Government Architect or Associate Government Architect*  
*or*
- b) *given development authorisation under the Planning, Development and Infrastructure Act 2016 or Development Act 1993*  
*and*
- c) *the variation to that application is, in the opinion of the relevant authority, minor in nature or would not warrant a referral when considering the purpose of the referral*

*any of the following classes of development:*

- a) *development within the area of the overlay located within the Corporation of the City of Adelaide where the total amount to be applied to any work, when all stages of the development are completed, exceeds \$10,000,000*
  - b) *development within the area of the overlay located within the City of Port Adelaide Enfield where the total amount to be applied to any work, when all stages of the development are completed, exceeds \$3,000,000*
  - c) *development within all other areas of the overlay that involves the erection or construction of a building that exceeds 4 building levels.*
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- 3.6. The Design Overlay specifies the following purpose of the referral to the Government Architect:

*To provide expert design advice to the relevant authority on how the development:*

- a) responds to its surrounding context and contributes to the quality and character of a place*
- b) contributes to inclusiveness, connectivity, and universal design of the built environment*
- c) enables buildings and places that are fit for purpose, adaptable and long-lasting*
- d) adds value by positively contributing to places and communities*
- e) optimises performance and public benefit*
- f) supports sustainable and environmentally responsible development.*

#### 4. Interpretations

For the purpose of this Policy:

- 4.1. **Act** means the *Planning, Development and Infrastructure Act 2016*.
  - 4.2. **Commission** means the State Planning Commission.
  - 4.3. **Department** means the Department for Trade and Investment.
  - 4.4. **Government Architect** means the South Australian Government Architect, or their delegate.
  - 4.5. **Minister** means the Minister for Planning.
  - 4.6. **ODASA** means the staff of the Office for Design and Architecture SA within the Department for Trade and Investment.
  - 4.7. **PLUS** means the staff of the Planning and Land Use Services Division within the Department for Trade and Investment.
  - 4.8. **Regulations** means the *Planning, Development and Infrastructure (General) Regulations 2017*.
  - 4.9. **Relevant authority** means the SCAP and PLUS when acting under delegation of the SCAP.
  - 4.10. **SCAP** means the State Commission Assessment Panel.
  - 4.11. **Variation** means an application seeking the variation of a development authorisation previously given under the Act.
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## 5. Policy

### 5.1. Objectives

- 5.1.1. To assist the relevant authority with its determination of whether the referral of a variation to the Government Architect is warranted.
- 5.1.2. To provide guidance to the relevant authority for seeking advice from ODASA on whether a variation is minor in nature or not warranted when considering the purpose of the referral.

### 5.2. Determining whether to refer a variation to the Government Architect

- 5.2.1. The relevant authority reserves the right to determine whether a variation is minor in nature or would not warrant referral to the Government Architect when considering the purpose of the referral as specified in section 3.6 of this Policy.
  - 5.2.2. Subject to sub-section 5.2.1, an application to vary a development authorisation should be considered for referral to the Government Architect where the original development application was referred to the Government Architect (refer to section 3.5 of this Policy). This provides the Government Architect with the opportunity to consider the impact of the proposed variation on the original development application and provide the relevant authority with independent and expert design advice.
  - 5.2.3. The following criteria are examples of variations where the relevant authority may wish to seek advice from ODASA to assist with its determination:
    - a) amendment to matters raised by the Government Architect in previous referral advice;
    - b) amendment to the height, scale, bulk, setback and/or quantum of the original development authorisation;
    - c) amendment to the approved form, materiality and/or finishes;
    - d) impact on the interface, interaction and/or relationship with the public realm;
    - e) removal of an incentive or offset component;
    - f) removal of a component that is integral to the successful performance and/or operation of the development;
    - g) introduction of a new negative impact and/or increases the severity of known negative impacts; and
    - h) amendment to a Crown authorisation which was previously referred to the Government Architect and the amendments are considered to have design related impacts.
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5.3. Consulting with ODASA

- 5.3.1. When in doubt on whether a referral to the Government Architect is warranted, the relevant authority should forward the variation application to ODASA for their review via: [ODASAreferalls@sa.gov.au](mailto:ODASAreferalls@sa.gov.au)
- 5.3.2. ODASA will review the variation application and advise the relevant authority on whether to refer the application within two business days from the day of receipt.
- 5.3.3. The relevant authority will have regard to ODASA's advice when determining whether to formally refer the variation application to the Government Architect.
- 5.3.4. The Commission reserves the right to review and amend this Policy at any time.

**EXECUTED FOR AND ON BEHALF OF  
THE STATE PLANNING COMMISSION**

A handwritten signature in black ink, appearing to read 'Craig Holden', with a long horizontal flourish extending to the right.

Craig Holden

**Chair, State Planning Commission**

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## Appendix A - Excerpts from various submissions supporting removal of the exemption clause from the Design Overlay.

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**Office for Design and Architecture SA** submission to the State Planning Commission regarding the implementation Phase Three of the Planning and Design Code (February 2020):

*The Design Overlay within the Code lists the triggers that determine when a development application will be referred to the South Australian Government Architect. The referral to the Government Architect provides the State Commission Assessment Panel (the SCAP) with advice in relation to the design quality of the proposal for consideration when undertaking their assessment. In the outgoing planning system, these triggers were included within the Development Regulations 2008.*

*We support the transition of these triggers to the Design Overlay as a consistent approach to referrals in the new planning system. However, we encourage reconsideration of the inclusion of a clause carried over from the Development Regulations 2008, which exempts a referral to the Government Architect where it relates to a variation of a development application that has previously-*

*(a) been referred to the Government Architect; or*

*(b) been given development authorisation under the Act.*

*This clause enables variations to an approved proposal that meets the criteria in the Design Overlay to be lodged without triggering a referral to the Government Architect.*

*In the interest of supporting high-quality design for the classes of development prescribed in the Design Overlay, and meeting the high-quality design objective within section 14 of the PDI Act, we encourage the reconsideration of this clause.*

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**Office for Design and Architecture SA** submission to the State Planning Commission regarding the draft Miscellaneous Technical Enhancements Code Amendment (September 2022):

*We strongly support amending the Design Overlay to no longer exempt the referral of variations to approved planning applications (variations) to the Government Architect (GA) or Associate Government Architect (AGA), where the original application was given development authorisation or previously referred to the GA or AGA.*

*South Australia's planning system is established under the Planning, Development and Infrastructure Act 2016 (the Act). Sections 12 and 14 of the Act recognise the importance of high-quality design and require the planning system to support high-quality design. State Planning Policy Two, entitled Design Quality, is established under section 59 of the Act and outlines design quality as a matter of State interest.*

*The referral to the GA or AGA supports the intent of the Act and State Planning Policies by providing the State Commission Assessment Panel (SCAP) with independent and expert design advice to assist with their informed, balanced and*

*objective assessment of the following development applications listed in the Design Overlay:*

- a. development within the area of the overlay located within the Corporation of the City of Adelaide where the total amount to be applied to any work, when all stages of the development are completed, exceeds \$10,000,000; and*
- b. development within the area of the overlay located within the City of Port Adelaide Enfield where the total amount to be applied to any work, when all stages of the development are completed, exceeds \$3,000,000; and*
- c. development within all other areas of the overlay that involves the erection or construction of a building that exceeds 4 building levels.*

*We believe that any exemption to this referral conflicts with the intent of the Act and State Planning Policies.*

*This exemption can lead to situations where a variation is assessed by the SCAP without independent and expert design advice, even where the variation significantly impacts design quality.*

*We acknowledge that the draft Code Amendment seeks to address this matter by enabling the SCAP to determine whether a variation is 'minor in nature or would not warrant a referral when considering the purpose of the referral'. However, we note that development applications can be changed incrementally through multiple minor variations. This can result in approvals, and ultimately built outcomes, that are significantly inconsistent with the original application referred to, and potentially supported by, the GA or AGA. Further, there is no requirement for the SCAP membership to include an architect or design expert, which may result in situations where the assessment of variations occurs without adequate design expertise.*

*Our recommendation is to remove this exemption altogether to help ensure design quality and intent is maintained through to construction. In practice, this would allow the GA or AGA to determine, in their expert opinion, the potential impact of a variation on design quality and provide appropriate advice to support the SCAP. Where the GA or AGA deem the impact of the variation minor in nature, a 'no comment' statement would be provided.*

*Should the State Planning Commission (the Commission) wish to retain the ability for the SCAP to determine what variations are 'minor in nature' with relation to design quality, we recommend establishing a formal process for the SCAP to seek the expert opinion of the GA or AGA to assist with this determination.*

**Australian Institute of Architects** submission to the State Planning Commission regarding the implementation Phase Three of the Planning and Design Code (February 2020):

*Finally, we are aware of the Local Design Review Scheme currently under development. We consider robust and well managed Local Design Review undertaken by suitably qualified and experienced people to be an integral mechanism for improving design quality and the only effective way to realise this core objective of the PDI Act. We also note that projects that undergo design review, at State or Local level, should not be able to be amended post-approval, without being referred to the design review body for consideration. This will ensure that design quality is maintained through to construction and not 'value managed' out of the project, as currently occurs on numerous projects.*

**Australian Institute of Landscape Architects** submission to the State Planning Commission regarding the implementation Phase Three of the Planning and Design Code (February 2020):

*AILA SA supports the transition of the process of referral to the Government Architect to the Design Overlay within the Code.*

*The referral to the Government Architect provides the SCAP with advice relating to design quality when undertaking their assessment. As part of this transition, a clause exempting a referral to the Government Architect where it relates to a variation of a development application that has previously (a) been referred to the Government Architect, or (b) been given development authorisation under the Act has also been carried over. Currently, this enables a variation to an application to be lodged that meets the requirements in the Design Overlay for referral yet does not require referral to the Government Architect. AILA SA requests that the Commission strongly considers removal of the clause relating to variations in the interest of maintaining design quality and reducing the risks of negative impacts through value management, as well as meeting the intent of the PDI Act.*

*However, if there are variations to approved schemes project referred to Government Architect, the Act currently does not require a need to go back for review once changes made. We express our concern at this lack of provision.*

**Planning Institute of Australia** submission to the State Planning Commission regarding the implementation Phase Three of the Planning and Design Code (February 2020):

*We support the inclusion of the Design Overlay for the purposes of determining when a large-scale development application will be referred to the South Australian Government Architect. However, we recommend the Commission and DPTI remove the provision that exempts this referral for a variation of a development application that has previously been referred to the Government Architect or been given development authorisation under the PDI Act. This provision enables design quality to be 'value managed' out of a development proposal previously referred to the Government Architect. This provision is at odds with high-quality design objectives in the PDI Act and works against the Planning and Design Code ability to support high-quality design outcomes.*