

# Local Design Review Scheme for South Australia

→ OUR  
NEW  
SYSTEM

Draft for Consultation

June 2020



**Government of South Australia**

Department of Planning,  
Transport and Infrastructure

**OFFICE FOR  
DESIGN+  
ARCHITECTURE SA**







*Design Review is a pre-lodgement service that supports high-quality design outcomes, improves access to independent design expertise and assists with informed decision-making during development assessment.*



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

The *Planning, Development and Infrastructure Act 2016* enables South Australia’s new planning system to place greater emphasis on high-quality design. One of the ways it will do this is by creating more opportunities to participate in Design Review under a new Local Design Review Scheme (the Scheme).

This draft Scheme sets out consistent procedural requirements for councils who wish to provide Local Design Review within their communities, as well as independent Design Review providers.

The Office for Design and Architecture South Australia (ODASA) has prepared the draft Scheme on behalf of the Minister for Planning in collaboration with the State Planning Commission, council staff from across the State and peak industry bodies who might provide Local Design Review.

Feedback on the draft Scheme is now being sought from councils, industry professionals and any other interested parties. It is envisaged the Local Design Review Scheme will come into operation with the Phase Three Planning and Design Code.

A consultation guide has been prepared to provide additional background information for the draft Local Design Review Scheme.

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# I. Introduction

## I.1. Legislative Context

Section 121 of the *Planning, Development and Infrastructure Act 2016* (the **Act**) enables the Minister for Planning (the **Minister**) to establish a design review scheme (the **Scheme**), where a person who is considering undertaking types of development specified in the Planning and Design Code may apply to a design panel for design advice.

It is intended that design review under this Scheme be available to development proposals that will be assessed by local relevant authorities in South Australia.

## I.2. Design Review

Design Review is an independent evaluation process where a panel of built environment experts (a **design panel**) review the design quality of a development proposal before it is lodged for assessment. Design Review is most effective when undertaken early in the planning and design process to effect positive change during design development. Proponents are typically encouraged to participate in more than one Design Review session.

The role of Design Review is not to redesign development proposals, but rather to identify and discuss opportunities to encourage high-quality design. In particular, Design Review provides the opportunity to obtain advice (**design advice**) in relation to:

- a) the form or content of a proposed development;
- b) how the proposed development might be changed or improved;
- c) other relevant matters that may assist with the assessment of the development; and/or
- d) other matters that may be relevant to the design of the proposed development.

The design advice is a summary of the Design Review session and is provided to the proponent to assist with design development. The design advice is also provided to the relevant authority when the development application is lodged so that it may be subsequently used for the purposes of development assessment.

The Act requires that any design advice provided by a design panel under this Scheme must be taken into account by the relevant authority when it is undertaking its assessment of the relevant development (insofar as may be relevant to the assessment of the proposed development by the relevant authority).

### I.3. Principles of Design Review

It is important that Design Review is carried out using a robust process and that it offers consistently high standards in the quality of advice. Design Review under this Scheme is informed by the following Principles of Design Review:

- a) **Independent**  
Design Review should be conducted by people who are not connected with the proponent or decision-makers so as to avoid any conflicts of interest.
- b) **Expert**  
Design Review should be carried out by appropriately experienced design experts who have training in delivering constructive feedback. Design advice is most effective when carried out by the professional peers of project designers.
- c) **Multidisciplinary**  
Design Review should combine the perspectives of architects, landscape architects, urban designers and other specialist experts to provide a complete and rounded assessment.
- d) **Accountable**  
A design panel and its advice should be clearly seen to be supporting the public's interest.
- e) **Transparent**  
Information about Design Review, panel membership, funding and governance should be available to the public.
- f) **Timely**  
Design Review should take place as early in the design process as possible so as to effect positive change during design development and to avoid reworking.
- g) **Advisory**  
A design panel should not make decisions or give direction; it offers impartial advice and recommendations to the panel Chair and to the proponent.
- h) **Objective**  
Design Review should appraise development proposals according to reasoned and objective principles, rather than stylistic tastes or subjective opinion.
- i) **Accessible**  
The recommendations arising from Design Review should be expressed in terms that design teams, decision-makers and proponents can clearly understand and apply.



## I.4. Principles of Good Design

Design Review under this 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.

The Principles of Good Design are:

- a) **Context**  
Good design is contextual because it responds to the surrounding environment, and contributes to the existing quality and future character of a place.
- b) **Inclusive**  
Good design is inclusive and universal because it creates places for everyone to use and enjoy, by optimising social opportunity and equitable access.
- c) **Durable**  
Good design is durable because it creates buildings and places that are fit for purpose, adaptable and long-lasting.
- d) **Value**  
Good design adds value by creating desirable places that promote community and local investment, as well as enhancing social and cultural value.
- e) **Performance**  
Good design performs well because it realises the project's potential for the benefit of all users and the broader community.
- f) **Sustainable**  
Good design is sustainable because it is environmentally responsible and supports long-term economic productivity, health and wellbeing.



## 1.5. Objects of the Scheme

The objects of this Scheme 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. Support South Australia's planning system 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;
  - b) promote certainty for people and bodies proposing to undertake development while at the same time providing scope for innovation; and
  - 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.
5. Demonstrate practical application of the *Principles of Good Planning* identified in section 14 of the Act, particularly—
  - a) high-quality design;
  - b) activation and liveability; and
  - c) sustainability.

## 1.6. Operation

This Scheme will come into operation on [date to be determined].

## 1.7. Interpretations

In this Scheme, unless the contrary intention appears—

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

**applicant** means a proponent who has submitted an application for design review under this Scheme;

**Chief Executive** means the Chief Executive of the Department of Planning, Transport and Infrastructure;

**code** of conduct means the code of conduct referred to in Part 7 of this Scheme;

**Commission** means the State Planning Commission;

**constituent council** means a council that has obtained, or that is a member of a group of councils that have obtained, the registration as a Local Design Review Administrator under this Scheme;

**council** means a council constituted under the *Local Government Act 1999*;

**Department** means the Department of Planning, Transport and Infrastructure;

**design panel** means one or more design panel members (including the panel Chair) selected for a design review session;

**design review** session means the design review of a proposed development;

**designated entity** means a Local Design Review Administrator or Independent Design Review Administrator;

**Government Architect** means the South Australian Government Architect;

**Independent Design Review Administrator** means the person or body recognised by the Department to administer design review under this Scheme;

**Local Design Review Administrator** means the council or group of councils recognised by the Department to administer design review under this Scheme;

**Minister** means Minister for Planning;

**panel Chair** means the Chair of a design panel;

**panel member** means a member of a design panel (including the panel Chair);

**panel member pool** means one or more pre-qualified panel members from which a design panel is selected;

**proponent** means a person, persons or body considering the undertaking of development;

**registered architect** means a person who is registered as an architect under the *Architectural Practice Act 2009*;

**relevant authority** means any relevant authority under section 82 of the Act.

**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.



## 2. Establishing Design Review

### 2.1. Development to which this Scheme will apply

Design review under this Scheme will be available to any class of development specified by the Planning and Design Code.

### 2.2. Relevant Designated Entity

If a council determines to make design review available in its area by participating in this Scheme, design review in its area will be carried out—

- (a) if the council is a constituent council – by a design panel supplied by the constituent council's Local Design Review Administrator; or
- (b) in any other case – by an Independent Design Review Administrator in accordance with the provisions of this Scheme.

### 2.3. Registration as a Designated Entity

1. The Chief Executive Officer of a council, or a group of two or more Chief Executive Officers of councils, may seek registration as a Local Design Review Administrator for the purposes of this Scheme.
2. A person, body or any other appropriate entity, including a professional association, or a group of two or more professional organisations, may seek registration as an Independent Design Review Administrator for the purposes of this Scheme.
3. An application for registration as a designated entity must—
  - a) be made to the Chief Executive; and
  - b) be in the approved form determined by the Chief Executive; and
  - c) include any information specified in the approved form; and
  - d) be accompanied by any registration fee under the *Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019*.
4. The Chief Executive may, as the Chief Executive thinks fit, accept or refuse any application for registration as a designated entity under this Scheme.
5. Registration under this Scheme will be for a period of 3 years and may be renewed by the Chief Executive from time to time on a new application for registration under this Scheme.
6. The Chief Executive must ensure that a record of current designated entities and their panel members is maintained on the SA planning portal.

## 2.4. Design Panel Membership

1. Each designated entity may establish one panel member pool under this Scheme.
2. All persons within a panel member pool established by a Local Design Review Administrator must be independent from the council and any relevant authority appointed by that council.
3. Each design panel must have a panel Chair.
4. Where a design panel is made up of one person, this person will be taken to be the panel Chair.
5. Where the proposed development includes built form, the panel Chair must be a registered architect.

## 2.5. Design Panel Selection Process

1. The panel member selection process for any designated entity must be advertised publicly, including on the SA planning portal, for a minimum of 15 business days.
2. All panel members and Chairs must have at least—
  - a) a tertiary degree in a relevant field, such as—
    - i. Architecture;
    - ii. Ecologically Sustainable Design;
    - iii. Landscape Architecture;
    - iv. Urban Design; and
  - b) 10 years of professional experience relating to that field.
3. The designated entity must be satisfied that—
  - a) in addition to the competencies in section 2.5.2, a successful panel member is highly experienced within their field; and
  - b) the panel member pool provides a sufficient representation of the expert skills required for design review; and
  - c) panel Chairs can fulfil the responsibilities outlined in Part 4.3 to a high standard.
4. The designated entity must provide the names of the successful applicant(s) to the Chief Executive within 10 business days of the applicant(s) being notified of the outcome of their application(s).

## 2.6. Engagement of Panel Members

1. The designated entity must provide each panel member with a contractual agreement.
2. A contractual agreement provided under this section must be accompanied by a copy of the code of conduct requirements under Part 7 of this Scheme.
3. The designated entity must ensure contracts for panel members are current and valid.

## 2.7. Induction of Panel Members

All panel members must complete an induction program prepared in accordance with the Government Architect guidelines prior to being involved in design review under this Scheme.

## 2.8. Administrative Requirements

A designated entity must have sufficient resources to meet the requirements outlined in this Scheme.



## 3. Preparing for Design Review

### 3.1. Documentation

1. The Chief Executive must ensure that the information required from a proponent to apply for design review under this Scheme is published on the SA planning portal.
2. The Chief Executive must ensure that the application form for design review under this Scheme is published on the SA planning portal.

### 3.2. Application Process

1. A proponent who is seeking to participate in design review under this Scheme must apply to the council before lodging their development application with the relevant authority.
2. The application must—
  - a) be in the form approved by the Commission; and
  - b) include any information specified in the approved form; and
  - c) be lodged via the method outlined in the approved form; and
  - d) be accompanied by any relevant fee prescribed by the *Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019*.
3. The council may require an applicant—
  - a) to provide such additional documents or information as may be reasonably required to assess the application; and
  - b) to remedy any defect or deficiency in any application or accompanying document or information required under this Scheme.
4. If an application for design review under this Scheme is made in relation to a class of development specified in the Planning and Design Code, the council must approve the application for design review.
5. If the council is not a constituent council, the council must forward the application and accompanying information to an Independent Design Review Administrator, taking into account the kind of development to which the application relates, and request that they supply a design panel.
6. After receiving a request for a design panel from a council, the Independent Design Review Administrator must take all reasonable steps to establish a design panel for the council within 5 business days.

## 4. Undertaking Design Review

### 4.1. Role of the Designated Entity

A designated entity must, on receiving a valid application for design review under this Scheme—

- a) establish a suitable design panel for the design review session from their panel member pool; and
- b) coordinate panel member and Chair attendance (and panel members and Chairs should, so far as reasonably practicable, be the same persons when undertaking multiple reviews for the same project); and
- c) assist panel members and Chairs to identify any conflicts of interest and maintaining a register of any such conflicts; and
- d) coordinate proponents and other stakeholder attendance; and
- e) coordinate and distribute design review session agendas; and
- f) prepare and provide the design panel briefing prior to the design review session; and
- g) coordinate preparation of the design review venue; and
- h) assist the panel Chair to minute the discussion from the design review session.

### 4.2. Role of the Design Panel

1. The design panel established for each design review session must have an understanding of local design and planning challenges, opportunities and priorities, commercial viability and government policy relevant to the proposal.
2. Panel members must—
  - a) make themselves available for design review sessions where practicable; and
  - b) review the design review agenda and briefing notes prior to the design review session; and
  - c) identify any conflicts of interest, inform the designated entity of any such conflicts before the design review session, and not participate in any design review session where a conflict exists; and
  - d) be objective when reviewing projects; and
  - e) provide constructive feedback (whether supportive or critical); and
  - f) treat all information acquired through performing any function relating to this Scheme confidentially.

### 4.3. Role of Design Panel Chair

In addition to the responsibilities in section 4.2, the panel Chair must—

- a) welcome attendees and begin the design review session; and
- b) facilitate the design review session in an objective and considerate manner; and
- c) demonstrate strong critical and analytical skills; and
- d) communicate clearly in an accessible manner; and
- e) respectfully manage panel members, proponents or other stakeholders who express strong or conflicting opinions; and
- f) synthesise and summarise disparate or conflicting views; and
- g) summarise the panel discussion in a clear and concise manner; and
- h) close the design review session.



## 5. Design Advice

### 5.1. Preparing Design Advice

1. The panel Chair must prepare the design advice arising from the design review session.
2. The design advice must be in the format approved by the Chief Executive and—
  - a) be an accurate summary of the design review session; and
  - b) where possible, use clear and accessible language; and
  - c) include the design review session number; and
  - d) specify the date on which the design review session occurred; and
  - e) reference any design advice resulting from previously undertaken design review sessions for the relevant development proposal; and
  - f) outline the design panel's involvement with the project, including any site visits; and
  - g) include the contact information of the council; and
  - h) remain confidential.

### 5.2. Provision of Design Advice

1. The panel Chair must finalise the design advice and provide a copy to the designated entity as soon as practicable after signing the design advice.
2. Where design review is carried out by an Independent Design Review Administrator, the council must provide a copy of the signed design advice to the proponent.
3. It is intended that a copy of the signed design advice be provided to the proponent within 10 business days after the design review session.

### 5.3. Correction of Errors

If design advice is found to contain an error, the designated entity may withdraw it and request it be corrected by the panel Chair, and then re-issue it. The report must retain its original date and be clearly marked with an explanation of reissue.

#### 5.4. Lodging Design Advice with a Development Application

1. The proponent must provide a complete copy of the most recent design advice and previous iterations of design advice, if there have been two or more design review sessions, to the relevant authority when submitting their development application.
2. The proponent must include a response to the design advice, including a summary of any changes made to the proposal since the most recent design review session.
3. The council should undertake a concurrence check of the proponent's response to the design advice and the lodged development application before assessment, and alert the relevant authority of discrepancies.

#### 5.5. Status of the Design Advice in the Planning System

1. In considering a development application that was subject to design review under this Scheme, the relevant authority must take into account the design advice (insofar as may be relevant to the assessment of proposed development by the relevant authority).
2. The relevant authority should consider how the lodged proposal has responded to the design advice provided by the design panel.

## 6. Monitoring, Performance and Complaints

### 6.1. Annual Evaluation

1. The designated entity must undertake an annual evaluation on the impacts and benefits of design review in a format determined or approved by the Government Architect.
2. Each annual evaluation will relate to a financial year.
3. To undertake the evaluation, the designated entity must collect data on each project that was the subject of design review in the relevant year including—
  - a) the class of development; and
  - b) the address or site of the proposed development; and
  - c) any relevant planning zone, subzones and overlays; and
  - d) the estimated development cost; and
  - e) the Panel members and Chair; and
  - f) the number of design review sessions undertaken; and
  - g) project status as at the end of the financial year (if known); and
  - h) any other information that the Government Architect thinks fit.
4. The designated entity must provide the complete evaluation report to the Government Architect within three months of the end of the financial year.

### 6.2. Feedback

A proponent may provide feedback to the council on their experiences of design review under this Scheme, the quality of the design advice they received, and the impact it had on the final outcome.

### 6.3. Data Storage

Designated entities and councils participating in this Scheme must store all data collected under this Scheme securely and take such steps as may be reasonably necessary or appropriate to keep it confidential.

## 6.4. Complaints

1. A proponent may lodge a complaint to the designated entity under this Scheme, if the proponent—
  - a) believes that the designated entity failed to comply with, or acted in contravention of, the Act or any regulations under the Act with respect to any matter associated with this Scheme; or
  - b) believes that there has been a breach of the code of conduct; or
  - c) believes that the written design advice is not an accurate representation of the discussion from the design review session.
2. A complaint made under this Scheme must—
  - a) be made in the form approved by the designated entity; and
  - b) contain particulars of the allegation on which the complaint is based; and
  - c) include any other information specified by the designated entity.
3. The designated entity may refuse to investigate a complaint or, having accepted a complaint for investigation, may refuse to investigate it further, if it appears that—
  - a) the matter raised by the complaint is trivial; or
  - b) the complaint is frivolous or vexatious or is not made in good faith; or
  - c) it would be more appropriate for proceedings to be initiated in a court or tribunal constituted by law, or for the matter to be handled by another authority; or
  - d) there is some other good reason not to proceed (or further proceed) with the matter under this Scheme.
4. While no action may be brought against a panel member on the basis of any advice or other action given or taken by a design panel under section 121(8) of the Act, the designated entity may, at the conclusion of any complaints resolution process—
  - a) decide to take no further action on the complaint; or
  - b) undertake any consultation or further inquiry as the designated entity thinks fit; or
  - c) amend the design advice; or
  - d) make recommendations to the panel member; or
  - e) caution or reprimand the panel member; or
  - f) recommend that a person no longer hold office as a panel member under this Scheme; or
  - g) take such other action as the designated entity thinks fit.

## 7. Code of Conduct

### 7.1. Introduction

This Part provides for standards of conduct and professionalism that are to be observed by all persons and bodies operating under the Act.

For the purposes of the Act, all persons and bodies performing a function under this Scheme must carry out, and be seen to carry out, their functions with the highest ethical standards so as to maintain public confidence in the integrity of the design review scheme under the Act.

A designated entity may also develop and maintain other code of conduct requirements for the purposes of this Scheme.

These standards and requirements constitute a code of conduct and must be read in conjunction with the requirements under the Act.

### 7.2. Requirements under the Act

All persons or bodies operating under this Scheme are subject to a statutory duty under section 15 of the Act as follows:

- (1) *It is expected that a person or body that—*
  - (a) *seeks to obtain an authorisation under this Act; or*
  - (b) *performs, exercises or discharges a function, power or duty under this Act; or*
  - (c) *takes the benefit of this Act or is otherwise involved in a process provided by this Act,*  
*will—*
    - (d) *act in a cooperative and constructive way; and*
    - (e) *be honest and open in interacting with other entities under this Act; and*
    - (f) *be prepared to find reasonable solutions to issues that affect other interested parties or third parties.*
- (2) *Without limiting subsection (1), a person or body performing, exercising or discharging a function, power or duty under this Act must—*
  - (a) *exercise professional care and diligence; and*
  - (b) *act honestly and in an impartial manner; and*
  - (c) *be responsible and accountable in its conduct; and*
  - (d) *comply with any code of conduct, service benchmark or other requirement that applies in relation to the person or body.*
- (3) *The Minister may, after taking into account the advice of the Commission, establish and maintain service benchmarks for the purposes of this section.*
- (4) *The principles and benchmarks under this section—*
  - (a) *do not give rise to substantive rights or liabilities; but*
  - (b) *may lead to action being taken on account of a breach of a code of conduct or professional standard that applies in relation to a relevant person or body.*

## Have your say

The draft Local Design Review Scheme is available for public comment until Friday 21 August 2020.

Feedback received will help to finalise the Local Design Review Scheme for South Australia.

Please ensure you provide your feedback on the draft Scheme through any of the following channels:

- **Email:** [DPTI.ODASAconsultation@sa.gov.au](mailto:DPTI.ODASAconsultation@sa.gov.au)
- **Online:** [yoursay.sa.gov.au/local-design-review-scheme](https://yoursay.sa.gov.au/local-design-review-scheme)
- **Post:** ODASA Consultation, 28 Leigh Street, Adelaide SA 5000

If you would like to speak with someone about Local Design Review, please contact the Office for Design and Architecture South Australia (ODASA) on 8402 1884 during business hours (9am – 5pm, weekdays).

For more information about South Australia's new planning system, please visit the SA Planning Portal ([sapanningportal.sa.gov.au](https://sapanningportal.sa.gov.au)).





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