

Agenda Report for Decision

Meeting Date: 16 December 2021

Item Name	Code Amendment Initiation Advice to the Minister for Planning and Local Government – Tunnel Corridor and Asset Protection Overlay Code Amendment
Presenters	Jason Bailey and Daniel Clapp
Purpose of Report	Decision
Item Number	3.1
Confidentiality	Not confidential (Release Delayed). To be released following final decision by the Minister for Planning and Local Government on early commencement of the Code Amendment.
Related Decisions	N/A

Recommendation

It is recommended that the Commission resolves to:

1. Approve the designation of the item as Not Confidential (Release Delayed), with the meeting papers for the item to be released following final decision by the Minister for Planning and Local Government (the Minister) on early commencement of the Code Amendment.
2. Advise the Minister that it:
 - 2.1 Recommends the approval of the Tunnel Corridor and Asset Protection Overlay Code Amendment under section 73(2)(b)(ii) of the *Planning, Development and Infrastructure Act 2016* (the Act), subject to the following conditions applied under section 73(5)(b) of the Act:
 - (a) The Designated Entity must obtain the Minister's approval to undertake early commencement of the proposed Code Amendment, pursuant to section 78 of the Act.
 - (b) Should the Designated Entity seek approval to undertake early commencement, a draft Engagement Plan and an updated timetable are to be provided.
 - (c) The policy drafting for the proposed Tunnel Corridor and Asset Protection Overlay be undertaken by staff from Planning and Land Use Services within the Attorney-General's Department (AGD-PLUS).
 - (d) AGD-PLUS obtains the approval of the Commission that the new Overlay is suitable for use prior to undertaking public consultation.
 - 2.2 Recommends that the Department for Infrastructure and Transport (DIT) be the Designated Entity responsible for undertaking the Code Amendment process.

3. Specify that the Designated Entity consults with the following nominated individuals and entities, under section 73(6)(e) of the Act:
 - utility providers including SA Power Networks, ElectraNet Pty Ltd, APA Group, SA Water, EPIC Energy, NBN, and other telecommunications providers
 - State Members of Parliament for the electorates in which the proposed Code Amendment applies
4. Specify the following further investigations or information requirements under section 73(6)(f) of the Act, in addition to those outlined in the Proposal to Initiate:
 - (a) The development types and built form characteristics of proposed future developments that could impact on the tunnel assets, and would therefore be captured by the Overlay (i.e. bulk/scale, position on the site).
 - (b) Any resultant changes to assessment pathways for the development types which are captured by the Overlay.
 - (c) The development types which are within the Overlay area which would maintain an Accepted or Deemed-to-Satisfy assessment pathway which can be reflected in the Overlay policy.
 - (d) The intent of, and triggers for, the proposed Referral.
5. Recommend that the Minister approve the initiation of the Code Amendment by signing the Proposal to Initiate (**Attachment 1**) and approval letter with conditions (**Attachment 2**).
6. Approve and authorise the Chair of the Commission to sign the advice to the Minister as provided in **Attachment 3**.
7. Authorise the Chair to finalise any minor amendments to the advice and attachments as required.

Background

Section 73(2)(b)(ii) of the Act provides that a proposal to amend the Planning and Design Code (the Code) may be initiated by another agency or instrumentality of the Crown with the approval of the Minister, acting on the advice of the Commission, in relation to the following matters:

- Strategic assessment against the State Planning Policies and *The 30-Year Plan for Greater Adelaide: 2017 Update*.
- Any person or body that must be consulted by the Designated Entity, pursuant to section 73(6)(e) of the Act.
- Any investigations to be carried out or information to be obtained by the Designated Entity, in accordance with section 73(6)(f) of the Act.

The purpose of this report is therefore to provide the Commission with advice to be provided to the Minister in relation to the Proposal to Initiate submitted by the Chief Executive of DIT (**Attachment 1**).

Procedural matters regarding the Commission's role is provided in **Attachments 4** and **5**.

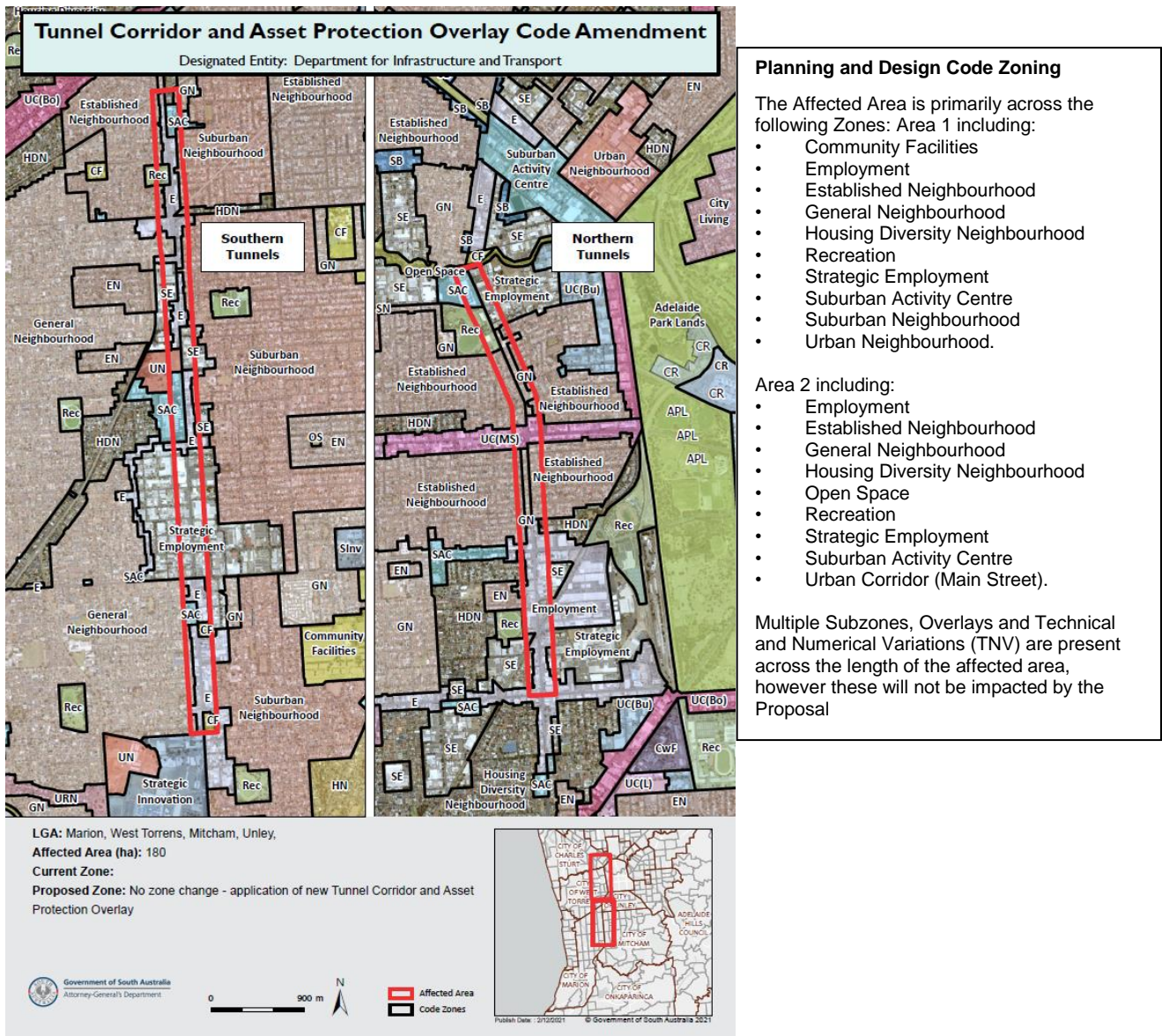
Discussion

Scope of the Amendment

The Proposal to Initiate seeks to apply a new Tunnel Corridor and Asset Protection Overlay to land located in the vicinity of South Road, between the River Torrens/Karrawirra Parri and Tonsley, within the City of Marion, City of West Torrens, City of Mitcham and City of Unley council areas, to support the Torrens to Darlington (T2D) Project as part of the North-South Corridor Project. The Proposed Overlay will be spatially applied to the alignment of the tunnels to facilitate the physical protection of the T2D tunnels during design, construction and operation from encroachment of inappropriate development.

The proposed overlay will need to be supported by amendments to the *Planning, Development and Infrastructure (General) Regulations 2017* in order to provide a referral trigger to the Commissioner of Highways, and to introduce additional activities as development within the Overlay Area. The new Overlay will become a part of the Code Library, and will be available for use in similar circumstances in the future, should the need arise. The final width of the Overlay will be determined pending technical investigations.

The affected area and current zoning are shown in the figure below.



Detailed discussion is provided in the advice to the Minister in **Attachment 3**.

Advice to the Minister

The attached advice to the Minister sets out the statutory and procedural elements that must be considered as part of the initiation of a Code Amendment (**Attachment 3**).

The advice recommends that the Minister approve the initiation of the Code Amendment for the following reasons and subject to conditions (as set out below).

Strategic Considerations

The proposal seeks to protect nationally significant transport infrastructure from encroachment of inappropriate development during the lifespan of the tunnel asset (during planning, construction and operation).

Further strategic considerations and discussion are provided in **Attachment 3**.

Procedural considerations

The Designated Entity has confirmed that it seeks to undertake early commencement of the proposed Code Amendment in accordance with section 78 of the Act. The Designated Entity has advised that early commencement is warranted for the following reasons:

- It is necessary in the interest of the protection of nationally significant transport infrastructure assets forming part of the North-South Corridor.
- It is required in order to counter applications for undesirable development ahead of the outcomes of the consideration of the Code Amendment. Undesirable development is considered as development that would detract from, or negate, the intent of the Code Amendment. In particular, development that could affect the proposed tunnels and their alignment.

It is, however, acknowledged that the Proposal to Initiate does not contain a timetable that reflects the early commencement process. A condition is proposed to ensure an updated timetable is provided, should the Commission agree to its commencement. Notwithstanding, early commencement would usually coincide with commencement of consultation, which is indicated to start at the beginning of May 2022.

It is further acknowledged that the Proposal to Initiate indicates that consultation with the affected council areas has not occurred to this date. Given that the proposal is intended to remain confidential until the point at which it is released for early commencement, and that the proposal would affect multiple council areas, it is considered acceptable within the context Part 3(7)(g) of *Practice Direction 2 – Preparation and Amendment of Designated Instruments* that consultation with the councils occurs simultaneously with public consultation upon early commencement of the proposal.

Excluding the matters listed above, the Proposal to Initiate meets all procedural requirements, as detailed in the attached advice to the Minister (**Attachment 3**).

Conditions proposed and items specified

A number of conditions have been recommended to be specified by the Minister, pursuant to sections 73(5)(b) of the Act. In addition, it has been recommended that the Commission specify persons or bodies to be consulted with by the Designated Entity under section 73(6)(e) of the Act, as outlined in the advice to the Minister (**Attachment 3**).

Furthermore, as the proposal includes an additional Overlay and associated policy to that which is currently contained within the Code Library, it is recommended that the Commission, as custodians of the Code, give its approval that the new Overlay is suitable for use prior to the commencement of public consultation.

Delegations

The Designated Entity has advised that it seeks to undertake early commencement of the proposed Code Amendment in accordance with section 78 of the Act. The Designated Entity has requested early commencement to ensure that future undesirable developments that would impact tunnel infrastructure assets is not undertaken while the Code Amendment is underway, as it would detract from the intent of the policy to protect the tunnel infrastructure asset.

Pursuant to section 78(3) of the Act, the Minister is required to consult the Commission prior to making any decision as to the merits of the proposed Amendment undertaking early commencement.

Following the receipt of a request for advice from the Minister under section 78(3) of the Act, the request will be brought back to the Commission.

Attachments:

1. Proposal to Initiate the Tunnel Corridor and Asset Protection Overlay Code Amendment (#18070149).
2. Draft approval letter from the Minister to the Proponent (#18093709).
3. State Planning Commission advice to the Minister (#18087438).
4. Procedural Matters for State Planning Commission (#18096162).
5. Process Flowchart – Code Amendments Initiated by Proponents (#18093285).

Prepared by: Damien Gencarelli

Endorsed by: Jason Bailey

Date: 7 December 2021

**PROPOSAL TO INITIATE AN AMENDMENT
TO THE PLANNING & DESIGN CODE**

***Tunnel Corridor and Asset Protection
Overlay Code Amendment***

**By the *Department for Infrastructure and
Transport (the Proponent)***



_____ (Signature Required)

Chief Executive, Department for Infrastructure and Transport (the Proponent)

Date: 26 / 11 /2021

This Proposal to Initiate document together with conditions specified by the Minister forms the basis for the preparation of a proposed amendment to the Planning and Design Code for the purpose of section 73(2)(b) of the *Planning, Development and Infrastructure Act 2016* (the Act). By signing this Proposal to Initiate, the Proponent acknowledges and agrees that this Proposal to Initiate, and any supporting documents may be published on the PlanSA portal by the Attorney-General's Department.

MINISTER FOR PLANNING AND LOCAL GOVERNMENT

Date:

1. INTRODUCTION	3
1.1. Designated Entity for Undertaking the Code Amendment	3
1.2. Rationale for the Code Amendment	4
2. SCOPE OF THE CODE AMENDMENT	5
2.1. Affected Area	5
2.2. Scope of Proposed Code Amendment	5
3. STRATEGIC PLANNING OUTCOMES	7
3.1. Alignment with State Planning Policies	7
3.2. Alignment with Regional Plans	8
4. INVESTIGATIONS AND ENGAGEMENT	9
4.1. Investigations Already Undertaken	9
4.2. Further Investigations Proposed	9
4.3. Engagement Already Undertaken	10
4.4. Further Engagement Proposed	10
5. CODE AMENDMENT PROCESS	12
5.1. Engagement Plan	12
5.2. Engagement Report	12
5.3. Code Amendment Timetable	12
ATTACHMENT A	13
Map of Affected Area	13
ATTACHMENT B	15
Timetable for Code Amendment by Proponent	15

1. INTRODUCTION

The Department for Infrastructure and Transport (the Proponent) is proposing to initiate an amendment to the Planning and Design Code (the Code Amendment). The Code Amendment relates to land located in the vicinity of the South Road, between the River Torrens Karrawirra Parri and Tonsley. The Code Amendment is required to support the Torrens to Darlington (T2D) project as part of the North-South Corridor (the Affected Area).

The purpose of this Proposal to Initiate is to seek approval of the Minister for Planning and Local Government (the Minister) to initiate the Code Amendment under section 73(2)(b) of the *Planning, Development and Infrastructure Act 2016* (the Act).

The Proponent is the Department for Infrastructure and Transport (the Department), which is responsible for delivering the T2D project on behalf of the Australian and South Australian Governments within the Affected Area.

This Proposal to Initiate details the scope, relevant strategic and policy considerations, nature of investigations to be carried out and information to be collected for the Code Amendment. It also details the timeframes to be followed in undertaking the Code Amendment, should this Proposal to Initiate be approved by the Minister.

The Department acknowledges that the Minister may specify conditions on approving this Proposal to Initiate, under section 73(5) of the Act. In the event of inconsistency between this Proposal to Initiate and any conditions specified by the Minister, the conditions will apply.

1.1. Designated Entity for Undertaking the Code Amendment

In accordance with section 73(4)(a) of the Act, the Department will be the Designated Entity responsible for undertaking the Code Amendment process. As a result:

- 1.1.1. The Department acknowledges that it will be responsible for undertaking the Code Amendment in accordance with the requirements of the Act.
- 1.1.2. The Department declares that it has not and does not intend to enter into an agreement with a third party for the recovery of costs incurred in relation to the Code Amendment under section 73(9) of the Act.
- 1.1.3. The Department's contact person responsible for managing the Code Amendment and receiving all official documents is:
 - (a) Matthew Morrissey, Director Land and Planning, North-South Corridor Program Delivery Office, Department for Infrastructure and Transport
 - (b) matthew.morrissey@sa.gov.au
 - (c) 0435 658 480
- 1.1.4. The Proponent intends to undertake the Code Amendment by engaging the Department's Master Advisory Services (MAS) contractor for the T2D Project. The contractor will provide the professional services required to undertake the Code Amendment.

The Code Amendment will be led by Michael Davis, MAS Planning Lead and supported by a range of planning, engineering and engagement professionals.

Michael Davis is an Accredited Professional – Planning Level 1 and a Registered Planner with the Planning Institute of Australia.

1.2. Rationale for the Code Amendment

The T2D Project involves converting the remaining 10.5 km of South Road into a non-stop motorway, completing the total 78 km of the North-South Corridor from Old Noarlunga to Gawler. The T2D section of South Road is the corridor's most complex due to its ground conditions, highly urbanised built form, heritage and character. The delivery of the motorway will include sections of surface motorway, lowered motorway and tunnels.

The Department considers that a Code Amendment is required to facilitate protection of the tunnel assets from inappropriate development, in line with similar approaches interstate. 'Asset protection' in the planning system is needed to protect the two T2D tunnels from development that may compromise their construction and operation across their lifespan. This may include ground penetrating activities and works that create additional weight-bearing loads above the tunnels beyond what has been factored into their engineering design.

Given the T2D tunnels traverse multiple zones, and their protection is in the State's interest, the Department considers an Overlay should be utilised in the Code to establish a protected area above and around them. Currently, there are no Overlays within the Planning and Design Code that would be suitable to facilitate the required protections for the T2D tunnels. The Code Amendment will propose a new Overlay that spatially relates to the alignment of the tunnels and incorporates associated policy provisions that informs the suitability of development within proximity of the asset.

Noting the urban context and scale of the project, future development within proximity of the T2D Project will be diverse. The suitability of development would therefore need to be considered on a case-by-case basis. Accordingly, the purpose of the Overlay would:

- Specify the types of development or works that may compromise the structural integrity or operation of the asset.
- Identify referral triggers to the Commissioner, which would need to be made a referral body through an associated amendment to Schedule 9 of the Planning, Development and Infrastructure (General) Regulations 2017.

2. SCOPE OF THE CODE AMENDMENT

2.1. Affected Area

The proposal seeks to amend the Code for the Affected Area, being the land in the vicinity of the South Road corridor within the Marion, Mitcham Unley and West Torrens council areas, as shown in the map in **Attachment A**.

2.2. Scope of Proposed Code Amendment

For simplicity, the scope of the Code Amendment will be defined by two areas which are shown in Attachment A:

- Area 1 – for the protection of the Southern Tunnels of the T2D Project
- Area 2 – for the protection of the Northern Tunnels.

<p>Current Policy</p>	<p>Area 1 is located across several Zones, including:</p> <ul style="list-style-type: none"> • Community Facilities • Employment • Established Neighbourhood • General Neighbourhood • Housing Diversity Neighbourhood • Recreation • Strategic Employment • Suburban Activity Centre • Suburban Neighbourhood • Urban Neighbourhood. <p>Area 2 is located across several Zones, including:</p> <ul style="list-style-type: none"> • Employment • Established Neighbourhood • General Neighbourhood • Housing Diversity Neighbourhood • Open Space • Recreation • Strategic Employment • Suburban Activity Centre • Urban Corridor (Main Street) <p>No subzones will be impacted by the proposed overlay.</p> <p>The affected area is subject to several existing Overlays, which will not be impacted by the proposed Overlay. Similarly, there are multiple Technical and Numerical Variations that apply to the affected area.</p>
<p>Amendment Outline</p>	<p>The Code Amendment seeks to implement a new 'Tunnel Corridor and Asset Protection' Overlay which will facilitate the physical protection of the T2D tunnels during design, construction and operation. The use of an Overlay ensures that</p>

	<p>the protections can apply consistently to multiple zones and subzones, including the changing of Zones through future Code Amendments.</p> <p>The new Overlay is proposed to ensure that its application is restricted to the spatial alignment of the tunnels and does not compromise the intent of the existing Overlays in the code.</p>
Intended Policy	<p>Subject to investigations, the Code Amendment is anticipated to propose to implement a new Overlay in the Code that facilitates the protection of the T2D tunnels from development activities that penetrate the ground or create additional loads at the surface that have not been accounted for in the engineering design of the tunnels.</p>

3. STRATEGIC PLANNING OUTCOMES

Proposed Code Amendments occur within a state, regional and local strategic setting, which includes:

- State Planning Policies (SPPs)
- Regional Plans
- Other relevant strategic documents

3.1. Alignment with State Planning Policies

The State Planning Policies (SPPs) set out the State’s overarching goals and requirements for the planning system. Under section 66(3)(f) of the Act, the Code must comply with any principle prescribed by a SPP.

The Code Amendment should be initiated because the strategic planning outcomes sought to be achieved through the Code Amendment align with or seeks to implement the following SPPs:

State Planning Policy (SPP)	Code Amendment Alignment with SPPs
<p>SPP1- Integrated Planning</p> <p>To apply the principles of integrated planning to shape cities and regions in a way that enhances our liveability, economic prosperity, and sustainable future.</p>	
<p>SPP 1: Integrated Planning</p> <p>1.5 Protect land corridors for expansion or augmentation of infrastructure.</p>	<p>A Code Amendment will be utilised to establish a protected area around the T2D tunnel assets. The purpose of this protected area is to ensure development does not compromise the structural integrity or operation of the asset.</p>
<p>SPP11- Strategic Transport Infrastructure</p> <p>To integrate land use policies with existing and future transport infrastructure, services and functions to preserve and enhance safe, efficient and reliable connectivity for people and business.</p>	
<p>SPP 11- Strategic Transport Infrastructure</p> <p>11.1 Facilitate an efficient, reliable and safe transport network that connects business to markets and people to places (i.e. where they live, work, visit and recreate).</p> <p>11.6 Allow for the future expansion and intensification of strategic</p>	<p>The proposed Overlay facilitates a safe transport network and supports the expansion of the nationally significant North-South Corridor by protecting its underground assets for continued passenger and freight movements.</p>

State Planning Policy (SPP)	Code Amendment Alignment with SPPs
<p>transport infrastructure and service provision (corridors and nodes) for passenger and freight movements.</p> <p>11.7 Identify and protect the operations of key transport infrastructure, corridors, and nodes (passenger and freight).</p>	

3.2. Alignment with Regional Plans

As with the SPPs, the directions set out in Regional Plans provide the long-term vision and spatial patterns for future development in a region. This includes consideration of land use integration, transport infrastructure and the public realm.

The *30-Year Plan for Greater Adelaide* (2017 Update) volume of the Planning Strategy (which has transitioned to a Regional Plan under the Act) is relevant for this Code Amendment.

Regional Plan Identified Priorities or Targets	Code Amendment Alignment with Regional Plan
<p><i>30-Year Plan for Greater Adelaide</i> (2017 Update)</p> <p>Policy Theme: Infrastructure</p> <p>P.83 Define and protect strategic infrastructure sites and corridors from inappropriate development to ensure the continued functionality of the services they provide.</p>	<p>The Code Amendment will provide the framework to protect an essential infrastructure asset from inappropriate development during its 100-year life span.</p>

4. INVESTIGATIONS AND ENGAGEMENT

4.1. Investigations Already Undertaken

The table below identifies what investigations have already been undertaken in support of the proposed Code Amendment.

Investigation Undertaken	Summary of Scope of Investigations	Summary of Outcome of Recommendations
Business case	The Business Case for the T2D Project considered technical investigations, option development and analysis to support an investment decision in constructing tunnels for this section of the North-South Corridor.	The Business Case concluded that the Hybrid + model of the T2D Project was the preferred option, with two sections of tunnels connected by a combination of surface and lowered motorway.
Reference Design	The Reference Design for the T2D has investigated the environmental, technical and engineering constraints of constructing the tunnels and motorway projects, and provided a design concept that will inform future detailed engineering design.	The Reference Design was used for determining the optimum alignment of the tunnels and their depth having regard to surface development, existing ground conditions and development cost. The Reference Design will inform the technical parameters of the proposed overlay.
Technical Investigations	The Department has reviewed how similar infrastructure is recognised and protected in the planning systems of other jurisdictions. This includes Cross City Tunnel (NSW), Melbourne Metro (VIC), Suburban Rail Loop (VIC), and North East Link (VIC).	Technical Investigations have been undertaken to provide precedent and context from other States, highlighting a need for protection of the tunnel assets in the planning system.

4.2. Further Investigations Proposed

In addition to the investigations already undertaken and identified above, the table below outlines what additional investigations that will be undertaken to support the Code Amendment.

Further Investigations Proposed	Explanation of how the further investigations propose to address an identified issue or question
Technical Investigations	<p>Additional technical investigations are required. These will focus on specific conditions needed to protect the tunnel asset, including depth of ground penetration and loading limits above tunnel, having regard to the Reference Design and the policy framework of the Zones in the Code.</p> <p>This will also include an assessment of the impacts that the proposed Overlay may have on the development potential of current Zones, and the implications for future proponents of development that will trigger the Overlay.</p>

4.3. Engagement Already Undertaken

Preliminary engagement has been undertaken with AGD-PLUS regarding the scope of this amendment. No Council or community engagement has been undertaken specifically on this aspect of the T2D Project. However, there has been ongoing engagement with councils, community and businesses on the impacts of the T2D Project.

4.4. Further Engagement Proposed

In addition to the engagement already undertaken and identified above, the table below outlines additional engagement that will be undertaken to support the Code Amendment.

Further Engagement Proposed	Explanation of how the further engagement propose to address an identified issue or question
Community consultation	<p>An extensive community engagement process is proposed for the Project Assessment Report (PAR) for the T2D Project. The PAR describes the environmental, economic and social impacts of the T2D Project and specifies the mitigation measures proposed to be implemented. The PAR includes an assessment of the land use planning impacts, which includes the proposed Overlay.</p> <p>Public engagement of the Code Amendment is required in accordance with the Engagement Plan, which will be aligned to the engagement period for the Project Assessment Process.</p> <p>Submissions received during the engagement period need to be assessed and summarised, with an Engagement Report required in accordance with Practice Direction 2 and the Engagement Report for Code Amendments template. The Engagement Report will be separate to the work undertaken for the PAR.</p>

<p>Consultation with any person or body specified by the Commission under section 73(6)(e) of the Act.</p>	<p>The Engagement Plan will outline the specific method and nature of consultation with specified persons or bodies.</p>
--	--

5. CODE AMENDMENT PROCESS

5.1. Engagement Plan

The Code Amendment process will occur in accordance with the Community Engagement Charter and Practice Direction 2 – Consultation on the Preparation or Amendment of a Designated Instrument.

The Department will prepare an Engagement Plan prior to the commencement of engagement on the proposed Code Amendment, which will be aligned to the engagement for the separate Project Assessment Report for the T2D Project.

The Engagement Plan will include the following mandatory consultation requirements (which may be in addition to the engagement outlined in this Proposal to Initiate):

- the Local Government Association must be notified in writing of the proposed Code Amendment
- if the Code Amendment has a specific impact on one or more particular parcels of land in a particular zone or subzone (rather than more generally), the Designated Entity must take reasonable steps to give notice in accordance with Regulation 20 of the *Planning, Development and Infrastructure (General) Regulations 2017*, to:
 - the owners or occupiers of the land
 - owners or occupiers of each parcel of adjacent land
- consultation must also occur with any person or body specified by the State Planning Commission under section 73(6)(e) of the Act.

5.2. Engagement Report

Once engagement on the Code Amendment is complete, the Department will prepare an Engagement Report under section 73(7) of the Act.

The Department will ensure that a copy of the Engagement Report is furnished with the Minister and published on the PlanSA portal. This will occur in accordance with Practice Direction 2.

The Engagement Plan and the Engagement Report will also be considered by the State Planning Commission during the final stages of the Code Amendment process. The Commission will provide a report to the Environment, Resources and Development Committee of Parliament under section 74(3) of the Act. The Commission's report will provide information including the reason for the Code Amendment, the consultation undertaken on the Code Amendment and any other information considered relevant by the Commission.

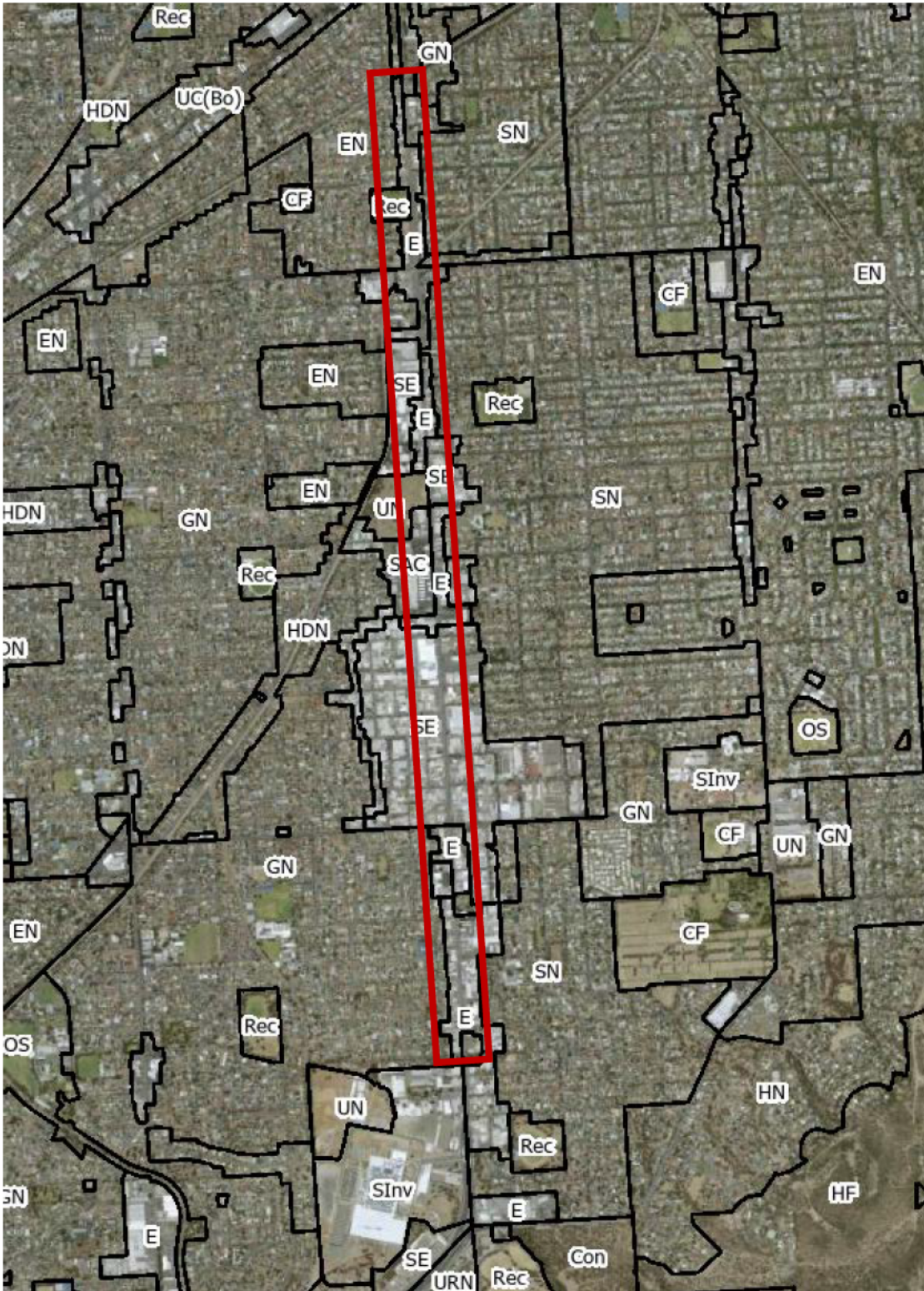
5.3. Code Amendment Timetable

The Department commits to undertaking the Code Amendment in line with the timeframe outlined in **Attachment B**. If this timeframe is exceeded (or expected to be exceeded) the Proponent agrees to provide an amended timetable to AGD-PLUS with an explanation of the delay, for approval by the Minister.

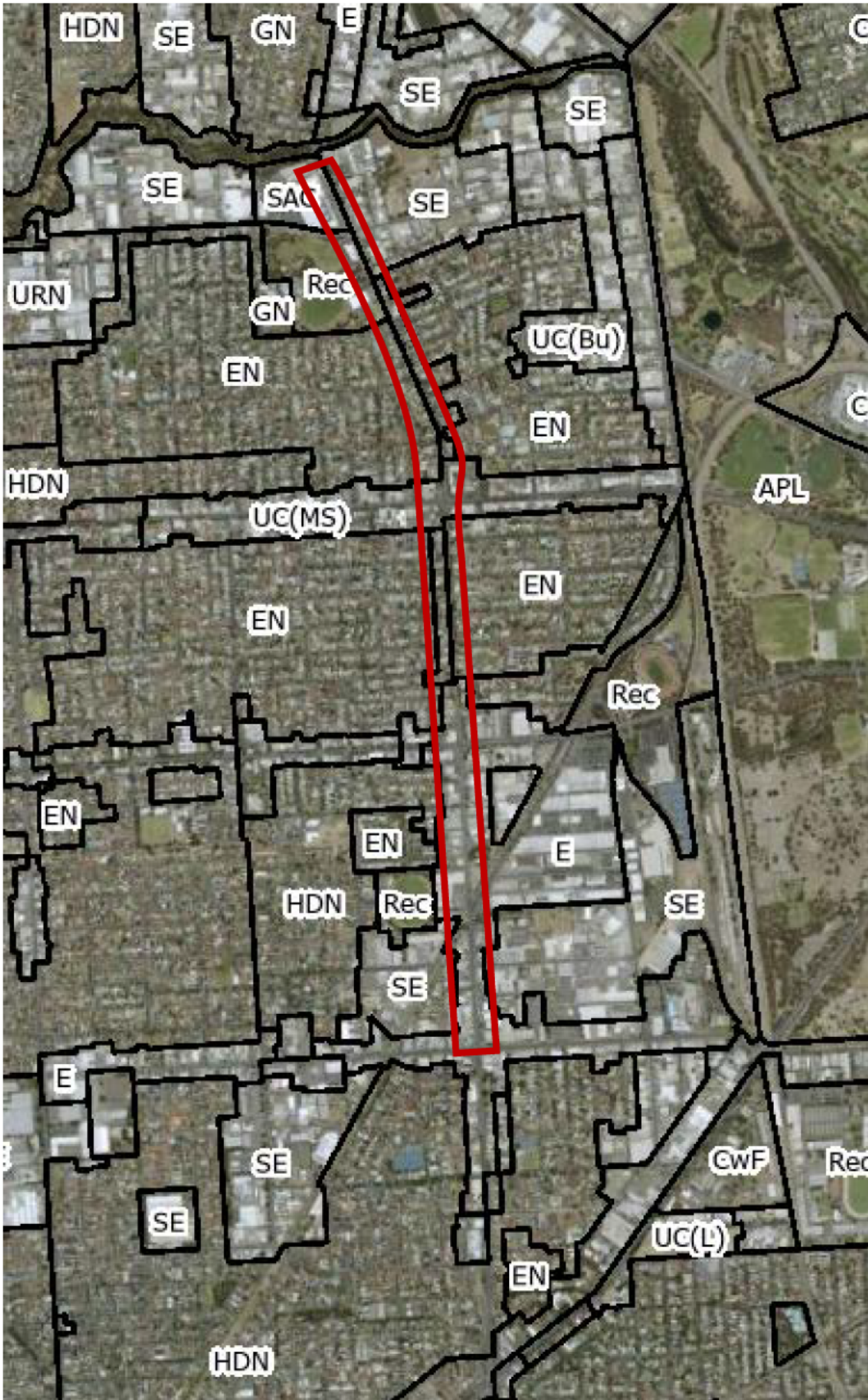
ATTACHMENT A

Map of Affected Area

Area 1 - Southern Tunnels



Area 2 - Northern Tunnels



ATTACHMENT B

Timetable for Code Amendment by Proponent

Step	Responsibility	Timeframes
Approval of the Proposal to Initiate		
Review of Proposal to Initiate to confirm all mandatory requirements are met (timeframe will be put on hold if further information is required). Referral to the Minister to request advice from the Commission.	AGD	2 weeks <i>(includes lodgement and allocation + referral to Government Agencies within the first week)</i>
Minister requests advice from the Commission.	Minister	
Consideration of Proposal to Initiate and advice to the Minister.	Commission (Delegate)	+ 2 weeks
	Minister	+ 1 week
Proposal to Initiate agreed to by the Minister	Minister	1 day
Preparation of the Code Amendment		
Engagement Plan Prepared. Investigations conducted; Code Amendment Report prepared. The Drafting instructions and draft mapping provided to AGD.	Designated Entity	4 weeks
AGD prepares Amendment Instructions and Mapping and provides to Council for consultation purposes.	AGD	6 weeks
Preparation of Materials for Consultation.	Designated Entity	6 weeks
Engagement on the Code Amendment		
Code Amendment Report released for public consultation in accordance with the Community Engagement Charter and the prepared Community Engagement Plan.	Designated Entity	4 weeks Indicative start date – 01 May 2022 [noting may be subject to change pending finalisation of Engagement Plan]
Consideration of Engagement and Finalisation of Amendments		
Submissions summarised; Amended drafting instructions provided, Engagement Report prepared and lodged with AGD.	Designated Entity	6 weeks

Step	Responsibility	Timeframes
Assess the amendment and engagement. Prepare report to the Commission or delegate Timeframe will be put on hold if further information is required, or if there are unresolved issues.	AGD	2 weeks
Consideration of Advice	Commission (Delegate)	2 weeks <i>(includes 1 week to process through Minister's office)</i>
Decision Process		
Minister considers the Code Amendment Report and the Engagement Report and makes decision	Minister	3 weeks
Implementing the Amendment (operation of the Code Amendment)		
Go- Live- Publish on the PlanSA portal	AGD	3 weeks
Parliamentary Scrutiny		
Referral of approved Code Amendment to ERDC	AGD	8 weeks



TO: MINISTER FOR PLANNING AND LOCAL GOVERNMENT

**RE: PROPOSAL TO INITIATE THE TUNNEL CORRIDOR AND ASSET PROTECTION
OVERLAY CODE AMENDMENT**

PURPOSE

To recommend that you approve the Proposal to Initiate the Tunnel Corridor and Asset Protection Overlay Code Amendment (the Proposal).

BACKGROUND

Section 73(2)(b) of the *Planning, Development and Infrastructure Act 2016* (the Act) provides:

73 – Preparation and amendment

(2) A proposal to amend a designated instrument may be initiated by—

(b) with the approval of the Minister, acting on the advice of the Commission—

(ii) another agency or instrumentality of the Crown.

The Chief Executive of the Department for Infrastructure and Transport (DIT) has lodged a Proposal to Initiate the Tunnel Corridor and Asset Protection Overlay Code Amendment (the Code Amendment) to amend the Planning and Design Code (the Code) as it relates to the affected area (**Attachment 1**).

The State Planning Commission (the Commission) considered the Proposal to Initiate at its meeting of 16 December 2021 and resolved to support the Code Amendment, subject to conditions.

A summary of the roles and responsibilities for you and the Commission in regard to the Code Amendment is provided in **Appendix A**.

A flowchart of the Code Amendment process is provided in **Appendix B**.

DISCUSSION

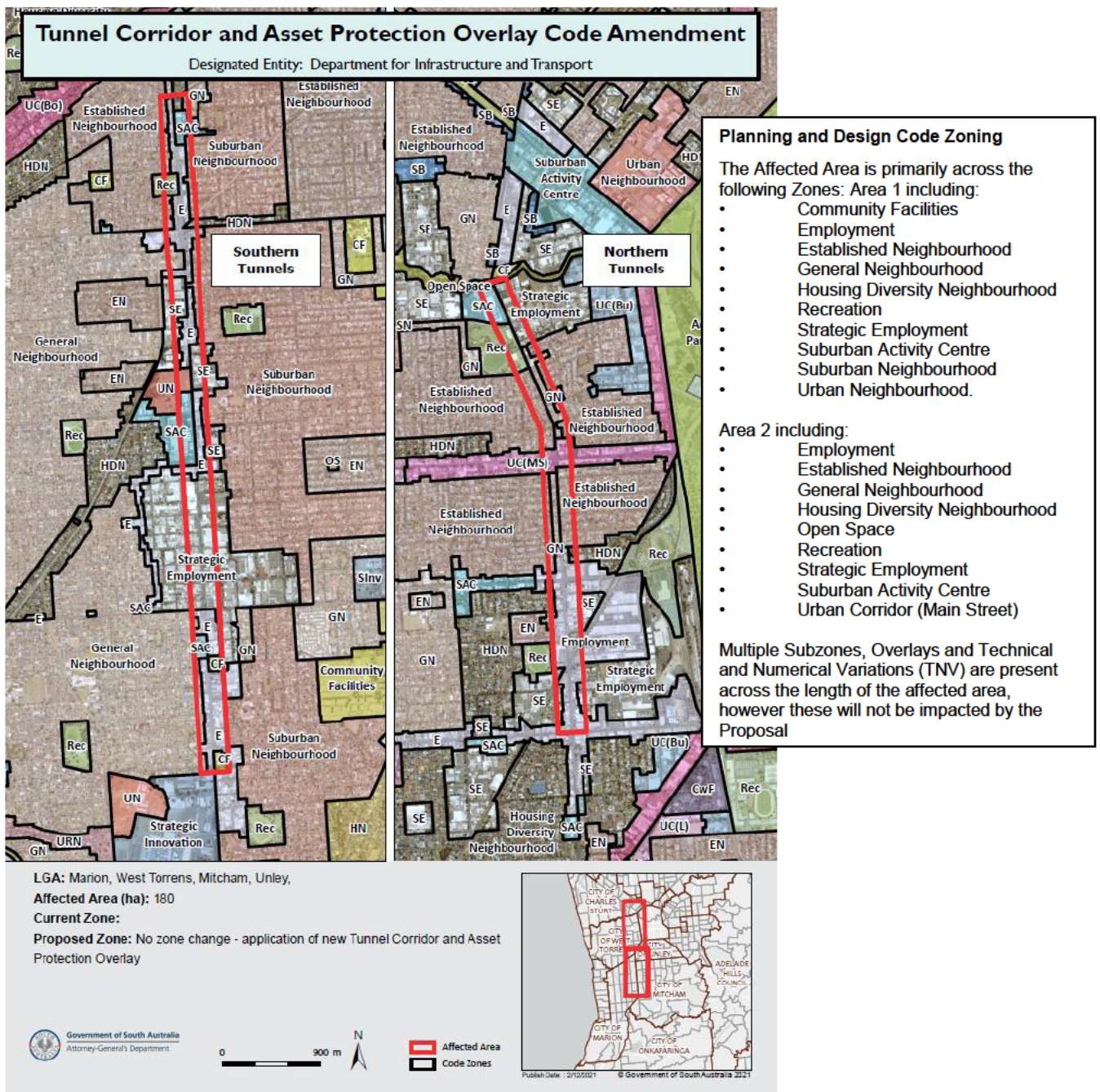
The following sets out the strategic, policy and procedural considerations in relation to the Proposal to Initiate.

Proposal

The Proposal seeks to apply a new Tunnel Corridor and Asset Protection Overlay to land located in the vicinity of South Road, between the River Torrens/Karrawirra Parri and Tonsley, within the City of Marion, City of West Torrens, City of Mitcham and City of Unley council areas, to support the Torrens to Darlington (T2D) Project as part of the North-South Corridor Project.

The proposal will facilitate the physical protection of the T2D tunnels during design, construction and operation through the use of an Overlay to ensure that the protections can apply consistently across multiple zones and subzones, taking into account potential changes to Zoning of affected land through future Code Amendments. The new Overlay is proposed to ensure that its application is restricted to the spatial alignment of the tunnels, comprising two areas, being 'Area 1 – Southern Tunnels' and 'Area 2 – Northern Tunnels.'

The affected area and current zoning are shown in the figure below.



The proposed Tunnel Corridor and Asset Protection Overlay will be drafted following consideration of proposed investigations regarding technical requirements for the protection of the tunnel infrastructure, as well as the impacts that the proposed Overlay may have on the development potential of current Zones.

The detailed technical investigations related the requirements for protection of the tunnels themselves may assist in informing a more precise alignment of the tunnel assets, and therefore, the spatial extent of the proposed Overlay comprising the affected area.

The proposed overlay will need to be supported by amendments to the *Planning, Development and Infrastructure (General) Regulations 2017* in order to:

- Define certain activities that could impact upon the tunnel assets, which are not currently a development under the Act, as development requiring approval – amendment to Schedule 3.
- Introduce specific requirements for technical information that applicants must submit with an application – amendment to Schedule 8.
- Introduce a referral for certain activities to the Commissioner of Highways, and providing the power of direction to relevant authorities – amendment to Schedule 9.
- Remove exemptions from approval for certain activities undertaken by the Crown or essential infrastructure – amendment to Schedules 4A and 13.

It is acknowledged that in recent discussions with Planning and Land Use Services within the Attorney-General's Department (AGD-PLUS), the Proponent has indicated to seek early commencement of the Code Amendment, pursuant to Section 78(1)(b) of the Act, to coincide with community consultation scheduled to commence in May 2022 (**Appendix F**).

Strategic Considerations

The following sets out the strategic considerations relating to this proposal and rationale for the Commission recommending support for the Code Amendment.

More details of the Commission's strategic priorities are provided in **Appendix C**.

An assessment against the State Planning Policies (SPPs) and relevant Regional Plan are provided in **Appendix D**.

Strategic Advice

The Proposal seeks to create and spatially apply a new Tunnel Corridor and Asset Protection Overlay to land following the alignment of the tunnels forming part of the Torrens to Darlington (T2D) Project as part of the North-South Corridor Project (the Affected Area). The proposed Overlay is intended to incorporate associated policy provisions that informs the suitability of development within proximity of the tunnel asset, and would support the expansion and safe operation of the North-South Corridor.

Given that the Proposal seeks to protect nationally significant transport infrastructure from encroachment of inappropriate development during the lifespan of the tunnel asset (during planning, construction and operation), the spatial application of planning policy via the proposed Overlay is deemed appropriate.

A review of current State and Local Council strategic planning documents indicates the following:

- The North-South Corridor is identified within *The 30-Year Plan for Greater Adelaide: 2017 Update* – Map 4 (Business and industry clusters) and Map 7 (Major transport and public transport investments).
- Land Supply Reports (LSRs) for Greater Adelaide, released in 2021, indicates:
 - The affected area is located within the portions of both the Adelaide West and Inner South regions of Greater Adelaide, as defined within the LSR Report(s).
 - Population projections estimate that both regions region will grow by a combined 36,400 (medium) to 50,100 (high) people over the next 10 years to 2030.
 - It is estimated this will generate demand for an additional 15,700 (medium) to 22,900 (high) dwellings over the same period.
 - It is anticipated that the proposed Code Amendment will not significantly impact the ability for landowners to reasonably develop their land as per current zoning; however, will likely require more detailed investigations for more 'intense' forms of development – this detail will be worked through during the next phase of the Code Amendment process and will be subject to review through the public consultation process.

Land use characteristics

The Affected Area traverses a number of Zones along the South Road Corridor.

Area 1 – Southern Tunnels: between Aroha Terrace and Walsh Avenue:

- Community Facilities
- Employment
- Established Neighbourhood
- General Neighbourhood
- Housing Diversity Neighbourhood
- Recreation
- Strategic Employment
- Suburban Activity Centre

- Suburban Neighbourhood
- Urban Neighbourhood.

Area 2 – Northern Tunnels: between River Torrens Karrawirra Parri and Richmond Road

- Employment
- Established Neighbourhood
- General Neighbourhood
- Housing Diversity Neighbourhood
- Open Space
- Recreation
- Strategic Employment
- Suburban Activity Centre
- Urban Corridor (Main Street).

Impacts to Affected Properties

The Proposal to Initiate indicates that further investigations will be undertaken to ascertain what impacts the proposed Overlay may have on the development potential of properties within the affected area, as well as the implications for future proponents of development that trigger the Overlay and associated referrals.

Procedural Considerations

The following sets out the key procedural considerations that satisfy the legislative requirements. Pursuant to section 73(5) of the Act, approval for a Proposal to Initiate may be given on conditions prescribed by the regulations (there are none at this time) or as specified by you as Minister. As such a number of conditions are recommended by the Commission as set out below.

Information Requirements

Practice Direction 2 – Preparation of Amendment of Designated Instruments (Practice Direction 2) outlines the information requirements for a Proposal to Initiate (**Appendix E**).

It is, however, acknowledged that the Proposal to Initiate does not contain a timetable that reflects the early commencement process. A condition is proposed to ensure an updated timetable is provided, should the Commission agree to its commencement. Notwithstanding, early commencement would usually coincide with commencement of consultation, which is indicated to start at the beginning of May 2022.

It is further acknowledged that the Proposal to Initiate indicates that consultation with affected council areas has not occurred to this date. Given that the proposal is intended to remain confidential until the point at which it is released for early commencement, and that the proposal would affect multiple council areas, it is considered acceptable within the context Part 3(7)(g) of Practice Direction 2 that consultation with the councils occurs simultaneously with public consultation upon early commencement of the proposal.

Excluding the matters listed above, the mandatory information requirements have been met, and therefore, the Proposal is of a suitable form to be considered by you, as Minister for Planning and Local Government.

Consistent with State Planning Policies and Regional Plan

The Code must be consistent with the principles of the SPPs and should be consistent with the directions of the relevant Regional Plan, which in this instance is *The 30-Year Plan for Greater Adelaide: 2017 Update* (the Regional Plan). The former Minister for Planning and Local Government, the Hon Vickie Chapman MP, previously sought the Commission's advice in this regard.

This assessment is provided in **Appendix D**. A more detailed analysis is also located in the Proposal to Initiate.

In summary, the Proposal to Initiate is considered to be consistent with the SPPs and Regional Plan.

Designated Entity

DIT is proposed to be the Designated Entity and to conduct the Code Amendment processes, pursuant to section 73(2)(b)(ii) of the Act. The Commission supports DIT being the Designated Entity in this instance.

To ensure that the Overlay aligns with drafted principles established by the Act or by the Commission, the Commission recommends that AGD-PLUS staff undertake policy drafting. Furthermore, as the Proposal includes an additional Overlay and associated policy to that which is currently contained within the Code Library, it is recommended that the Commission, as custodians of the Code, give its approval that the new Overlay is suitable for use prior to the commencement of public consultation.

Recommendation(s)

- That DIT be the Designated Entity responsible for undertaking the Code Amendment process.
- That a condition be placed on the Proposal to Initiate that requires the policy drafting for the proposed Tunnel Corridor and Asset Protection Overlay be undertaken by AGD-PLUS staff.
- That a condition be placed on the Proposal to Initiate that AGD-PLUS obtains the approval of the Commission prior to undertaking public consultation.

Investigations to support the Amendment

The investigations undertaken to date are outlined in the Proposal to Initiate (**Attachment 1**). Whilst the Proposal outlines that investigations relating to the Business Case and Reference Design for the tunnel assets, as well as policy investigations relating to the approach taken by other jurisdictions to protect similar infrastructure assets, have been undertaken, the detail of these investigations have not been provided with the Proposal. It is recommended that these investigations be provided to AGD-PLUS to assist with the drafting of policy content for the proposed Overlay.

The Proponent has identified further investigations to support the Code Amendment, including:

- Technical investigations which focus on specific conditions needed to protect the tunnel asset, including depth of ground penetration and loading limits above the tunnel, having regard to the Reference Design and the policy framework of the Zones in the Code.
- An assessment of the impacts that the proposed Overlay may have on the development potential of current Zones and the implications for future proponents of development that will trigger the Overlay.

The Commission has resolved that all investigations undertaken to date as outlined above be provided to AGD-PLUS, and pursuant to section 73(6)(f) of the Act, has further specified that the following investigations be undertaken:

- The development types and built form characteristics of proposed future developments that could impact on the tunnel assets and would therefore be captured by the Overlay (i.e. bulk/scale, position on the site).
- Any resultant changes to assessment pathways for the development types which are captured by the Overlay.
- The development types which are within the Overlay area which would maintain an Accepted or Deemed-to-Satisfy assessment pathway which can be reflected in the Overlay policy.
- The intent of, and triggers for, the proposed Referral.

Recommendation(s)

That the following further investigations be undertaken by the Designated Entity, in addition to that outlined in the Proposal to Initiated, under section 73(6)(f) of the Act:

- The impact of the proposed Overlay to provide assurances that the intent of the underlying zone(s), including the envisaged land uses, will not be negatively impacted.
- Any resultant changes to assessment pathways for the development types which are captured by the Overlay.
- The development types which are within the Overlay area which would maintain an Accepted or Deemed-to-Satisfy assessment pathway which can be reflected in the Overlay policy.
- The intent of, and triggers for, the proposed Referral.

Application of the Code

The Proposal seeks to apply a new Tunnel Corridor and Asset Protection Overlay to land in the affected council areas to support/facilitate the development and ongoing protection of tunnel assets in association with the T2D Project as part of the North-South Corridor.

The precise details of the Overlay policy, applicable development types to which the policies apply, and the associated changes to applicable assessment pathways for those development types relevant are yet to be determined – pending the outcomes of the aforementioned investigations to be undertaken by the Designated Entity. As the Proposal involves the creation of new planning rules, rather than being limited to the spatial application of zones, subzones, overlays, or technical and numerical variations provided for under the published Code (on the date the Amendment is released for consultation), it is recommended that a condition be placed upon the Proposal to Initiate requiring that the content of the proposed Overlay is prepared by AGD-PLUS. This process is a standard convention to ensure that the integrity of the Code policy is maintained.

Recommendation(s)

- See previous recommendation regarding AGD-PLUS staff undertaking drafting of the Overlay under the subheading of Designated Entity.

Consultation

In accordance with the Community Engagement Charter, the Designated Entity is required to prepare an Engagement Plan that will outline how, when and with whom it engages with regarding the proposed Code Amendment. Consultation is scheduled to commence in May 2022, subject to consideration regarding early commencement.

The Commission has determined to specify the following further persons or bodies that the Designated Entity must consult with in relation to the proposed Code Amendment, as permitted under section 73(6)(e) of the Act:

- Utility providers, including SA Power Networks, ElectraNet Pty Ltd, APA Group, SA Water, EPIC Energy, NBN, and other telecommunications providers.
- State Members of Parliament for the electorates in which the proposed Code Amendment applies.

In addition, in accordance with sections 44(6) & 73(6)(d) of the Act, consultation must be undertaken with:

- The affected councils, including the City of Marion, City of West Torrens, City of Mitcham and City of Unley.
- Owners or occupiers of the land and adjacent land in accordance with the *Planning Development and Infrastructure (General) Regulations 2017*.

Recommendation(s)

- Advise the Designated Entity of the required consultation with the entities and bodies specified by the Commission.
- That the Proposal to Initiate is not placed on the SA Planning Portal until a decision is made with respect to early commencement.
- If early commencement is agreed to, the Proposal to Initiate is published on the SA Planning Portal at the time that it is released for community engagement.

RECOMMENDATIONS

It is recommended that you:

- | | |
|--|--------------------------|
| <p>1. Note the advice of the State Planning Commission provided to you as required under section 73(2)(b) of the Act.</p> | <p>NOTED / NOT NOTED</p> |
| <p>2. Note that the State Planning Commission has, under section 73(6)(e) of the Act, specified that the Designated Entity must consult with the following nominated individuals and entities (and advise the Designated Entity accordingly):</p> <ul style="list-style-type: none"> • Utility providers, including SA Power Networks, ElectraNet Pty Ltd, APA Group, SA Water, EPIC Energy, NBN, and other telecommunications providers. • State Members of Parliament for the electorates in which the proposed Code Amendment applies. | <p>NOTED / NOT NOTED</p> |
| <p>3. Note that the State Planning Commission has, under section 73(6)(f) of the Act, resolved to specify the following further investigations to that outlined in the Proposal to Initiate (and advise the Designated Entity accordingly):</p> <ul style="list-style-type: none"> • The impact of the proposed Overlay to provide assurances that the intent of the underlying zone(s), including the envisaged land uses, will not be negatively impacted. • Any resultant changes to assessment pathways for the development types which are captured by the Overlay. | <p>NOTED / NOT NOTED</p> |

- The development types which are within the Overlay area which would maintain an Accepted or Deemed-to-Satisfy assessment pathway which can be reflected in the Overlay policy.
- The intent of, and triggers for, the proposed Referral.

4. Approve Initiation of the Tunnel Corridor and Asset Protection Overlay Code Amendment under section 73(2)(b)(ii) of the Act, subject to the following conditions (under section 73(5)) of the Act):

APPROVED / NOT APPROVED

- The Designated Entity must obtain your approval to undertake early commencement of the proposed Code Amendment, pursuant to section 78 of the Act.
- Should the Designated Entity seek approval to undertake early commencement, a draft Engagement Plan and an updated timetable are to be provided.
- The policy drafting for the proposed Tunnel Corridor and Asset Protection Overlay be undertaken by AGD-PLUS staff.
- AGD-PLUS obtains the approval of the Commission that the new Overlay is suitable for use prior to undertaking public consultation.

5. Agree to sign the Proposal to Initiate the Code Amendment (**Attachment 1**).

AGREED / NOT AGREED

6. Agree to sign the attached letter to the Proponent advising of your approval with conditions (**Attachment 2**).

AGREED / NOT AGREED



Craig Holden
CHAIR, STATE PLANNING COMMISSION
20 / 12 / 2021

JOSH TEAGUE MP

/ /

Attachments:

1. Proposal to Initiate the Tunnel Corridor and Asset Protection Overlay Code Amendment (#18070149).
2. Suggested letter of approval to the Proponent (#18093709).

Appendices:

- A. Summary of Roles and Responsibilities in Code Amendment Process (#18093358).
- B. Process Flowchart – Code Amendments Initiated by Proponents (#18093285).
- C. State Planning Commission’s Strategic Priorities (#18093394).
- D. Assessment against the State Planning Policies and Regional Plan (#18095037).
- E. Extract from *Practice Direction 2 – Preparation of Amendment of Designated Instruments* (#18093431).
- F. North-South Corridor Steering Committee – Code Amendment Discussion Paper, 18 November 2021 (#18094432).

Contact: Jason Bailey
Tel No: [REDACTED]

Procedural Matters for the State Planning Commission (the Commission)

The Commission's role at Initiation, when the Commission is not the Proponent, is to:

- Provide advice to the Minister for her consideration in making a decision on initiation pursuant to section 73(2)(b) of the Act.
- Specify any person or body the Designated Entity must consult with under section 73(6)(e) of the Act, noting that the designated entity will also need to prepare an engagement plan in accordance with the Community Engagement Charter prior to consultation.
- Specify any investigations to be carried out and/or information to be obtained by the Designated Entity, in accordance with section 73(6)(f) of the Act.

The importance of the initiation process is two-fold:

- Firstly, it enables proposals considered to be significantly at odds with the State Planning Policies (SPPs) and relevant Regional Plan to be refused early in the process, minimising risk. This is because the decision to proceed is based on an assessment against these documents.

To that end, the Commission may also advise the Minister on how the proposal fits with its stated priorities, including:

- Technical amendments that enhance the operation of the Code.
- Bushfire policy in response to the Royal Commission and improved bushfire mapping data.
- Support land supply, including infill, master planned neighbourhoods and growth areas consistent with the Growth Management Programme.
- Support economic clusters such as agribusiness and value adding, defence industries, energy and resources, health and medical industries and knowledge and creative industries.
- Provide state-wide strategic benefit such as protection against environmental hazards.
- Secondly, the initiation process is the point at which the scope of the Code Amendment process, investigations and information requirements and the amendments are determined. This provides clarity and certainty for the proponents.

Approval of the Proposal to Initiate may be given on conditions prescribed by the regulations (there are none at this time) or as specified by the Minister. As such, conditions have been recommended by the Commission, to be made by the Minister.

The Commission has previously determined that (where possible) Code Amendments should be prepared and led by proponents themselves for the first 12 months following implementation of the Phase Three Code.

Code Amendments Initiated by Proponents

Section 73(2)(b) of the *Planning, Development and Infrastructure Act 2016*

