

LOCAL DESIGN REVIEW SCHEME FOR SOUTH AUSTRALIA

Established under the *Planning, Development and Infrastructure Act 2016*

March 2021





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 also to 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 the 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 achieves this is by creating more opportunities to participate in Design Review under this Local Design Review Scheme (the Scheme).

This Scheme sets out consistent procedural requirements for councils who wish to provide Local Design Review within their communities and through the use of Independent Design Review Administrators.

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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 and Local Government (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 in South Australia that will be assessed by relevant authorities appointed by councils.

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 under this Scheme 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 a 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 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.
- c) **Multidisciplinary**
Design Review should combine the perspectives of specialist experts, including architects, landscape architects and urban designers, with consideration of planning matters 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 proponent and relevant authority.
- 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. Facilitate collaboration between allied professionals.
5. Support South Australia's planning system to meet the objects of the Act in section 12, including to—
 - a) support and enhance the State's liveability and prosperity in ways that are ecologically sustainable and meet the needs and expectations, and reflect the diversity, of the State's communities by creating an effective, efficient and enabling planning system; and
 - b) promote certainty for people and bodies proposing to undertake development while at the same time providing scope for innovation; and
 - c) promote high standards for the built environment through an emphasis on design quality in policies, processes and practices, including by providing for policies and principles that support or promote universal design for the benefit of people with differing needs and capabilities.
6. Demonstrate practical application of the *Principles of Good Planning* identified in section 14 of the Act, particularly—
 - a) high-quality design; and
 - b) activation and liveability; and
 - c) sustainability.

1.6. Operation

This Scheme will come into operation on 1 July 2021.

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;

code of conduct means the code of conduct referred to in Part 8 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 Attorney-General's Department;

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;

Independent Design Review Administrator means the person or body recognised by the Department to administer a panel member pool 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 the Minister for Planning and Local Government;

ODASA means the Office for Design and Architecture SA;

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

1. Design review under this Scheme will be available to any class of development specified by the Planning and Design Code.
2. If a council determines to encourage certain development proposals to participate in design review under this Scheme by—
 - a) reducing the proponent application fee under section 3.1.2(d) of this Scheme; or
 - b) applying any other incentive,

then the council should do so consistently for all development proposals within that same class of development in a manner that is transparent and accessible to the public.

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 established by the Local Design Review Administrator; or
- b) in any other case – by a design panel established by an Independent Design Review Administrator in accordance with the provisions of this Scheme.

2.3. Registration as a Designated Entity

1. This section applies if a council has made a determination under section 2.2.
2. A council, or a group of two or more councils, may seek registration as a Local Design Review Administrator for the purposes of this Scheme.
3. 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.
4. An application for registration as a designated entity must—
 - a) be made to the Chief Executive of the Department; and
 - b) be in the approved form determined by the Chief Executive of the Department; and
 - c) include any information specified in the approved form; and
 - d) be accompanied by any prescribed registration fee.
5. The Chief Executive of the Department may, as they think fit, accept or refuse any application for registration as a designated entity under this Scheme.
6. Registration under this Scheme will be for a period of 3 years and may be renewed by the Chief Executive of the Department from time to time on a new application for registration under this Scheme.

2.4. Design Panel Membership

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

2.5. Panel Member 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 must have at least—
 - a) a tertiary qualification in a relevant field, such as—
 - i. Architecture; or
 - ii. Landscape Architecture; or
 - iii. Urban Design; and
 - b) 7 years of professional experience relating to that field.
3. In addition to the requirement in section 2.5.2, the designated entity must be satisfied that—
 - a) panel members are highly regarded within their field; and
 - b) panel members can communicate in a clear, objective and constructive manner in relation to design quality; and
 - c) the panel member pool provides a sufficient representation of the expert skills required for design review; and
 - d) panel members can fulfil the responsibilities outlined in section 5.2 to a high standard; and
 - e) panel Chairs can fulfil the responsibilities outlined in section 5.3 to a high standard.
4. The designated entity must provide the names of the successful panel member applicant(s) to ODASA 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 an instrument of appointment.
2. An instrument of appointment provided under this section must be accompanied by a copy of the code of conduct requirements under Part 8 of this Scheme.
3. The designated entity must ensure instruments of appointment for panel members are current and valid.

2.7. Induction of Panel Members

All panel members must successfully complete an induction program, including any training, in accordance with guidelines determined by ODASA, prior to undertaking design review under this Scheme.

2.8. Administrative Requirements

1. A designated entity must have sufficient resources to meet the requirements outlined in this Scheme.
2. ODASA must ensure that a record of current designated entities and their panel members is maintained and publicly accessible on the SA planning portal.

3. Applying for Design Review

3.1. 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 prescribed fee.
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 accept the application for design review.
5. The council and proponent may agree to undertake subsequent design review sessions before the relevant development application is lodged with the relevant authority.

3.2. Documentation

ODASA must ensure that the approved application form under section 3.1.2(a) of this Scheme is publicly accessible on the SA planning portal.

4. Preparing for Design Review

4.1. Establishing a Design Panel

1. If a constituent council receives a valid application for design review under this Scheme, the constituent council must take all reasonable steps within 5 business days to—
 - a) establish the design panel from the panel member pool with expertise suitable for the development proposal; and
 - b) confirm the date and time of the design review session with the panel members and proponent.
2. If a council that is not a constituent council receives a valid application for design review under this Scheme (and the council has made a determination under section 2.2), the council must forward the application to an Independent Design Review Administrator within 5 business days and request that they supply a design panel.
3. If section 4.1.2 applies—
 - a) the Independent Design Review Administrator must take all reasonable steps to establish the design panel from the panel member pool with expertise suitable for the development proposal and confirm with the council within 5 business days; and
 - b) the council must confirm the date and time of the design review session with the panel members and proponent.
4. Panel members should, so far as reasonably practicable, be the same persons when undertaking multiple reviews of the same project.

4.2. Preparing the Design Panel

1. Before a design review session takes place, the council must—
 - a) confirm the format of the session and coordinate the venue (if applicable); and
 - b) coordinate panel member, proponent and other stakeholder attendance; and
 - c) provide the design panel with reasonable information about—
 - i. any relevant planning instruments under Part 5 Division 2 of the Act, including specific policies or rules that are relevant to the proposal; and
 - ii. any other planning matter, design guidelines and government policy relevant to the proposal; and
 - iii. any local planning and design challenges, opportunities and priorities; and
 - iv. any other relevant matter.
2. Before a design review session takes place, panel members must—
 - a) review any information provided by the council that is relevant to the development proposal; and
 - b) identify any conflicts of interest and inform the designated entity of any such conflicts, before the session commences.
3. A panel member must not participate in any design review session where a conflict exists.

5. Undertaking Design Review

5.1. Role of the Council

1. The council must—
 - a) undertake a briefing with the design panel prior to the design review session; and
 - b) assist the panel Chair to minute the discussion from the design review session.
2. The council should provide a planning officer to—
 - a) participate in the briefing with the design panel; and
 - b) observe the design review session.

5.2. Role of the Design Panel

During the design review session, panel members must—

- a) communicate clearly, objectively and constructively (whether supportive or critical) in an accessible manner; and
- b) demonstrate strong critical and analytical skills; and
- c) treat all information acquired through performing any function relating to this Scheme confidentially.

5.3. Role of the Design Panel Chair

In addition to the responsibilities in section 5.2, the panel Chair must—

- a) lead and facilitate the design review session in a professional and considerate manner; and
- b) respectfully manage panel members, proponents or other stakeholders who express strong or conflicting opinions; and
- c) synthesise and summarise disparate or conflicting views; and
- d) summarise the design review discussion; and
- e) ensure the design review discussion is minuted accurately.

6. Design Advice

6.1. Preparing Design Advice

The design advice must be completed in a format determined by ODASA and—

- a) be an accurate summary of the design review session; and
- b) where possible, use clear and accessible language; and
- c) remain confidential until the relevant development application is lodged with the relevant authority.

6.2. Provision of Design Advice

1. The panel Chair must finalise the design advice and provide a copy to the council as soon as practicable.
2. The council must provide a copy of the finalised design advice to the proponent as soon as practicable.
3. It is intended that a copy of the finalised design advice be provided to the proponent within 5 business days after the design review session.

6.3. Correction of Errors

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

6.4. Lodging Design Advice with a Development Application

1. The proponent must provide a complete copy of the most recent design advice to the relevant authority with the relevant development application.
2. The proponent must include a response to the most recent design advice, including any changes made to the proposal since the most recent design review session.

6.5. 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.

6.6. Design Opinion on a Lodged Development Application

If a relevant authority requests that a council seek an opinion in relation to the design of a lodged development application, then the council should do so in a way that upholds the principles and objects outlined in sections 1.3, 1.4 and 1.5 of this Scheme.

7. Monitoring, Performance and Complaints

7.1. 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.

7.2. Annual Evaluation

1. The designated entity must undertake an annual evaluation of the operation of this Scheme in its area in a format determined by ODASA.
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).
4. The designated entity must provide the complete evaluation report and any feedback received under section 7.1 to ODASA within 3 months of the end of the financial year.

7.3. 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.

7.4. Complaints

1. A proponent may lodge a complaint to a council in relation to 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 a design review session.
2. A council may lodge a complaint to an Independent Design Review Administrator in relation to this Scheme, if the council—
 - a) believes that the Independent Design Review Administrator 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 a design review session.
3. A complaint made under this Scheme must—
 - a) be made in the form approved by the council or designated entity; and
 - b) contain particulars of the allegation on which the complaint is based; and
 - c) include any other information specified by the council or designated entity.
4. The council or 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.
5. 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) determine 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.

8. Code of Conduct

8.1. 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.

8.2. 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.*

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