



Agenda Report for Decision

Meeting Date: 29 June 2023

Item Name	Code Amendment Advice to the Minister for Planning – Early Commencement of the Tunnel Corridor and Asset Protection Code Amendment
Presenters	Jason Bailey and Nadia Gencarelli
Purpose of Report	Decision
Item Number	4.2
Strategic Plan Reference	4. Discharging Statutory Obligations
Work Plan Reference	4.2 Advise the Minister on Code Amendments
Confidentiality	Not Confidential (Release Delayed). To be released following final decision by the Minister for Planning on Early Commencement of the Code Amendment. Anticipated by August 2023.
Related Decisions	12 May 2022: SPC Workshop – Tunnel Corridor and Asset Protection Overlay Code Amendment 26 May 2022: Summary of Tunnel Corridor and Asset Protection Overlay Code Amendment

Recommendation

It is recommended that the State Planning Commission (the Commission) resolves to:

1. Approve the designation of this item as Not Confidential (Release Delayed), with the meeting papers for the item to be released following Early Commencement of the Code Amendment. Anticipated by August 2023.
2. Approve and authorise the Chair of the Commission to sign the advice to the Minister recommending approval of the Tunnel Corridor and Asset Protection Overlay Code Amendment for the purposes of Early Commencement, as provided in **Attachment 1**.
3. Authorise the Chair to finalise any minor amendments to the advice and attachments as required.

Background

The Tunnel Corridor and Asset Protection Overlay Code Amendment – now referred to as the Tunnel Protection Overlay Code Amendment (Code Amendment) – was initiated by the former Minister for Planning and Local Government, Josh Teague MP, on 10 January 2022, pursuant to section 73(2)(b)(ii) of the *Planning, Development and Infrastructure Act 2016* (the Act). The

Designated Entity for the Code Amendment is the Chief Executive of the Department for Infrastructure and Transport (CE DIT).

The Code Amendment forms part of the River Torrens to Darlington (T2D) project which is set to deliver the final section of the North-South Corridor, including the construction of two tunnels. The CE DIT is seeking early commencement of the proposed Code Amendment to ensure development is undertaken in a way which protects the future tunnels from changes in loadings beyond their engineering design limits, as well as intrusion to the Tunnel Exclusion Area prior to, and post-construction.

The Minister for Planning (the Minister), the Hon Nick Champion MP, has sought advice from the State Planning Commission (the Commission) on early commencement of the Code Amendment pursuant to section 78(3) of the Act. The Minister's letter to the Commission is contained in **Appendix A**.

The purpose of this report is therefore to provide the Commission with advice (**Attachment 1**) to be provided to the Minister in relation to the request for Early Commencement of the Tunnel Protection Overlay Code Amendment.

Discussion

Scope of the Amendment

The Code Amendment seeks to apply a new Tunnel Protection Overlay to land located within the vicinity of South Road to facilitate protection of the tunnels during their design, construction and ongoing operation. Specifically, the Code Amendment seeks to:

- Introduce the Tunnel Protection Overlay into the Planning and Design Code (the Code), and spatially apply it per the figures below.
- Include a new definition for 'regulated surface level' in the Code.
- Amend the Accepted Development Classification tables for zones within the Affected Areas to:
 - introduce additional Classes of Development that have the potential to impact on the T2D tunnels.
 - add Classification Criteria to assist with determining the potential to impact on the T2D tunnels.
- Amend the Deemed-to-Satisfy Development Classification tables for zones within the Affected Areas to add relevant Tunnel Protection Overlay policy to be considered in the assessment of certain Classes of Development.
- Amend Performance Assessed tables for zones within the Affected Areas to relevant Tunnel Protection Overlay policy to be considered in the assessment of certain Classes of Development.

The affected area and current zoning are shown in **Appendix B**.

Advice to the Minister

The attached advice to the Minister recommends that the Code Amendment be approved for the purposes of Early Commencement.

Strategic considerations

The Code Amendment seeks to create and spatially apply a new Overlay along the alignment of the T2D tunnels. The proposed Overlay is intended to protect nationally significant transport

infrastructure during both the construction and ongoing operation of the tunnels and can also be applied in other locations in future should the tunnels network be expanded upon.

The Commission has previously considered the merits of the policy and supported initiation of the amendment. In response to matters raised by the Commission, the Tunnel Protection Overlay has been drafted in a way which will not unduly impact upon existing or future development rights, but rather the referral triggers will ensure development is designed in a way to prevent any impacts on the tunnels. In this context, early commencement is considered appropriate to protect State significant infrastructure.

Conditions and requirements

The former Minister approved initiation of the Code Amendment, specifying conditions under section 73(5)(b) of the Act as outlined in **Attachment 1**.

The Commission specified stakeholders with which the Designated Entity must consult, pursuant to section 73(6)(e) of the Act; refer **Attachment 1**. These stakeholders have been identified in the Engagement Plan (**Attachment 1**).

The Commission also resolved to specify further investigations and information requirements under section 73(6)(f) of the Act (**Attachment 1**) in addition to those outlined in the Proposal to Initiate.

Investigations

The following investigations have been undertaken to inform this Code Amendment:

- T2D Design, December 2022
- Review of interstate Policy Precedents and Practices
- Identification of technical parameters
- Assessment of potential impacts on development potential within the Overlay.

Further detail regarding these investigations is contained within the draft Code Amendment (**Attachment 1**).

Statutory and Procedural Considerations

Pursuant to Section 78(3) of the Act, the Commission must be consulted prior to the Amendment coming into operation:

78–Early commencement

- (3) *The Minister must consult with the Commission before the Minister acts under subsection (1).*

The referral letter from the Minister is contained in **Appendix A**.

Pursuant to Section 78(1) of the Act, a notice is required to be published in the Gazette and, pursuant to Section 78(4) of the Act, the Amendment comes into operation on the day specified in the notice.

Pursuant to Section 78(5), the Minister must, as soon as practicable after the publication of a notice under subsection (1), prepare a report on the matter and cause copies of that report to be laid before both Houses of Parliament.

Next Steps

A letter to the Minister has been prepared in response to the Minister's referral to the Commission (**Attachment 1**). Following receipt of the Commission's advice, the Minister will may:

- Declare that the Amendment will come into operation on an interim basis by placing a notice in the Gazette; or
- Decline the request for early commencement.

Attachments:

1. State Planning Commission Advice to the Minister (#20115428).

Appendices:

- A. Letter of referral from the Minister (#20275132).
- B. Maps of the affected area (#20190861 and #20190862)

Prepared by: Nadia Gencarelli

Endorsed by: Brett Steiner

Date: 20 June 2023

20115428

3 July 2023

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Hon Nick Champion MP
Minister for Planning

By email: [REDACTED]

Dear Minister

**Advice on the Tunnel Corridor and Asset Protection Overlay Code Amendment –
Early Commencement**

I write in relation to your letter to Craig Holden, dated 22 June 2023, seeking advice from the State Planning Commission (the Commission) on the early commencement of the Tunnel Corridor and Asset Protection Overlay Code Amendment (the Code Amendment) under section 78(3) of the *Planning, Development and Infrastructure Act 2016*. The Chief Executive of the Department for Infrastructure and Transport is the Designated Entity responsible for undertaking this Code Amendment.

The Commission has considered the draft Code Amendment Report and the Engagement Plan and is satisfied that there is adequate justification for seeking early commencement. The Commission is also satisfied that all statutory obligations required at this stage of the process have been met.

I trust this information is of assistance in making your determination.

Yours sincerely



Stephanie Johnston
Acting Chairperson
State Planning Commission

Hon Nick Champion MP



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Mr Craig Holden
Chair
State Planning Commission

By email: saplanningcommission@sa.gov.au

Dear Mr Holden

I write to advise that I have received the draft Code Amendment for consultation relating to the Tunnel Protection Overlay Code Amendment. The Designated Entity responsible for leading this Code Amendment is the Chief Executive of the Department for Infrastructure and Transport (DIT).

The Chief Executive of DIT has requested Early Commencement for this Code Amendment to ensure development is undertaken in a way which protects the future tunnels from changes in loadings beyond their engineering design limits, as well as intrusion to the Tunnel Exclusion Area prior to, and post, construction.

Pursuant to section 78(3) of the *Planning, Development and Infrastructure Act 2016*, as Minister for Planning, I must consult with the State Planning Commission (the Commission) prior to declaring that the Code Amendment will come into operation on an interim basis.

Therefore, I request that the Commission consider the attached draft Code Amendment supplied by the Designated Entity, along with the Engagement Plan, and provide advice to me for consideration.

For further information, please contact Ms Nadia Gencarelli, Team Leader – Code Amendments, Planning and Land Use Services, on [REDACTED] or via email at [REDACTED].

Yours sincerely

Hon Nick Champion MP
Minister for Planning

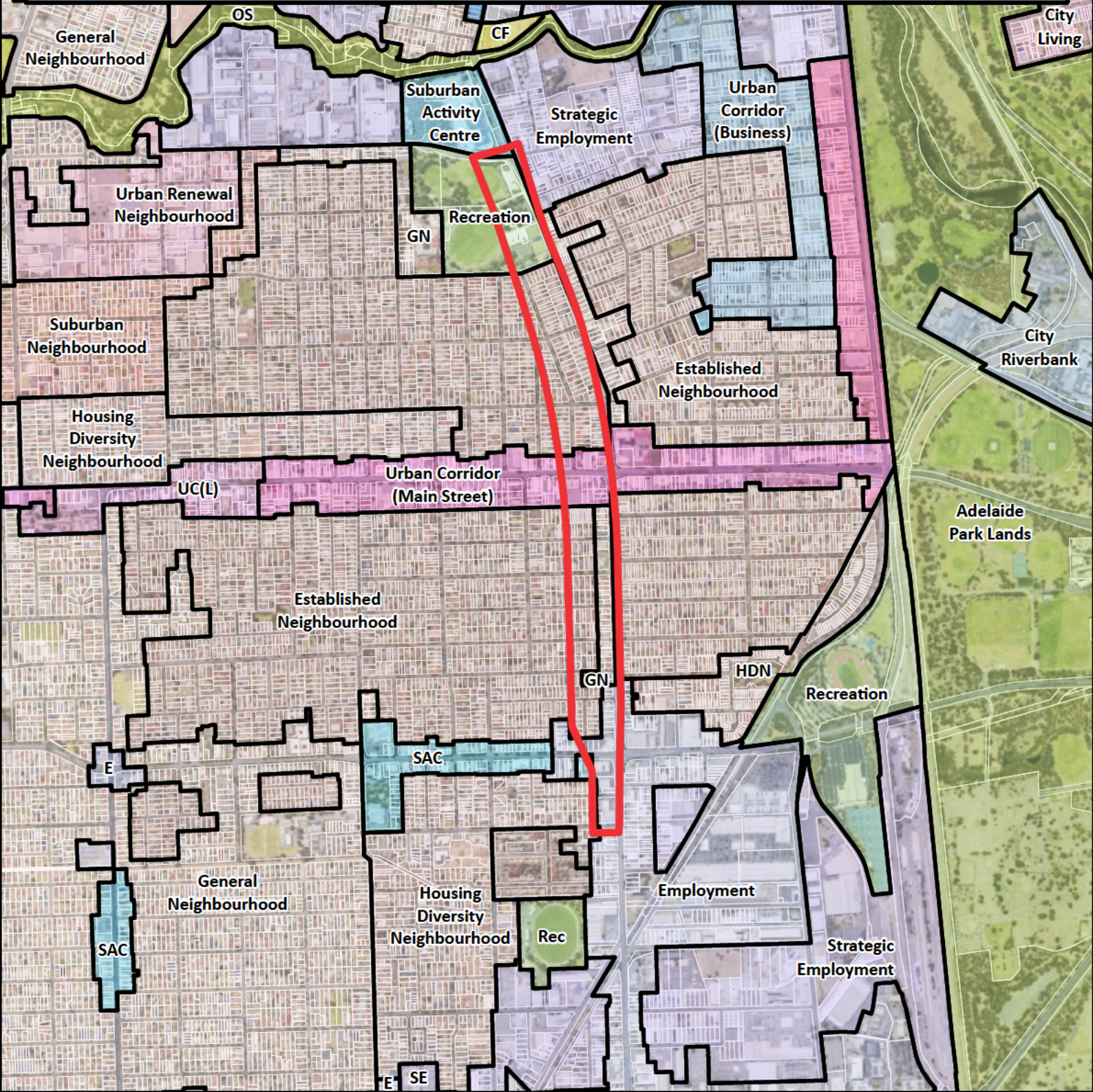
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Encl: Attachment 1 – Draft Tunnel Protection Overlay Code Amendment
Attachment 2 – Draft Amendment Instructions for Early Commencement
Attachment 3 – Engagement Plan



Tunnel Protection Overlay

Designated Entity: Department for Infrastructure and Transport



LGA: Marion, West Torrens, Mitcham, Unley,

Affected Area (ha): 33

Current Zone:

Proposed Zone: No zone change - application of new Tunnel Protection Overlay

