

Planning and Design Code Amendments

Version 2.1 (November 2024)



Government of South Australia

Department for Housing
and Urban Development

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Introduction

The Planning and Design Code (the code) sets out planning controls for the assessment of a development application under the *Planning, Development and Infrastructure Act 2016* (the Act).

The code is based on a framework that contains various elements called overlays, zones, subzones and general development policies. Together these elements provide all the rules that apply to a particular parcel of land.

The Act provides legislative framework for undertaking amendments to the code.

Code amendments can generally be categorised into two types:

- spatial changes – changes to the spatial application of existing zones, subzones, technical and numerical variations (TNV) and/or overlays.
- policy changes – including:
 - alterations to existing policy
 - creation of new general development policy
 - creation of new overlays, zones, subzones or TNV capabilities.

As the code applies throughout South Australia, changes to policy (including changes to zones and overlays) can have broad-reaching impact. This being the case, it is generally not appropriate for a designated entity – other than the Commission, CE or government agency – to amend policy, unless there are exceptional circumstances to justify the change.

This guide provides information about amending the Planning and Design Code and should be used alongside the following:

- [The Planning and Design Code Amendment Toolkit \(PDF 1.1MB\)](#) which provides step-by-step guidance, templates and forms to request and undertake an amendment to the code; and
- The [Community Engagement Charter toolkit](#), that includes templates and outlines the statutory obligations for engagement on code amendments; and
- The [Guide to the Planning and Design Code](#) that provides an overview of the code's structure and content.

Glossary of terms

In this information guideline, unless the contrary intention appears –

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

affected area means an area of land to which a proposed code amendment applies

CE means the Chief Executive of the Department for Housing and Urban Development

charter means the Community Engagement Charter

code means the Planning and Design Code: code.plan.sa.gov.au

code amendment means an amendment to the Planning and Design Code

Commission means the State Planning Commission

department means the department of the Minister responsible for the administration of the Act

designated instrument means the instruments set out in section 70 of the Act

designated entity means a person or entity authorised or approved to prepare a draft of a proposal to prepare or amend a designated instrument under section 73 of the Act

essential infrastructure includes:

- water infrastructure and sewerage infrastructure (*Water Industry Act 2012*)
- communications network
- electrical infrastructure
- gas infrastructure
- transport networks or facilities
- coast protection works of sand replenishment facilities
- health, education or community facilities

ERDC means the Environment, Resources and Development Committee of Parliament

Minister means the Minister for Planning

PlanSA Portal means the SA Planning Portal: plan.sa.gov.au.

private proponent means a person who has an interest in the land, as listed in section 73(2)(b) (vii) of the Act; this includes landowners and developers with a legal interest in the land

proponent means the Chief Executive of the department, another agency or instrumentality of the Crown, a joint planning board, a council, a provider of essential infrastructure, a scheme coordinator or a person who has an interest in land, as listed in section 73(2)(b) of the Act

Proposal to Initiate means the document prepared for the purpose of initiating a code amendment

scheme coordinator means someone responsible for preparing, developing and implementing infrastructure schemes initiated by the Minister.

Roles and responsibilities

The State Planning Commission

The Commission is responsible for ensuring the code is maintained, reflects contemporary values relevant to planning and responds readily to emerging trends or issues. The Commission undertakes code amendments to address significant state-wide issues, to update and improve policy and to address matters of a technical nature.

The Commission also:

- provides independent advice to the Minister on code amendments, at the initiation stage and in certain circumstances during the final determination stage
- provides a report to the ERDC following adoption of a code amendment that sets out information about the changes made to the code and engagement outcomes, amongst other matters.

Further information about the Commission can be found on the [State Planning Commission](#) website.

The Minister for Planning

The Minister is responsible for approving the initiation of code amendments by persons and entities other than the Commission, and for the final adoption of any amendments to the code.

The Minister can also make minor or operational amendments to the code that meet the criteria in section 76 of the *Planning, Development, and Infrastructure Act 2016* (the Act).

Environment, Resources and Development Committee of Parliament

The ERDC is responsible for undertaking an independent review of a code amendment once it is adopted into the code.

In addition to this statutory function, the ERDC also undertakes investigations in relation to a range of matters relating to the environment, land use consideration, planning and transport.

Further information about the ERDC can be found on the [Parliament South Australia - ERDC](#) website.

Councils

Councils play an important role in planning for growth and change within their local area. Identifying strategic policy amendments that address local conditions is a key function. Councils are also encouraged to identify areas of policy improvement within the code.

Code amendment types

Code amendments – section 73

With the approval of the Minister, the following people and entities may initiate an amendment to the code and undertake a code amendment process:

- the CE of the Department for Housing and Urban Development
- an agency or instrumentality of the Crown
- a council
- a joint planning board
- a provider of essential infrastructure
- a scheme coordinator
- a person who has an interest in the land – where the person is seeking to alter the way in which the code affects that land.

The CE generally undertakes code amendments which involve the rezoning of strategic sites and owned or otherwise managed by the South Australian Government.

The Commission can also lead a code amendment at the Minister's request or acting on its own initiative. The Commission does not require the Minister's approval to initiate this process. The Commission generally undertakes code amendments which seek to refine and improve policy.

Depending on the circumstances and extent of amendments sought, the above people and entities may request that the Commission or the CE undertake the code amendment on their behalf. However, there is no obligation for such requests to be accepted. Where the Commission or CE does agree to undertake a code amendment, agreements and funding arrangements would be put in place to ensure appropriate resourcing.

Early discussion with the department is encouraged if you:

- are contemplating the introduction of new policy (overlay, zone, subzone)
- are considering undertaking a heritage- or character-related code amendment
- have not undertaken a code amendment before, and would like some further guidance
- would like to request that the CE or Commission undertake a code amendment on your behalf.

Types of changes by proponent type

Given the state-wide nature of the code, there are rules in place to guide how policy is drafted and applied. This is to ensure consistency across the state, and to make sure that changes intended for specific locations don't have an unintended impact across a wider area. Further information about the code, including a summary of all zones, subzones and overlays and the rules about where/how each are applied, is in the [Guide to the Planning and Design Code](#).

In general, the following changes can be made by proponents:

| Proponent | Spatial Changes | | Policy Changes | | | | |
|--|---------------------------|---------------------------|------------------------------|----------|-------|----------|--------------------|
| | Overlays, zones, subzones | TNV (existing capability) | General development policies | Overlays | Zones | Subzones | New TNV capability |
| Commission | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| CE | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Agency of instrumentality of the Crown | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Council | ✓ | ✓ | ✗ | ? | ? | ✓ | ? |
| Joint planning board | ✓ | ✓ | ✗ | ? | ? | ✓ | ? |
| Provider of essential infrastructure | ✓ | ✓ | ✗ | ✗ | ? | ? | ? |
| Scheme coordinator | ✓ | ✓ | ✗ | ✗ | ? | ? | ? |
| Private proponent | ✓ | ✓ | ✗ | ✗ | ✗ | ? | ✗ |

- ✓ can change
 ? may change subject to agreement and localised application
 ✗ cannot change

All changes to code amendments must comply with the code drafting rules, outlined in the [Guide to the Planning and Design Code](#).

Private proponents

Landowners and people with a legal interest in the land can seek to undertake a code amendment. There are two suggested pathways for private proponents:

1. Request council undertake the code amendment

Councils may undertake a developer funded code amendment. The relevant council will have its own policies regarding how it considers individual requests for rezonings. Some councils have an established policy for developer funded amendments where the developer is required to either draft or pay for the proposed code amendment.

2. Prepare the code amendment themselves

The proponent can lead the code amendment; however, this will require the engagement of a qualified planning consultant to assist in preparing the code amendment.

Regardless of which pathway is used, it is recommended that in the first instance the relevant council be approached for preliminary advice as there may be proposals already in train or other matters which may be of relevance.

Regardless of who undertakes the code amendment process, a private proponent may also be required to enter into deeds and agreements for future infrastructure costs prior to final adoption of the code amendment.

Complying changes – section 75

Complying changes to the code are undertaken through a fast-track process that allows for zone, subzone or overlay boundary changes to the code that are consistent with a clear recommendation in a regional plan.

For this to occur, the proposed changes to the code must be clearly and expressly identified in the regional plan.

Updated regional plans are currently being prepared for:

- Greater Adelaide
- Kangaroo Island
- Eyre and Western
- Far North
- Yorke Peninsula and Mid North
- Limestone Coast
- Murray Mallee.

As regional plans are still being prepared, complying changes to the code are not currently available. Further information about regional plans can be viewed here: regional.plan.sa.gov.au

Minor or operational amendments – section 76

The performance of the code is constantly being monitored and regular updates made to address various policy matters.

The Minister may make a minor or operational change to the code by notice in the South Australian Government Gazette (section 76 of the Act). This can only be undertaken if the Minister (or delegate) considers that the change is consistent with one or more of the legislated criteria, including to:

- introduce changes in the form of the code that do not alter the effect of the underlying policy
- correct an error
- remove irrelevant material, duplication or inconsistencies
- provide consistency with any provisions made by the regulations
- give effect to the adoption, amendment or revocation of a precinct plan under the Urban Renewal Act 1995

- provide consistency with a change to an Environment and Food Production Area
- provide consistency with a development that has been substantially commenced or completed, which has been declared by the Minister as being an impact assessed development and subject to an Environmental Impact Statement
- include a state heritage place or change the designation of a place from being a state heritage place to a local heritage place (or vice versa) (on the basis of a recommendation or action from the South Australian Heritage Council)
- remove the listing of a state heritage place or local heritage place that has been demolished, destroyed or removed
- ensure the code accords with any plan, policy, standard, report or document prepared under another Act.

Members of the public can lodge a request to the Minister for a minor or operational amendment to the code through the [Request a change to the Code](#) page on the PlanSA portal. These requests should:

- clearly identify the error, inconsistency or irrelevant material within the code which should be amended; or
- identify and justify that the amendment meets one or more of the criteria provided under section 76 of the Act.

All requests will be assessed and triaged in accordance with its impact on development assessment. The timing of these amendments will depend on the number and urgency of requests.

The Minister must seek advice from the Commission in deciding on these amendments; however, for straightforward matters these roles will be delegated to the department.

The ERDC will not be consulted or referred a minor or operational amendment to the code.

Code amendment fees

Fees apply to cover the administrative costs of processing code amendments. These are set out under the [Planning, Development and Infrastructure \(Fees\) Notice](#).

The overarching principle underpinning the processing fees is that of “user pays” to recognise the substantial commercial benefits that may be achieved by an applicant seeking a code amendment that increases the value of their land.

There are three private proponent code amendment complexity streams – simple, moderate, and complex. The total code amendment fee increases relative to the complexity of the proposal. These costs have been determined based on the actual work effort of the department in processing and assessing private proponent led code amendments. For council led code amendments, fees may apply if a landowner or developer has funded the code amendment.

No processing fees will be charged where a council or state agency initiates a code amendment that will result in a community benefit (i.e. a code amendment recognising a new state heritage listing).

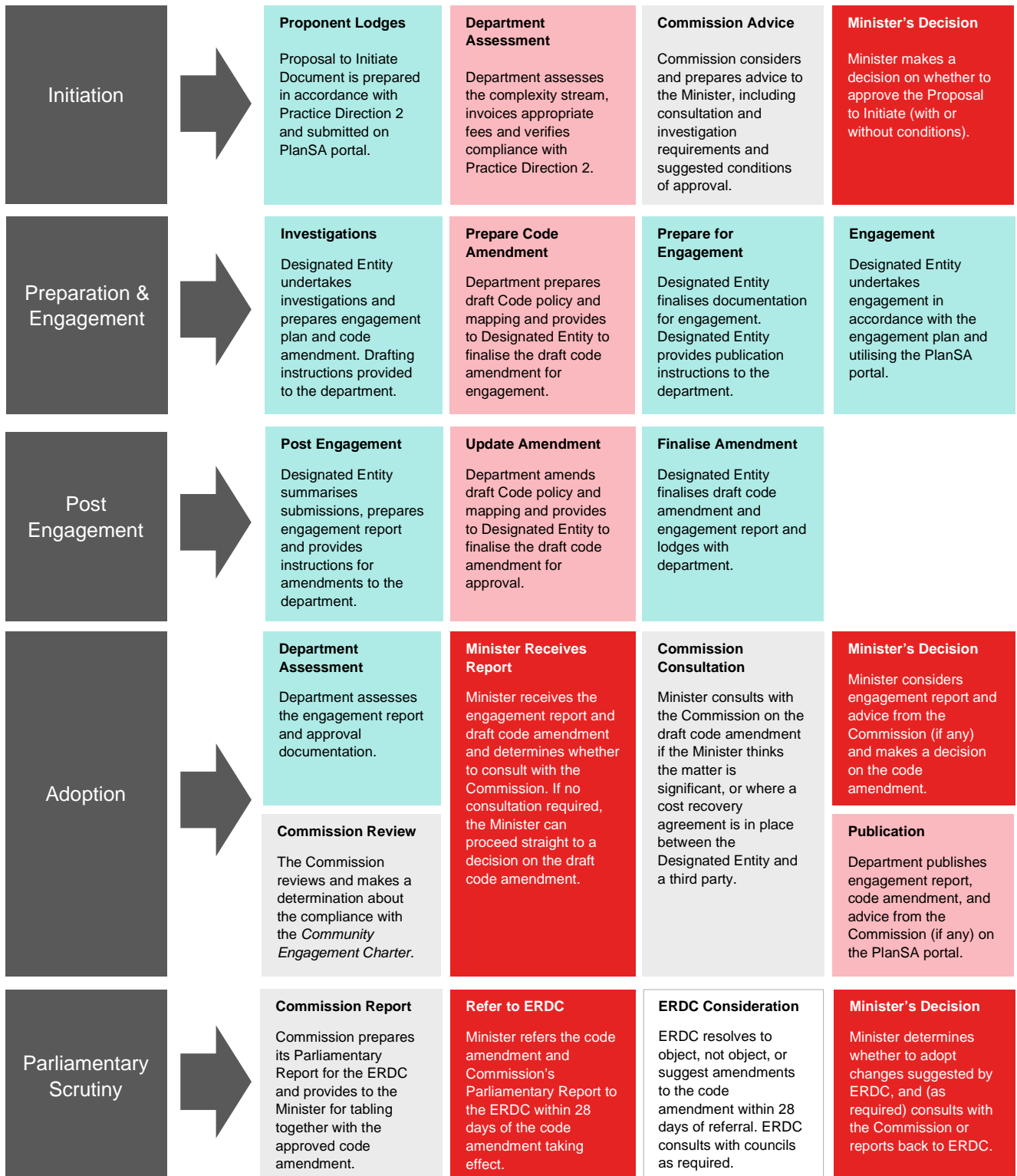
Proponents can refer to the [Chief Executive’s Policy – Service Standards and Code Amendment Fee](#) for detailed information on how the complexity of a code amendment is assessed.

Code amendment process (proponent-led)

The code amendment process includes several steps which must be taken before any changes to zoning or policy can be implemented.

The steps in the process for proponents undertaking a code amendment are shown in **Figure 1**.

Figure 1: Code amendment initiated by proponents



The steps identified in **Figure 1** are a guide only, and depending on conditions of initiation and whether early commencement applies, additional steps may be required.

Step-by-step guide

The [Planning and Design Code Amendment Toolkit](#) (the toolkit) provides practitioners with step-by-step guidance, templates and forms to request and undertake an amendment to the code.

This toolkit should be used alongside the following:

- the [Community Engagement Charter toolkit](#), that includes templates and outlines the statutory obligations for engagement on Code Amendments; and
- the [Guide to the Planning and Design Code](#) that provides an overview of the code's structure and content.

All the guides and templates referenced in the toolkit are available online through the PlanSA portal: plan.sa.gov.au

Step-by-step guidance is provided in the [Planning and Design Code Amendment Toolkit](#). A summary of the code amendment process is provided below.

Preliminary considerations

Planning practitioners and proponents will need to consider the following when providing advice about code amendments or considering whether a Proposal to Initiate should be prepared.

Determine whether the proposal is considered consistent with the key planning strategic documents:

- state planning policies
- relevant regional plans
- other strategic documents.

Consider any significant planning matters that may be relevant such as:

- site contamination
- infrastructure availability (including roads)
- native vegetation
- hazard management such as flooding and bushfire
- built form and design
- heritage
- land management agreements on adjacent or nearby sites
- land supply and demand (housing, industry, employment etc)

Private proponents should engage with the Chief Executive of the relevant council or joint planning board prior to lodging a Proposal to Initiate. Feedback from the council or the joint planning board should inform a preliminary assessment of the proposal. Evidence of this preliminary engagement is required when lodging the Proposal to Initiate.

It is also recommended that the proponent consults with the relevant State Member of Parliament prior to lodging the Proposal to Initiate.

Initiation

To initiate an amendment to the code, a proponent must lodge minimum documentation as outlined in [Practice Direction 2](#).

When the Proposal to Initiate documentation is completed and endorsed by the proponent it must be submitted through the PlanSA portal.

The department will:

- ensure that all mandatory requirements have been met and will advise the proponent if any further information is required to progress the Proposal to Initiate
- undertake a complexity assessment
- invoice lodgement and complexity assessment fee
- refer the proposal to specific government agencies
- provide advice to the Commission on its strategic assessment of the proposal.

The Commission will:

- consider the Proposal to Initiate and provide advice to the Minister
- advise the Minister regarding conditions to be placed on an approval
- specify additional investigations that must be carried out or any information that should be provided in preparing the code amendment (if applicable)
- specify any person or body that the Commission considers should be consulted on the code amendment (if applicable).

The Minister will consider the Commission's advice and decide on whether to initiate the proposed code amendment.

If approved, the proponent and relevant council and joint planning boards will be notified and the Proposal to Initiate will be published on the PlanSA portal.

Once a code amendment has been initiated, the person or entity responsible for leading the code amendment is referred to as the **designated entity**.

Streamlined Code Amendment

The introduction of a Streamlined Code Amendment process seeks to deliver a faster code amendment process for straightforward proposals.

Introduced in November 2024, Code Amendments may be eligible for a 'streamlined' process with submissions reaching the Minister for an initiation decision within 15 business days from verification.

A Code Amendment will be eligible for the streamlined process where the Proposal to Initiate:

- aligns with State Planning Policies and Regional Plans; and
- includes mandatory documentation and investigations; and
- is not complex (for example known infrastructure constraints).

Further information is available in the [Chief Executive's Policy – Service Standards and Code Amendment Fees 2024](#).

Preparation and engagement

Once the Proposal to Initiate has been approved, the designated entity will

- undertake investigations
- prepare the engagement plan and finalise documentation for engagement
- undertake engagement in accordance with the engagement plan and utilising the PlanSA portal.

The department will assist the designated entity with drafting code policy and mapping.

Detailed information for this stage is available in the [Planning and Design Code Amendment Toolkit](#) and the [Community Engagement Charter toolkit](#).

Engaging with government agencies

South Australian and Australian government agencies govern a range of different Acts applying to the state and within Australia. The state planning policies and regional plans recognise these Acts and how they interrelate with the planning system.

Identifying the overlays that are affected by a code amendment will assist in determining whether there will be agency interest in that code amendment. Government agencies may be involved in the different parts of the code amendment process by providing specialist advice in their area of expertise.

There may be matters of state interest applicable to a site being investigated for a code amendment. In some situations, these matters may result in an issue that could make the land unsuitable for the desired use (e.g. a hazard), or an inconsistency with the state planning policies and/or regional plan.

In these cases, it is likely that discussions with government agencies will be required to determine whether an initiation should proceed or not and, if the initiation proceeds, what investigations are required to address the matter.

A Proposal to Initiate may be referred to government agencies for review (prior to or after submitting for initiation) to ensure that adequate guidance is given to the designated entity in investigating issues, or to clarify issues that may be present.

Table: *Common matters of interest requiring referral to a government agency*

| Matters of interest | Government agency |
|---|--|
| Native title and Aboriginal heritage | Department of the Premier and Cabinet |
| Coast protection | Department for Environment and Water |
| Native vegetation and biodiversity | Department for Environment and Water |
| Transport infrastructure and services | Department for Infrastructure and Transport |
| Environment protection | Environment Protection Authority |
| Airport protection | Department for Infrastructure and Transport |
| Extractive industries and protection of resources | Department for Energy and Mining |
| Primary production (including aquaculture) | Primary Industries and Regions SA |
| State heritage protection | Department for Environment and Water |
| Fire protection | South Australian Country Fire Service |
| Infrastructure providers | SA Water and other relevant infrastructure providers |
| Housing affordability | SA Housing Authority |

It is expected that proponents engage those government agencies that have a direct interest in the code amendment.

It is recommended that proponents do not engage with those government agencies that may only have a remote interest in the code amendment. Where relevant, a detailed investigations report should be provided to each relevant agency with an interest in that area.

It is important that any issues raised by government agencies during engagement are resolved prior to the determination stage of the code amendment. If conflicting advice is received, the designated entity should endeavour to resolve the conflict; failing which, assistance may be sought from the department.

How to engage with government agencies

Most government agencies have developed systems and procedures for dealing with statutory engagement requirements under the Act including the code amendment requirements.

It is important for proponents to advise a government agency when engaging as a statutory requirement. It is recommended that agency engagement is streamlined by:

- highlighting, in a covering letter, key issues for the agency to address; this does not limit the extent of comments by the agency but does help in focusing the response
- meeting with key government departments and agencies early in the period for agency engagement for more complex issues
- forwarding copies of the summary of agency comments and the proponent's response to the relevant agency for reference and to facilitate further dialogue if an agency wishes to make further comment.

Post engagement

Once engagement has been completed, the designated entity will prepare an engagement report and provide instructions to the department for the final code amendment.

The designated entity will:

- review and summarise all submissions received
- undertake an assessment of the issues raised through engagement and determine whether any changes should be made to the proposed code amendment (further investigations may be required)
- prepare an engagement report in accordance with Practice Direction 2.

The engagement report and final code amendment is provided to the Minister for a decision.

Detailed information for this stage is available in the [Planning and Design Code Amendment Toolkit](#) and the [Community Engagement Charter toolkit](#).

Adoption

On receipt of the final engagement report and the code amendment, the department will assess the compliance of the engagement process against the Community Engagement Charter and may refer the code amendment to the Commission.

The Minister may consult with the Commission prior to making a decision.

Following engagement with the Commission (if required) the Minister may decide to:

- adopt the code amendment as proposed and as outlined in the engagement report; or
- make alterations to the proposed code amendment and adopt the code amendment as altered; or
- divide the code amendment into separate parts and adopt one or more of those parts; or
- determine that the code amendment should not proceed.

Implementation

The outcomes of the Minister's decision (adopt, alter and adopt or decline) will be published on the PlanSA portal within 5 business days – *the policy will not be in effect at this point*. The following documents will be published at this stage:

- engagement report prepared and provided to the Minister by the designated entity; and
- any advice provided by the Commission following consultation by the Minister on the proposed code amendment.

Once adopted, the code amendment will be implemented within the code. This process generally takes a minimum of 4 weeks from the Minister's decision to enable time to build the code amendment into the system and test it. The code amendment will have effect from the date on which this online implementation occurs.

The designated entity and the relevant council(s) will be directly notified of the code amendment coming into effect.

Parliamentary scrutiny

If the Minister decides to adopt the code amendment (with or without alterations), it is then referred to the ERDC within 28 days of the policy taking effect.

The ERDC must then resolve, within 28 days, to:

- not object to the code amendment
- suggest amendments to the code amendment; or
- object to the code amendment.

If the ERDC resolves to suggest changes to the code amendment, the Minister may:

- proceed to make those changes after consulting with the Commission; in this case, the designated entity will also be advised of any changes made to the code amendment in response to the ERDC's suggestions
- report back to the ERDC that the Minister is unwilling to make the ERDC's suggested changes.

If the Minister is unwilling to make changes suggested by the ERDC, and the ERDC decide to continue to object to the code amendment, copies of the code amendment must be laid before both Houses of Parliament. If either House of Parliament passes a resolution to disallow the code amendment, the code amendment from that point in time will no longer be in operation. Notice will be published in the South Australian Government Gazette and the code amendment will be reversed in the code.

Tools for amending the code

The mandatory requirements for lodging a code amendment are detailed in [Practice Direction 2 – Preparation and Amendment of Designated Instruments](#).

The [Planning and Design Code Amendment Toolkit](#) provides practitioners with step-by-step guidance, templates and forms to request and undertake an amendment to the Planning and Design Code.

This toolkit should be used alongside the following:

- The [Community Engagement Charter toolkit](#), that includes templates and outlines the statutory obligations for engagement on Code Amendments; and
- The [Guide to the Planning and Design Code](#) that provides an overview of the code's structure and content.

All the guides and templates referenced in the toolkit are available online through the PlanSA portal: plan.sa.gov.au

Early commencement of a code amendment

A code amendment can be brought into effect within the code at the same time as, or following, the start of public consultation. This is called early commencement.

Under section 78 of the Act, early commencement can only be used where the Minister forms the view that the code amendment is:

- necessary in the interest of the orderly and proper development of an area of the state; or
- required 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.

Code amendments on early commencement will be in effect for a period of 12 months or until the code amendment process is finalised (adopted/alterd and adopted/declined), whichever is sooner.

Approval from the Minister is required for early commencement. In making a decision on whether early commencement is appropriate, the Minister must also seek advice from the Commission. If early commencement approval is granted, the code amendment must then be Gazetted and implemented into the code. This being the case, there is often a period of 4-8 weeks between an approval for early commencement being granted and the code amendment taking effect.

It is important to note that if a development application is lodged during the early commencement period, the application must be assessed against the previous version of the code as well as the version of the code that has commenced early. If the outcome of the assessment differs, a decision cannot be made until the code amendment has been finalised.

Early discussion with the department is strongly encouraged if early commencement is being considered.

Outline Consents

Outline consent is a relatively new planning tool within the South Australian planning system that can be used to provide greater certainty to an applicant regarding specific elements of a proposed development at an earlier stage, without having to provide the same level or extent of information required to obtain planning consent.

Section 120 of the *Planning, Development and Infrastructure Act 2016* (the Act) provides for this concept of a 'provisional consent', stating that a relevant authority may, on application, grant a consent in the nature of an outline consent and that it may be done so in circumstances specified by [Practice Direction 18 – Outline Consent 2023](#).

The Practice Direction specifies that an outline consent is able to be assessed against a *relevant amendment* to the Code which means that a proposal to amend the Code has been initiated. The result being that a development proposal can be submitted against the Planning Rules and the new policy proposed through a Code Amendment.

Early discussion with the department is strongly encouraged for proponents considering submitting an outline consent alongside a Code Amendment.

For more information visit
plan.sa.gov.au



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