PRACTICE DIRECTION 2

Preparation and Amendment of Designated Instruments

STATE PLANNING COMMISSION

This practice direction is issued by the State Planning Commission under section 42 of the *Planning, Development and Infrastructure Act 2016*.

Introduction

Section 42 of the *Planning, Development and Infrastructure Act 2016* (the Act) allows the State Planning Commission (the Commission) to issue practice directions for the purposes of the Act. Generally, practice directions specify procedural requirements or steps in connection with a matter arising under the Act. In certain cases, the Act requires a particular matter to be addressed or dealt with by a practice direction.

This practice direction is provided by the Commission to support the operation of Part 5 Division 2 Subdivision 5 of the Act with respect to the requirements for:

1. Amendments to the Planning and Design Code (the Code).
2. Engagement required by the Community Engagement Charter (the Charter), which is to be undertaken and reported on under section 73 of the Act.
3. The information requirements for requesting a Complying Change to the Code after completing a Regional Plan under section 73 of the Act.
4. The information requirements for requesting early commencement of a Code Amendment under section 78 of the Act.

Part 1 – Preliminary

1 – Citation

This practice direction may be cited as the *State Planning Commission Practice Direction 2 – Preparation and Amendment of Designated Instruments*.

2 – Commencement of operation

This practice direction came into operation on 9 August 2018, and was varied on:

- 28 November 2019
- 1 April 2021
- 27 May 2021
- 3 June 2022

Version 6 of this practice direction commences operation on 22 November 2024.

Superseded by Version 7 dated 10 February 2025

3 – Object of practice direction

The object of this practice direction is to specify:

1. Requirements under section 73 of the Act for the preparation of a proposal to initiate, consult and lodge for approval an amendment to the Code.

2. How, under section 73 of the Act, engagement (as required by the Charter) is to be undertaken and reported on in relation to the preparation or proposed amendment of a designated instrument.

3. Requirements under section 75 of the Act for requesting a complying change to the Code.

4. Requirements under section 78 of the Act for requesting early commencement of a Code Amendment.

4 – Interpretation

In this practice direction, 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.

Charter means the Community Engagement Charter.

Code means the Planning and Design Code.

Code Amendment means an amendment to the Planning and Design Code.

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.

Local Heritage Criteria means the criteria for designation as a place of local heritage value in the Code, as provided under section 67(1) of the Act.

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 a “Proposal to Initiate a Code Amendment” document, prepared in accordance with this practice direction for the purpose of initiation of amendments to the Code under section 73 of the Act.

Private Proponent means a provider of essential infrastructure or a person who has an interest in the land, as listed in section 73(2)(b)(v) or (vii) of the Act.

Significant Tree Criteria means the criteria for declaration of a tree or stand of trees as significant tree(s) in the Code, as provided under section 68(1) of the Act.

Strategic directions means relevant strategic directions sourced primarily from State Planning Policies and Regional Plans but may be sourced from other State Policies.

Note: Section 12 of the Legislation Interpretation Act 2021 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.

Part 2 – Planning and Design Code Amendments

5 –Initiating a Code Amendment

(1) To initiate a Code Amendment, the proponent must lodge the following documents to the Department via the SA Planning Portal:

(a) a Proposal to Initiate

(b) SA Planning Portal Publication Instructions – for Initiation

(c) Heritage Report with datasheet(s) and analysis of historic themes (relevant proposals only)

(d) Significant Tree report with description/s and assessment/s (relevant proposals only)

(2) The Proposal to Initiate must set out:

Designated Entity

(a) With respect to proposals from Private Proponents, a request for either the Private Proponent or the Chief Executive of the Department to be the Designated Entity responsible for undertaking the Code Amendment process.

Professional Expertise

(b) Where the Private Proponent will be the Designated Entity responsible for undertaking the Code Amendment process, the name, qualifications and experience of practitioner/s that will undertake the Code Amendment process (including any engagement) for or on behalf of the Private Proponent. In this case, the relevant practitioner(s) must have the following qualifications and experience:

(i) A relevant planning qualification, as set out in Schedule 1 of the *Accreditation Authority's Qualifications, Skills & Experience Requirements for Accredited Professionals*

(ii) A minimum 5 years full time or equivalent experience in role(s) using any one or more of the following skills:

a. Plan making, including strategic planning, master planning and structure planning.

b. Planning policy development, review and/or policy interpretation and advice.

c. Plan implementation including development assessment and statutory planning.

d. Place-making and urban design.

Code Policy

(c) An outline of:

(i) any overlay, general development policy, zone, subzone or technical or numeric variation in the Code being proposed for amendment; and/or

(ii) the intended spatial application of an overlay, zone, subzone or technical or numeric variation in the Code over an identified area.

Affected Area

(d) A map or description of the Affected Area.

State Planning Policies

(e) Identification of the relevant principles or objectives of the State Planning Policies and an assessment of the proposed Code Amendment's alignment with those State Planning Policies.

Regional Plan

(f) Identification of relevant regional plans and assessment of how the matters or issues proposed to be addressed by the proposed Code Amendment will relate to the relevant regional plan.

Consultation

(g) In the case where a Private Proponent is the Designated Entity, evidence that the Private Proponent has undertaken preliminary consultation with the Chief Executive Officer (or delegate) of the relevant council and/or with a relevant Joint Planning Board on the Proposal to Initiate and details of any matters raised on the Proposal to Initiate as a result.

(h) If details on any matters for the Proposal to Initiate are not received by the Private Proponent within 15 business days after the request is made in (g), the Private Proponent may presume that the Chief Executive Officer and/or relevant Joint Planning Board does not desire to provide comment on the Proposal to Initiate.

(i) Information regarding any consultation that has already occurred with respect to the proposed Code Amendment.

(j) Details of further consultation proposed to be undertaken with respect to the proposed Code Amendment.

Planning Merit Statement

(k) Provide a statement detailing how the proposed Code Amendment relates to strategic directions and outlines desired policy / development outcomes and anticipated residential / employment yields.

Investigation Information

(l) Information regarding any investigations which have already been undertaken with respect to the proposed Code Amendment.

(m) Commitment to undertake further investigations to support the proposed Code Amendment including the following as applicable:

(i) infrastructure (road, civil, corridor).

(ii) service infrastructure (water, wastewater, stormwater, electricity, gas, telecommunications).

(iii) cultural and heritage significance (search of the Register of Aboriginal Sites and Objects).

(iv) Code policy (zone, overlay, TNVs, concept plan).

(v) hazard risk (analysis of relevant overlays and site conditions).

(vi) the extent to which there are social, economic, land use, built form or environmental features that present a barrier to the outcomes sought.

(n) High-level details of any infrastructure required to support development arising through the proposed Code Amendment and how that infrastructure will be provided (for example potable water and sewerage connection requirements).

(o) Where known, details of any infrastructure agreement (or agreements) or infrastructure scheme which will need to be established or entered into in connection with the proposed Code Amendment.

(3) The SA Planning Portal Publication Instructions – for Initiation must set out:

(a) a summary of the Code Amendment in plain English, which will be published on the SA Planning Portal.

(b) where possible, an indication of when consultation may begin.

(4) To initiate a Code Amendment which is intended to designate a place as a place of local heritage value, the Proponent must provide a report which:

(a) includes a heritage datasheet for each proposed Local Heritage Place, which includes:

(i) all relevant property details and descriptions (including images);

(ii) historical background and thematic analysis;

(iii) a statement of heritage value;

(iv) an assessment against the Local Heritage Criteria; and

(v) the extent of listing (including any exclusions).

(b) includes an analysis of historic themes of importance to the area;

(c) is prepared by a heritage architect, historian or person with similar qualifications, skills or experience; and

(d) is otherwise prepared in accordance with any guidelines prepared and published by the Commission under section 67(2)(c) of the Act.

(5) To initiate a Code Amendment which is intended to designate a tree (or stand of trees) as a significant tree (or trees), the Proponent must provide a report which:

(a) includes relevant details and descriptions of the tree or stand of trees (including images as necessary).

(b) includes an assessment of the tree (or stand of trees) against the Significant Tree Criteria.

(c) is prepared by an urban planner, arborist or person with qualifications, skills or experience relevant to the assessment in the report.

6 –Preparation of a draft Code Amendment (prior to consultation)

(1) Where the Designated Entity is any party other than the Commission or the Chief Executive of the Department, then prior to consultation occurring on a draft Code Amendment, the Designated Entity must:

(a) carry out investigations and obtain such information:

(i) as provided in the Proposal to Initiate approved by the Minister;

(ii) as required under any conditions imposed by the Minister under section 73(5)(b) of the Act; and

(iii) as specified by the Commission under sections 73(6)(e) or 73(6)(f) of the Act;

(b) provide the Department with:

(i) written instructions (in a form acceptable to the Department) that set out the intent of the proposed Code Amendment for the purposes of the Department writing the draft policy for inclusion in the draft Code Amendment; and

(ii) mapping instructions or a description of the Affected Area (in a form acceptable to the Department) in order to enable the Department to prepare and provide to the Designated Entity, mapping which is suitable for inclusion in the draft Code Amendment.

(c) prepare the draft Code Amendment in accordance with the approved Proposal to Initiate and any conditions imposed by the Minister under section 73(5)(b) of the Act and the requirements of this Practice Direction;

(d) provide the Department with written instructions (in a form acceptable to the Department) to prepare the SA Planning Portal for consultation on the draft Code Amendment; and

(e) provide the Department with the engagement plan prepared (and approved, if required) under these Practice Directions, for the purpose of the Department publishing the engagement plan on the SA Planning Portal.

(2) Where an engagement plan is amended by a Designated Entity during any period of consultation or at any time prior to finalisation of the engagement report under these Practice Directions, the Designated Entity will provide the Department with the engagement plan (as updated) for the purpose of the Department publishing the updated engagement plan on the SA Planning Portal.

7 –Requirements for a draft Code Amendment

(1) A draft Code Amendment must be supported by the following information:

(a) an explanation of the current code policy as it applies to the Affected Area (at the time of preparation of the draft Code Amendment);

(b) an explanation of the amendments to the Code policy proposed for the Affected Area;

(c) an assessment of the strategic planning outcomes intended to be achieved through the draft Code Amendment, including an analysis of the consistency of the draft Code Amendment with the relevant provisions of State Planning Policies, the Regional Plan and any other relevant strategic plans;

(d) a summary and explanation of the investigations undertaken and how these support the draft Code Amendment; and

(e) an explanation of any infrastructure or services required to support development facilitated by the proposed Code Amendment, and an explanation of how and when the infrastructure will be provided.

8 –Objectors to local heritage listings

(1) In the case of a Code Amendment that proposes to designate a place as a Local Heritage Place under section 67(1) of the Act, the Commission will give the owner of the land (if an objection was received) reasonable opportunity to make a submission to the Commission on the proposed designation.

Part 3 – Consultation for Designated Instruments

9 – Preparation of an Engagement Plan (prior to consultation)

(1) The Designated Entity is responsible for preparing an engagement plan that:

(a) meets the principles and performance outcomes of the Charter;

(b) describes the persons or bodies to be consulted on the proposed amendment of the Designated Instrument, which must include any persons or bodies:

(i) required to be consulted with under a condition imposed by the Minister under section 73(5) of the Act;

(ii) specified by the Commission under section 73(6)(e) of the Act; and

(iii) who must be consulted with under the Charter.

(c) outlines any relevant previous engagement undertaken to inform the proposal;

(d) describes the evaluation framework for the engagement.

(2) All engagement plans which relate to proposed preparation of or amendment to a State Planning Policy or a Regional Plan must be submitted to the Commission for approval prior to commencement of formal engagement on the proposal.

(3) An engagement plan relating to a proposed amendment to the Code or a Design Standard does not need to be approved by the Commission or the Minister, unless a condition has been imposed by the Minister under section 73(5) of the Act which requires such approval (in which case the condition will apply).

10 – Preparation of an Engagement Report (following consultation)

(1) At the completion of engagement on a proposal to prepare or amend a Designated Instrument, the Designated Entity must provide the Department with:

(a) if amendments to the proposal are required:

(i) written instructions (in a form acceptable to the Department) that set out any changes to the draft Designated Instrument for the purposes of the Department updating and providing the draft policy for inclusion in the draft Designated Instrument; and/or

(ii) mapping instructions or a description of the Affected Area (in a form acceptable to the Department) in order to enable the Department to prepare and provide to the Designated Entity, mapping which is suitable for inclusion in the draft Designated Instrument;

(b) the updated draft Designated Instrument or amendment to the Designated Instrument in the form of amendment instructions (once finalised by the Designated Entity, incorporating any amendments); and

(c) a final engagement report as required under section 73(7) of the Act and prepared in accordance with these Practice Directions, for the purpose of the Department arranging for the engagement report and draft Designated Instrument to be furnished to the Minister.

(2) An engagement report required under section 73(7) of the Act must set out:

(a) details of the engagement undertaken and how that engagement met the engagement plan and reasons for variations (if any) to the engagement plan;

(b) the outcome of the engagement including a summary of the written submissions or feedback received;

(c) any proposed changes to the proposal to prepare or amend a Designated Instrument (when compared with the proposal that was engaged on) and the reasons for those proposed changes. This should specifically indicate:

(i) where changes are proposed to the Designated Instrument based on or as a result of the engagement; and

(ii) any other changes which are proposed based on or as a result of additional investigations or information which was not available when the proposal was released for engagement.

(3) The engagement report must also include an evaluation of the effectiveness of the engagement that considers whether:

(a) the principles of the Charter have been achieved; and

(b) all mandatory requirements identified in the Charter have been met (where the consultation category is applicable).

(4) The engagement report will be placed on the SA Planning Portal by the Department:

(a) in relation to a regional plan, the Code or a design standard – five business days after the Minister has made a decision on the proposal to prepare or amend the Designated Instrument under section 73(10) of the Act; or

(b) in relation to a State Planning Policy – five business days after the Governor has approved the preparation or amendment of a State Planning Policy under section 73(12)(a) of the Act.

Part 4 – Complying changes to the Code

11 –Complying Changes to the Code

(1) A request for the Minister to agree to a complying change to the Code under section 75 of the Act must be provided to the Department and must include the following information:

(a) description of the relevant recommendations in the Regional Plan which relate to the proposed Code Amendment, including any specific maps or other specific information which clearly and expressly identify the changes relevant to the proposed Code Amendment;

(b) a summary of any consultation which has occurred in accordance with the Charter in relation to the proposed Code Amendment or the relevant Regional Plan. This should include a copy of the engagement report prepared for the relevant Regional Plan and any additional consultation that has occurred for the proposed Code Amendment;

(c) written instructions (in a form acceptable to the Department) that set out the intent of the proposed Code Amendment for the purposes of the Department writing the draft policy for inclusion in the draft Code Amendment; and

(d) mapping instructions or a description of the Affected Area (in a form acceptable to the Department) in order to enable the Department to prepare and provide to the Designated Entity, mapping which is suitable for inclusion in the draft Code Amendment.

Part 5 – Early Commencement of a Code Amendment

12 – Early Commencement of a Code Amendment

(1) A request for early commencement of a Code Amendment under section 78 of the Act must be provided to the Department and must include:

(a) explanation, justification and evidence as necessary to demonstrate how early commencement of the Code Amendment is:

(i) necessary in the interest of the orderly and proper development of an area of the state; and

(ii) required in order to counter applications for undesirable development (which should identify possible future development that would detract from or negate the object of the proposed Code Amendment) ahead of the outcome of consideration of the Code Amendment;

(b) written instructions (in a form acceptable to the Department) that set out the intent of the proposed Code Amendment for the purposes of the Department writing the draft policy for inclusion in the draft Code Amendment; and

(c) mapping instructions or a description of the Affected Area (in a form acceptable to the Department) in order to enable the Department to prepare and provide to the Designated Entity, mapping which is suitable for inclusion in the draft Code Amendment.

This Version 6 of Practice Direction 2 supersedes the current Version 5 and Version 5 is hereby revoked.

Issued by the State Planning Commission on 22 November 2024.

Note: This Practice Direction commences operation in accordance with clause 2 ‘Commencement of operation’.

Version 6: Commences operation on 22 November 2024

Version 5: Commences operation on 3 June 2022

Version 4: Commences operation on 27 May 2021

Version 3: Commences operation on 1 April 2021

Version 2: Commenced operation on 28 November 2019

Version 1: Commenced operation on 9 August 2018