

# LOCAL DESIGN REVIEW CODE AMENDMENT

By the State Planning Commission (the Designated Entity)  
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# 1. CONTEXT

## 1.1. Planning and Design Code

The Planning and Design Code (the Code) is a statutory instrument under the *Planning, Development and Infrastructure Act 2016* (the Act). The Code sets out the rules that determine what landowners can do on their land.

For instance, if you want to build a house, the Code rules will tell you how high you can build and how far back from the front of your land your house will need to be positioned. The Code will also tell you if any additional rules apply to the area where your land is located. For example, you might be in a high bushfire risk area or an area with specific rules about protecting native vegetation.

The Code is based on a framework that contains various elements called overlays, zones, sub zones and general development policies. Together these elements provide all the rules that apply to a particular parcel of land. An outline of the Code framework is available on the PlanSA portal.

The State Planning Commission (the Commission) is responsible for ensuring the Code is maintained, reflects contemporary values and responds to emerging trends and issues.

## 1.2. Amending the Planning and Design Code

From time to time the Code may need to be amended. The legislative process for amending the Code is outlined in section 73 of the Act.

The Commission, acting as the Designated Entity for this Amendment, is required to undertake the following process:



## 2. LOCAL DESIGN REVIEW CODE AMENDMENT

### 2.1. Purpose of the Amendment

Section 121 of the Act enables the Minister to establish a Design Review scheme where a person who is considering undertaking types of development specified in the Code may apply to a design panel for design advice. The design advice is provided to the proponent to assist with design development and to the relevant authority for consideration during development assessment.

The Office for Design and Architecture SA (ODASA) prepared the Local Design Review Scheme for South Australia (the Scheme) to meet the provisions of the Act in close collaboration with the Commission, council staff from across the state, representatives from peak industry bodies and interstate government agencies with experience operating Design Review programs.

The draft Scheme was available for public comment for eight weeks from 26 June to 21 August 2020.

The Minister approved the Scheme in February 2021. The approved Scheme and the Engagement Summary Report are available to view on the [PlanSA portal](#)<sup>1</sup>.

The Local Design Review Code Amendment (the Amendment) is now required to give effect to the Scheme by enabling councils to specify classes of development to be eligible for Local Design Review in their area.



*Cover of the Local Design Review Scheme*

<sup>1</sup> [plan.sa.gov.au/development\\_applications/case\\_management\\_services/design\\_review](http://plan.sa.gov.au/development_applications/case_management_services/design_review)

## 2.2. Affected area

The Amendment will give effect to the Local Design Review Scheme across South Australia by enabling participating councils to specify eligible classes of development within their area under section 121(1) of the Act.

## 2.3. Summary of the Amendment

### 2.3.1. Pre-existing policy

Prior to this Amendment, there was no policy relating to Local Design Review within the Code.

### 2.3.2. New policy

This Amendment will introduce the following provisions into Part 5 of the Code, 'Table 2 – Specified matters and areas identified under the *Planning, Development and Infrastructure Act 2016*':

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- (1) Development within the ambit of subclause (2) is specified as a class of development for the purposes of section 121(1) of the Act.
  - (2) Development that is—
    - (a) within the area of a council that has determined to make design review available in its area by participating in the scheme determined by the Minister for the purposes of section 121 of the Act; and
    - (b) a form of development that is, or has the potential to be, either performance assessed development or restricted development that is within a class of development that has been—
      - i. selected by the council as a class of development for the purposes of this clause; and
      - ii. specified by the Chief Executive by a notice published on the SA planning portal for the purposes of this clause.
  - (3) A council may from time to time vary the classes of development applying in its area under this clause by a further notice published by the Chief Executive on the SA planning portal at the request of the council.
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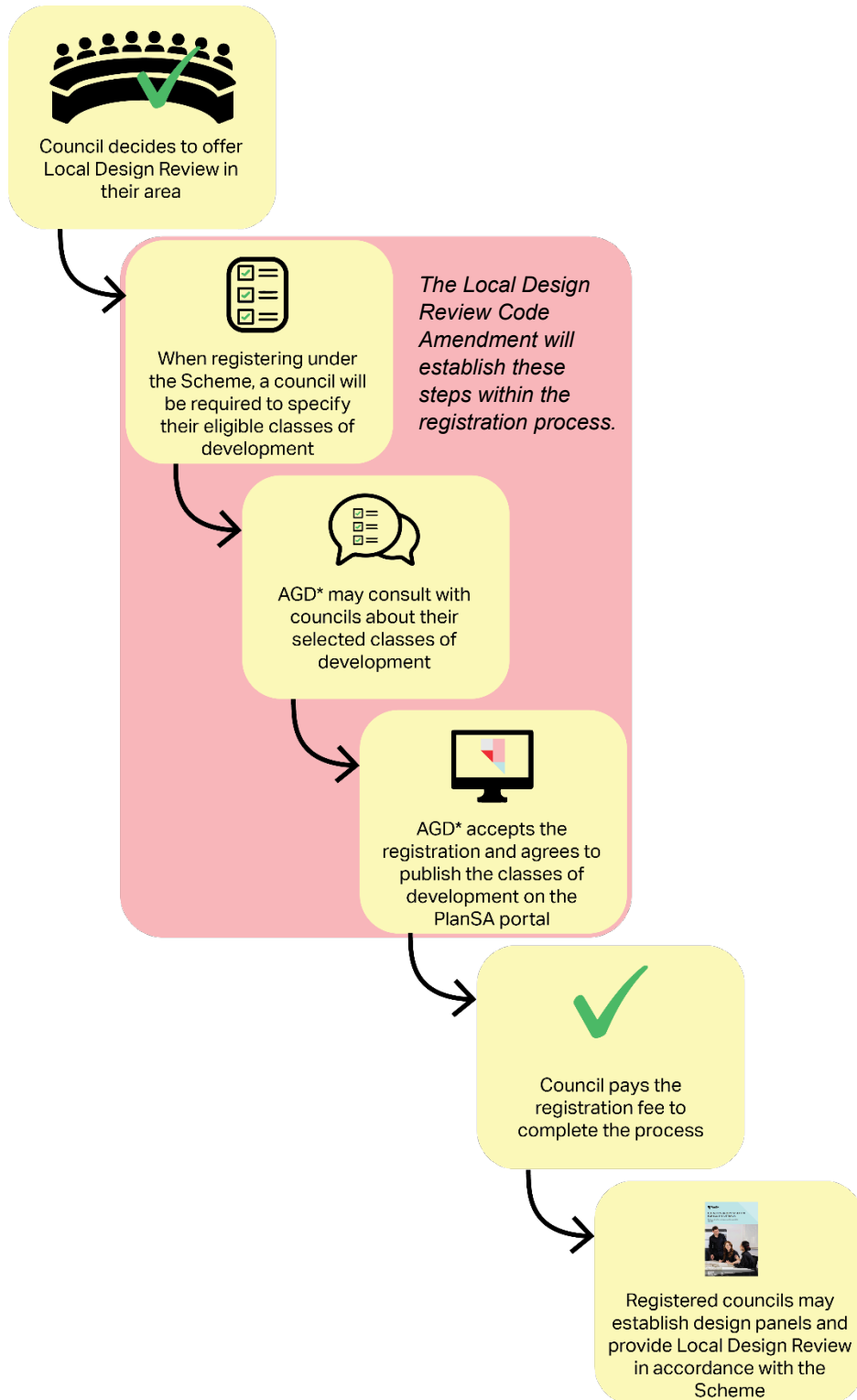
The new policy provisions are also provided in **Attachment A**.

### 2.3.3. Outcomes

This Amendment will enable a process where councils can specify eligible classes of development to be eligible for Local Design Review in their area. This process will be completed by a council when they register to participate in the Scheme.

The Amendment also requires the Chief Executive of the Attorney-General's Department to publish and maintain a register of participating councils and their selected classes of development on the PlanSA portal.

An overview of the registration process and the steps enabled by this Amendment are provided in the following process diagram.



Overview of the registration process for councils under the Local Design Review Scheme. The steps enabled by this Amendment are highlighted in pink.

### 3. ENGAGEMENT

Public consultation on the draft Amendment was undertaken from 12 August to 27 September 2021 (six weeks) in accordance with the Commission's approved Engagement Plan.

The consultation process built upon the collaborative approach undertaken by ODASA staff to develop the Scheme.

The Commission has prepared an Engagement Report that details the engagement process and outcomes relating to the Amendment, which is available on the PlanSA portal.

#### 3.1. Summary

Overall, 22 responses were received in relation to the draft Amendment:

- 14 written submissions:
  - nine from councils
  - five from industry bodies within the planning, design and development sectors
- seven survey responses were submitted via YourSAy
- one comment was posted on the YourSAy forum

#### 3.2. Outcomes

Of the 14 written submissions:

- most respondents (10) supported the proposed Amendment or made no comment or objection in relation to the draft provisions
- one respondent did not support the proposed Amendment as it 'would potentially see it [Local Design Review] used for such a wide class of developments'
- two respondents suggested a change be made to the proposed provisions in order to improve early proponent access to Local Design Review
  - this change is supported and reflected in the updated Amendment provisions
- one respondent did not specify whether or not they supported the proposed Amendment

Key themes arising from the written submissions are summarised as follows:

##### **Theme 1: intent and purpose of the Amendment**

Overall, the technical nature of the proposed Amendment and its purpose to give effect to the Scheme was acknowledged and understood by respondents

##### **Theme 2: early access to Local Design Review**

Two respondents (a council and an industry body) suggested a change to the wording in clause 2(b) of the proposed Amendment to improve early proponent access to Local Design Review. This change is supported and detailed in the next section of this document.

### **Theme 3 – eligible classes of development**

The proposed Amendment would enable councils to specify classes of development to be eligible for Local Design Review in their area. A number of respondents agreed that the eligible classes of development should be broad in order to:

- encourage greater uptake of the Scheme (by councils and proponents)
- recognise the different issues that may arise between council areas (inner, middle and outer metropolitan areas and regional areas)
- provide councils with flexibility to tailor the manner in which the Scheme could be applied within their area

Two respondents raised concerns that the list of development classes provided in Attachment B of the Amendment document was too broad.

Attachment B outlined classes of development which may be eligible for Local Design Review. It was stated in the documentation that this list was provided for guidance only and that it was informed through consultation with council staff and industry representatives prior to consultation on the proposed Amendment.

Two respondents acknowledged the purpose of Attachment B; one expressed support for the list, and the other suggested further additions should it remain available.

### **Theme 4: general commentary**

Several respondents provided general feedback on other matters, including the Scheme and how it may be implemented at the local level. This feedback is considered out of scope for this Amendment consultation opportunity but has been summarised in the Commission's Engagement Report.

## **3.3. Changes to the draft Amendment resulting from engagement**

Two respondents (a council and an industry body) suggested a change to the wording in clause 2(b) of the proposed Amendment that would improve early proponent access to Local Design Review. The respondents also believed this change would avoid the need for council staff 'to undertake a quasi-verification to determine whether the development is performance assessed or restricted', which could result in 'an administrative burden and substandard customer service'.

This suggestion is supported as it aligns with the intent and principles of the Scheme:

'Design Review is most effective when undertaken early in the planning and design process to effect positive change during design development' (Introduction, p.1).

'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' (Principles of Design Review, p.2).



The following table details how the Amendment provisions have been updated as a result of this feedback.

Wording in the proposed Amendment	Suggested change by respondents	Wording in the updated Amendment
<p>Clause 2(b)</p> <p><i>a form of development that is—</i></p> <ul style="list-style-type: none"> <li><i>i. either restricted development or performance assessed development that has been selected by the council as a class of development for the purposes of this clause; and</i></li> <li><i>ii. specified by the Chief Executive by a notice published on the SA planning portal for the purposes of this clause.</i></li> </ul>	<p>Clause 2(b)</p> <p><i>a form of development that is, or has the potential to be a class of development that is—</i></p> <ul style="list-style-type: none"> <li><i>i. either restricted development or performance assessed development that has been selected by the council as a class of development for the purposes of this clause; and</i></li> <li><i>ii. specified by the Chief Executive by a notice published on the SA planning portal for the purposes of this clause.</i></li> </ul>	<p>Clause 2(b)</p> <p><i>a form of development that is, or has the potential to be, either performance assessed development or restricted development that is within a class of development that has been—</i></p> <ul style="list-style-type: none"> <li><i>i. selected by the council as a class of development for the purposes of this clause; and</i></li> <li><i>ii. specified by the Chief Executive by a notice published on the SA planning portal for the purposes of this clause.</i></li> </ul>

## 4. ANALYSIS

### 4.1. Strategic planning outcomes

#### 4.1.1. Consistency with the State Planning Policies

State Planning Policies define South Australia's planning priorities, goals and interests. They are the overarching umbrella policies that define the state's interests in land use. There are 16 State Planning Policies and six special legislative State Planning Policies.

These policies are given effect through the Code, with referral powers assigned to relevant Government Agencies (for example, the Environmental Protection Agency for contaminated land). The Code (including any Code Amendments) must comply with any principle prescribed by a State Planning Policy.

This Code Amendment is considered to be consistent with the State Planning Policies as demonstrated in **Attachment B**.

#### 4.1.2. Consistency with Regional Plans

Regional Plans provide the long-term vision and set the spatial patterns for future development within a region. This can include land use integration, transport infrastructure and the public realm.

The Commission has identified that the existing volumes of the South Australian Planning Strategy, prepared under the Development Act 1993, will apply until such time as the new Regional Plans are prepared and adopted. Refer to the SA Planning Portal for more information on the Commission's program for implementing Regional Plans throughout South Australia.

Where there is conflict between a Regional Plan and the State Planning Policies, the State Planning Policies will prevail.

This Code Amendment is considered to be consistent with the Regional Plan as shown in **Attachment B**.

#### 4.1.3. Consistency with other relevant documents

This Amendment aligns with and gives effect to the Local Design Review Scheme, as required by section 121(1) of the Act.

**ATTACHMENTS**

**Attachment A:** Local Design Review Code Amendment Provisions

**Attachment B:** Strategic planning outcomes

## **Attachment A: Local Design Review Code Amendment Provisions**

This Amendment will introduce the following provisions into Part 5 of the Code, 'Table 2 – Specified matters and areas identified under the *Planning, Development and Infrastructure Act 2016*':

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- (1) Development within the ambit of subclause (2) is specified as a class of development for the purposes of section 121(1) of the Act.
  - (2) Development that is—
    - (a) within the area of a council that has determined to make design review available in its area by participating in the scheme determined by the Minister for the purposes of section 121 of the Act; and
    - (b) a form of development that is, or has the potential to be, either performance assessed development or restricted development that is within a class of development that has been—
      - i. selected by the council as a class of development for the purposes of this clause; and
      - ii. specified by the Chief Executive by a notice published on the SA planning portal for the purposes of this clause.
  - (3) A council may from time to time vary the classes of development applying in its area under this clause by a further notice published by the Chief Executive on the SA planning portal at the request of the council.
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## Attachment B: Strategic planning outcomes

### 1. State Planning Policies

This Code Amendment is considered to be consistent with the State Planning Policies as demonstrated in this section.

State Planning Policy (SPP)	Code Amendment Alignment with SPPs
<p><b>SPP 2 – Design Quality</b></p> <p>2.1 Promote best practice in the design of buildings, places and the public realm by applying the principles of Good Design.</p> <p>2.4 Design advice should be obtained early in the planning process for complex developments, and utilise consistent and credible processes (such as Design Review) to ensure improved outcomes.</p> <p>2.6 Maximise opportunities for the Principles of Good Design and community engagement to inform future policy creation and improve design outcomes.</p> <p>2.7 Promote a culture of good design to foster creative thinking, innovation and effective design processes within the planning industry, built environment professions and general public.</p> <p>2.9 Respect the characteristics and identities of different neighbourhoods, suburbs and precincts by ensuring development considers existing and desired future context of a place.</p> <p>The Scheme and subsequent Amendment will also support other related SPPs, including:</p> <ul style="list-style-type: none"> <li>• <b>SPP3 – Adaptive Reuse</b></li> </ul>	<p>The Local Design Review Scheme provides for the practical application of a number of objectives and policies from the State Planning Policies.</p> <p>Design Review under the 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.</p> <p>In addition, section 1.5 of the Scheme outlines the objects of this Scheme, which are to—</p> <ol style="list-style-type: none"> <li>1. Support development that demonstrates high-quality design.</li> <li>2. Improve access to independent and expert design advice early in the planning and design process.</li> <li>3. Support consistent and informed planning decisions.</li> <li>4. Facilitate collaboration between allied professionals.</li> <li>5. Support South Australia’s planning system to meet the objects of the Act in section 12, including to—             <ol style="list-style-type: none"> <li>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</li> <li>b) promote certainty for people and bodies proposing to undertake development while at the same time providing scope for innovation; and</li> </ol> </li> </ol>

<ul style="list-style-type: none"> <li>• <b>SPP5 – Climate Change</b></li> <li>• <b>SPP7 – Cultural Heritage</b></li> </ul>	<ul style="list-style-type: none"> <li>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.</li> </ul> <p>6. Demonstrate practical application of the Principles of Good Planning identified in section 14 of the Act, particularly—</p> <ul style="list-style-type: none"> <li>a) high-quality design; and</li> <li>b) activation and liveability; and</li> <li>c) sustainability.</li> </ul>
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## 2. Regional Plans

While all future regional plans should promote the value of high-quality design and consider the role of Local Design Review as a way of supporting it, the 30-Year Plan for Greater Adelaide (2017 Update) is of particular relevance to this Amendment.

<b>Regional Plan identified priorities or targets</b>	<b>Code Amendment alignment with Regional Plan</b>
<p>30-Year Plan for Greater Adelaide (2017 Update)</p> <p>Theme: Design quality</p> <p>A.12 Reinforce and expand the role of the design review process for strategic urban infill and other priority developments.</p> <p>A.15 Investigate how best to encourage and measure design quality in the new planning system.</p>	<p>As detailed in relation to alignment with the State Planning Policies, the Local Design Review Scheme (and therefore this Amendment) also provides for the practical application of actions and policies from the 30-Year Plan for Greater Adelaide (2017 Update) by bringing the design review process under section 121 of the Act into operation.</p>