

# PROPOSAL TO INITIATE AN AMENDMENT TO THE COMMUNITY ENGAGEMENT CHARTER

By the State Planning Commission

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Date: 18/03/2024

This Proposal to Initiate document forms the basis for the preparation of a proposed amendment to the Community Engagement Charter for the purpose of section 45(1) of the *Planning, Development and Infrastructure Act 2016*.

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## 1. BACKGROUND

The State Planning Commission (the Commission) is an independent body providing advice and leadership on all aspects of planning and development in South Australia. One of its responsibilities under Section 44 of the *Planning, Development and Infrastructure Act 2016* (the Act) is to establish and maintain the Community Engagement Charter (Charter). The Charter became operational in April 2018 and seeks to enable people to have their say on changes to planning rules or strategies that may affect them or places they value.

Section 45(7) of the Act requires the Commission review the Charter every five years. The Commission completed its inaugural review in late 2023. A copy of the Review Report is in **Attachment 1**.

The Report outlines 13 recommendations for updates or improvements to both the Charter and its supporting documentation.

## 2. PROPOSED AMENDMENT

Section 45(1) of the Act states that a proposal to prepare or amend the Charter may be initiated by the Commission acting on its own initiative or at the request of the Minister.

The Commission, acting on its own initiative, seeks to amend the Charter to generally implement the recommendations of the 2023 Review, including the following:

- Update the table titled '*Role of the Charter - Designated Policies, Strategies and Schemes and Entity*' to accurately reflect which entities can 'prepare' designated instruments compared with those which can 'amend' them. In addition, the table should also include all entities or persons that are able to amend the Code, or a design standard as outlined in section 73(2)(b) of the Act.
- Acknowledge the application of the Charter to consultations on Environmental Impact Statements for Impact Assessed development applications.
- Update the '*Community Engagement in the Planning System*' graphic to more clearly indicate that the Minister should have regard to the principles of the Charter in relation to consultation on an Environmental Impact Statement for an Impact Assessed development application.
- Identify the mandatory engagement requirements associated with facilitating a Complying Change to the Code, pursuant to section 75 of the Act (see **Appendix B** for draft requirements).
- Expand the mandatory engagement requirements to require a designated entity to:
  - demonstrate it has considered whether any relevant statutory boards (or committees) ought to be notified of the proposal; and
  - if so, directly notify it and seek comment on a proposal.

- Update the *‘Characteristics of Successful Engagement’* graphic by amending the heading in the right textbox from *‘The Government + Proponents’* to *‘Entity undertaking Engagement’*.
- Amend the Performance Outcomes and Performance Measures of the *‘Engagement is inclusive and respectful’* and *‘Engagement is fit for purpose’* Charter Principles to include and consider the effective engagement and communication needs (as required) of:
  - First Nations people;
  - the youth population;
  - persons from non-English speaking backgrounds; and
  - persons with a disability.
- Where relevant, update the text throughout the Charter to reflect the fact that it is now a ‘well-established’ instrument in the planning system, as opposed to being a ‘new instrument’ at the time that the document was originally drafted in 2018.
- Review the hyperlinks throughout the Charter to ensure they are accurate and up to date.

Other additional amendments to the Charter may also be identified to complement or support the above recommendations or to reflect best practice.

The Charter Amendment is intended to be undertaken in line with the timeframe outlined **Attachment 1**.

### **3. ENGAGEMENT**

#### **3.1. Preliminary Engagement**

The 2023 Review of the Charter did not involve engagement with external stakeholders and/or the community more broadly as it was intended this be undertaken as part the Charter Amendment process.

However, in reviewing the Charter, the Commission did receive feedback and advice from internal stakeholders within the Department for Trade and Investment – Planning and Land Use Services (DTI-PLUS). This was from staff who have significant experience and knowledge of the Charter through planning and undertaking engagement on State led Code Amendments and the preparation of Designated Instruments, as well as reviewing and reporting on engagement activities related to council or proponent-led Code Amendments.

In addition, following the Review and in light of the recommendations contained therein, the Minister for Planning requested preliminary consultation be undertaken with the following four State agencies/bodies:

- Aboriginal Affairs and Reconciliation (Attorney-General’s Department);

- Department for Human Services;
- Office for Autism – Department of the Premier and Cabinet; and
- SA Multicultural Commission.

The purpose of the preliminary consultation was to work with these agencies to:

- request expert advice regarding best practice engagement techniques for different community groups;
- ensure correct (and best practice) terminology is used in the Charter and other accompanying documents;
- understand key stakeholders to engage with on the proposed changes; and
- discuss, more generally, other opportunities to collaborate and engage with each agency and its key stakeholders on State-led planning initiatives.

All four agencies were consulted and PLUS received input and feedback from DHS and the Office for Autism. In summary, the two agencies recommended:

- the Charter include reference to persons with ‘neurodivergence’ in addition to ‘persons with a disability’ in the relevant sections of the Charter. This is particularly as neurodivergence is not exclusively considered a disability, but may still require adaptive engagement techniques;
- minor language amendments regarding the specific words to use in the Charter (e.g. using the term ‘young persons’ instead of ‘youth population’);
- a list of stakeholders in the disability sector to consult with on the proposed amended Charter (and other future planning initiatives); and
- examples of methods to employ to undertake effective engagement with different community groups.

The above matters raised in the preliminary consultation will be considered in drafting the amendments to the Charter prior to community engagement.

### **3.2. Legislated Consultation Requirements**

Section 45(2) of the Act requires the following:

- (2) The Commission must, after a proposal is initiated under subsection (1)—*
- (a) prepare a draft of the proposal; and*
  - (b) consult with—*
    - (i) any entity specified by the Minister; and*
    - (ii) the LGA; and*
    - (iii) any other entity prescribed by or under the regulations; and*
    - (iv) any other entity the Commission thinks fit; and*
  - (c) ensure that a copy of the proposal is published on the SA planning portal with an invitation for interested persons to make representations (in writing or via the SA planning portal) on the proposal within a period specified by the Commission.*

For the avoidance of doubt, the Regulations do not prescribe any additional entities to be engaged with under section 45(2)(b)(iii).

### **3.3. Engagement Plan**

Whilst not required by section 45 of the Act, it is proposed that the Charter Amendment will be subject to engagement in accordance with the current Community Engagement Charter to demonstrate best practice.

The Commission will prepare an Engagement Plan prior to the commencement of engagement on the proposed Charter Amendment. This will include the minimum legislated consultation requirements discussed in section 3.2.

In preparing the Engagement Plan, due consideration will be given to the amendments to the Charter recommended in the Review and addressing those recommendations in determining relevant stakeholders and methods of engagement.

### **3.4. Engagement Report and Decision**

Once engagement on the Charter Amendment is complete, the Commission will prepare a report on the matters raised during engagement (including information about any change to the original proposal that the Commission considers should be made) and furnish a copy of the report to the Minister.

The Minister will then determine whether to adopt, alter or refuse the amendment.

If adopted, the Minister will then forward the amended Charter to the Environment, Resources and Development Committee within 28 days, in accordance with section 46 of the Act.

## ATTACHMENT 1

### Timetable for Charter Amendment by the State Planning Commission

Step	Responsibility	Timeframe
<b>Preparation of the Charter Amendment</b>		
<b>Engagement Plan</b> prepared Investigations conducted and <b>Charter Amendment</b> prepared	The Department on behalf of the Commission	2 weeks
Preparation of Materials for Engagement	The Department on behalf of the Commission	Informed by the Engagement Plan
<b>Engagement on the Charter Amendment</b>		
<b>Charter Amendment</b> released for engagement in accordance with the prepared <b>Engagement Plan</b>	The Department on behalf of the Commission	To be specified in the Engagement Plan
<b>Consideration of Engagement and Finalisation of Amendments</b>		
Submissions summarised Updated drafting instructions to the <b>Charter Amendment</b> prepared <b>Engagement Report</b> prepared	The Department on behalf of the Commission	8 weeks
Report to the Commission prepared	The Department	4 weeks
Commission considers final <b>Charter Amendment</b> and <b>Engagement Report</b> and forwards to Minister	The Commission	2 weeks
<b>Decision Process</b>		
Minister considers the <b>Charter Amendment</b> and the <b>Engagement Report</b> and makes decision Decision and new version of the <b>Charter</b> published on the PlanSA Portal	Minister	Unknown
<b>Parliamentary Scrutiny</b>		
Referral of adopted <b>Charter Amendment</b> to Environment, Resources and Development Committee of Parliament – referred by the Minister within 28 days of adoption.		

## **ATTACHMENT 2**

### **Final Report from the 2023 Community Engagement Charter Review**



# 2023 COMMUNITY ENGAGEMENT CHARTER REVIEW

Delivered December 2023



STATE  
PLANNING  
COMMISSION



Government of South Australia  
Department for Trade  
and Investment

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# 1- Background and Introduction

The Community Engagement Charter (the Charter) is an important statutory instrument under the *Planning, Development, and Infrastructure Act 2016* (the Act).

The Charter was established in April 2018 by the State Planning Commission (the Commission). It was developed following an extensive process of listening to community and industry representatives, councils, and state bodies about what effective engagement should look like.

The Charter seeks to enable people to have their say on changes to planning rules or strategies that may affect them or places they value.

When a Designated Instrument (such as the Planning and Design Code (the Code)) is being prepared for the first time, or when there is a proposal to amend it, the Charter must be used to determine the process to engage the community and relevant stakeholders.

When rules and other regulatory instruments are being made, the Act puts focus on engaging with communities earlier in the process rather than later.

## Reviewing the Charter

Section 45 of the Act sets out how the Charter can be prepared and amended. It requires, amongst other things, that the—

- Commission must ensure various parts of the Charter are reviewed at least once in every 5 years according to a scheme approved by the Minister;
- outcome of the review undertaken is embodied in a written report to the Minister; and
- Minister, must within 6 sittings days after receiving a report cause copies to be laid before both Houses of Parliament.

Section 45(7) requires the Commission to review the Charter at least once every five years. However, the Commission can review the Charter at any time, of its own initiative.

As the Charter was established in April 2018, the first review was due to occur in or before April 2023.

In November 2022, the Minister for Planning, the Honourable Nick Champion (the Minister), approved a Scheme for the purposes of section 45(7) of the Act to allow the Commission to review and report on the performance and effectiveness of the Charter.

A copy of the approved Scheme is **Appendix A** to this Report.

In November 2022, while acknowledging the statutory obligation to undertake the review in or before April 2023, the Commission determined it would commence its inaugural review of the Charter following the delivery and publication of the Final Report and

Recommendations of the [Expert Panel for the Planning System Implementation Review](#) (the Expert Panel). This was to ensure any relevant recommendations made by the Expert Panel could be considered in the inaugural review.

In late August 2023 the Commission determined to commence the inaugural review (the Review). The Commission was provided with a copy of the Expert Panel Report in advance of the Review to ensure any relevant recommendations were able to be appropriately considered.

Accordingly, the Review was conducted between September and October 2023 in accordance with the Minister's Scheme.

For the avoidance of doubt section 45 of the Act does not require public engagement to form part of the Review. Rather, under section 45(2), public engagement is required to occur if the Commission proposes to amend the Charter.

The Commission will conduct public consultation when it next proposes to amend the Charter in accordance with the recommendations made in this Report.

### **Interaction with Regional Planning Engagement Program**

The Commission acknowledges it has undertaken engagement on the Greater Adelaide Regional Plan (GARP) Discussion Paper, in accordance with the existing version of the Charter. This was considered appropriate given the non-statutory nature of the Discussion Paper. In that context, the Commission notes the engagement program for the GARP itself has been designed to go above and beyond the existing requirements of the Charter. As such, the Commission considers it appropriate to undertake this Review concurrent with the GARP engagement.

It is noted that, apart from the engagement related to the initial roll-out of the Code, the preparation of the Regional Plans will involve the most significant engagement activities since the inception of the Charter.

The Commission subsequently anticipates it will gain valuable insights and learnings from not only the GARP Discussion Paper engagement, but also the upcoming engagement programs proposed for the [Regional Plans](#) expected to occur through 2024.

## 2 – Scope of the Review

As noted earlier in this Report, the Minister has approved a [Scheme](#) against which the Commission must review and report on the performance and effectiveness of the Charter on a (minimum) five yearly basis.

In summary, the objects of the Scheme are to:

- (a) review and report on the performance and effectiveness of the Charter;
- (b) identify the parts of the Charter to be reviewed; and
- (c) determine what data and method of review will be undertaken.

The Scheme requires the Commission to review the following aspects of the Charter:

### 1.0 Role of the Charter

1.1 Designated Policies, Strategies and Schemes

1.2 Entity

### 2.0 Structure of the Charter

2.1 Mandatory Requirements – Actions that must be included in engagement plans

2.2 Principles – A set of principles which guide engagement

- Engagement is genuine
- Engagement is inclusive and respectful
- Engagement is fit for purpose
- Engagement is informed and transparent
- Engagement processes are reviewed and improved

2.3 Performance Outcomes – The outcomes of successful engagement

- People had faith and confidence in the engagement process
- Affected and interested people had the opportunity to participate and be heard
- People were effectively engaged and satisfied with the process
- People were clear about the proposed change and how it would affect them
- All relevant information was made available and people could access it
- People understood how their views were considered, the reason for the outcomes and the final decision that was made
- The engagement was reviewed and improvements recommended

2.4 Measuring Performance – Types of measures for assessing performance

- Was there an opportunity for different knowledge and perspectives to be shared?
- How well did the engagement process enable stakeholders and community issues and solutions to be identified?
- Would people participate in a similar process in the future?
- Did everyone who is impacted or interested have an opportunity to participate?
- Was there an opportunity for different knowledge and perspectives to be shared?
- Did people feel the process enabled appropriate input?
- Did people understand how to participate in the engagement?

- Did people understand what was being proposed?
- Did people have access to the information they needed?
- How was participant input considered in the final decision? Did it add value?
- Does reporting adequately capture the spectrum of participant views?
- Were learnings about the process documented?

The Scheme also permits the Commission to collect and use data from councils, industry bodies and other sources to inform the Review.

Accordingly, to inform this Review, the Commission determined to consider the following sources of information:

- feedback and advice from internal stakeholders within the Department for Trade and Investment – Planning and Land Use Services (DTI – PLUS) who have significant experience and knowledge of the Charter through planning and undertaking engagement on State led Code Amendments and the preparation of Designated Instruments, as well as reviewing and reporting on engagement activities related to council or proponent-led Code Amendments;
- submissions and recommendations related to the Charter arising from the Expert Panel;
- reviewing a sample of Engagement Reports from completed Code Amendments (as published on the PlanSA website); and
- reviewing documentation which relates to the Charter, in particular the [Toolkit](#), [Guide](#) and [Practice Direction 2 - Preparation and Amendment of Designated Instruments](#).

It is noted that this Review has not sought to engage with external stakeholders and/or the community more broadly. It is intended that engagement will be undertaken as part the Charter amendment process.

For the avoidance of doubt, it is outside the scope of this Review to investigate or make recommendations to amend the Act or associated *Planning, Development and Infrastructure (General) Regulations 2017* (the Regulations) which relate to the Charter.

### 3 – Evaluation of the Charter

This section addresses each aspect of the Charter the Scheme requires the Commission to consider in the Review. Where relevant, the evaluation of each section is supported by the feedback and/or the research the Commission utilised to form its view.

#### 3.1 Role of the Charter - Designated Policies, Strategies and Schemes and Entity

The Charter identifies each document it is applicable to in accordance with the Act (the designated policies, strategies, and schemes) and which entity is responsible for the preparation and amendment of those documents.

Designated Policies, Strategies and Schemes	Entity
State Planning Policies	State Planning Commission
Regional Plans	Joint Planning Board State Planning Commission
The Planning and Design Code	Chief Executive Officer of DPTI State Planning Commission Council Joint Planning Board Government Agency
Design Standards	State Planning Commission
Infrastructure Delivery Scheme	Scheme Co-ordinator

#### Evaluation

The above table is included in the Charter for information purposes only. The designated policies, strategies and schemes, and the entity that can prepare or amend them, are determined by the Act, and cannot be amended through this Charter Review process.

Notwithstanding, it would be appropriate to update the table to accurately reflect the difference between which entities can ‘prepare’ these documents compared with those which can ‘amend’ them. For example, only the Commission and a Joint Planning Board may prepare a Regional Plan, but other entities may seek to amend a Regional Plan (when established).

The table is also missing some entities identified for the purposes of section 73(2)(b) of the Act. Specifically, the following entities should be listed in the table as being able to amend the Code or a design standard (with the approval of the Minister, acting on the advice of the Commission):

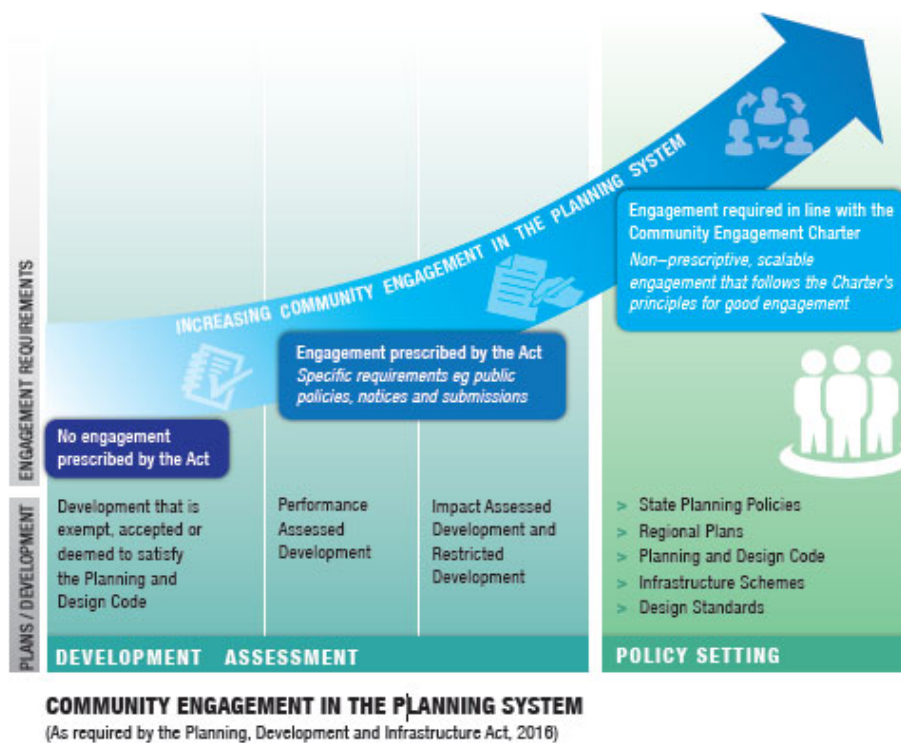
- a provider of essential infrastructure;
- an infrastructure scheme coordinator; and
- a person who has an interest in land who is seeking to alter the way in which the Code or a design standard affects that land.

Further, it is noted that section 113(6) of the Act empowers the Minister to undertake, or require a proponent to undertake, consultation in relation to an Environmental Impact Statement (EIS) for an Impact Assessed development application. Regulation 72 of the Regulations goes on to provide that, for the purposes of any consultation undertaken in connection with an EIS:

*the Minister should have regard to the principles applying under the Community Engagement Charter for public participation in planning processes (insofar as they may be appropriately adapted to an EIS process).*

Noting this Regulation speaks to the Charter, there may be value in incorporating a note or acknowledgement in the 'Role of the Charter' heading, identifying its application to EIS consultations in circumstances where the Minister requires consultation to be undertaken. This will assist in ensuring the Charter is a 'one stop shop', identifying all circumstances it may be applicable to.

The following graphic is also incorporated in the 'Role of the Charter' heading:



This graphic continues to be fit for purpose. However, it may be appropriate to update it to depict the Charter's potential application to EIS consultations.



### Role of the Charter Recommendations:

- Update the table titled ‘*Role of the Charter - Designated Policies, Strategies and Schemes and Entity*’ to accurately reflect which entities can ‘prepare’ designated instruments compared with those which can ‘amend’ them. In addition, the table should also include all entities or persons that are able to amend the Code, or a design standard as outlined in section 73(2)(b) of the Act.
- Acknowledge the application of the Charter to consultations on Environmental Impact Statements for Impact Assessed development applications.
- Update the ‘*Community Engagement in the Planning System*’ graphic to more clearly indicate that the Minister should have regard to the principles of the Charter in relation to consultation on an Environmental Impact Statement for an Impact Assessed development application.

### 3.2 Structure of the Charter – Mandatory Requirements

Mandatory requirements are incorporated into the Charter for certain proposals to ensure that, at a minimum, interested parties are going to be informed and consulted with. The Charter provides the following explanatory text and table in relation to Mandatory Requirements:

#### Mandatory requirements

An entity to which this Charter applies must comply with the following mandatory requirements that are applicable, based on the consultation category below. Where the mandatory requirements do not apply, an entity must have regard to, and seek to achieve, the principles and performance outcomes that apply under the Charter.

The State Planning Commission, or an entity acting with the approval of the State Planning Commission, may adopt an alternative way to achieving compliance with the mandatory requirements if the State Planning Commission is satisfied that the alternative way is at least as effective in achieving the public consultation requirements under the Charter. An entity will therefore need to obtain the approval of the State Planning Commission for any variation of the mandatory requirements.

Consultation Category	Mandatory requirement
Proposals that are specifically relevant to a particular Council or Councils (where Council did not initiate the proposal).	That Council or Councils must be directly notified of the proposal and consulted.
Proposals that are generally relevant to Councils.	The Local Government Association must be notified in writing and consulted.
A proposal to enter a place within the Planning and Design Code as a place of local heritage value.	The owner of any land on which the place resides, must be directly notified in writing of the proposal and consulted for a minimum period of four weeks.
A proposal to amend the Planning and Design Code to include any heritage character or preservation policy that is similar in intent or effect to a local heritage listing.	The owner of any land on which the place resides, must be directly notified in writing of the proposal and consulted for a minimum period of four weeks.
Infrastructure delivery scheme.	Landowners affected by the scheme must be directly notified in writing of the scheme under section 166 of the PDI Act for a minimum of four weeks.

## Evaluation

The Commission considers a key strength of the Charter is that it is not overly prescriptive and allows proponents to undertake tailored and fit for purpose engagement commensurate with the scale and nature of the proposal.

It appears this position is agreed across the industry, as supported by commentary made about the Charter by users of the Charter and in engagement reports prepared for the purposes of Code Amendments.

### **Quotes from Engagement Reports on Code Amendments:**

*"Project managers identified that a key strength of the Charter and Guide was that **engagement is fit for purpose** to ensure that participants are clear about what is being proposed and how this may affect them."*

*"The charter **enables flexibility** to have a 'fit for purpose' engagement plan prepared."*

*"A strength of the Charter is the **flexibility to undertake a process that was fit for purpose**, scaled appropriately for the anticipated impact of the Code Amendment and met the local circumstance."*

The Commission acknowledges the need to maintain this positive aspect of the Charter. However, the following additional mandatory requirements have been proposed by users of the Charter through their experiences with the Charter (whether applying it to own engagements or reviewing the engagements of other entities) which the Commission considers would be valuable to include in the Charter:

- Minimum engagement timeframes

As identified earlier, the Charter currently prescribes mandatory minimum engagement timeframes for three types of consultation.

However, in considering past engagement reports, it became evident the period of engagement is inconsistent, particularly in circumstances where no minimum engagement period is prescribed by the Charter (such as for small scale proposals).

For example, in one circumstance, a 4-week engagement period was applied to a proposal in the northern fringes of Adelaide which sought to rezone approximately 30 hectares of rural land to enable low to medium density housing. However, in an analogous (and perhaps less significant) proposal in the mid-north of the State, an 8-week engagement period was applied to a proposal which sought to rezone approximately 30 hectares of rural land for low-density housing.

It may be beneficial to identify a minimum (or recommended minimum) engagement period to apply to all engagements. To ensure that flexibility is still achieved, this may be more appropriate to include in the Charter Toolkit and Guide supporting the use of the Charter, rather than in the Charter itself.

The minimum engagement period could:

- be inclusive of those engagement periods already prescribed by the Charter;
- provide certainty to the community; and
- be variable (i.e., based on the scale or type of instrument to be amended) to ensure it is commensurate with the proposed amendment.

The Commission will consider what minimum engagement timeframes may be suitable (and how they would be determined) and will consult with stakeholders on this proposed amendment (and where it is best located) when it next seeks to amend the Charter.

- Complying Changes under section 75 of the Act

Section 75 of the Act enables a Complying Change to the Code to occur in limited circumstances. The intent of section 75 is to ‘fast track’ a Code Amendment on the basis it complies with a Regional Plan. However, despite section 75 enabling a Code Amendment to occur relative to the content of a Regional Plan, a requirement of progressing a Complying Change is that the amendment is *‘the subject of consultation under the Community Engagement Charter’*.

The full terms of section 75 are set out as follows:

### **Section 75 - Complying changes - Planning and Design Code**

*(1) The Minister may, after seeking the advice of the Commission, initiate or agree to an amendment to the Planning and Design Code under this section if—*

*(a) the amendment comprises a change to—*

*(i) the boundary of a zone or subzone; or*

*(ii) the application of an overlay; and*

*(b) the amendment is consistent with a recommendation in the relevant regional plan that, through the use of—*

*(i) specific maps or other spatial information; and*

*(ii) specific information about the changes that are being proposed, clearly and expressly identifies (in the opinion of the Minister) the changes that are considered to be appropriate.*

*(2) An amendment under subsection (1) must be the subject of consultation under the Community Engagement Charter.*

*(3) An amendment under this section is effected by an instrument deposited on the SA planning portal for publication on the SA planning database (in accordance with requirements established by the Chief Executive).*

*(4) An amendment under this section—*

*(a) takes effect from a date specified in the instrument under subsection (3); and*

*(b) takes effect without the need to take any other steps under this Division and without the need to be approved under any other provision of this Act; and*

*(c) does not need to be referred to the ERD Committee under this Part (and is not subject to disallowance).*

The Charter does not currently provide any specific engagement requirements for the purposes of progressing a Complying Change to the Code in accordance with section 75. Consequently, any Complying Change proposed to be progressed would (currently) need to be the subject of an engagement program, compliant with the mandatory requirements and principles set out in the Charter. This may circumvent the capacity for section 75 to effect efficient and targeted amendments to the Code, where consistent with a Regional Plan.

It is intended to utilise the section 75 Complying Change process in the coming months following approval and implementation of the first Regional Plans.

Accordingly, the Commission sees value in the Charter identifying mandatory minimum engagement requirements to apply to section 75 Complying Changes, to fulfil the requirements of subsection 75(2).

The Commission has now prepared draft Minimum Mandatory Consultation Requirements for section 75 Complying Changes. The draft Minimum Mandatory Consultation Requirements are included in **Appendix B** of this Report.

The draft Minimum Mandatory Consultation Requirements are not final and will be subject to broad public consultation when the Charter is amended.

In addition, clause 11 of *Practice Direction 2 – Preparation and Amendment of Designated Instruments* currently identifies the Commission’s requirements to facilitate a Complying Change for the purposes of section 75. It is proposed the Practice Direction will be amended alongside the Charter to identify the Commission’s requirements in providing advice to the Minister to initiate and agree to a Complying Change under section 75(1).

- Early Engagement with Statutory Boards and Committees

There is currently nothing in the Charter which requires a designated entity to consider whether their proposal may impact any relevant statutory boards (or committees) which ought to be consulted.

However, the Commission understands there may be circumstances where this would be appropriate, noting the implication the proposed amendment may have on the work of those bodies.

For example, section 25(1)(e) of the *Landscape South Australia Act 2019* (Landscape Act) identifies one of the functions of a regional landscape board is to undertake an active role in ensuring that the board's relevant plans and policies and the Code ‘*form a coherent set of policies*’. It provides a regional landscape board should:

*when an amendment to [the] Code that is relevant to the activities of the board is under consideration under [the PDI] Act, to work with the entity or entities engaged in undertaking the amendment under [the PDI] Act.*

The Landscape Act imposes an obligation on regional landscape boards to participate in the Code Amendment as appropriate. However, it would not be unreasonable to require a designated entity to actively seek out their participation when it is likely that the nature of the amendment may impact upon relevant plans or strategies of a board.

Whilst the above example is specifically outlined in legislation, there may be other circumstances where it is appropriate for other boards to be consulted in a similar fashion (for example the Coast Protection Board if a proposal involves rezoning of coastal land).

Accordingly, the Commission considers it may be appropriate to expand the mandatory engagement requirements to require a designated entity to:

1. demonstrate it has considered whether any relevant statutory boards (or committees) ought to be notified of the proposal; and
2. if so, directly notify it and seek comment on a proposal.

This change could be supported by updates to the Charter Toolkit and Guide, which outline the common statutory boards and committees which exist across State Government.

#### **Mandatory Requirements Recommendations:**

4. Provide further guidance and case studies in either the Charter or the Charter Toolkit and Guide, with recommended minimum engagement periods.
5. Identify the mandatory engagement requirements associated with facilitating a Complying Change to the Code, pursuant to section 75 of the Act (see **Appendix B** for draft requirements).
6. Expand the mandatory engagement requirements to require a designated entity to:
  - 6.1. demonstrate it has considered whether any relevant statutory boards (or committees) ought to be notified of the proposal; and
  - 6.2. if so, directly notify it and seek comment on a proposal.

### **3.3 Structure of the Charter – Principles**

The Charter includes five principles to guide good engagement, and to describe what is important when engaging under the Charter. The five principles are:

1. Engagement is genuine;
2. Engagement is inclusive and respectful;
3. Engagement is fit for purpose;
4. Engagement is informed and transparent; and
5. Engagement processes are reviewed and improved.

The application of the principles is mandatory, and each principle must be considered when a decision maker determines the appropriate approach to engagement.

#### Evaluation

As noted earlier in this Report, flexibility and adaptability are key strengths of the Charter. It can be appropriately applied in a vast range of circumstances, and for varied engagements. The Charter recognises that each engagement will differ and will need to cater for different audiences, places, and influences.

It follows that these guiding principles are ‘*a reference point for good engagement*’, noting if each can be achieved, it is likely the engagement will be appropriate and effective.

None of the information the Commission has reviewed during this Review has identified any need to update or amend these principles, or suggested they were not operating as intended. Accordingly, the principles are considered appropriate as written and no change is required.

In addition to the principles themselves, the Charter also includes the following graphic under the 'Principles' heading:



There is opportunity to improve this graphic by amending the right textbox from 'The Government + Proponents' to 'Entity undertaking Engagement' to reflect the provisions of the Act more accurately.

#### **Principles Recommendations:**

7. Update the 'Characteristics of Successful Engagement' graphic by amending the heading in the right textbox from 'The Government + Proponents' to 'Entity undertaking Engagement'.

### **3.4 Structure of the Charter - Performance Outcomes**

For each of the abovementioned Principles, the Charter includes a written description and performance outcome to inform what successful achievement of each principle looks like.

The performance outcomes must be considered in the preparation of the engagement process and must be reported against at the conclusion of the process.

Below is an example of one of the performance outcomes:

### Engagement is genuine

All parties are genuine and honest in their participation. Those conducting the engagement use their best endeavors to proactively seek participation of communities and genuinely listen to and understand the range of views. Those participating are open to a range of perspectives and are well informed. Participants respect that their views may not prevail.

#### *Performance outcomes*

People had faith and confidence in the engagement process.

## Evaluation

The Commission has reviewed each of the descriptions and performance outcomes and considers they remain generally appropriate and fit for purpose.

However, noting the best practice engagement program designed for the purposes of the GARP Discussion Paper, it was identified by both relevant stakeholders and the Commission that there was opportunity to further refine the performance outcomes to ensure all engagement programs address the engagement and communication needs of:

- First Nations people;
- the youth population;
- persons from non-English speaking backgrounds; and
- persons with a disability.

A review of previous Code Amendment engagement reports reveals that engagements seldom seek to adequately manage accessibility issues which arise through language barriers and disability inclusion, nor do they design engagement programs to increase the likelihood of engaging with specific cohorts, such as the First Nations and youth populations.

This is the case despite the Charter's abovementioned principles of engagement which require engagement to be inclusive and respectful, and informed and transparent.

In addition, the Review identified limited circumstances where demographic analysis was appropriately used to inform engagement programs.

The following brief case study is demonstrable of engagement done well, and is indicative of the fact that these additional measures can be included in engagement programs when necessary:



### **Case Study – Engagement of persons from a non-English speaking background**

*A proponent-led Code Amendment sought to rezone land in a residential area in the eastern suburbs of Adelaide. Demographic analysis was conducted as part of the engagement planning. It was identified that Chinese was the most common non-English language group in the area to which engagement was going to occur.*

*As part of a much broader engagement approach, the proponent undertook direct notification to identified affected stakeholders and provided a letter and fact sheet regarding the proposal.*

*An offer of translation (in Chinese) was provided on the fact sheet for relevant engagement materials accompanying the Code Amendment.*

Accordingly, the Commission considers specific reference should be made to considering the engagement and communication needs of these cohorts within the relevant description and/or performance outcome related to the following two principles:

- *Engagement is inclusive and respectful*

The Charter currently notes under this principle that ‘*affected and interested people can have their say and be heard, regardless of background or status*’, but places no parameters or obligations on ensuring the engagement is accessible to persons from different backgrounds or status’.

There would be benefit in amending the performance outcome to require an engagement program to consider, at inception, how it will appropriately, proportionately, and reasonably seek to engage with First Nations and youth populations.

For example, an engagement program could include (but is not limited to):

- First Nations focus groups;
- targeted engagement with Aboriginal Advisory Committees and State Agencies;
- targeted engagement with Traditional Owners and Aboriginal and Torres Strait Islander organisations;
- a youth-focused social media strategy;
- youth-focused information sessions;
- targeted engagement with university student associations and unions; and/or
- targeted engagement with Youth Advisory Committees.

- *Engagement is informed and transparent*

One of the performance outcomes for this principle is *'all relevant information was made available and people could access it'*. However, in the absence of specific guidance on how this performance outcome can be achieved, it appears limited investment is being made in ensuring both availability and accessibility of information for all community members.

There would be benefit in amending the performance outcome to require an engagement program to consider, at inception, how the engagement will ensure it is accessible to non-English speaking backgrounds and/or persons with a disability.

For example, an engagement program could include (but is not limited to):

- offers of translation of engagement materials;
- targeted engagement with multicultural community groups;
- provision of sign language interpretation at public meetings where attendees have indicated they have hearing disabilities;
- conducting engagement sessions on Teams/Zoom with closed captioning (some facilities may also include translated captions); and/or
- targeted engagement with Disability Advisory Committees.

The amendment of these performance outcomes would assist in elevating the importance of developing specific engagement approaches and considering the communication needs of various groups during the planning and delivery of engagement processes.

Associated documentation for the Charter (such as the Guide and Toolkit) should also be updated to outline practical methods and examples for best practice engagement of these groups (such as those methods identified above).

### **Performance Outcomes Recommendations:**

8. Amend the Performance Outcomes and Performance Measures of the '*Engagement is inclusive and respectful*' and '*Engagement is fit for purpose*' Charter Principles to include and consider the effective engagement and communication needs (as required) of:
  - First Nations people;
  - the youth population;
  - persons from non-English speaking backgrounds; and
  - persons with a disability.
9. Update the Charter Toolkit and Guide to provide advice to engagement entities regarding best practice approaches to effective engagement and communication needs of the abovementioned cohorts.

### 3.5 Structure of the Charter – Measuring Performance

The Charter requires the performance of every engagement undertaken to be measured. This is to ensure engagement practices are continually improving, and to build transparency and accountability.

The Charter provides guidance as to the types of measures which can be utilised for the purposes of assessing an engagement program against each principle and performance outcome. This is presented as a table, as shown in the example below:

Consideration in measuring performance		
Principles	Performance outcomes	Types of measures
Engagement is genuine	People had faith and confidence in the engagement process	<p>Was there an opportunity for different knowledge and perspectives to be shared?</p> <p>How well did the engagement process enable stakeholders and community issues and solutions to be identified?</p> <p>How did people interact with each other? Did the process build community capacity about planning?</p> <p>Would people participate in a similar process in the future?</p>

#### Evaluation

To match the specific recommendations outlined in chapter 3.4 above, appropriate additions should also be made to the ‘*Types of Measures*’ column to recognise appropriate ways to measure performance in relation to successful engagement of the four identified cohorts, as appropriate.

Separately, in relation to the Principle ‘*Engagement Processes are Reviewed and Improved*’ and relative to post-engagement reporting, concerns were identified by proponents in several Code Amendment engagement reports that post-engagement reporting can be overly onerous and time consuming. This was particularly identified in connection with minor ‘spot-rezonings’ and other small-scale Code Amendments. It was suggested that greater flexibility could be built into the Charter to enable the post-engagement reporting processes to be more commensurate with the nature of the amendment.

The Commission has considered this proposition and whether it is appropriate to build into the Charter. However, noting the Charter is already necessarily broad in how it requires post-engagement reporting to be undertaken, it is considered the Charter’s supporting documentation could be reviewed to determine potential ways to address this issue, including by providing guidance as to the extent of post-engagement reporting required for certain types of proposals.

**Measuring Performance Recommendations:**

10. Update the Charter Toolkit and Guide to provide guidance as to the extent of post-engagement reporting required for certain types of proposals.

## 4 – Summary of Recommendations

This Review has been undertaken in accordance with the Minister's Scheme and indicates the Charter is generally fit for purpose and does not require any significant amendments in the short term.

However, this Review has identified there are improvements that could be investigated for inclusion in the Charter when it is next amended. We note this is likely to occur following the conclusion of some, or all, of the Regional Plans engagement programs, therefore ensuring learnings arising from those engagements may be incorporated into the Charter.

In summary, the Commission **recommends** the following improvements are made to the Charter and/or its associated documentation:

- Update the table titled '*Role of the Charter - Designated Policies, Strategies and Schemes and Entity*' to accurately reflect which entities can 'prepare' designated instruments compared with those which can 'amend' them. In addition, the table should also include all entities or persons that are able to amend the Code, or a design standard as outlined in section 73(2)(b) of the Act.
- Acknowledge the application of the Charter to consultations on Environmental Impact Statements for Impact Assessed development applications.
- Update the '*Community Engagement in the Planning System*' graphic to more clearly indicate that the Minister should have regard to the principles of the Charter in relation to consultation on an Environmental Impact Statement for an Impact Assessed development application.
- Provide further guidance and case studies in either the Charter or the Charter Toolkit and Guide, with recommended minimum engagement periods.
- Identify the mandatory engagement requirements associated with facilitating a Complying Change to the Code, pursuant to section 75 of the Act (see **Appendix B** for draft requirements).
- Expand the mandatory engagement requirements to require a designated entity to:
  - .1. demonstrate it has considered whether any relevant statutory boards (or committees) ought to be notified of the proposal; and
  - .2. if so, directly notify it and seek comment on a proposal.
- 7. Update the '*Characteristics of Successful Engagement*' graphic by amending the heading in the right textbox from '*The Government + Proponents*' to '*Entity undertaking Engagement*'.
- 8. Amend the Performance Outcomes and Performance Measures of the '*Engagement is inclusive and respectful*' and '*Engagement is fit for purpose*' Charter Principles to

include and consider the effective engagement and communication needs (as required) of:

- First Nations people;
- the youth population;
- persons from non-English speaking backgrounds; and
- persons with a disability.

9. Update the Charter Toolkit and Guide to provide advice to engagement entities regarding best practice approaches to effective engagement and communication needs of the abovementioned cohorts.
10. Update the Charter Toolkit and Guide to provide guidance as to the extent of post-engagement reporting required for certain types of proposals.

In addition to our recommendations to amend the Charter, the Commission also **recommends** the following general improvements which were identified throughout the Review:

11. Implement a more user-friendly approach to making submissions directly from the YourSAy website, noting that currently the website links back to the engagement submission forms on the SA Planning Portal.
12. Where relevant, update the text throughout the Charter to reflect the fact that it is now a 'well-established' instrument in the planning system, as opposed to being a 'new instrument' at the time that the document was originally drafted in 2018.
13. Review the hyperlinks throughout the Charter to ensure they are accurate and up to date.

**Appendix A - Minister's Scheme for Reviewing the Charter**



# COMMUNITY ENGAGEMENT CHARTER REVIEW SCHEME

Approved November 2022



STATE  
PLANNING  
COMMISSION



Government of South Australia  
Department for Trade  
and Investment

### Version Control

Version	Date	Description
1	25/11/2022	First iteration of scheme approved by Minister for Planning.
2		
3		



## Introduction

Section 45 of the *Planning, Development and Infrastructure Act* (the Act) requires that –

- The various parts of the charter are reviewed at least once in every 5 years according to a scheme approved by the Minister;
- The outcome of the review undertaken is embodied in a written report to the Minister; and
- The Minister, must within 6 sittings days after receiving a report cause copies to be laid before both Houses of Parliament.

The Minister has approved this Scheme to allow the Commission to effectively review and report on the performance and effectiveness of the Community Engagement Charter.

## Part 1 – Preliminary

### Citation

This Scheme may be cited as the Community Engagement Charter Review Scheme 2022.

### Operation

This Scheme will come into operation on approval by the Minister.

### Versions of the Scheme

This Scheme may be varied or substituted from time to time by further approval of the Minister under section 45(7) of the Act.

### Object of the Scheme

The objects of this scheme are to:

- (d) review and report on the performance and effectiveness of the Charter
- (e) identify the parts of the Charter to be reviewed
- (f) determine what data and method of review will be undertaken

### Interpretation

In this Scheme, unless the contrary intention appears:

- *Act* means the [Planning, Development and Infrastructure Act 2016](#)
- *Charter* means the Community Engagement Charter.
- *Commission* means the [State Planning Commission](#)
- *The Department* means the Department of Trade and Investment

**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.

## Part 2 – Scheme Review

**2.1** Elements of the Charter to be reviewed are set out in **Attachment A**.

## Part 3 – Data Collection

**3.3** The Commission will undertake the review as required by the Scheme.

- 3.4** Data may be used from councils or other persons or industry bodies.
- 3.5** The Commission may undertake additional data collection to inform the review.

## **Part 4 – Evaluation and Reporting**

- 4.1** The evaluation and reporting process relating to the Charter will occur on a 5-year basis.
- 4.2** The Commission must provide a written report on a review under this Scheme to the Minister.
- 4.3** The Minister must, within 6 sitting days after receiving the report lay it before both Houses of Parliament:
- 4.4** The report will be made available on the PlanSA portal.

# ATTACHMENT A – CHARTER REVIEW

The Commission will review the following aspects of the Charter:

## 1.0 Role of the Charter

- 1.1 Designated Policies, Strategies and Schemes
- 1.2 Entity

## 2.0 Structure of the Charter

2.1 Mandatory Requirements – Actions that must be included in engagement plans

2.2 Principles – A set of principles which guide engagement

- Engagement is genuine
- Engagement is inclusive and respectful
- Engagement is fit for purpose
- Engagement is informed and transparent
- Engagement processes are reviewed and improved

2.2 Performance Outcomes – The outcomes of successful engagement

- People had faith and confidence in the engagement process
- Affected and interested people had the opportunity to participate and be heard
- People were effectively engaged and satisfied with the process
- People were clear about the proposed change and how it would affect them
- All relevant information was made available and people could access it
- People understood how their views were considered, the reason for the outcomes and the final decision that was made
- The engagement was reviewed and improvements recommended

2.3 Measuring Performance – Types of measures for assessing performance

- Was there an opportunity for different knowledge and perspectives to be shared?
- How well did the engagement process enable stakeholders and community issues and solutions to be identified?
- Would people participate in a similar process in the future?
- Did everyone who is impacted or interested have an opportunity to participate?
- Was there an opportunity for different knowledge and perspectives to be shared?
- Did people feel the process enabled appropriate input?
- Did people understand how to participate in the engagement?
- Did people understand what was being proposed?
- Did people have access to the information they needed?
- How was participant input considered in the final decision? Did it add value?
- Does reporting adequately capture the spectrum of participant views?
- Were learnings about the process documented?

## **Appendix B – Draft Section 75 Complying Change Consultation Requirements**

Section 75 of the Act enables a Complying Change to the Planning and Design Code to occur in limited circumstances. However, pursuant to section 75(2), a requirement of progressing a Complying Change is that the amendment is '*the subject of consultation under the Community Engagement Charter*'.

Accordingly, for the purposes of section 75(2), a person or entity proposing a Complying Change to the Planning and Design Code must comply with the following minimum consultation requirements. These are subject to any additional requirements outlined by the Minister in the initiation of the proposed amendment. The following requirements are the only consultation requirements to be observed for a section 75 proposal, and no other provisions of this Charter will apply.

### **Section 75 Complying Change - Mandatory Requirements**

The following are minimum mandatory consultation requirements for the purposes of a section 75 Complying Change.

The State Planning Commission, or an entity acting with the approval of the State Planning Commission, may adopt an alternative way to achieving compliance with the mandatory requirements if the State Planning Commission is satisfied that the alternative way is at least as effective in achieving the intent of the mandatory requirements. An entity will therefore need to obtain the approval of the State Planning Commission for any variation of the mandatory requirements.

- 1) Where an amendment comprises a change to the boundary of a zone or subzone, the entity must directly notify:
  - a. an owner or occupier of each piece of land within the affected area; and
  - b. an owner or occupier of each piece of adjacent land; and
  - c. the relevant council/s (and, if relevant, the joint planning board/s) in which the affected land is located; and
  - d. any other person or body as required by the Minister in the initiation of the proposed amendment.
- 2) For an amendment that comprises a change to the application of an overlay, in addition to the notification requirements in clause 1, the entity must also directly notify all referral bodies identified within the Procedural Matters of the relevant overlay in the Planning and Design Code.
- 3) For the purposes of clauses 1 and 2, the direct notification must include a notice which:
  - a. identifies the affected area impacted by the proposal;
  - b. explains the proposal and describes the impact;



- c. identifies which recommendation in the relevant Regional Plan the proposal is consistent with;
- d. indicates the location on the SA Planning Portal where the relevant Regional Plan can be viewed;
- e. specifies that (subject to any longer period required by the Minister in the initiation of the proposed amendment) there is a minimum 14-day consultation period in which any person who has received a notice may make a written representation on the proposed amendment;
- f. advises that a written representation:
  - i. is limited to commenting on the proposal; and
  - ii. cannot affect the relevant recommendation in the Regional Plan as it is within an approved and operational designated instrument; and
- g. the method/s in which a person may make a written representation (i.e. by email, post, telephone).

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