

PROPOSAL TO INITIATE AN AMENDMENT TO THE PLANNING & DESIGN CODE

Assessment Improvements Code Amendment

By the State Planning Commission (the Designated Entity)

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CHAIR, STATE PLANNING COMMISSION

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This Proposal to Initiate document forms the basis for the preparation of a proposed amendment to the Planning and Design Code for the purpose of section 73(2)(a) of the *Planning, Development and Infrastructure Act 2016*.



STATE
PLANNING
COMMISSION



Government of South Australia
Department for Housing
and Urban Development

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1. INTRODUCTION

The State Planning Commission (the Commission) is an independent body providing advice and leadership on all aspects of planning and development in South Australia. A key role is to ensure the Planning and Design Code (the Code) is maintained, reflects contemporary values relevant to planning and is responsive to emerging trends and issues.

The Commission is proposing to initiate an amendment to the Code as it relates to the whole of South Australia, including coastal waters (the Affected Area).

The Assessment Improvements Code Amendment (the Code Amendment) proposes to undertake technical improvements to the Planning and Design Code (the Code), ensuring that it is maintained, reflects contemporary values relevant to planning and is responsive to emerging trends.

The Code Amendment will also form part of the state government's response to the Planning System Implementation Review, implementing some of the Expert Panel recommendations supported by the Government.

The Commission seeks to amend the Code pursuant to section 73(2)(a) of the *Planning, Development and Infrastructure Act 2016* (the Act). This Proposal to Initiate details the scope, relevant strategic and policy considerations, nature of investigations to be carried out and information to be collected for the Code Amendment. It also details the timeframes to be followed in undertaking the Code Amendment.

The Commission is the 'designated entity' responsible for conducting this Code Amendment process and is required to undertake consultation in accordance with the [Community Engagement Charter](#) and make final recommendations to the Minister for Planning (the Minister) prior to consideration whether to adopt, alter or refuse the Code Amendment.

1.1. Designated Entity for Undertaking the Code Amendment

In accordance with section 73(2)(a) of the Act, the Commission will be the Designated Entity responsible for undertaking the Code Amendment process. As a result:

- 1.1.1. The Commission acknowledges that it will be responsible for undertaking the Code Amendment in accordance with the requirements Act.
- 1.1.2. The Commission intends to undertake the Code Amendment by utilising professional expertise of employees of the Planning and Land Use Services division (PLUS) of the Department for Housing and Urban Development including:
 - Planning officers
 - Communications staff
 - Staff responsible for the technical management and operation of the online Planning and Design Code.

1.2. Rationale for the Code Amendment

The Code Amendment provides opportunity to make various changes of a technical nature to the Code informed through experience of planning practitioners and other users to improve its general performance. The Code Amendment forms part of the Government's response to the Planning System Implementation Review; it will implement some of the recommendations of the Expert Panel that were supported by the Government.

The Commission and the PLUS divisions of the Department for Housing and Urban Development have, since implementation of the Code, been monitoring and reviewing the Code and its performance with a view to identifying where targeted adjustments may be required to ensure intended outcomes being achieved. For the most part, it is considered the Code has been working efficiently and the intent of its policies and procedures are being achieved.

This Code Amendment will have a focus on the following key topics:

- implementation of recommendations arising from the Planning System Implementation Review supported by the Government
- improving policy clarity and interpretation and remove any unintended policy consequences
- improvement of language consistency and alignment with Code drafting principles
- enhancing system efficiency and procedural matters
- linkages improvements (missing or additional policies)
- general review of policy to ensure that the tangible requirements it imposes are reasonable and practical.
- review and update the Rules of Interpretation to clarify matters taking into account recent case law.

2. SCOPE OF THE CODE AMENDMENT

2.1. Affected Area

The proposal seeks to amend the Code for the whole of South Australia.

2.2. Scope of Proposed Code Amendment

Current Policy	The whole of the Code is under consideration for targeted amendments.
Amendment Outline	The Code Amendment will be focused on technical amendments to the Code. Technical amendments that respond to recommendations of the Planning System Implementation Review supported by the Government will be a focus.

Intended Policy

While the Code Amendment will broadly include the whole Code, the scope of the Code Amendment itself is limited to matter and issues of a technical nature.

The following matters have been identified as examples for inclusion in the Code Amendment:

Rules of Interpretation

In response to recent case law (Geber Super Pty Ltd v Barossa Assessment Panel), amendments to the rules of interpretation will be considered to clarify whether and for what purpose a relevant authority can consider policies of the Code outside of those identified by Table 3 of the relevant Zone or Zones in a performance assessment.

Expansion of the circumstances where the spatial application of an Overlay may be updated via a streamlined process under Section 71(e) of the Act will also be considered. Example being the ability for aviation overlays to be updated to align with approved airport master plans.

Improvements to Land Use and Administrative Definitions

The Expert Panel recommended that definitions within the PDI Act and the Code be reviewed, and additional definitions included. The Government supports this recommendation and agrees there is value in continuing to review and consider what additional terms could and should be defined in the PDI Act and Code. For the Code, this will occur through this amendment and will build on definition amendments made in the previous Miscellaneous Technical and Enhancement Amendment completed in 2023.

Review of Part 7 – Land Use Definitions and Part 8 – Administrative Terms and Definitions will occur to provide greater clarity in interpretation and relationship with policy, noting that definitions are a ‘slave’ to policy.

Referrals

The Expert Panel recommended that development of State Heritage Places should not attract a referral in certain circumstances. The Government agrees but is cautious about making concessions on what ought to be the subject of a referral. A review of heritage referrals will be undertaken with advice sought from the Heritage Branch of the Department for Environment and Water.

A general review of Overlay and Part 9 referral triggers will also be undertaken to remove unnecessary referrals and duplication where applications have previously been referred at an earlier stage of development (e.g. land division application then residential development).

Adjustments to referral triggers will also be considered where agency advice is deemed appropriate to assessment.

Demolition policy for Local Heritage Places

The Expert Panel recommended that Performance Outcome 6.1 in the Local Heritage Place Overlay be reviewed to exclude dilapidation due to neglect as a supporting factor for demolition. The Government supports this recommendation. Demolition policy in the Local Heritage Plan Overlay will be reviewed and amended where appropriate in this context.

Language and consistency check

The Expert Panel recommended that a language and consistency check of the Code be undertaken to ensure the same terms and expressions are used throughout. The Government agrees with the recommendation. Some of this work will be done in the review of Rules of Interpretation, described above. Individual policies that have been identified by stakeholders that are causing confusion, are contradictory or unclear will be reviewed as part of the Code Amendment.

Policies are reasonable and practical

The Expert Panel recommended that the Code be reviewed to ensure requirements are reasonable and practical. The Government agrees that it is timely to undertake this review to ensure that the tangible requirements it imposes are reasonable and practical. The Code Amendment will build on this recommendation by undertaking a review of policy in this context and implications to assessment. Examples include:

- Review of relevant policies identified in zone Classifications Tables to ensure:
 - there are no gaps or inconsistencies across similar zones
 - or policy linkages that result in assessment of unnecessary or irrelevant policy.
- Wall height measurements points where taken from top of footings, particularly on sloping land.
- Design and Design in Urban Areas General Development Policies requiring hot-water services being connected to rainwater, which is contrary to the plumbing code.
- Applicability of Housing Renewal General Development policies to multi-dwelling and community title sites and identification of any policy anomalies.
- Application of Stormwater Management Overlay policy to Dwelling Additions or development that increases total roof area.
- Review of public notification tables to:

	<ul style="list-style-type: none"> ○ further reduce notification requirements for envisaged uses where built form criteria are met <p>Consider how the defined term ‘adjacent land’ is used in notification tables and whether it is resulting in unnecessary notification.</p> <p>Car parking for major open spaces</p> <p>The Expert Panel recommended the investigation of specified car parking rates for major open spaces. The Government agrees, particularly for those open spaces that are expected to attract significant public interest. The Government felt that it would be appropriate for this to be considered through consultation on the Greater Adelaide Regional Plan, specifically with Local Government. PLUS is of the view that this matter can be addressed through this Assessment Improvements Code Amendment.</p>
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The technical review and alignment with Government’s responses to the Expert Panel’s recommendations will continue through the investigations and preparation of the Code Amendment. This may reveal additional issues for consideration of amendment proposals.

3. STRATEGIC PLANNING OUTCOMES

Proposed Code Amendments occur within a state, regional and local strategic setting, which includes:

- State Planning Policies (SPPs)
- Regional Plans
- Other relevant strategic documents.

3.1. Summary of Strategic Planning Outcomes

The Commission’s Strategic Plan 2023-2024 identifies work plan priorities for enhancing our planning system and leading on planning policy for the next 12 to 18 months. Implementing the recommendations of the Expert Panel supported by the Government are amongst these priorities. This Code Amendment will seek to undertake targeted policy improvements in line with this priority.

3.2. Alignment with State Planning Policies

The State Planning Policies (SPPs) set out the State’s overarching goals and requirements for the planning system. Under section 66(3)(f) of the Act, the Code must comply with any principle prescribed by a SPP.

The Code Amendment should be initiated because the strategic planning outcomes sought to be achieved through the Code Amendment align with or seeks to implement the following SPPs:

State Planning Policy (SPP)	Code Amendment Alignment with SPPs
<p>SPP 1: Integrated Planning</p> <p>Objective: To apply the principles of integrated planning to shape cities and regions in a way that enhances our liveability, economic prosperity and sustainable future.</p> <p>In particular, the principle for: balanced decision-making – Decision-making that considers multiple perspectives</p> <p>SPP 2: Design Quality</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>2.6 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>Like the Miscellaneous Technical Enhancement Code Amendment this Code Amendment will continue to build upon the goals and requirements of the SPPs already established within the Code.</p> <p>The Code Amendment forms part of the Government’s response to the Planning System Implementation Review and will focus on improvements to assessment processes rather than significant policy amendments, or substantial change in policy position or intent.</p> <p>There will be a focus on improvements in assessment and decision-making parameters.</p>

3.3. Alignment with Regional Plans

As with the SPPs, the directions set out in Regional Plans provide the long-term vision as well as setting the spatial patterns for future development in a region. This includes consideration of land use integration, transport infrastructure and the public realm.

Given the scope of the Code Amendment, it is not anticipated to substantially change or address policy positions or strategic outcomes within Regional Plans. It is envisaged that there will be an overall improvement in the Code through enhancements of policy expression and greater consistency in language.

3.4. Alignment with Other Relevant Documents

Additional documents may relate to the broader land use intent within the scope of this proposed Code Amendment (or directly to the Affected Area) and therefore are identified for consideration in the preparation of the Code Amendment.

The following table identifies other documents relevant to the proposed Code Amendment:

Other Relevant Document	Code Amendment Alignment with Other Relevant Document
<p><i>Final Report and Recommendations 2023 Expert Panel for the Planning System Implementation Review</i></p> <p><i>Response of the South Australian Government to the Final Report and Recommendations of the Expert Panel for the Planning System Implementation Review</i></p>	<p>The Code Amendment will implement some of the recommendations of the Expert Panel supported by the Government. Not all such recommendations are within the scope of this Code Amendment.</p>
<p><i>Planning, Development and Infrastructure Act 2016 - Section 12 Objects of Act</i></p> <p>...the scheme established by this Act is intended to—</p> <p>(a) be based on policies, processes and practices that are designed to be simple and easily understood and that provide consistency in interpretation and application; and</p> <p>(c) promote certainty for people and bodies proposing to undertake development while at the same time providing scope for innovation; and</p> <p>(g) promote cooperation, collaboration and policy integration between and among State government agencies and local government bodies.</p> <p>Section 14 Principles of Good Planning, particularly—</p> <p>a) Long-term focus;</p> <p>c) High-quality design;</p>	<p>The Code Amendment will be prepared taking into account sections 12 and 14 of the Act. The Code Amendment will seek to enable those identified intentions and principles of the Act to be fulfilled.</p>

d) Activation and liveability: and e) sustainability	
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4. INVESTIGATIONS AND ENGAGEMENT

4.1. Investigations Already Undertaken

The Commission and the PLUS division of the Department for Housing and Urban Development have been monitoring the Code and its operation in a technical sense since its implementation. Practitioner and stakeholder feedback on the use of the Code is central to this monitoring and review function and together with the findings of the Planning System Implementation Review Expert Panel’s findings constitutes the primary body of investigative work undertaken to date.

4.2. Further Investigations Proposed

Further investigations proposed to inform the Code Amendment will largely be of a detailed technical nature to consider and review the effect of proposed changes to ensure they achieve the desired outcome.

4.3. Engagement Already Undertaken

No early engagement has been undertaken for this Code Amendment. Feedback received in relation to the 2023 Expert Panel’s System Implementation Review and stakeholder experiences communicated to the PLUS divisions of the Department for Housing and Urban Development will be a key input informing the amendment.

4.4. Further Engagement Proposed

The table below outlines what additional engagement will be undertaken to support the Code Amendment.

Further Engagement Proposed	Explanation of how the further engagement propose to address an identified issue or question
Practitioner’s Policy Forum	Utilise the standing Policy Forum with planning practitioners to further discussions on specific policy or assessment pathway amendments being considered by the Code Amendment.
Agency engagement	Where proposed amendments relate to agency concerns, feedback will be sought from relevant state agencies, particularly in relation to any changes to referrals.

<p>Consultation with any person or body specified by the Commission under section 73(6)(e) of the Act.</p>	<p>The Engagement Plan will outline the specific method and nature of engagement.</p>
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5. CODE AMENDMENT PROCESS

5.1. Engagement Plan

The Code Amendment process will occur in accordance with the Community Engagement Charter and *Practice Direction 2 – Consultation on the Preparation or Amendment of a Designated Instrument (Practice Direction 2)*.

The Designated Entity will prepare an Engagement Plan prior to the commencement of consultation on the proposed Code Amendment. The Engagement Plan will include the following mandatory consultation requirements (which may be in addition to the engagement outlined in this Proposal to Initiate):

- Given the proposal is generally relevant to councils, the Local Government Association must be notified in writing and consulted on the proposed Code Amendment;

In addition to engaging with the Local Government Association the Commission will directly notify and consult with the following key stakeholders:

- All South Australian Local Government Councils
- All referral agencies (State Government Agencies)
- Housing Industry Association
- Master Builders Association
- Planning Institute of Australia
- Property Council of Australia
- Urban Development Institute of Australia.

It is anticipated Community Engagement on this Code Amendment will be undertaken for a period of eight weeks.

Along with directly notifying the above listed persons/groups, the Code Amendment will be published on the Plan SA webpage to invite submissions. Consultation will also be promoted by:

- An article within the Planning Ahead e-newsletter
- A piece in a Monthly Policy Forum with Planning Professionals (Council Code policy group and Accredited Professionals).

5.2. Engagement Report

Once engagement on the Code Amendment is complete, the Designated Entity will prepare an Engagement Report under section 73(7) of the Act.

The Designated Entity must ensure that a copy of the Engagement Report is furnished on the Minister and also published on the SA Planning Portal. This will occur in accordance with Practice Direction 2.

The Engagement Plan and Engagement Report will also be considered by the State Planning Commission during the final stages of the Code Amendment process. The Commission will provide a report to the Environment, Resources and Development Committee of Parliament under section 74(3) of the Act. The Commission's report will provide information about the reason for the Code Amendment, the consultation undertaken on the Code Amendment and any other information considered relevant by the Commission.