

PROPOSAL TO INITIATE AN AMENDMENT TO THE PLANNING & DESIGN CODE

Site Contamination Development Assessment Scheme Code Amendment

By the State Planning Commission (the Designated Entity)

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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*.

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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.

The Commission proposes to amend the Code pursuant to section 73(2)(a) of the *Planning, Development and Infrastructure Act 2016* (the Act).

The Site Contamination Development Assessment Scheme Code Amendment (the Code Amendment) proposes to review the scope of the Scheme to improve the way the planning system responds to site contamination risk, ensuring that investigations are commensurate to the level of risk.

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 approve, amend 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:
 - Planning and Land Use Services (PLUS) employees from the Department for Trade and Investment (the Department) including:
 - Planning officers
 - Communications staff
 - Staff responsible for the technical management and operation of the online Planning and Design Code
 - Staff from the Environment Protection Authority (EPA).

1.2. Rationale for the Code Amendment

Context

A key responsibility of a planning authority is to ensure that a site is suitable for its intended use and does not pose an unacceptable risk to human health or the environment, taking into account the proposed use of the site.

Assessment of site contamination in the South Australian planning system seeks to be consistent with the *National Environment Protection (Assessment of Site Contamination) Measure 1999 (NEPM)*, which aims to:

“establish a nationally consistent approach to the assessment of site contamination to ensure sound environmental management practices by the community which includes regulators, site assessors, environmental auditors, landowners, developers and industry.

“provide adequate protection of human health and the environment, where site contamination has occurred, through the development of an efficient and effective national approach to the assessment of site contamination.”

More specifically section 6(5) of the NEPM states:

“Authorities of participating jurisdictions (at local and State government level) that consent to developments, or changes in land use, should ensure a site that is being considered for development or a change in land use, and that the authorities ought reasonably know if it has a history of use that is indicative of potential contamination, is suitable for its intended use.”

Prior to introduction of the Code in 2021, most development plans contained the following general policy:

Objectives:

Protection of human health and the environment wherever site contamination has been identified or suspected to have occurred.

Appropriate assessment and remediation of site contamination to ensure land is suitable for the proposed use and provides a safe and healthy living and working environment.

Principle of Development Control:

Development, including land division, should not occur where site contamination has occurred unless the site has been assessed and remediated as necessary to ensure that it is suitable and safe for the proposed use.

This policy was often used in an on-merit assessment, with no statutory referral or prescribed information requirements.

The Commission and EPA worked to reform the way site contamination was assessed in South Australia over several years (2017-2021). The site contamination development assessment scheme established in 2021 (the Scheme) provides a risk-based approach to site contamination, requiring consideration of site contamination in development applications which involve a change to a more sensitive land use.

Objectives of the Scheme included:

- Safeguard community health by providing a consistent state-wide planning approach to site contamination assessment.
- Specify site contamination assessment steps that must be taken when a change to a more sensitive land use is proposed (including an application for land division).
- Ensure that investigations are consistent with the risk-based *National Environment Protection (Assessment of Site Contamination) Measure 1999* (NEPM).
- Ensure that land is suitable, or will be made suitable, for its intended use where a more sensitive land use is proposed.

In summary, the Scheme requires that, when land use changes to a 'more sensitive use', investigation requirements are triggered. More detailed investigations are required as risk increases to ensure that site contamination is adequately investigated as part of the development assessment process.

The Scheme currently involves the following steps:

1. Development applications that involve a change in use to a more sensitive use require the submission of a site contamination declaration (SDF) form and a Preliminary Site Investigation (PSI) upon lodgement.
2. Where a potentially contaminating activity (PCA) has been identified on the PSI, further investigations may be required in the form of a Detailed Site Investigation (DSI) and potentially also a Site Contamination Audit.
3. Development applications meeting the criteria in Part 9.1 of the Code require referral to the EPA for direction regarding the type of site contamination investigations required. Only the EPA have the power to require an audit to be undertaken.
4. Statement of Site Suitability confirms that the site is suitable for its intended use, including any remediation required prior to occupation.

The Scheme operates through the following instruments:

- [*State Planning Commission Practice Direction 14 \(Site Contamination Assessment\)*](#) (Practice Direction 14) sets out procedural requirements that apply to assessment of potential site contamination when land use changes to a more sensitive use. It contains the LUSH, the Site Contamination Declaration form, the Statement of Site Suitability form, the potentially contaminating activity class lists, standard conditions, and matters for the EPA to consider when assessing referrals.
- [*Planning, Development and Infrastructure \(General\) Regulations 2017*](#) (the Regulations) specify the required forms and reports to accompany development applications and prescribes the EPA as a referral body.
- [*the Code*](#) includes Site Contamination General Development Policies used to assess site contamination, as well as outlining when a development requires referral to the EPA in Part 9.

Background

Practice Direction 14 was originally issued by the Commission in March 2021, with an agreement to undertake a formal review of its operation within 12 months. The initial review of Practice Direction 14 in 2022 revealed that a broader investigation into the overall Scheme was required, focussing on:

- removing low risk development applications from the Scheme; and

- providing clarity on when site contamination assessments should be a condition/reserved matter.

This perspective was formed based on wider industry feedback received since the implementation of the Code and Practice Direction 14, as well as an interim review of how other interstate planning schemes manage site contamination matters.

SCRG

A Site Contamination Reference Group (SCRG) was originally established by the EPA in 2017 to provide input into the development of the Scheme. The SCRG consists of representatives from the development sector, site contamination sector, councils, PLUS and the EPA.

The SCRG was re-convened in 2022 to examine the outcomes of the Commission's review of the Scheme and table other matters of significance.

In general, it was agreed that there was a need to recalibrate the risk-based approach for site contamination in the planning system.

Areas for review

This Code Amendment seeks to investigate improvements to the Scheme to enable more streamlined assessment pathways in appropriate cases, whilst ensuring that site contamination investigations and assessment continue to be required to protect community health.

The Commission's review of the Scheme, with feedback from the SCRG, identified two main areas for review and improvement, summarised below:

1. Land-Use Sensitivity Hierarchy (LUSH)

Table 1 of Practice Direction 14 (shown in Figure 1) currently specifies a hierarchy of land use types to determine what constitutes a 'more sensitive use' for the purposes of a proposed change in land use or an application for land division for a 'sensitive use'.

This categorisation was created in collaboration with the EPA to capture increasing levels of human sensitivities depending on the nature of the existing land use.

Item	Land Use	Description and examples
1	Residential Class 1	Domestic residential
	Educational premises class 1	Pre-school or primary school premises
2	Residential Class 2	Commercial aged care or other residential care facility
3	Open space/recreation area	Parks, playgrounds, playing ovals and other recreation areas in the open
4	Educational premises class 2	Secondary School premises, University or other tertiary educational premises
	Hospitals	Hospitals and hospices where persons with vulnerable physiology typically reside
	Tourist Accommodation	Hotels, motels and other forms of tourist accommodation
	Community Centre	Land uses for social, recreational, educational purposes for local community, but not including school premises or university or other educational premises or indoor recreation centres
5	Commercial class 1	Shops, offices, consulting rooms and the like
6	Primary Production	Farming, horticulture and intensive animal husbandry
	Commercial class 2	Petrol stations, dry cleaners, warehouses and other commercial uses (other than Commercial class 1)
7	Industrial	Light, service, general or special industry

Figure 1 Current Land Use Sensitivity Hierarchy Table (LUSH)

Evaluation of how the Scheme applies to development applications has observed the need to undertake site contamination investigations for applications which may have maintained a low risk of site contamination. For example, applications for the following changes of land use would all trigger the requirement for a PSI:

- residential care to private residential
- light industry to shop
- industry to retail fuel outlet (petrol station)
- light industry to warehouse
- office to school
- farming land to open space.

In comparison to other interstate planning systems, South Australia is the only jurisdiction to regulate what constitutes a 'more sensitive land use' by ranking both sensitive and non-sensitive land uses and requiring further testing if moving from one land use to another.

This Code Amendment seeks to review the concept of a 'more sensitive use', which will involve a review of not only Practice Direction 14, but also the Code, Regulations and other practice directions.

2. Investigations as a reserved matter

The Commission seeks to ensure a process can be followed, where planning consent for low-risk changes of use cannot be withheld pending detailed site contamination investigations, particularly in instances where the site cannot be reasonably accessed to undertake site contamination investigations (known as a 'constrained site'). In these

cases, site investigations may be more suitably undertaken at a later date, while ensuring appropriate consideration through reserved matters on the planning consent.

Some changes were made to Practice Direction 14 in April 2023 to acknowledge constrained sites, but this may be further reviewed through this Code Amendment process.

2. SCOPE OF THE CODE AMENDMENT

2.1. Affected Area

The Code Amendment will apply to the whole of South Australia.

2.2. Scope of Proposed Code Amendment

Current Policy	<p>The Scheme operates in conjunction with the following provisions of the Code, which will be reviewed through this Code Amendment:</p> <ul style="list-style-type: none"> • Part 4 – General Development Policies – Site Contamination • Part 8 – Administrative Terms and Definitions • Part 9 – Referrals - Part 9.1 Referral Body: Environment Protection Authority <p>Current Code provisions are contained in Attachment A.</p>
Amendment Outline	<p>This Code Amendment proposes to review the parts of the Code which form part of the Scheme to improve the way the planning system responds to site contamination risk, ensuring that investigations are commensurate to the level of risk.</p> <p>More specifically, it is proposed to review the extent of developments which are captured by the term “more sensitive use” in PO1.1 of the Site Contamination General Development Policies:</p> <p>“Ensure land is suitable for use when land use changes to a more sensitive use.”</p> <p>In turn, this will also require review of DTS/DPF 1.1:</p> <p>“Development satisfies (a), (b), (c) or (d):</p> <ul style="list-style-type: none"> a) does not involve a change in the use of land b) involves a change in the use of land that does not constitute a change to a more sensitive use c) involves a change in the use of land to a more sensitive use on land at which site contamination is unlikely to exist (as demonstrated in a site contamination declaration form)

	<p>d) involves a change in the use of land to a more sensitive use on land at which site contamination exists, or may exist (as demonstrated in a site contamination declaration form), and satisfies both of the following:</p> <ol style="list-style-type: none"> i. a site contamination audit report has been prepared under Part 10A of the <i>Environment Protection Act 1993</i> in relation to the land within the previous 5 years which states that- <ol style="list-style-type: none"> A. site contamination does not exist (or no longer exists) at the land or B. the land is suitable for the proposed use or range of uses (without the need for any further remediation) or C. where remediation is, or remains, necessary for the proposed use (or range of uses), remediation work has been carried out or will be carried out (and the applicant has provided a written undertaking that the remediation works will be implemented in association with the development) <p>and</p> ii. no other class 1 activity or class 2 activity has taken place at the land since the preparation of the site contamination audit report (as demonstrated in a site contamination declaration form)."
<p>Intended Policy</p>	<p>Instead of the term 'more sensitive use' and the LUSH in Practice Direction 14, it is proposed to investigate a scheme where site contamination investigations are required for changes to particular land uses most susceptible to site contamination (e.g. through exposure pathways), but only where those uses are located on potentially contaminated land.</p> <p>The nature of these particular land uses will be investigated having regard to the current LUSH, NEPM and <i>Environment Protection Act 1993</i> (the EP Act), while using land use definitions from Part 7 of the Code. Such land uses may include:</p> <ul style="list-style-type: none"> • Dwelling (residential) • Pre-school

- Supported accommodation
- Retirement facility
- Student accommodation
- Sales office
- Educational establishment (in the form of a primary school)
- Educational establishment (in the form of a secondary school)
- Hospital
- Caravan and tourist park
- Tourist accommodation
- Community facility
- Open Space
- Recreation area
- Golf Course
- Place of worship

The concept of 'potentially contaminated land' will also be explored and could include:

- Land which:
 - a) has been used for a potentially contaminating activity (currently defined in Practice Direction 14 as "a class 1 activity, class 2 activity or class 3 activity" which are listed in Schedule 1 of the Practice Direction); or
 - b) is adjacent land to land which has been used for a Class 1 potentially contaminating activity and remediation has not been undertaken to make the land suitable and safe for a sensitive use.
- Land which is the subject of a notation on the relevant title under section 103P of the EP Act that a site contamination audit report has been prepared.
- Land which is subject to a notification of site contamination of underground water (known as a section 83A notification under the EP Act), or where such a notification exists on adjacent land, shown in the South Australian Property and Planning Atlas (SAPPA).
- Land located within a Groundwater Prohibition Area as shown on the SAPPA.

The Code Amendment will investigate an approach where relevant authorities would consider the previous history of land and adjacent land where applications propose certain changes of use, to consider whether a potentially contaminating activity has triggered the definition of potentially contaminated land. If the relevant authority is unsure whether such a use has been undertaken, they could request the applicant to provide a PSI under section 119(3)(a) of the Act (rather than requiring a PSI and

	<p>consultant's declaration form upfront under section 119(1)(c) of the Act as prescribed under Schedule 8 clause 2A of the Regulations).</p> <p>The intended policy amendments will involve review of DO1, PO1.1 and DTS/DPF 1.1 of the Site Contamination General Development Policies, as well as Part 9.1 Referral Body: Environment Protection Authority. It will also involve review of (potential insertion, deletion, and modification) of various terms in Part 8 – Administrative Terms and Definitions, including:</p> <ul style="list-style-type: none"> • <i>more sensitive use</i> • <i>non-sensitive use</i> • <i>sensitive receiver</i> • <i>sensitive use</i> • <i>site contamination</i> • <i>class 1 activity</i> • <i>class 2 activity</i>
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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 Code Amendment will align with the following key strategic outcomes:

- Protect communities from exposure to site contamination
- Enable the safe development and use of land
- Mitigate potential contamination of sites

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
SPP16: Emissions and Hazardous Activities	
<p><u>Policy</u> 16.2 Assess and manage risks posed by known or potential site contamination to enable the safe development and use of land.</p> <p><u>Principles for Statutory Instruments:</u> The Code should include remediation policies to mitigate any potential contamination of sites and to facilitate the safe use of land.</p>	<p>The Code Amendment seeks to improve the way the planning system responds to site contamination risk, ensuring that investigations are commensurate to the level of risk.</p> <p>The Code and associated instruments will continue to manage risks posed by site contamination through remediation policies and ensuring the safe use of land. The Code Amendment will focus on reviewing procedural steps for when site contamination investigations are warranted, and ensuring that low risk development does not require unwarranted investigations.</p> <p>The Code Amendment will therefore remain consistent with SPP 16.2 and associated statutory principles.</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 Code Amendment will affect General Development Policies which can apply across the entirety of South Australia, all regional plans are relevant for this Code Amendment.

Regional Plan Identified Priorities or Targets	Code Amendment Alignment with Regional Plan
30 Year Plan for Greater Adelaide 2017 Update	
<p><i>Emergency management and hazard avoidance</i></p> <p>A68. Update procedures and provide educational materials for planning authorities' rezoning and assessment matters related to site contamination.</p>	<p>The Code Amendment is consistent with the 30 Year Plan for Greater Adelaide 2017 Update, as, through review and updates to the Scheme, new and improved guidance materials and procedures will be prepared to assist practitioners to understand and implement the Scheme.</p>
Other Regional Plans: Eyre and Western, Far North, Kangaroo Island, Limestone Coast, Mid North, Murray and Mallee, Yorke Peninsula (summary)	

<p><i>Principle: Protect people, property and the environment from exposure to hazards</i></p> <p>Policy: Integrate adaptation to climate change and disaster risk reduction and hazard avoidance policies, standards and actions into strategic plans, Development Plan policies and development assessment processes using best practice models to:</p> <p>...protect human health and the environment where contamination has occurred</p>	<p>The Code Amendment aligns with other regional plans, as it seeks to update policies and processes regarding site contamination to continue to protect human health and the environment.</p>
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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 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
National Environment Protection (Assessment of Site Contamination) Measure 1999 (NEPM)	<p>The Code Amendment will seek to align with the aims of the NEPM, including to:</p> <p>“provide adequate protection of human health and the environment, where site contamination has occurred, through the development of an efficient and effective national approach to the assessment of site contamination.”</p> <p>More specifically section 6(5) of the NEPM states:</p> <p>“Authorities of participating jurisdictions (at local and State government level) that consent to developments, or changes in land use, should ensure a site that is being considered for development or a change in land use, and that the authorities ought reasonably know if it has a history of use that is indicative of potential contamination, is suitable for its intended use.”</p>

4. INVESTIGATIONS AND ENGAGEMENT

4.1. Investigations Already Undertaken

The table below identifies what investigations have already been undertaken in support of the proposed Code Amendment.

Investigation Undertaken	Summary of Scope of Investigations	Summary of Outcome of Recommendations
Interstate Comparison of Site Contamination Assessment (PLUS)	<p>Initial desktop review, then email enquiries to Australian State Governments, seeking information on the role of site contamination in interstate planning systems, focussing on:</p> <ul style="list-style-type: none"> - trigger for site contamination assessment - sensitive land use hierarchy table - sensitive vs more sensitive land uses - definition of 'sensitive' investigations - subdivision - referrals to EPA / environmental authority - overlays. 	Observations documented in Attachment B
Series of interstate meetings on site contamination assessment schemes (EPA/PLUS)	<p>Series of online meetings seeking interstate experiences with their respective site contamination assessment schemes. Topics included:</p> <ul style="list-style-type: none"> - key elements of the scheme, achieving desired outcomes, response of industry and stakeholders - procedural trigger for when site contamination investigations are required - site contamination investigations/reports, who prepares - referral role of the EPA and what expertise relevant authorities rely upon when assessing site contamination - if a site is 'constrained' for the purpose of undertaking detailed site 	Meeting notes documented in Attachment C

	investigations, how/when site contamination is assessed - whether site contamination investigations required to be completed prior to granting planning consent or dealt with as a reserved matter.	
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4.2. Further Investigations Proposed

In addition to the investigations already undertaken and identified above, the table below outlines what additional investigations that will be undertaken to support the Code Amendment.

Further Investigations Proposed	Explanation of how the further investigations propose to address an identified issue or question
Principles for when the Scheme should apply	Map out the types of land use changes where site contamination should be considered, considering various risk/exposure levels, and the likely nature of investigations needed.
Investigate concept of 'sensitive use'	Investigations to consider how and whether 'sensitive use' could be used as a trigger for site contamination investigations, considering current definitions of 'sensitive use' and similar terms in the Code, EP Act, NEPM and interstate jurisdictions, compared to the current land uses in the LUSH.
Investigate concept of 'potentially contaminated land'	Investigations to consider whether the term 'potentially contaminated land' can be appropriately used to initiate site contamination investigations, and how such a term should be defined.
Devise appropriate standard conditions and/or reserved matters	Review standard conditions and consider reserved matters to be used where site contamination requires assessment
Environmental advice	Engage a qualified site contamination expert/s to review the existing Scheme and assist in consideration of potential changes.

4.3. Engagement Already Undertaken

The following engagement has occurred to inform the proposed Code Amendment:

- State Planning Commission Round Table on Site Contamination Assessment – 31 March 2022
- Local Government Assessment Manager Forum – 7 December 2022
- Site Contamination Reference Group (SCRG) Meeting – 14 December 2022
- Site Contamination Reference Group (SCRG) Sub-group meeting – 17 May 2023
- Site Contamination Reference Group (SCRG) Meeting – 19 June 2023

4.4. Further Engagement Proposed

In addition to the engagement already undertaken and identified above, 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
Ongoing consultation with the EPA	Consult with the EPA during preparation of proposed changes to the Scheme and present draft changes to the EPA for technical feedback
Additional meeting(s) of the SCRG	Draft policy and procedures to be presented to the SCRG for feedback, used to inform proposed amendments to the Code and associated instruments
Present changes to Local Government Assessment Managers Forum	Draft policy and procedures to be presented to the Local Government Assessment Managers Forum for feedback, used to inform proposed amendments to the Code and associated instruments
Community consultation	Broader community consultation to provide an opportunity for any interested community members to comment on the proposed outcomes of the Code Amendment.
Consultation with any person or body specified by the Commission under section 73(6)(e) of the Act.	The Engagement Plan will outline the specific method and nature of consultation.

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 engagement 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;
- Consultation must also occur with any person or body specified by the State Planning Commission under section 73(6)(e) of the Act.

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 to the Minister and published on the SA Planning Portal in accordance with Practice Direction 2.

The Engagement Plan and the Engagement Report will also be considered by the 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.

5.3. Code Amendment Timetable

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

ATTACHMENT A

Current site contamination policies in the Planning and Design Code

21 November 2023

Part 4 – General Development Policies

Site Contamination

Assessment Provisions (AP)

Desired Outcome (DO)

Desired Outcome	
DO 1	Ensure land is suitable for the proposed use in circumstances where it is, or may have been, subject to site contamination.

Performance Outcomes (PO) and Deemed-to-Satisfy (DTS) Criteria / Designated Performance Feature (DPF)

Performance Outcome	Deemed-to-Satisfy Criteria / Designated Performance Feature
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PO 1.1

Ensure land is suitable for use when land use changes to a more sensitive use.

DTS/DPF 1.1

Development satisfies (a), (b), (c) or (d):

- a) does not involve a change in the use of land
- b) involves a change in the use of land that does not constitute a change to a more sensitive use
- c) involves a change in the use of land to a more sensitive use on land at which site contamination is unlikely to exist (as demonstrated in a site contamination declaration form)
- d) involves a change in the use of land to a more sensitive use on land at which site contamination exists, or may exist (as demonstrated in a site contamination declaration form), and satisfies both of the following:
 - i. a site contamination audit report has been prepared under Part 10A of the *Environment Protection Act 1993* in relation to the land within the previous 5 years which states that-
 - A. site contamination does not exist (or no longer exists) at the land
or
 - B. the land is suitable for the proposed use or range of uses (without the need for any further remediation)
or
 - C. where remediation is, or remains, necessary for the proposed use (or range of uses), remediation work has been carried out or will be carried out (and the applicant has provided a written undertaking that the remediation works will be implemented in association with the development)
and
 - ii. no other class 1 activity or class 2 activity has taken place at the land since the preparation of the site contamination audit report (as demonstrated in a site contamination declaration form).

Part 9 – Referrals

Part 9.1 Referral Body: Environment Protection Authority

Class of Development / Activity			Policies Relevant to the Referral	Purpose of Referral	Statutory Reference
Site contamination	Change in the use of land to a more sensitive use.	<p>Change in the use of land to a more sensitive use on land at which site contamination exists or may exist as a result of one of the following:</p> <ol style="list-style-type: none"> 1. class 1 activity (including where a class 1 activity exists or previously existed on adjacent land) 2. class 2 activity and the proposed use is a sensitive use <p>or</p> <p>Change in the use of land to a more sensitive use on land where one or more of the following applies:</p> <ol style="list-style-type: none"> 1. that is the subject of a notation on the relevant title under section 103P of the Environment Protection Act 1993 that a site contamination audit report has been prepared; 	Site Contamination General Development Policies and Section 57 of Environment Protection Act 1993 that sets out criteria to be considered by the EPA in relation to the assessment of development applications.	To provide direction to the relevant authority on whether they must consider the advice of either a site contamination consultant or site contamination auditor regarding site suitability, including through the imposition of conditions of planning consent.	Development of a class to which Schedule 9 clause 3 item 9A of the Planning, Development and Infrastructure (General) Regulations 2017 applies.

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Class of Development / Activity			Policies Relevant to the Referral	Purpose of Referral	Statutory Reference
		<ol style="list-style-type: none"> 2. subject to a notification of site contamination of underground water (known as a section 83A notification under the Environment Protection Act 1993), or where such a notification exists on adjacent land, shown on the South Australian Property and Planning Atlas; 3. located within a Groundwater Prohibition Area as shown on the South Australian Property and Planning Atlas <p>No referral is required where, in relation to the subject land:</p> <ol style="list-style-type: none"> 1. a site contamination audit report has been prepared under Part 10A of the Environment Protection Act 1993 in relation to the land within the previous 5 years which concludes one or more of the following: <ol style="list-style-type: none"> 1. site contamination does not exist (or no longer exists) at the land 2. the land is suitable for the proposed use or range of 			

Class of Development / Activity			Policies Relevant to the Referral	Purpose of Referral	Statutory Reference
		<p>uses (without the need for any further remediation)</p> <p>3. where remediation is, or remains, necessary for the proposed use (or range of uses), remediation work has been carried out or will be carried out (and the applicant has provided a written undertaking that the remediation works will be implemented in association with the development)</p> <p>2. no other class 1 activity or class 2 activity has taken place at the land since the preparation of the site contamination audit report</p>			
	Land Division	<p>Subject to clause 1(4) of Schedule 9 of the Planning, Development and Infrastructure (General) Regulations 2017, development involving the division of land if—</p> <p>1. Schedule 8 clause 2A(1)(b) applies to the application in respect of the development; and</p> <p>2. site contamination exists or may exist at the land because of 1 or more of the following circumstances:</p>	<p>Site Contamination General Development Policies and Section 57 of <i>Environment Protection Act 1993</i> that sets out criteria to be considered by the EPA in relation to the assessment of</p>	<p>To provide direction to the relevant authority on whether they must consider the advice of either a site contamination consultant or site contamination auditor regarding site suitability, including through the</p>	<p>Development of a class to which Schedule 9 clause 3 item 9AB of the Planning, Development and Infrastructure (General)</p>

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Class of Development / Activity			Policies Relevant to the Referral	Purpose of Referral	Statutory Reference
		<ol style="list-style-type: none"> 1. a class 1 activity has been conducted on the land or on adjacent land; 2. a class 2 activity has been conducted on the land; 3. the land or adjacent land is the subject of a section 83A notification under the <i>Environment Protection Act 1993</i> that appears on the South Australian Property and Planning Atlas; 4. the land is within a groundwater prohibition area that appears on the South Australian Property and Planning Atlas; 5. the land is the subject of a notation on the certificate of title for the land under section 103P of the <i>Environment Protection Act 1993</i> that a site contamination audit report has been prepared. 	development applications.	imposition of conditions of planning consent.	Regulations 2017 applies.

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ATTACHMENT B

Site Contamination - Interstate comparison by PLUS

June 2022

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SITE CONTAMINATION

Planning Assessment - Interstate Comparison by PLUS

June 2022

PLANNING ASSESSMENT THEMES

- Trigger for Site Contamination Assessment
- Sensitive Land Use Hierarchy Table
- Sensitive vs More Sensitive Land Uses
- Definition of 'Sensitive'
- Investigations
- Subdivision
- Referrals to EPA / Environmental Authority
- Overlays

TRIGGER FOR SITE CONTAMINATION ASSESSMENT

Planning Scheme	Application Type	Criteria
NT	Planning Application received for Rezoning, Development or Subdivision	More Sensitive (or Intensive) Use + Sensitive Subdivision
ACT	Change of Use	More Sensitive Land Use
TAS	(a) Development Application (b) Subdivision	(a) On Potentially Contaminated Land (b) Sensitive Use
VIC	Development Application	Sensitive Land Use or Land that is Potentially Contaminated
QLD	Development Application	Material change of use to a more sensitive land use or for the reconfiguring of a lot
NSW	Development Application	Where Sensitive uses are proposed
WA	Development Application	More sensitive land use on land already on the contamination register or due to subjective planning decision.

HIERARCHY TABLE

- SA's Planning Scheme is the only one to contain a Hierarchy Table of Sensitive Land Uses.
- All of the other Planning Schemes either refer to a defined 'Sensitive Land Use' or take a subjective approach to what a Sensitive Land Use or More Sensitive Land Use' is and apply a suitable determination accordingly.

SENSITIVE VS MORE SENSITIVE LAND USE

Planning schemes that assess applications based on a 'Sensitive' Land Use: VIC, TAS, NSW

Planning schemes that assess applications based on a 'More Sensitive' Land Use: NT, ACT, QLD, WA

DEFINITION OF SENSITIVE LAND USE

Planning Scheme	Definition of Sensitive Land Use
NT	<u>Defined</u> as: Child-care centres, schools, aged care, residential and relevant local sensitive environments e.g., surface water, wetlands and reserves
ACT	No definition of 'Sensitive Land Use' (subjective planning decision)
TAS	<u>Defined</u> as: a residential use or a use involving the presence of people for extended periods except in the course of their employment such as a caravan park, childcare centre, dwelling, hospital or school.
VIC	<u>Defined</u> as Residential uses, child-care centres, kindergartens, pre-school centres or primary schools, even if ancillary to another use, and also for secondary schools and children's playgrounds.
QLD	<u>Defined</u> as: (a) caretaker's accommodation; or (b) a childcare centre; or (c) a community care centre; or (d) a community residence; or (e) a detention facility; or (f) a dual occupancy; or (g) a dwelling house; or (h) a dwelling unit; or (i) an educational establishment; or (j) a health care service; or (k) a hospital; or (l) a hotel, to the extent the hotel provides accommodation for tourists or travellers; or (m) a multiple dwelling; or (n) a relocatable home park; or (o) a residential care facility; or (p) a resort complex; or (q) a retirement facility; or (r) rooming accommodation; or (s) rural workers' accommodation; or (t) short-term accommodation; or (u) a tourist park; or (v) workforce accommodation.
NSW	No definition – but referred to as 'New residential or sensitive use development and recreational areas involving large numbers of people'
WA	<u>Defined</u> as: residential development, hospitals, hotels, motels, hostels, caravan parks, schools, nursing homes, child-care facilities, shopping centres, playgrounds and some public buildings. <u>Includes uses with more frequent access or occupation of the site despite no change in actual land use'</u>

INVESTIGATIONS

Pre-Lodgement

None of the interstate Planning Schemes require Site Contamination investigations to be undertaken prior to lodgement of the development application.

Assessment

If the Planning Authority determines that investigations are required, then a Preliminary Site Investigation (PSI) (also termed 'Site Audit' or Preliminary Risk Screen Assessment (PRSA)) may be conditioned.

Planning Consent

If the outcome of the PSI is positive, then a Detailed Site Investigation (DSI), Audit, Remediation and /or Conditions will be imposed.

SUBDIVISION

- Some of the Planning Schemes, make specific reference to Subdivision with regards to the triggers for Site Contamination Assessment (NT and QLD).
- The others just treat Subdivision as 'Development' for these purposes (i.e., no distinction in the application for development)
- NB some states require a separate and more thorough approvals process for sub-division from their planning commissions e.g., WA

REFERRALS

- QLD does not have an independent EPA but the QLD Department of Environment and Science (DES) is also not triggered as a referral or technical advice agency for contaminated land under the Planning Act 2016.
- The other Planning Schemes will either make referrals to independent Site Auditors who are accredited by the EPA, or to the EPA directly.

OVERLAYS – ‘POTENTIALLY CONTAMINATED LAND’

- Some of the Planning Schemes contain Environmental Overlays.
- In VIC where land has been determined to be potentially contaminated, but it is difficult or inappropriate to meet environmental audit system requirements at the amendment stage, the application of the Environmental Audit Overlay (EAO) to the land allows deferment of these requirements.
- Applying the overlay ensures the requirements will be met in the future but does not prevent the assessment and approval of a planning scheme amendment.
- What constitutes 'Potentially Contaminated Land' is also outlined in the Victorian planning framework.

ATTACHMENT C

Summary of interstate meetings on site contamination assessment schemes by EPA

August-September 2022

19426879

Summary of Meetings
with EPA, DTI and interstate Planning, Environmental and Site Contamination
Professionals to discuss
interstate Site Contamination Assessment Schemes

Victorian Site Contamination Assessment Scheme

Date: 2 August 2022

Meeting attended by: Elinor Walker (State Planning Commission), Rhiannon Hardy (Department of Trade and Investment, Planning and Land Use Services), Phil Hazell (Environment Protection Authority), Melissa Chrystal (EPA), Wendy Boyce (EPA), Stuart Menzies (Department of Environment, Land, Water and Planning, Victoria), Nick Kennedy (EPA, Victoria), Rodney Wee (DELWP), Jimmy Papadimitriou (DELWP) and Jo Coupar (EPA, Victoria).

Summary of the scheme and meeting

The Victorian Site Contamination Development Assessment Scheme is a new scheme put into place in 2021 to better align the planning system with the [Environment Protection Act 2017 \(Vic\)](#). Site contamination risks are now considered in Victoria's planning scheme at the rezoning stage and development application stage.

i. Rezoning of Land

[Ministerial Direction 19](#) requires planning authorities to consult with the EPA in relation to certain types of rezoning proposals, resulting in a consideration of site contamination risks at the rezoning stage.

Where land is determined to be an area of known site contamination, an Environment Audit Overlay ('EAO') can be applied to such land. Where an EAO applies, *Ministerial Direction 19* allows the detailed assessment of site contamination to be deferred to the development application stage (as opposed to being largely dealt with at the rezoning stage).

When a sensitive use is proposed within an EAO, the Victorian planning provisions require an applicant to undertake an environmental audit or Preliminary Risk Screen Assessment ('PRSA') and comply with remediation requirements prior to the commencement of the proposed use.

ii. Development Applications

[Ministerial Direction 1](#) applies to potentially contaminated land¹ where a use is proposed which could be significantly adversely affected by any contamination. Such uses include, residential, public open space, agriculture, a child-care centre, pre-school centre or a primary school (but not a secondary school).

¹ For the purpose of Ministerial Direction 1, 'potentially contaminated land' means land that is, or has been, used for industry; mining; or storing chemicals, gas, wastes or liquid fuel (if not ancillary to another use of the land). Land that is, or has been, used for farming or a petrol station is also typically considered to be potentially contaminated as such industries involve the storage of chemicals, gas, wastes or liquid fuels.

Planning authorities in Victoria are required to have regard to site contamination and whether land will be suitable for its intended use when assessing all development applications, however detailed site contamination assessment is primarily invoked in relation to a proposed sensitive use.

If land is potentially contaminated, then the relevant authority could ask for the applicant to provide a preliminary site investigation ('PSI') report. Another way in which relevant authorities inform themselves of site contamination risk is by requesting that an applicant provide a PRSA. The PRSA (undertaken pursuant to the *Environment Protection Act 2017* (Vic)) will determine whether or not an environmental audit is required. Experience to date shows that PRSAs are relied on more often than PSIs.

Where development applications involve technical site contamination matters, they may be informally referred² to EPA Victoria for advice. The EPA Victoria has no formal referral role at planning permit stage.

DELWP has prepared a [Planner's Toolkit](#) to provide guidance to planners when identifying potentially contaminated land for an EAO and when assessing planning permits for potentially contaminated land.

EPA staff key observations

- The *Environment Protection Act 2017* (Vic) and three inquiries resulted in changes to the Victorian planning system in relation to site contamination assessment
- The Victorian planning system includes Environmental Audit Overlays in areas of known site contamination. Overlays invoke the need for site contamination audits in relation to development in such areas.
- A PRSA is a key feature of the new Victorian system. It is a tool used to determine whether an audit will be required for the proposed land use at the subject site.
- The Victorian scheme is primarily invoked in relation to 'sensitive uses' and not 'a change to a more sensitive use'. However, councils are required to consider site contamination risks as part of every DA assessment in line with their DA assessment rules. *Ministerial Direction 19* requires planning authorities to consult with the EPA in relation to certain types of rezoning proposals. This means there is typically a greater emphasis on site contamination risks at the rezoning stage.
- The Victorian EPA does not receive site contamination DA referrals but they do receive informal referrals for advice about technical site contamination matters.
- In-house site contamination expertise varies between relevant authorities. Some relevant authorities may engage a third party site contamination consultant to review proposals.
- Victorian staff indicated no significant objections to the operation of the scheme from a stakeholder point of view.

² No fees are payable for informal referrals

New South Wales Site Contamination Assessment Scheme

Date: 17 August 2022

Meeting attended by: Elinor Walker (SPC), Rhiannon Hardy (DTI, PLUS), Phil Hazell (EPA) Wendy Boyce (EPA), Melissa Chrystal (EPA), Anthea White (EPA, NSW), Mitchell Bennett (EPA, NSW) and Victoria Lee (EPA, NSW).

Summary of the scheme and meeting

The management framework for contaminated land in NSW broadly consists of two tiers:

- the EPA NSW, which uses its powers under the [Contaminated Land Management Act 1997](#) ('CLM Act') to deal with contamination that is significant enough to warrant regulation given the site's current or approved use.
- planning authorities, who deal with other contamination under the planning and development process, including the [State Environmental Planning Policy \(Resilience and Hazards\) 2021](#) ('Resilience and Hazards SEPP') and the [Managing Land Contamination - Planning Guidelines](#) ('MLC Guidelines') on sites which do not pose an unacceptable risk under their current or approved use. This process determines what remediation is needed to make the land suitable for a different use.

i. EPA Assessment of Significant Sites

The CLM Act requires landowners to notify the EPA of site contamination (or suspected site contamination). The EPA will then undertake investigations to determine whether the site contamination is significant such that it warrants declaration of the site as 'significantly contaminated' site.

ii. Planning Authority Assessment of All Other Sites

The [Environment Planning and Assessment Act 1979 \(NSW\)](#) ('EP&A Act') requires planning authorities to consider site contamination risks and site suitability for all development applications which involves acting in accordance with the MLC Guidelines and adherence with the Resilience and Hazards SEPP.

The Resilience and Hazards SEPP requires a planning authority to consider a preliminary investigations report where a change in use is proposed on a site with current and/or historical potentially contaminating activities ('PCAs') and which has been declared to be a 'significantly contaminated' site by the NSW EPA.

Planning authority assessments of other development applications are guided by the MLC Guidelines. The MLC Guidelines provide information around when site contamination reports (preliminary site investigations, detailed site investigations etc) should be requested and state that a planning authority should have certainty that a site can be made suitable for the intended use. Planning authorities typically do not employ in-house site contamination experts to assist with this assessment.

Formal referrals to the EPA exist for 'integrated developments' and certain types of other developments, including state significant developments. For other types of development proposals, the planning authority will determine if an informal referral to the EPA is warranted. The EPA needs to triage DA referrals based on the site contamination risk profile.

EPA staff key observations

- The MLC Guidelines were prepared in 1998. New guidance material has been drafted by the NSW Government, however has not yet been finalised: [Contaminated Land Planning Guidelines](#)
- The planning guidelines include a series of questions for planning authorities to consider in relation to site contamination at the DA assessment stage. The guidelines state that there needs to be certainty that a site can be made suitable for the intended use.
- The CLM Act requires notification to the EPA. It is the responsibility of landowners or polluters to notify the EPA about site contamination. The EPA then determines whether the contamination is 'significant' and therefore warrants the declaration of a site as 'significant'.
- Councils deal with site contamination DA related risks more often than the EPA. Some councils have site contamination experts but most don't.
- There are referrals to the EPA for integrated developments and certain types of other developments, including state significant developments as they will need to be licensed by the EPA.
- The EPA can stop the clock on DAs that are formally referred but councils also informally refer DAs to the EPA. The EPA needs to triage DA referrals based on priority/risks/needs etc.

Western Australia Site Contamination Assessment Scheme

Date: 29 August 2022

Meeting attended by: Phil Hazell (EPA), Wendy Boyce (EPA), Scott Douglas (EPA), Melissa Chrystal (EPA), Sheri-lynn Ludwig (Department of Planning, Lands and Heritage), Bill Richmond (Department of Water and Environmental Regulation), Andrew Miller (DWER) and Rohan Miller (DPLH).

Summary of the scheme and meeting

The WA system relies very heavily upon the site contamination registers set up under the [Contaminated Sites Act 2003](#) ('CS Act') and the [Contaminated Sites Regulations 2006](#) ('CS Regulations').

The CS Act requires an owner or occupier of a site or a person who suspects they have caused or contributed to site contamination to report suspected or known site contamination to DWER.

DWER will then classify these reported sites into one of seven classes:

1. report not substantiated
2. possible contaminated – investigation required
3. not contaminated – unrestricted use
4. contaminated – restricted use
5. remediated for restricted use
6. contaminated – remediation required, and
7. decontaminated.

Where land is classified as [2], [4], [5], [6] above, a 'memorial' will be lodged on the land title. Any application to subdivide, amalgamate or develop a site with a listed 'memorial' on the title will require the planning authority to refer to DWER for advice on site suitability. At this time DWER may seek further information from the proponent and will often require an audit be undertaken.

As part of their assessment, DWER will consider whether a proposed development involves a change in use to a more sensitive use. However, as an objective land use sensitivity hierarchy or similar has not been published, this results in conjecture and internal debate. If in doubt, DWER treats proposals as if they were a more sensitive use. Proposals for a more sensitive use would generally require an auditor to demonstrate that the site is suitable for the intended use.

DWER seek to respond to these development applications within 45 days as a matter of practice, but this deadline is not legislated. As timeframes are not legislated, there is no need to stop the clock if further information is required from the applicant.

After providing advice³ in relation to conditions that should be attached to any development approval, DWER is subsequently responsible for determining whether their recommended conditions have been complied with prior to occupancy/use being permitted.

DWER assesses referred DAs at no cost (i.e. no fee is payable). In addition, DWER invests significant resources maintaining, updating and classifying contaminated sites into the seven classes.

EPA staff key observations

- The WA system relies very heavily upon the CS Act, the CS Regulations 2006, associated site contamination registers and notations on the title of land.
- Such legislation requires DA referrals to DWER for sites that have been previously classified as contaminated for various reasons including the fact that certain PCAs have been undertaken on such sites.
- DWER spends significant resources maintaining, updating and classifying contaminated sites into 7 classes.
- The site contamination register is publicly available but only has a certain number of classes of contamination identified publicly.
- DWER assesses referred DAs (for no cost) and provides advice only to the relevant planning authority about conditions that should be attached to any DA approval
- DWER is also subsequently asked to determine whether their recommended conditions have been satisfied before a development can be used/occupied
- DWER considers whether a proposed development involves a change in use to a more sensitive use and what PCAs may have occurred on the site when a DA is referred. Rather than having a definitive list of uses in a hierarchy of sensitivity land uses, DWER staff determine whether a development is a change to a more sensitive use through internal debate/discussions amongst experts.
- DWER often require audits to be undertaken as part of the DA assessment process.
- Development industry generally doesn't like audit requirements but it is generally accepted as part of the system.
- Planning authorities generally adopt the conditions advised by DWER.
- No significant complaints from development industry about the current operation of the scheme.

³ DWER does not have the ability to direct the imposition of conditions

Queensland Site Contamination Assessment Scheme

Date: 30 August 2022

Meeting attended by: Elinor Walker (SPC), Phil Hazell (EPA), Rebecca Hughes (EPA), Scott Douglas (EPA), Melissa Chrystal (EPA), Sally Thomas (Department of Environment and Science, Qld), Ryan Allsopp (DES), Ken Mackenzie (Brisbane City Council), Bronwyn Cruse (DES) and Renelle Watson (BCC).

Summary of the scheme and meeting

The DES is required to maintain two registers that are central to the Queensland site contamination assessment scheme:

- the Environment Management Register ('EMR') and
- the Contaminated Land Register ('CLR').

The EMR is a list of sites upon which PCAs have occurred. The CLR is a register of sites that have been determined to be contaminated. Land owners, councils and auditors are required to notify the state government of contamination which will trigger the relevant site to be placed on the CLR.

A development application that proposes a 'material change in use' on a site listed on either register will trigger referral to the state government under the [Environment Protection Act 1994 \(Qld\)](#). The state government will then assess these referrals and require statements of site suitability for the relevant sites as issued by a consultant or auditor.

EPA staff key observations

- There are two site contamination registers at the heart of the Qld scheme – contaminated sites register and environmental management register.
- A 'material change in use' DA and the site being on either register triggers referral to the State Government via the regulations under the Environment Protection Act. The State Government assesses referrals and provides concurrent approval. Assessment managers work for councils.
- Site suitability statements are issued by consultants or auditors.
- There is a requirement for landowners, councils or auditors to notify the state government of contamination which then triggers it being put on the register.
- Site contamination reports must be prepared by a 'suitably qualified person' and endorsed by an auditor. There is no definition prescribed for a 'suitably qualified person'.

ATTACHMENT D

Timetable for Code Amendment by the State Planning Commission

Step	Responsibility	Timeframe
Preparation of the Code Amendment		
Engagement Plan prepared Investigations conducted; Code Amendment Report prepared Drafting instructions and draft mapping prepared	The Department on behalf of the Commission	8-12 weeks
Preparation of Materials for Engagement	The Department on behalf of the Commission	Informed by the Engagement Plan
Engagement on the Code Amendment		
Code Amendment Report released for public engagement in accordance with the Community Engagement Charter and the prepared Community Engagement Plan	The Department on behalf of the Commission	To be specified in the Engagement Plan
Consideration of Engagement and Finalisation of Amendments		
Submissions summarised; Amended drafting instructions provided, Engagement Report prepared	The Department on behalf of the Commission	8-12 weeks
Prepare report to the Commission	The Department	4 weeks
Consideration of Advice		
Decision Process		
Minister considers the Code Amendment Report and the Engagement Report and makes decision – decision published on the PlanSA Portal within 5 business days (policy is not live)	Minister	Unknown
Implementing the Amendment (operation of the Code Amendment)		
Implement the Code Amendment in the Planning and Design Code and the South Australian Property and Planning Atlas	The Department	Align with deployment process
Parliamentary Scrutiny		
Referral of adopted Code Amendment to Environment, Resources and Development Committee of Parliament – referred within 28 days of implementation		