

Agenda Report for Decision

Meeting Date: 28 October 2021

Item Name	Request to amend Practice Direction 2 – Preparation and Amendment of Designated Instruments
Presenters	Brett Steiner and Nadia Gencarelli
Purpose of Report	Decision
Item Number	4.1
Confidentiality	Not Confidential (Release Delayed). To be released following Gazettal and publication on the SA Planning Portal. Anticipated in November 2021
Related Decisions	30 September 2021 – agreement to amend the Practice Direction

Recommendation

It is recommended that the State Planning Commission (the Commission) resolves to:

- 1. Approve the designation of this item as Not Confidential (Release Delayed) to be released following Gazettal and publication on the SA Planning Portal;
- Note the correspondence from the Hon Vickie Chapman MP, Minister for Planning and Local Government (the Minister) requesting variations to *Practice Direction 2 – Preparation* and Amendment of Designated Instruments (Practice Direction 2) (Attachment 1);
- 3. Approve the variations to Practice Direction 2 as shown in **Attachment 2**, to be published on the SA Planning Portal as required under section 42(4)(b)(ii) of the *Planning, Development and Infrastructure Act 2016* (the Act);
- 4. Delegate to the Ex Officio Member, the power to approve and publish a Notice in the *Government Gazette* for notification of the variations to Practice Direction 2, as required under section 42(4)(b)(i) of the Act; and
- 5. Authorise the Chair to approve any minor amendments and sign the letter to the Minister (**Attachment 3**).



Background

On 20 September 2021, the Minister wrote to the Commission requesting amendments to Practice Direction 2 to address concerns around the consultation process for Code Amendments. In particular, to enhance transparency and accountability, the Minister has requested that Practice Direction 2 be amended to require proponents to provide the following information when a Proposal to Initiate is lodged:

- identification of a start date for public consultation;
- provision of a consultation approach, including:
 - period of consultation;
 - key audience; and
 - consultation methods (noting the Commission may also recommend specific conditions).

A copy of the Minister's letter is attached in **Attachment 1**.

Discussion

There are a number changes to the PlanSA website (SA Planning Portal), Code Amendment Toolkit and Practice Direction 2 that have been implemented to improve the transparency and understanding of the Code Amendment process. These changes have sought to address confusion within the community about when consultation will occur (i.e. post initiation).

It is recommended that amendments be made to clause 7 of Practice Direction 2 to expressly require the provision of a consultation start date and consultation approach when a Proposal to Initiate is lodged. The proposed amendments are provided in **Attachment 2**.

The amendment will be supported by recent updates to the Code Amendment Toolkit, including a template for Publication Instructions outlining key information about the Code Amendment (including consultation start dates and activities) which will then be published on the PlanSA website (SA Planning Portal) following initiation on the Code Amendment.

The material on the Portal has been improved to include:

- the initiation proposal;
- letter from the Minister;
- process flowchart (with 'you are here') to assist community in understanding the process;
- improved visibility of proponent contacts; and
- inclusion of proposed consultation dates.

The Code Amendment toolkit has also been updated to encourage proponents to undertake preliminary engagement with key stakeholders (in addition to consultation with the relevant council as stipulated in the Practice Direction) as soon as practicable before and/or after initiation of a Code Amendment.



Attorney-General's Department

Procedural Matters

Section 42(4)(b) of the Act enables the Commission to vary a Practice Direction via notification in the *Government Gazette* and publication of the varied Practice Direction on the SA Planning Portal.

By Instrument of Delegation dated 18 March 2021, the Commission delegated its powers and functions under section 42(4)(b) of the Act to the:

- Executive Director, Planning & Land Use Services (PLUS); and
- Director, Planning & Development, PLUS.

The power delegated by the Commission under section 42(4)(b) is limited to the power to, from time-to-time, make a minor variation to a Practice Direction.

Given the nature of the Minister's request, the amendments to Practice Direction 2 are not considered to be of a minor nature. Accordingly, it is recommended that the Commission approve the amendments to Practice Direction 2, and agree to delegate the authority to publish a *Government Gazette* Notice to the Ex Officio Member of the Commission.

Attachments:

- 1. Letter from the Minister for Planning and Local Government, 20 September 2021—Request to amend *Practice Direction 2 Preparation and Amendment of Designated Instruments* (#17738649).
- 2. Variations to *Practice Direction 2 Preparation and Amendment of Designated Instruments* (#16380789).
- 3. Letter of response to the Minister for Planning and Local Government (#17738768).

Prepared by:	Nadia Gencarelli
Endorsed by:	Brott Stainar
Endorsed by.	
Date:	14 October 2021



The Hon Vickie Chapman MP

2019/00937/01

September 2021

Ms Helen Dyer Chair State Planning Commission

By email: saplanningcommission@sa.gov.au



Government of South Australia

Deputy Premier

Attorney-General

Minister for Planning and Local Government

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Dear Ms Dyer

I write in relation to the requirements associated with the Code Amendment process, and in particular, those relating to public consultation.

A key intent of the recent planning reforms was to improve the transparency around decision making, including in relation to Code Amendments. To that end, I note that the PlanSA website <u>https://plan.sa.gov.au/en/codeamendments</u> has been updated to include information about all Code Amendments that have been initiated, including details of the proposed policy changes and key contact details for the relevant Designated Entity.

Since the launch of this website, I have witnessed significant confusion from affected communities, many of whom wish to understand both the rezoning and the means by which they can be engaged in the process.

To address this issue, I have requested that the Attorney-General's Department make amendments to the PlanSA website to identify a consultation commencement day for each Code Amendment, and amendments have been made to the Code Amendment Toolkit to ensure appropriate information regarding this is provided when a Proposal to Initiate is lodged. However, this in and of itself is not a mandated step under legislation.

I note that the State Planning Commission (the Commission) has issued *Practice Direction 2* – *Preparation and Amendment of Designated Instruments*. I request that the Commission amend this Practice Direction to require proponents to provide the following information when a Proposal to Initiate is lodged:

- Identification of a start date for public consultation
- Provision of a consultation approach including:
 - o period of consultation
 - o key audience
 - consultation methods (noting the Commission may also recommend specific conditions).

It is anticipated these changes will lead to a better user experience, higher quality stakeholder interface and reinforce established transparency measures. Individuals who have provided submissions in relation to Code Amendments come from a diverse range of backgrounds, many of whom have no professional background in planning, policy or the built environment.

It is considered that the provision of a clearly discernible start date, contact details, nontechnical language and further detail on the chosen consultation approach will strengthen the Code Amendment Process, for citizens of all backgrounds and experience.

I look forward to seeing these changes implemented, and the above benefits realised.

Yours sincerely

VICKIE CHAPMAN MP DEPUTY PREMIER MINISTER FOR PLANNING AND LOCAL GOVERNMENT

PRACTICE DIRECTION 2

Preparation and Amendment of Designated Instruments



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

Introduction

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

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

- 1. Amendments to the Planning and Design Code (the Code).
- 2. Engagement required by the Community Engagement Charter (the Charter), which is to be undertaken and reported on under section 73 of the Act.
- 3. The information requirements for requesting a Complying Change to the Code after completing a Regional Plan under section 75 of the Act.
- 4. The information requirements for requesting early commencement of a Code Amendment under section 78 of the Act.

Part 1 – Preliminary

1 – Citation

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

2 - Commencement of operation

This practice direction will come into operation on the day on which it is published on the SA Planning Portal.

3 - Object of practice direction

The object of this practice direction is to specify:

- 1. Requirements under section 73 of the Act for the preparation of a proposal to initiate, consult and lodge for approval an amendment to the Code.
- 2. How, under section 73 of the Act, engagement (as required by the Charter) is to be undertaken and reported on in relation to the preparation or proposed amendment of a designated instrument.
- 3. Requirements under section 75 of the Act for requesting a complying change to the Code.

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

4 - Interpretation

In this practice direction, unless the contrary intention appears -

Act means the Planning, Development and Infrastructure Act 2016.

Affected Area means an area of land to which a proposed Code Amendment applies.

Charter means the Community Engagement Charter.

Code means the Planning and Design Code.

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

Department means the Attorney General's Department.

Designated Instrument means the instruments set out in section 70 of the Act.

Designated Entity means a person or entity authorised or approved to prepare a draft of a proposal to prepare or amend a designated instrument under section 73 of the Act.

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

Proponent means the Chief Executive of the Attorney-General's Department (the Department), another agency or instrumentality of the Crown, a joint planning board, a council, a provider of essential infrastructure, a scheme coordinator, or a person who has an interest in land, as listed in section 73(2)(b) of the Act.

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

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

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

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 - Consultation for Designated Instruments

5-Preparation of an Engagement Plan (prior to consultation)

- (1) The Designated Entity is responsible for preparing an engagement plan that:
 - (a) meets the principles and performance outcomes of the Charter;
 - (b) describes the persons or bodies to be consulted on the proposed amendment of the Designated Instrument, which must include any persons or bodies:

- (i) required to be consulted with under a condition imposed by the Minister under section 73(5) of the Act;
- (ii) specified by the Commission under section 73(6)(e) of the Act; and
- (iii) who must be consulted with under the Charter.
- (c) outlines any relevant previous engagement undertaken to inform the proposal;
- (d) describes the evaluation framework for the engagement.
- (2) All engagement plans which relate to proposed preparation of or amendment to a State Planning Policy or a Regional Plan must be submitted to the Commission for approval prior to commencement of formal engagement on the proposal.
- (3) An engagement plan relating to a proposed amendment to the Code or a Design Standard does not need to be approved by the Commission or the Minister, unless a condition has been imposed by the Minister under section 73(5) of the Act which requires such approval (in which case the condition will apply).

6- Preparation of an Engagement Report (following consultation)

- (1) At the completion of engagement on a proposal to prepare or amend a Designated Instrument, the Designated Entity must provide the Department with:
 - (a) if amendments to the proposal are required:
 - written instructions (in a form acceptable to the Department) that set out any changes to the draft Designated Instrument for the purposes of the Department updating and providing the draft policy for inclusion in the draft Designated Instrument; and/or
 - mapping instructions or a description of the Affected Area (in a form acceptable to the Department) in order to enable the Department to prepare and provide to the Designated Entity, mapping which is suitable for inclusion in the draft Designated Instrument;
 - (b) the updated draft Designated Instrument (once finalised by the Designated Entity, incorporating any amendments); and
 - (c) a final engagement report as required under section 73(7) of the Act and prepared in accordance with these Practice Directions, for the purpose of the Department arranging for the engagement report and draft Designated Instrument to be furnished on the Minister.
- (2) An engagement report required under section 73(7) of the Act must set out:
 - (a) details of the engagement undertaken and how that engagement met the engagement plan and reasons for variations (if any) to the engagement plan;
 - (b) the outcome of the engagement including a summary of the written submissions or feedback received;
 - (c) any proposed changes to the proposal to prepare or amend a Designated Instrument (when compared with the proposal that was engaged on) and the reasons for those proposed changes. This should specifically indicate:

- (i) where changes are proposed to the Designated Instrument based on or as a result of the engagement; and
- (ii) any other changes which are proposed based on or as a result of additional investigations or information which was not available when the proposal was released for engagement.
- (3) The engagement report must also include an evaluation of the effectiveness of the engagement that considers whether:
 - (a) the principles of the Charter have been achieved; and
 - (b) all mandatory requirements identified in the Charter have been met (where the consultation category is applicable).
- (4) The engagement report will be placed on the SA Planning Portal by the Department:
 - (a) in relation to a regional plan, the Code or a design standard five business days after the Minister has made a decision on the proposal to prepare or amend the Designated Instrument under section 73(10) of the Act; or
 - (b) in relation to a State Planning Policy five business days after the Governor has approved the preparation or amendment of a State Planning Policy under section 73(12)(a) of the Act.

Part 3 – Planning and Design Code Amendments

7-Initiating a Code Amendment

(1) To initiate an amendment to the Code, the proponent must lodge the following documents to the Department a Proposal to Initiate with the Department via the SA Planning Portal:

(a) a Proposal to Initiate

- (1) (b) SA Planning Portal Code Amendment Publication Instructions for Initiation-
- (2) The Proposal to Initiate must set out:

Designated Entity

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

Professional Expertise

(b) Where the Private Proponent will be the Designated Entity responsible for undertaking the Code Amendment process, the name, qualifications and experience of practitioner/s that will undertake the Code Amendment process (including any engagement) for or on behalf of the Private Proponent. In this case, the relevant practitioners must have qualifications and experience that is equivalent to an Accredited Professional – Planning Level 1 under the Act.

Code Policy

(c) An outline of:

This instrument is certified pursuant to section 52(1) of the Planning, Development and Infrastructure Act 2016

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- (i) any overlay, general policy, zone or subzones in the Code being proposed for amendment; and/or
- (ii) the intended spatial application of an overlay, general policy, zone or subzone in the Code over an identified area.

Affected Area

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

State Planning Policies

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

Regional Plan

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

Consultation

- (g) Evidence that the Private Proponent has undertaken preliminary consultation with the Chief Executive Officer of the relevant Council and/or with a relevant Joint Planning Board on the Proposal to Initiate and details of any matters raised on the Proposal to Initiate as a result. If consultation with the Chief Executive Officer of the relevant Council or with the relevant Joint Planning Board has not been undertaken by the Private Proponent, consultation will be undertaken by the Department.
- (h) Information regarding any consultation that has already occurred with respect to the proposed Code Amendment.
- (i) Details of further consultation proposed to be undertaken with respect to the proposed Code Amendment.

Investigations

- (j) Information regarding any investigations which have already been undertaken with respect to the proposed Code Amendment.
- (k) An outline of the further investigations that will be undertaken to support the proposed Code Amendment.
- (I) Details of any infrastructure required to support development arising through proposed Code Amendment and how the infrastructure will be provided.
- (m) Details of any infrastructure agreement (or agreements) or infrastructure scheme which will need to be established or entered into in connection with the proposed Code Amendment.

Timetable

(n) Identification of a consultation start date

- (o) An outline of the proposed timetable for each step of the Code Amendment process (ensuring that the process is completed within reasonable time limits), and a commitment from the Proponent (where it is also the Designated Entity) that it will take steps to update the timetable and seek approval from the Department if it appears that timeframes will not be met.
- (3) The Code AmendmentSA Planning PublicationPortal Publication Instructions for Initiation must set out:
 - (a) Identification of a consultation start date, consistent with the Proposal to Initiate timetable
 - (b) An outline of the consultation approach including period of consultation, key audience and consultation methods (noting the Commission may also recommend specific conditions)
 - (n)(c) A summary of the Code Amendment in plain English.
- (3)(4) To initiate a Code Amendment which is intended to designate a place as a place of local heritage value, the Proponent must provide a report which:
 - (a) includes a heritage datasheet for each proposed Local Heritage Place, which includes: -
 - (i) all relevant property details and descriptions (including images);
 - (ii) historical background and thematic analysis;
 - (iii) a statement of heritage value;
 - (iv) an assessment against the Local Heritage Criteria; and
 - (v) the extent of listing (including any exclusions).
 - (b) includes an analysis of historic themes of importance to the area;
 - (c) is prepared by a heritage architect, historian or person with similar qualifications, skills or experience; and
 - (d) is otherwise prepared in accordance with any guidelines prepared and published by the Commission under section 67(2)(c) of the Act.

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

- (a) includes relevant details and descriptions of the tree or stand of trees (including images as necessary).
- (b) includes an assessment of the tree (or stand of trees) against the Significant Tree Criteria;
- (c) is prepared by an urban planner, arborist or person with qualifications, skills or experience relevant to the assessment in the report.

8-Preparation of a draft Code Amendment (prior to consultation)

This instrument is certified pursuant to section 52(1) of the Planning, Development and Infrastructure Act 2016

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- (1) Where the Designated Entity is any party other than the Commission or the Chief Executive of the Department, then prior to consultation occurring on a draft Code Amendment, the Designated Entity must:
 - (a) carry out investigations and obtain such information:
 - (i) as provided in the Proposal to Initiate approved by the Minister;
 - (ii) as required under any conditions imposed by the Minister under section 73(5)(b) of the Act; and
 - (iii) as specified by the Commission under sections 73(6)(e) or 73(6)(f) of the Act;
 - (b) provide the Department with:
 - written instructions (in a form acceptable to the Department) that set out the intent of the proposed Code Amendment for the purposes of the Department writing the draft policy for inclusion in the draft Code Amendment; and
 - (ii) mapping instructions or a description of the Affected Area (in a form acceptable to the Department) in order to enable the Department to prepare and provide to the Designated Entity, mapping which is suitable for inclusion in the draft Code Amendment;
 - (c) prepare the draft Code Amendment in accordance with the approved Proposal to Initiate and any conditions imposed by the Minister under section 73(5)(b) of the Act and the requirements of this Practice Direction;
 - (d) provide the Department with written instructions (in a form acceptable to the Department) to prepare the SA Planning Portal for consultation on the draft Code Amendment; and
 - (e) provide the Department with the engagement plan prepared (and approved, if required) under these Practice Directions, for the purpose of the Department publishing the engagement plan on the SA Planning Portal.
- (2) Where an engagement plan is amended by a Designated Entity during any period of consultation or at any time prior to finalisation of the engagement report under these Practice Directions, the Designated Entity will provide the Department with the engagement plan (as updated) for the purpose of the Department publishing the updated engagement plan on the SA Planning Portal.

9-Requirements for a draft Code Amendment

- (1) A draft Code Amendment must be supported by the following information:
 - (a) an explanation of the current code policy as it applies to the Affected Area (at the time of preparation of the draft Code Amendment);
 - (b) an explanation of the amendments to the Code policy proposed for the Affected Area;
 - (c) an assessment of the strategic planning outcomes intended to be achieved through the draft Code Amendment, including an analysis of the consistency of the draft Code Amendment with the relevant provisions of State Planning Policies, the Regional Plan and any other relevant strategic plans;

- (d) a summary and explanation of the investigations undertaken and how these support the draft Code Amendment; and
- (e) an explanation of any infrastructure or services required to support development facilitated by the proposed Code Amendment, and an explanation of how and when the infrastructure will be provided.

10–Objectors to local heritage listings

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

11-Complying Changes to the Code

- A request for the Minister to agree to a complying change to the Code under section 75 of the Act must be provided to the Department and must include the following information:
 - (a) description of the relevant recommendations in the Regional Plan which relate to the proposed Code Amendment, including any specific maps or other specific information which clearly and expressly identify the changes relevant to the proposed Code Amendment;
 - (b) a summary of any consultation which has occurred in accordance with the Charter in relation to the proposed Code Amendment or the relevant Regional Plan. This should include a copy of the engagement report prepared for the relevant Regional Plan and any additional consultation that has occurred for the proposed Code Amendment;
 - (c) written instructions (in a form acceptable to the Department) that set out the intent of the proposed Code Amendment for the purposes of the Department writing the draft policy for inclusion in the draft Code Amendment; and
 - (d) mapping instructions or a description of the Affected Area (in a form acceptable to the Department) in order to enable the Department to prepare and provide to the Designated Entity, mapping which is suitable for inclusion in the draft Code Amendment.

12–Early Commencement of a Code Amendment

- A request for early commencement of a Code Amendment under section 78 of the Act must be provided to the Department and must include:
 - (a) explanation, justification and evidence as necessary to demonstrate how early commencement of the Code Amendment is:
 - (i) necessary in the interest of the orderly and proper development of an area of the state; and
 - (ii) required in order to counter applications for undesirable development (which should identify possible future development that would detract from or negate the object of the proposed Code Amendment) ahead of the outcome of consideration of the Code Amendment;

- (b) written instructions (in a form acceptable to the Department) that set out the intent of the proposed Code Amendment for the purposes of the Department writing the draft policy for inclusion in the draft Code Amendment; and
- (c) mapping instructions or a description of the Affected Area (in a form acceptable to the Department) in order to enable the Department to prepare and provide to the Designated Entity, mapping which is suitable for inclusion in the draft Code Amendment.

Practice Direction 2 *Preparation and Amendment of Designated Instruments* issued by the Commission on the 28 November 201927 May 2021 is revoked.

Issued by the State Planning Commission on 18 March 2021 TBA.

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

Version 5:	Commences operation on TBA
Version 4:	Commences operation on 27 May 2021
Version 3:	Commences operation on 1 April 2021
Version 2:	Commenced operation on 28 November 2019
Version 1:	Commenced operation on 9 August 2018

17738768

11 November 2021



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08 7109 7466 saplanningcommission@sa.gov.au

Hon Vickie Chapman MP Deputy Premier Minister for Planning and Local Government

By email: <u>AttorneyGeneral@sa.gov.au</u>

Dear Minister

Practice Direction 2 – Preparation and Amendment of Designated Instruments

Thank you for your letter of 20 September 2021 requesting the State Planning Commission (the Commission) to amend the *Practice Direction 2 – Preparation and Amendment of Designated Instruments* (the Practice Direction).

On 28 October 2021, the Commission agreed to the variations to the Practice Direction in accordance with your request. The variation of the Practice Direction will be notified in the *Government Gazette*, and will come into operation on the day that it is published on the PlanSA website.

I have enclosed a copy of the amended Practice Direction for your reference.

The variations as agreed will assist in improving transparency in the Code Amendment process, creating greater certainty and understanding for the community.

Yours sincerely

Craig Holden Chair

Enc Amended Practice Direction 2 – Preparation and Amendment of Designated Instruments



