



Agenda Report for Decision

Meeting Date: 18 April 2024

Item Name	Policy for referring applications for variations of a development authorisation to the Government Architect	
Presenters	Brad McCormack (ODASA) and Troy Fountain (PLUS)	
Purpose of Report	Decision	
Item Number	5.3	
Strategic Plan Reference	N/A	
Work Plan Reference	N/A	
Confidentiality	Not Confidential (Release Immediately)	
Related Decisions	Item 5.2 – 5 October 2023 – Policy for referring applications for variations of a development authorisation to the Government Architect – For decision	
Conflicts Declared	Nil	
Is the Report author aware of any potential undeclared conflict?		NO

Recommendation

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

1. Approve the designation of this item as *Not Confidential (Release Immediately)*;
2. Approve the Policy for referring applications for variations of a development authorisation to the Government Architect (**Attachment 1**), subject to any changes requested by the Commission;
3. Authorise the Chair to sign the Policy for referring applications for variations of a development authorisation to the Government Architect (**Attachment 1**), subject to any changes requested by the Commission; and
4. Authorise the Department to publish the final Policy for referring applications for variations of a development authorisation to the Government Architect as **Attachment 1** to this Agenda Report, following approval by the Chair.

Background

On 5 October 2023, the Commission considered the draft *Policy for referring applications for variations of a development authorisation to the Government Architect* (the Policy). The Agenda Report from this meeting provides detailed background information on the purpose and development of the Policy and is included as **Appendix A**.

At the 5 October 2023 meeting, the Commission resolved to:

- support a criteria-based approach to guide the relevant authority in determining whether a variation is ‘minor’ in design terms (either individually or cumulatively); and
- authorise PLUS and ODASA to collaborate on a set of criteria based on those outlined in the Agenda Report (**Appendix A**) and they report back to the Commission on the outcome.

This Agenda Report seeks the Commission’s approval of the amended Policy with a criteria-based approach, which is provided as **Attachment 1**.

Discussion

In June 2023, the Miscellaneous Technical Enhancements Code Amendment (MTE Code Amendment) introduced a change to the Design Overlay within the Planning and Design Code (the Code), which specifies the triggers for referring development applications to the Government Architect. This change to the Design Overlay enables the relevant authority to refer variations of a development authorisation to the Government Architect. Prior to the MTE Code Amendment, variations were exempt from this referral.

Following finalisation of the MTE Code Amendment, it was agreed that a Commission policy be prepared to outline an efficient process for the relevant authority to obtain advice from the Office for Design and Architecture SA (ODASA) to assist with determining which variations should be referred to the Government Architect with minimal impact on the development assessment process and timeframes.

Following the Commission’s consideration of the draft Policy and resolutions from the 5 October 2023, staff from ODASA and PLUS collaborated on the following set of criteria that are included within section 5.2.3 of the amended Policy (**Attachment 1**):

The following criteria are examples of variations where the relevant authority may wish to seek advice from ODASA to assist with its determination:

- a) amendment to the height, scale, bulk, setback and/or quantum of the original development authorisation;*
- b) amendment to the approved form, materiality and/or finishes;*
- c) impact on the interface, interaction and/or relationship with the public realm;*
- d) removal of an incentive or offset component;*
- e) removal of a component that is integral to the successful performance and/or operation of the development;*
- f) introduction of a new negative impact and/or increases the severity of known negative impacts; and*
- g) amendment to a Crown authorisation which was previously referred to the Government Architect and the amendments are considered to have design related impacts (similar to those referred to above).*

In addition to developing the above criteria, ODASA and PLUS refined the following elements of the Policy to enhance the overall clarity and interpretation in the amended version (**Attachment 1**):

- include the purpose of the referral to the Government Architect as prescribed by the Design Overlay within the Planning and Design Code; and
- minor grammatical improvements.

Attachments:

1. Amended Policy for referring applications for variations of a development authorisation to the Government Architect (#20325706)

Appendices:

- A. Previous SPC Agenda Report (5 October 2023) - Policy for referring applications for variations of a development authorisation to the Government Architect (#20325699)

Prepared by: Brad McCormack and Troy Fountain

Endorsed by: Kirsteen Mackay

Date: 11 April 2024

Policy for Referring Variation Applications for Development Authorisation to the Government Architect

Classification	State Planning Commission Policy
Policy Name	Policy for Referring Applications for Variations of a Development Authorisation to the Government Architect
First Approved	17 May 2024
Next Review	May 2025
KNet ref	Document no. 20325706
Responsible Officer(s)	Senior Planning and Design Officer (ODASA) and Manager Commission Assessment (PLUS)
Relevant Legislation	<i>Planning, Development and Infrastructure Act 2016</i> and <i>Planning, Development and Infrastructure (General) Regulations 2017</i>
Related Documents	N/A

1. Introduction

Section 128 of the *Planning, Development and Infrastructure Act 2016* (the Act) establishes that a person may seek the variation of a development authorisation previously given under the Act. This Policy has been prepared by the State Planning Commission (the Commission) to guide the State Commission Assessment Panel (the SCAP) and their delegates on which variation applications to refer to the Government Architect for advice.

2. Strategic Plan Desired Outcomes

- 2.1. In its [Strategic Plan](#), the Commission commits to 'act in the best interests of South Australians, to achieve the objectives of the *Planning, Development and Infrastructure Act 2016*'.
- 2.2. The objects and principles of the Act are outlined in Part 2, which includes sections 12(2)(d) and 14(c) that highlight the importance of high-quality design in the built environment.
- 2.3. State Planning Policy Two, entitled Design Quality, is established by the Minister for Planning under section 59 of the Act and recognises design quality as a matter of State interest.
- 2.4. The Commission recognise the importance of the statutory referral to the Government Architect, which provides independent and expert design advice to the State Commission Assessment Panel (the SCAP) for consideration during the development assessment process for larger scale development projects.
- 2.5. This Policy upholds the intent of the Act and State Planning Policies by maintaining the provision of design advice from the Government Architect through the variation process.



3. Legislative and Policy Context

- 3.1. Pursuant to section 30(3) of the Act, the Commission has delegated its functions and powers as a relevant authority with respect to determining whether to grant a planning consent to the SCAP.
- 3.2. Under section 30(5) of the Act, the SCAP has further delegated some of its functions and powers as a relevant authority to the Department for Trade and Investment, Planning and Land Use Services Division (PLUS).
- 3.3. Section 128 of the Act establishes that a person may seek the variation of a development authorisation previously given under the Act.
- 3.4. Pursuant to section 122 of the Act, Schedule 9 of the *Planning, Development and Infrastructure (General) Regulations 2017* prescribes the Government Architect as a referral body for advice on development that is—
 - a) *in the Design Overlay under the Planning and Design Code; and*
 - b) *specified by the Planning and Design Code as development of a class to which this item applies.*
- 3.5. The Design Overlay within the Planning and Design Code specifies the following classes of development for referral to the Government Architect:

Except where the development comprises a variation to an application that has either been:

- a) *previously referred to the Government Architect or Associate Government Architect*
or
- b) *given development authorisation under the Planning, Development and Infrastructure Act 2016 or Development Act 1993*
and
- c) *the variation to that application is, in the opinion of the relevant authority, minor in nature or would not warrant a referral when considering the purpose of the referral*

any of the following classes of development:

- a) *development within the area of the overlay located within the Corporation of the City of Adelaide where the total amount to be applied to any work, when all stages of the development are completed, exceeds \$10,000,000*
 - b) *development within the area of the overlay located within the City of Port Adelaide Enfield where the total amount to be applied to any work, when all stages of the development are completed, exceeds \$3,000,000*
 - c) *development within all other areas of the overlay that involves the erection or construction of a building that exceeds 4 building levels.*
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- 3.6. The Design Overlay specifies the following purpose of the referral to the Government Architect:

To provide expert design advice to the relevant authority on how the development:

- a) responds to its surrounding context and contributes to the quality and character of a place*
- b) contributes to inclusiveness, connectivity, and universal design of the built environment*
- c) enables buildings and places that are fit for purpose, adaptable and long-lasting*
- d) adds value by positively contributing to places and communities*
- e) optimises performance and public benefit*
- f) supports sustainable and environmentally responsible development.*

4. Interpretations

For the purpose of this Policy:

- 4.1. **Act** means the *Planning, Development and Infrastructure Act 2016*.
 - 4.2. **Commission** means the State Planning Commission.
 - 4.3. **Department** means the Department for Trade and Investment.
 - 4.4. **Government Architect** means the South Australian Government Architect, or their delegate.
 - 4.5. **Minister** means the Minister for Planning.
 - 4.6. **ODASA** means the staff of the Office for Design and Architecture SA within the Department for Trade and Investment.
 - 4.7. **PLUS** means the staff of the Planning and Land Use Services Division within the Department for Trade and Investment.
 - 4.8. **Regulations** means the *Planning, Development and Infrastructure (General) Regulations 2017*.
 - 4.9. **Relevant authority** means the SCAP and PLUS when acting under delegation of the SCAP.
 - 4.10. **SCAP** means the State Commission Assessment Panel.
 - 4.11. **Variation** means an application seeking the variation of a development authorisation previously given under the Act.
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5. Policy

5.1. Objectives

- 5.1.1. To assist the relevant authority with its determination of whether the referral of a variation to the Government Architect is warranted.
- 5.1.2. To provide guidance to the relevant authority for seeking advice from ODASA on whether a variation is minor in nature or not warranted when considering the purpose of the referral.

5.2. Determining whether to refer a variation to the Government Architect

- 5.2.1. The relevant authority reserves the right to determine whether a variation is minor in nature or would not warrant referral to the Government Architect when considering the purpose of the referral as specified in section 3.6 of this Policy.
 - 5.2.2. Subject to sub-section 5.2.1, an application to vary a development authorisation should be considered for referral to the Government Architect where the original development application was referred to the Government Architect (refer to section 3.5 of this Policy). This provides the Government Architect with the opportunity to consider the impact of the proposed variation on the original development application and provide the relevant authority with independent and expert design advice.
 - 5.2.3. The following criteria are examples of variations where the relevant authority may wish to seek advice from ODASA to assist with its determination:
 - a) amendment to matters raised by the Government Architect in previous referral advice;
 - b) amendment to the height, scale, bulk, setback and/or quantum of the original development authorisation;
 - c) amendment to the approved form, materiality and/or finishes;
 - d) impact on the interface, interaction and/or relationship with the public realm;
 - e) removal of an incentive or offset component;
 - f) removal of a component that is integral to the successful performance and/or operation of the development;
 - g) introduction of a new negative impact and/or increases the severity of known negative impacts; and
 - h) amendment to a Crown authorisation which was previously referred to the Government Architect and the amendments are considered to have design related impacts.
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5.3. Consulting with ODASA

- 5.3.1. When in doubt on whether a referral to the Government Architect is warranted, the relevant authority should forward the variation application to ODASA for their review via: ODASAreferalls@sa.gov.au
- 5.3.2. ODASA will review the variation application and advise the relevant authority on whether to refer the application within two business days from the day of receipt.
- 5.3.3. The relevant authority will have regard to ODASA's advice when determining whether to formally refer the variation application to the Government Architect.
- 5.3.4. The Commission reserves the right to review and amend this Policy at any time.

**EXECUTED FOR AND ON BEHALF OF
THE STATE PLANNING COMMISSION**

Craig Holden

Chair, State Planning Commission



Agenda Report for Decision

Meeting Date: 5 October 2023

Item Name	Policy for referring applications for variations of a development authorisation to the Government Architect
Presenters	Margaret Smith (PLUS) and Brad McCormack (ODASA)
Purpose of Report	Decision
Item Number	
Strategic Plan Reference	N/A
Work Plan Reference	N/A
Confidentiality	Not Confidential (Release Immediately)
Related Decisions	Item 4.2 – 15 December 2022 – Miscellaneous Technical Enhancements Code Amendment – For approval

Recommendation

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

1. Approve the designation of this item as Not Confidential (Release Immediately).
2. Approve that the Chair sign the policy for referring applications for variations of a development authorisation to the Government Architect (**Attachment 1**).

Background

On 15 December 2022, the Commission approved the finalisation of the Miscellaneous Technical Enhancements Code Amendment (MTE Code Amendment), and for it to be provided to the Minister for Planning (the Minister) for consideration.

On 6 April 2023, the Minister adopted the MTE Code Amendment, which came into effect on 3 June 2023.

The MTE Code Amendment introduced a change to the Design Overlay within the Planning and Design Code (the Code), which specifies the triggers for referring development applications to the Government Architect. This change to the Design Overlay enables the relevant authority to refer variations of a development authorisation to the Government Architect. Prior to the MTE Code Amendment, variations were exempt from this referral.

This Agenda Report seeks the Commission's approval of the policy document provided in **Attachment 1**, which outlines an efficient consultation process between the relevant authority and the Office for Design and Architecture SA (ODASA) to determine which variations should be referred to the Government Architect with minimal impact on the development assessment process and timeframes.

Discussion

Design quality not only relates to the 'look and feel' of buildings and places, but also to how successfully they meet the needs of the people who use and experience them. High-quality well considered design helps to make buildings and places better for people, our environment and the economy.

Sections 12(2)(d) and 14(c) of the *Planning, Development and Infrastructure Act 2016* (the Act) recognise the importance of, and requirement to support, high-quality design within the planning system.

State Planning Policy Two, entitled Design Quality, is established by the Minister under section 59 of the Act and identifies design quality as a matter of State interest.

The statutory referral to the Government Architect supports the intent of the Act and State Planning Policies by providing the State Commission Assessment Panel (SCAP) or their delegate (e.g. State Assessment) with independent and expert design advice. This advice assists with the assessment of the following larger-scale developments as prescribed by the Design Overlay within the Code:

- a) *development within the area of the overlay located within the Corporation of the City of Adelaide where the total amount to be applied to any work, when all stages of the development are completed, exceeds \$10,000,000*
- b) *development within the area of the overlay located within the City of Port Adelaide Enfield where the total amount to be applied to any work, when all stages of the development are completed, exceeds \$3,000,000*
- c) *development within all other areas of the overlay that involves the erection or construction of a building that exceeds 4 building levels.*

Prior to the MTE Code Amendment, variations to the above classes of development were exempt from referral to the Government Architect. This exemption has led to situations where variations were assessed without consideration of independent and expert design advice, even where design quality was significantly impacted. Approved development applications may have also been subject to incremental change over multiple variations. This has led to approvals, and ultimately built outcomes, that fall short of the design intent of the originally approved scheme.

The Australian Institute of Architects, Australian Institute of Landscape Architects, Planning Institute of Australia and ODASA have advocated for removal of the exemption of variations since February 2020 (**Appendix B**). In response to feedback and acknowledging that variations can have a range of impacts on design quality, the Commission resolved to amend the Code through the MTE Code Amendment to enable the referral of eligible variations to the Government Architect, except where the relevant authority determines them to be 'minor in nature'.

Following finalisation of the MTE Code Amendment, it was agreed that a Commission policy be prepared to outline a consultation process between the relevant authority and ODASA. This policy is intended to support decisions on whether a variation is 'minor' in relation to design quality, as ODASA specialises in interpreting architectural drawings to identify potential built impacts.

The proposed policy is provided for your consideration in **Attachment 1** and has been prepared collaboratively between State Assessment (PLUS) and ODASA, with review and endorsement from the Manager of Governance and Legislation (PLUS).

Key considerations

The consultation outlined in the policy is not a formal referral and would not impose a referral fee on the applicant.

The policy relates only to variations where the original application was referred to the Government Architect (located within the Design Overlay and over a certain value or height).

In recent years, the following number of referrals to the Government Architect were received:

- **2021/22:** 47 referrals
- **2022/23:** 33 referrals

Of these referrals, only a percentage of applications is varied. ODASA has the resourcing capacity to manage this volume of reviews.

The policy also states that ODASA will provide their opinion to the relevant authority within two business days, a commitment supported by the Government Architect. This turnaround time is achievable as the ODASA team will already have a detailed understanding of the project through the original referral to the Government Architect and State Design Review program.

Assisting the relevant authority with technical advice may in-turn reduce their time spent considering the detailed impacts of a variation on design quality. Whether a proposed variation is “minor” is a matter of fact and degree, whereby the individual circumstances of the development in the context of the proposed change, must be considered and the proposed approach considers this.

Seeking ODASA’s preliminary advice will not adversely impact the assessment timeframes or unduly burden ODASA. Ultimately, the relevant authority reserves the right to exercise its discretion on whether a variation is ‘minor in nature’, as prescribed in the Code.

However, if the Commission is of the view that the policy should contain specific guidance about what constitutes a minor variation and, therefore, where a further referral to the Government Architect is not required, clarification could be added to section 5.2 of the policy, such as:

*A variation is considered **minor** and therefore, does not need to be referred to the Government Architect, where it does not result in a substantially different development and where any proposed change does **not**:*

- *involve a new use;*
- *change the built form in terms of scale, bulk and intensity;*
- *affect the character or appearance of the development or erode the quality of the approved materials or finishes;*
- *remove a component that is integral to the operation of the development;*
- *introduce a new impact or increase the severity of known impacts;*
- *remove an incentive or offset component; or*
- *cumulatively result in a significant change from the original proposed development where there have been previously approved variations to the original development authorisation.*

Attachment:

1. State Planning Commission Policy for referring applications for variations of a development authorisation to the Government Architect (#20325706).

Appendices:

- A. Excerpts from various submissions supporting removal of the exemption clause from the Design Overlay (#20688968)

Prepared by: Brad McCormack (Senior Planning and Design Officer, ODASA)

Kirsteen Mackay (Government Architect, ODASA) and

Endorsed by: Margaret Smith (Director, State Assessment, PLUS)

Date: 25 September 2023
