



Agenda Report for Decision

Meeting Date: 2 February 2023

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| Item Name | Code Amendment Engagement Advice to the Minister for Planning – Scotty’s Corner Code Amendment |
| Presenters | Paul Bennett, Jason Bailey and Nadia Gencarelli |
| Purpose of Report | Decision |
| Item Number | 4.1 |
| Strategic Plan Reference | 4. Discharging Statutory Obligations |
| Work Plan Reference | 4.2 Advice the Minister on Code Amendments |
| Confidentiality | Not Confidential (Release Delayed). To be released following final decision by the Minister for Planning on determination of the Code Amendment. Anticipated by March 2023 |
| Related Decisions | <ul style="list-style-type: none">• SPC Agenda Item 3.2 – Code Amendment Initiation Advice to the Minister for Planning and Local Government – 1 April 2021• SPC Agenda Item 4.1 – Advice on Scotty’s Corner Code Amendment – Compliance with the Community Engagement Charter – 12 May 2022 |

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 the final decision by the Minister for Planning (the Minister) on whether or not to adopt the Scotty’s Corner Code Amendment (the Code Amendment) – anticipated March 2023.
2. Approve and authorise the Chair of the Commission to sign the advice to the Minister as provided in **Attachment 1**.
3. Approve and authorise the Chair to make any minor editorial and technical amendments to the attachments as required.

Background

On 1 April 2021, the Commission resolved to:

- *Recommend approval of the initiation of the Code Amendment under section 73(2)(b)(vii) of the Act, subject to two conditions under section 73(5)(b) of the Act and consultation with nominated individuals under section 73(6)(e) of the Act, as outlined in the Commission's advice to the Minister dated 4 April 2021 provided in Attachment 2.*
- *Recommend YS Super Investments Pty Ltd as the Designated Entity responsible for undertaking the Code Amendment process.*

No further investigations or information requirements were sought under section 73(6)(f) of the *Planning, Development and Infrastructure Act 2016* (the Act) in addition to those outlined in the Proposal to Initiate.

On 22 April 2021, the former Minister for Planning and Local Government, Vickie Chapman, initiated the Code Amendment.

Engagement on the Code Amendment was undertaken from 9 August 2021 to 19 September 2021 and the Designated Entity submitted the Engagement Report under section 73(7) of the Act on 16 December 2021. A copy of the initial Engagement Report is provided in **Appendix A**.

On 29 April 2022, the current Minister for Planning, the Hon Nick Champion MP, requested the Commission make a determination under section 44(12) of the Act as to whether it considers that community engagement on the Code Amendment had satisfied the Community Engagement Charter (the Charter). The Minister's letter to the Commission is provided in **Appendix B**.

Engagement had resulted in 88 written submissions, of which three were agency submissions. Details of the issues raised during engagement and the Designated Entity's response are set out in the Commission's Agenda Report dated 12 May 2022 provided in **Appendix C**.

Planning and Land Use Services (PLUS) commissioned a review of the engagement undertaken by a qualified communications and engagement professional to assist the Commission in making a determination under section 44(12) of the Act. This review evaluated the engagement undertaken against the Charter principles, performance outcomes and engagement measures.

At its meeting of 12 May 2022, the Commission considered the Engagement Report and the updated Code Amendment, together with the independent review, and determined that engagement on the Code Amendment had failed to comply with the Charter.

The Commission then directed the Designated Entity to comply with the Charter.

A copy of the letter from the Commission to the Designated Entity is provided in **Appendix D** and a letter from the Commission to the Minister is provided in **Appendix E**.

In accordance with the Commission's direction, the Designated Entity:

- Prepared an updated Engagement Plan.
- Undertook further engagement from 8 August to 4 September 2022.
- Prepared an Engagement Report.

The Designated Entity has now lodged the new Engagement Report with the Minister for Planning for a determination on whether to adopt, alter and adopt, or decline the Code Amendment pursuant to section 73(10)(c) of the Act. The new Engagement Report is provided in **Attachment 2**.

Discussion

The Code Amendment proposes to rezone 7,300 square metres of land at 43 Main North Road and 1-5 Nottage Terrace, Medindie (Karna Country) from the Suburban Business Zone and the Established Neighbourhood Zone to the Urban Corridor (Business) Zone, to facilitate mixed-use development comprising medium density residential and small-scale commercial/retail uses.

The affected area comprises seven contiguous allotments occupied by the Scotty's Motel, two detached dwellings and vacant land. The Historic Area Overlay applies over the two residential properties, one of which is also a Representative Building. A map of the affected area is provided in **Attachment 3**.

The draft Code Amendment initially contained a Maximum Building Height Technical and Numeric Variations (TNV) of six levels and 24.5 metres. There is also a significant development site policy within the Urban Corridor (Business) Zone which makes provision for buildings up to 30 per cent above this maximum building height, should certain criteria be met. In response to feedback on the initial engagement, the maximum building height was reduced to five levels and 18.5 metres.

An original proposal to include the Urban Corridor Business Retail Subzone was discontinued in response to community engagement and further consideration that concluded the site was unsuitable for the development of large-scale shops and commercial development.

No changes to the draft Code Amendment were made in response to re-engagement.

Proposed zoning, overlays and TNVs, together with investigations undertaken, are detailed in the Commission's Agenda Report dated 12 May 2022 (**Appendix C**) and in the draft Code Amendment dated 1 November 2022 (**Attachment 4**).

Re-engagement

Following completion of engagement on a Code Amendment, the Designated Entity must prepare an Engagement Report in accordance with the Commission's *Practice Direction 2 – Preparation and Amendment of Designated Instruments* (Practice Direction 2).

Re-engagement was undertaken from 8 August 2022 to 4 September 2022 in accordance with the updated Engagement Plan dated 27 July 2022 provided in **Attachment 5**.

The new Engagement Report and its appendices set out:

- Details of the engagement undertaken and how that engagement met the Engagement Plan.
- The outcome of the engagement including a summary of the written submissions and feedback received.
- Proposed changes to the proposal (when compared with the proposal that was engaged on) and the reasons for those proposed changes. Specifically:
 - Where changes are proposed based on, or as a result of the engagement.
 - Any other changes which are proposed based on, or as a result of, additional investigations or information not available when the proposal was released for engagement.

Evaluation of the effectiveness of the engagement that considers whether:

- The principles of the Charter have been achieved.
- All mandatory requirements identified in the Charter have been met.

There were 91 submissions received from 68 individuals in response to re-engagement, with the Designated Entity noting a number of duplicate/multiple submissions.

Two agency submissions and one submission from a utility provider were received, together with a submission from the Town of Walkerville.

Issues raised were consistent with those raised during the initial engagement concerning height, traffic and car parking, vehicle access, impacts on heritage and character, infrastructure capacity, lack of hydrology investigations and the inappropriateness of affordable housing in the area.

The issues raised in submissions and the Designated Entity's response to each of these are provided in the new Engagement Report (**Attachment 2**). A copy of the Amendment is provided in **Attachment 6**.

Consultation evaluation against the Community Engagement Charter

Review by the Designated Entity

An evaluation of the engagement process was undertaken by the Designated Entity to ensure the principles of the Charter were met. Details of this work are outlined in the new Engagement Report (**Attachment 2**). The effectiveness of the re-engagement was measured via a post-engagement survey sent to stakeholders who made a submission in response to the further engagement. 13 community evaluation surveys were received, all from residents.

The evaluation showed that stakeholders, particularly adjacent and nearby landowners/occupiers, indicated disappointment in the further engagement activities. The Designated Entity noted that it is reasonable to conclude from the content of written submissions and surveys, that a majority of the participants who made a submission indicating disappointment with the re-engagement process were also opposed to the Code Amendment.

Review by PLUS

A review of the re-engagement process was undertaken by Levercar Consulting (who also undertook the review of the initial engagement) on behalf of PLUS to determine if the principles of the Charter were met. The effectiveness of the engagement was considered to achieve the five principles of good engagement with the Designated Entity, genuinely taking measures to re-engage all identified stakeholders.

It was considered that the Designated Entity sought to validate the initial engagement findings, provide opportunities to gain additional feedback and consider the range of views presented. There was a willingness to improve the engagement processes, with additional engagement activities undertaken, such as one-on-one meetings.

It was noted that there was a high level of interest and expectation from adjacent owners/occupiers, and there remains a high level of dissatisfaction from this group with the engagement processes and why feedback did not result in further changes to the Code Amendment. It was noted that the engagement evaluation surveys were completed by residents, with no survey responses received from any other key stakeholder groups. Given this lack of response from other stakeholders, it is difficult to ascertain the level of satisfaction with the additional engagement activities from non-owner/occupier stakeholder groups.

A copy of the new consultant report is provided at **Attachment 7**. and a copy of the previous consultant report is provided at **Appendix F**.

Policy framework

The referral by the Minister also provides for advice to be received from the Commission on the policy framework proposed in the Code Amendment. As the Commission has previously provided advice on the policy framework and no changes have been proposed, it is recommended that no further advice is necessary. However, to assist in this consideration, the previous report on this matter has been attached for your reference (**Appendix C**).

In summary, PLUS is supportive of the policy framework and is of the view that the site warrants density of at least five levels given:

- Its location on 1-5 Nottage Terrace, Medindie and 43 Main North Road, Medindie.
- The Proponent's amalgamation of the site, which provides greater opportunity to transition in height to the residential development.
- The gateway nature of the site.

Next steps

Having consideration to the advice of the Commission in relation to compliance of the Code Amendment with the Charter, the Minister may either:

- Adopt the Code Amendment.
- Make alterations and proceed to adopt the Code Amendment as altered.
- Divide the Code Amendment into separate parts and then proceed to adopt one or more of those parts.
- Determine that the matter should not proceed.

Within five business days after the Minister's decision, the following will be published on the SA Planning Portal:

- the Engagement Report
- a signed copy of the Amendment (if adopted).

The Code Amendment takes effect when it is published on the SA Planning Portal (unless the Minister specifies a later date).

Within 28 days after the Amendment takes effect, the Amendment must be referred to the Environment, Resources and Development Committee (ERDC) of the Parliament of South Australia for consideration in accordance with section 74(2) of the Act. Pursuant to section 74(3) of the Act, this referral must be accompanied by a further report from the Commission. The Minister will request the Commission provide this report to send to the ERDC. The ERDC may then resolve that it does not object, suggest amendments, or object the Amendment.

Advice to the Minister

A draft letter to the Minister is attached for consideration which outlines the Commission's determination on compliance of the Code Amendment with the Charter (**Attachment 1**).

Attachments:

1. Draft letter to the Minister providing the Commission's determination on compliance of the Code Amendment with the Charter (#19689687).
2. New Engagement Report dated 1 November 2022, including Appendices 1 to 13 (#19792760).
3. Map of the affected area (#19545680).
4. Draft Scotty's Corner Code Amendment for re-engagement, including Appendices 1 to 14 – Final for consultation dated 4 August 2021 and updated for submission 1 November 2022 (#19755936).
5. Updated Engagement Plan dated 27 July 2022 (#19531370).
6. The Amendment – Scotty's Corner Code Amendment (#18250751).
7. Consultant's Re-engagement Review dated December 2022 (#19698174).

Appendices:

- A. Initial Engagement Report dated 16 December 2021 (updated 15 February 2022 to delete Business Retail Subzone) (#18182333).
- B. Letter from the Minister dated 29 April 2022 requesting advice on the Code Amendment (#18632612).
- C. SPC Agenda Report dated 12 May 2022 (#19698799).
- D. Letter from the State Planning Commission to the Designated Entity dated 7 June 2022 directing compliance with the Charter (#19534958).
- E. Letter from the State Planning Commission to the Minister dated 21 July 2022 advising Designated Entity directed to comply with the Charter (#19543550).
- F. Consultant's Engagement Review dated March 2022 (#18509529).

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Endorsed by: Paul Bennett


Date: 25 January 2023

OFFICIAL



STATE
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19689687

 February 2023

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Minister for Planning

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Dear Minister

22EXT0014 – Advice on the Scotty’s Corner Code Amendment by YS Super Investments Pty Ltd

On behalf of the State Planning Commission (the Commission), I write in reference to my letter of 21 July 2022 regarding the Scotty’s Corner Code Amendment (the Code Amendment).

As you know, at its meeting on 12 May 2022, the Commission considered the Engagement Report, updated Code Amendment Report and other relevant material provided by the Designated Entity, and determined under section 44(12) of the *Planning, Development and Infrastructure Act 2016* that the Designated Entity had failed to comply with the Community Engagement Charter (the Charter). Subsequently, the Commission directed the Designated Entity to comply with the Charter.

In accordance with the Commission’s direction, the Designated Entity has:

- Prepared an updated Engagement Plan.
- Undertaken further engagement from 8 August 2022 to 4 September 2022.
- Lodged a new Engagement Report.

The Commission has considered the Engagement Report, Engagement Plan, draft Code Amendment Report, and other relevant material provided by the Designated Entity and advises that an independent peer review of the re-engagement process has also been completed.

The Commission is also of the view that the policy framework is appropriate for the gateway site and that sufficient policy exists in the Planning and Design Code to manage interface issues with the adjoining residential area.

The Commission is satisfied that the Engagement Plan and Engagement Report prepared for the Code Amendment demonstrate that engagement has been undertaken in accordance with the Charter.

Yours sincerely


Craig Holden
Chair