



Agenda Report for Decision

Meeting Date: 5 August 2021

Item Name	Code Amendment Delegations
Presenters	Chelsea Lucas, Brett Steiner
Purpose of Report	Decision
Item Number	4.1
Confidentiality	Not Confidential (Release Immediately)
Related Decisions	N/A

Recommendation

It is recommended that the Commission resolves to:

1. Approve the designation of this item as Not Confidential (Release Immediately).
2. Note the Department will exercise existing delegations with respect to code amendments, in particular including:
 - (a) the function of providing advice to the Minister for Planning and Local Government (the Minister) in relation to a proposed code amendment under section 73(2)(b) of the *Planning, Development and Infrastructure Act 2016* (the Act);
 - (b) the power to make a determination on compliance with the Community Engagement Charter under section 44(12) of the Act; and
 - (c) the power to prepare a parliamentary report on a code amendment (once approved) under section 74(3) of the Act and to furnish that report on the Minister;

as limited by the instrument of delegation dated 18 March 2021 as shown in **Attachment 1**, and further excluding all code amendments where the Chief Executive of the Department is either the proponent under section 73(2)(b)(i) of the Act, or the designated entity responsible for undertaking the code amendment under section 73(6) of the Act;

3. Delegate to the Executive Director, Planning and Land Use Services and the Director, Planning and Development in the Attorney General's Department, the powers and functions:
 - (a) under section 73(6)(e) of the Act, to specify any person or body with which the designated entity must consult; and
 - (b) under section 73(6)(f) of the Act, to specify such investigations which must be carried out, and information which must be obtained by the designated entity;

with such delegation being limited to proposed code amendments where the function of providing advice to the Minister under section 73(2)(b) of the Act has also been exercised under delegation.

- Note that the additional delegations provided for in resolution 3 will be incorporated into the Commission's broader instrument of delegation as part of the 6-monthly review and update of that document in late September 2021.

Background

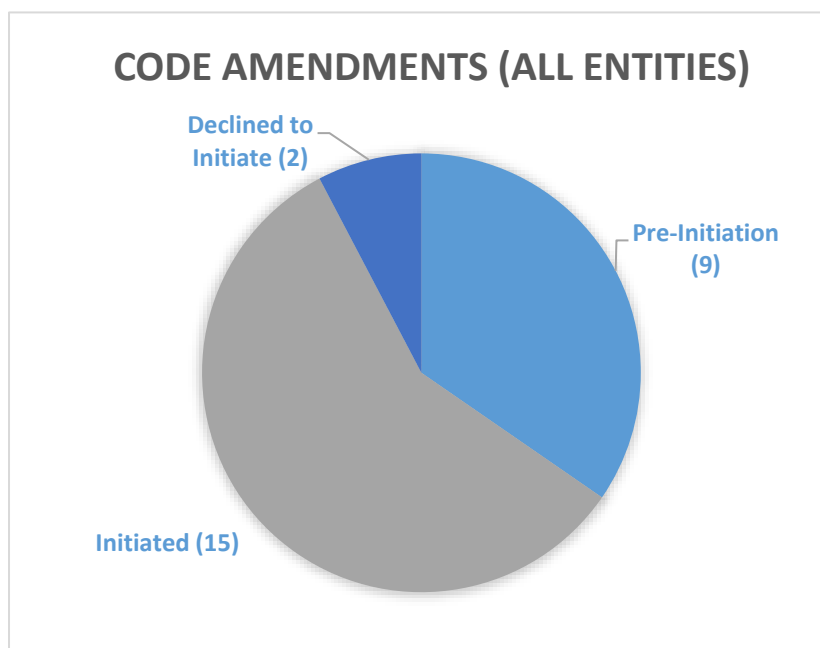
The Commission's role in the process for proponent-led code amendments is shown in green in the flowchart at **Attachment 1**.

By instrument of delegation dated 18 March 2021 (extract shown in **Attachment 2**), the Commission delegated certain powers and functions relating to the code amendment process, to the Executive Director, Planning and Land Use Services (the ED, PLUS), and the Director Planning and Development (the Director).

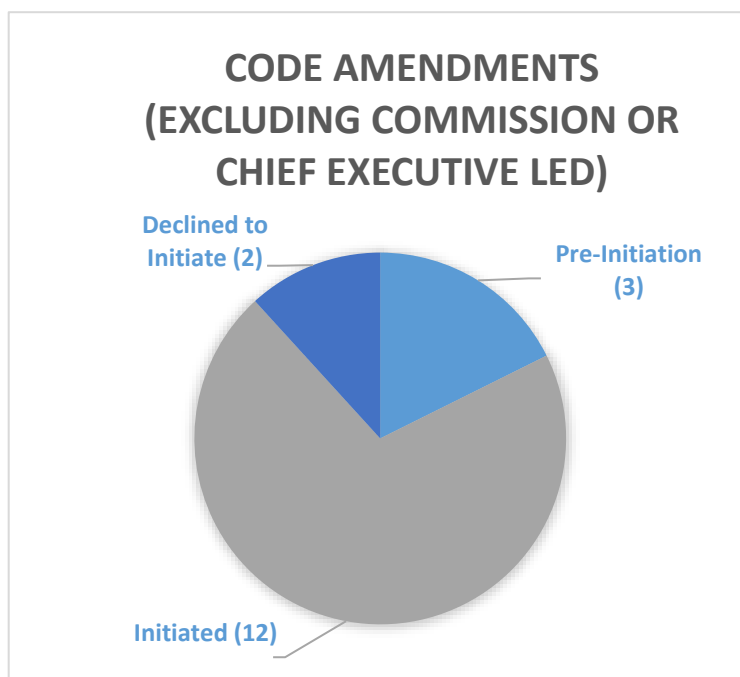
Discussion

Status of Code Amendments

For the 4 month period since full implementation of the Code (19 March 2021 to 19 July 2021), 26 code amendments have been managed by the Department (including code amendments led by the Commission and the Chief Executive of the Department, as well as code amendments led by other external proponents). This includes 15 code amendments which have progressed through to initiation, 2 where the Minister has declined to approve initiation, and 9 code amendments which are still in the pre-initiation stage.



Of these, 17 code amendments have been proposed by external parties (including private proponents and councils). Of these external-led code amendments, 12 have been approved for initiation by the Minister, 2 have been declined to be initiated and 3 are still in the pre-initiation stage, as shown below.



The statistics indicate that code amendments lodged by external proponents (including private proponents with an interest in the land) form the largest proportion of code amendments received by the Department, and initiated by the Minister to date. These are largely site-specific proposals, of varying sizes.

Based on data from the past 4 months, it is anticipated that the Department will continue to receive approximately 4-5 external code amendments per month through the PlanSA website. To date the Commission has only considered initiation proposals as the new system is in its infancy. The Commission's workload will increase as new proposals are initiated and existing Code Amendments are considered by the Commission at key milestones.

As the Commission has powers and functions relating to a number of different stages of the code amendment process, over the next 12-18 months this is anticipated to be reflected in the Commission's workload as shown below:

Power or Function	External Code Amendments (Items per meeting)	External Code Amendments (minutes per meeting)
Advice to Minister on Initiation	2.5	75
Determination Against Charter	2	60
Consultation from Minister	1	30
Parliamentary Report	2.5	75
Total	8	240 minutes (4 hours)

At an average of 30 minutes per code amendment item, this is anticipated to be approximately 4 hours per meeting (or approximately 50-60% of the Commission's meeting time and meeting preparation workload). This code amendment workload is not considered sustainable, particularly given the significant range of other strategic planning and statutory functions required to be undertaken by the Commission.

Existing Delegations for Code Amendments

The Commission's existing delegations relating to the code amendment process include various limitations as described below. To date, these delegations have not been exercised by the delegates within PLUS, given the Commission's interest in the code amendment process, particularly following full implementation of the Code in March 2021.

Existing Delegation	Existing Limitations	Recommendation
<p>Initiation Advice to the Minister</p> <p>Delegation of the function of providing advice to the Minister in relation to a proposal to initiate a code amendment under section 73(2)(b) of the Act.</p>	<p>Limited to circumstances where the proposed code amendment meets all of the following criteria (in the opinion of the delegate):</p> <ul style="list-style-type: none"> • clear consistency with the State Planning Policies and Regional Plans • Council/s support for the proposal • amendments are consistent with the Code Framework • not known to be a highly sensitive issue for the local community. 	<p>Delegation to be exercised for proponent-led code amendments (but not including code amendments where the Chief Executive of the Department is the proponent or the designated entity).</p>
<p>Specifying Consultation Requirements</p> <p>Delegation of the power to specify person or body to be consulted with under section 73(6)(e) of the Act.</p>	<p>Limited to technical amendments to the Code (which may include amendments considered by the delegate as minor, such as amendments to aid interpretation of policy or adjust mapping boundaries).</p>	<p>Additional delegation, but limited to circumstances where initiation advice to the Minister is also provided under delegation.</p>
<p>Specifying Investigation and Information Requirements</p> <p>Delegation of the power to specify investigations to be carried out or information to be obtained under section 73(6)(f) of the Act.</p>	<p>Limited to technical amendments to the Code (which may include amendments considered by the delegate as minor, such as amendments to aid interpretation of policy or adjust mapping boundaries).</p>	<p>Additional delegation, but limited to circumstances where initiation advice to the Minister is also provided under delegation.</p>
<p>Determination on Compliance with the Charter</p> <p>Delegation of the power to make a determination on compliance with the Community Engagement Charter under section 44(12) of the Act.</p>	<p>Limited to proposals to amend the Planning and Design Code in circumstances where:</p> <ul style="list-style-type: none"> • the Department has not received any complaints regarding an engagement process undertaken by a Designated Entity; • the Chief Executive is not the Designated Entity under section 73 of the Act; and 	<p>Delegation to be exercised for proponent-led code amendments (but not including code amendments where the Chief Executive of the Department is the proponent or the designated entity).</p>

	<ul style="list-style-type: none"> the delegate forms the opinion that the Community Engagement Charter has been complied with for such engagement. 	
<p>Response to Consultation from the Minister</p> <p>No delegation exists for the function of responding to the Minister, if a code amendment has been referred to the Commission where the Minister thinks the matter is significant (section 73(10)(a) of the Act), or where a cost recovery agreement is in place (section 73(10)(b) of the Act).</p>	No delegation exists.	No delegation. If the Minister refers a matter for consultation with the Commission because it is considered significant, it is recommended that such matter is dealt with by the Commission itself.
<p>Preparation of Parliamentary Report</p> <p>Delegation of the power to prepare a parliamentary report on a code amendment (once approved) under section 74(3) of the Act and to furnish that report on the Minister.</p>	<p>Limited to the following code amendments (as relevant):</p> <ul style="list-style-type: none"> where the delegate forms the opinion that no reasonable objections have been made in response to public consultation on the proposed Code Amendment; or where the delegate forms the opinion that all objections made in response to public consultation on the proposed Code Amendment have been adequately addressed through changes to the proposed Code Amendment, as reflected in the relevant engagement report. 	Delegation to be exercised for proponent-led code amendments (but not including code amendments where the Chief Executive of the Department is the proponent or the designated entity).

Proposed Changes to Delegation Arrangements

Given the number and scope of external code amendments received to date, it is recommended that the Commission note the Department's intention to begin exercising powers and functions delegated by the Commission. The exercise of those delegations will be subject to the existing limitations as described above.

In addition, it is proposed that, for probity and transparency reasons, such delegations will not be utilised where the Chief Executive of the Department is either the proponent seeking to initiate the code amendment, or the designated entity responsible for undertaking the code amendment processes. This matter will be further considered as part of the 6-monthly review of the Commission's delegations, in late September 2021, where it may be included as a formal limitation on the Commission's delegated code amendment powers.

It is recommended that the Commission does not delegate the function of responding to the Minister, where the Minister is required to consult with the Commission prior to making a determination on a code amendment. This includes circumstances where the Minister “thinks that the matter is significant” and where there is a funding agreement in place between a designated entity and a third party for the code amendment. These matters are considered significant enough to warrant consideration by the Commission itself, and also are not anticipated to occur at high volumes.

The Commission’s current practice is to specify consultation and investigation requirements at the same time as providing advice to the Minister on initiation of a proposed code amendment. This provides greater certainty for proponents at the point of initiation of the code amendment. To better align with this current process, it is recommended that the Commission’s powers to specify consultation and investigation requirements are delegated to the ED PLUS and the Director, but only in circumstances where advice to the Minister on initiation of a code amendment is also provided under delegation. This will allow these matters to be addressed collectively and in a streamlined manner by the delegate.

It is anticipated that, due to the limitations on the delegation for providing advice to the Minister on initiation of code amendments, any recommendations to refuse initiation of a code amendment would be provided to the Commission for their consideration, rather than being made under delegation.

Attachments:

1. Proponent-led Code Amendment Process Flowchart - #16979468
2. Extract of Code Amendment Delegations – Instrument of Delegation dated 18 March 2021 - #17363304

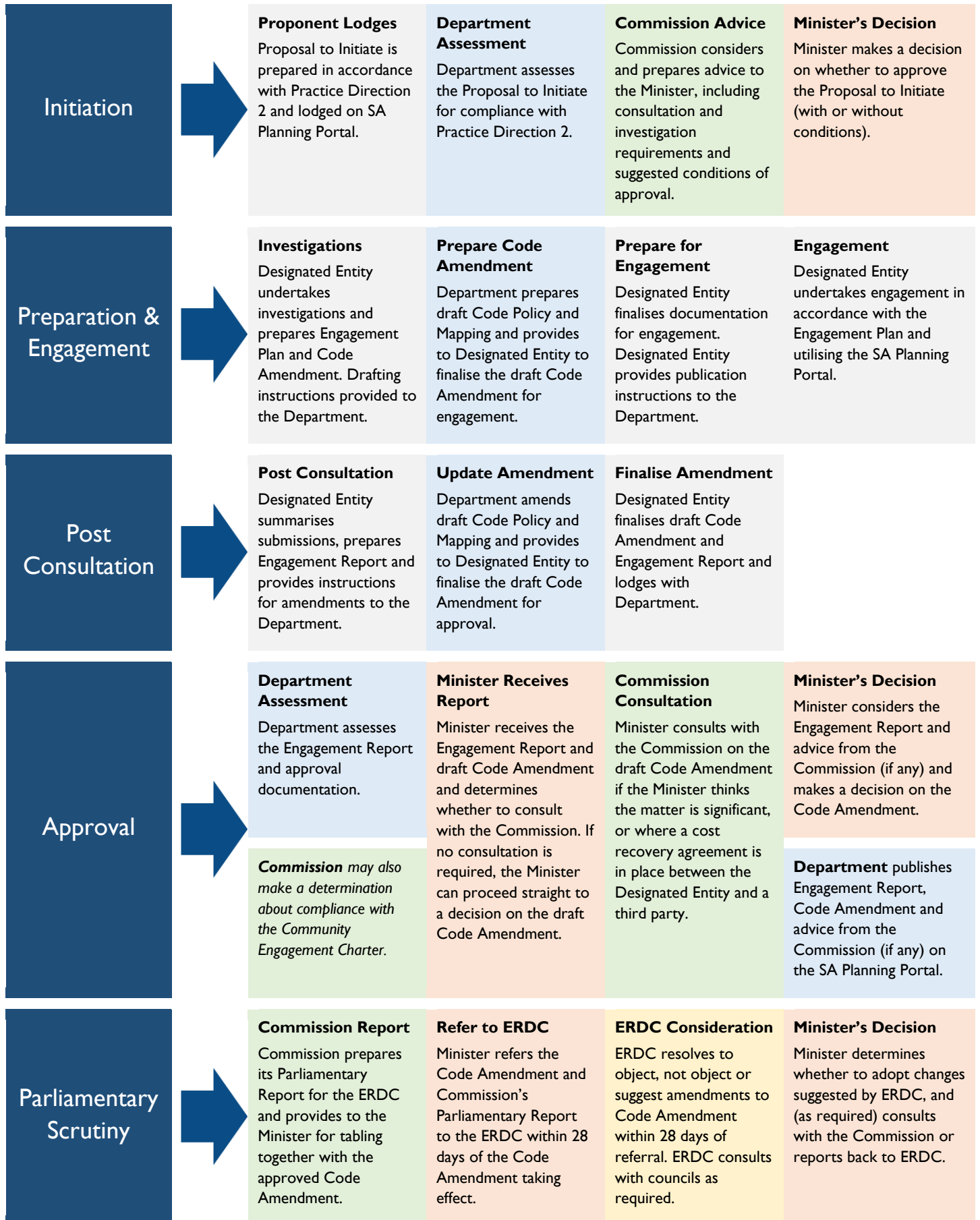
Prepared by: Chelsea Lucas

Endorsed by: Anita Allen

Date: 28 July 2021

Code Amendments Initiated by Proponents

Section 73(2)(b) of the *Planning, Development and Infrastructure Act 2016*



INSTRUMENT OF DELEGATION UNDER THE *PLANNING DEVELOPMENT AND INFRASTRUCTURE ACT 2016* (“the Act”)

1. We, the State Planning Commission (“the Commission”), in exercise of the power under section 30 of the Act hereby:
 - (a) **REVOKE** all previous delegations made under the Act and its statutory instruments, with the exception of:
 - (i) the instrument of delegation dated 27 August 2020 from the Commission to the Chief Executive, Department of Infrastructure and Transport regarding the project known as “Kangaroo Island Plantation Timbers Port”; and
 - (ii) the instrument of delegation dated 9 July 2020 from the Commission to the Chief Executive, Department of Infrastructure and Transport regarding the project known as “Port Spencer Grain Export Facility”; and
 - (iii) the instrument of delegation dated 24 May 2019 from the Commission to the Executive Director, Planning and Land Use Services (and various other positions), delegating powers and functions under the *Character Preservation (Barossa Valley) Act 2012*, the *Character Preservation (McLaren Vale) Act 2012* and the *Roads (Opening and Closing) Act 1991*.
 - (b) **DELEGATE** each of the powers and functions under the section of the Act and its statutory instruments identified in Column 1 of Schedule 1 to this instrument to:
 - (i) each of the persons or persons for the time being holding, acting in or assigned to the positions within the administrative unit known as Planning and Land Use Services within the Attorney-General’s Department; and/or
 - (ii) the panel or panels for the time being established by the Commission under section 29(1) of the Act and its statutory instruments;as specified in the corresponding line of Column 3, subject to the conditions, if any, specified in the corresponding line of Column 4 of this instrument;

AND FURTHER:

2. Pursuant to section 30(5) of the Act, any of the powers or functions hereby delegated may be further delegated by the delegate, by instrument in writing, except as expressly limited.

Notes

- (1) The descriptions in Column 2 are for administrative use only and do not form part of this delegation. All delegates exercising delegated powers or functions should refer to the statutory power or function delegated when exercising that power or function.
- (2) The terms in this instrument have the same meaning as under the Act.

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



Michael Lennon
Chair, State Planning Commission
18 March 2021

SCHEDULE 1

COLUMN 1 Power/Function	COLUMN 2 Description of power or function	COLUMN 3 Delegated To	COLUMN 4 Conditions and limitations on delegation (where applicable)
<i>Planning Development and Infrastructure Act 2016</i>			
PART 1	Preliminary		
Section 7	Environment and food production areas – Greater Adelaide		
Section 7(5)(a)	The power to determine whether to concur in the granting of the authorisation.	State Commission Assessment Panel	
Division 4	Practice directions and practice guidelines		
Section 42	Practice Directions		
Section 42(4)(b)	The power to, from time to time, make a minor variation to a practice direction.	<ul style="list-style-type: none"> • Executive Director, Planning and Land Use Services • Director, Planning and Development • Director, Land and Built Environment 	
Section 43	Practice guidelines		
Section 43(4)(b)	The power to, from time to time, make a minor variation to a practice guideline.	<ul style="list-style-type: none"> • Executive Director, Planning and Land Use Services 	

SCHEDULE 1

		<ul style="list-style-type: none"> • Director, Planning and Development • Director, Land and Built Environment 	
Division 1	Community engagement		
Section 44	Community Engagement Charter		
Section 44(12)	<p>The power to determine whether an entity has failed to comply with the charter and:</p> <p>(a) to direct the entity to comply with the charter; and</p> <p>(b) if the direction is not complied with within a period prescribed by the regulations—to take any action required by the delegate’s direction and recover the reasonable costs and expenses of so doing as a debt from the entity that failed to comply with the direction.</p>	<ul style="list-style-type: none"> • Executive Director, Planning and Land Use Services • Director, Planning and Development 	<p>Limited to proposals to amend the Planning and Design Code in circumstances where:</p> <ul style="list-style-type: none"> • the Department has not received any complaints regarding an engagement process undertaken by a Designated Entity; • the Chief Executive is not the Designated Entity under section 73 of the Act; and • the delegate forms the opinion that the Community Engagement

SCHEDULE 1

			Charter has been complied with for such engagement.
Section 73	Preparation and amendment		
Section 73(2)(a)	The power to initiate a proposal to amend a designated instrument (or at the request of the Minister).	<ul style="list-style-type: none"> • Executive Director, Planning and Land Use Services • Director, Planning and Development 	<p>Limited to proposals to initiate:</p> <ul style="list-style-type: none"> • technical amendments to the Planning and Design Code (which may include amendments considered by the delegate as minor, such as amendments to aid interpretation of policy or adjust mapping boundaries); or • amendments to the Planning and Design Code that were subject to a Development Plan Amendment which has since lapsed.

SCHEDULE 1

<p>Section 73(2)(b) <i>Section 22(1)(b)</i></p>	<p>The function of providing advice to the Minister in relation to a proposal to amend a designated instrument.</p>	<ul style="list-style-type: none"> • Executive Director, Planning and Land Use Services • Director, Planning and Development 	<p>A proposal to amend the Planning and Design Code that meets all of the following criteria:</p> <ul style="list-style-type: none"> • clear consistency with the State Planning Policies and Regional Plans • Council/s support for the proposal • amendments are consistent with the Code Framework • not known to be a highly sensitive issue for the local community. <p>OR</p> <p>A proposal that reflects an approved Statement of Intent under the <i>Development Act 1993</i> that has since lapsed.</p>
<p>Section 73(6) <i>Commission as a designated entity</i></p>	<p>The powers and functions, as a designated entity, to comply with the requirements of section 73(6), including the power to determine</p>	<ul style="list-style-type: none"> • Executive Director, Planning and Land Use Services 	<p>Limited to technical amendments to the Planning and Design Code (which may</p>

SCHEDULE 1

<p><i>initiating a proposal to prepare or amend a designated instrument</i></p>	<p>any person or body requiring consultation under s 73(6)(e).</p>	<ul style="list-style-type: none"> • Director, Planning and Development 	<p>include amendments considered by the delegate as minor, such as amendments to aid interpretation of policy or adjust mapping boundaries).</p>
<p>Section 73(6) <i>Commission <u>not</u> as a designated entity</i></p>	<p>The power to:</p> <p>(e) specify any person or body with which the designated entity must consult;</p> <p>(f) specify such investigations which must be carried out, and information which must be obtained.</p>	<ul style="list-style-type: none"> • Executive Director, Planning and Land Use Services • Director, Planning and Development 	<p>Limited to technical amendments to the Planning and Design Code (which may include amendments considered by the delegate as minor, such as amendments to aid interpretation of policy or adjust mapping boundaries).</p>
<p>Section 73(7) <i>Commission as a designated entity</i> <i>Section 22(1)(b)</i></p>	<p>The function of preparing a report in accordance with any practice direction that applies for the purposes of section 73 (including information about any change to the original proposal that the designated entity considers should be made) and furnishing a copy of the report to the Minister.</p>	<ul style="list-style-type: none"> • Executive Director, Planning and Land Use Services • Director, Planning and Development 	<p>Limited to engagement reports relating to technical amendments to the Planning and Design Code (which may include amendments considered by the delegate as minor, such as amendments to aid interpretation of policy or adjust mapping boundaries).</p>

SCHEDULE 1

<p>Section 73(8) <i>Commission as a designated entity</i> Section 42</p>	<p>The function of, after furnishing a report to the Minister under section 73(7), ensuring that a copy of the report is published on the SA planning portal in accordance with a practice direction that applies for the purposes of section 73.</p>	<ul style="list-style-type: none"> • Executive Director, Planning and Land Use Services • Director, Planning and Development 	
<p>Section 74</p>	<p>Parliamentary Scrutiny</p>		
<p>Section 74(3)</p>	<p>The function of preparing a report for the ERD Committee under section 74.</p>	<ul style="list-style-type: none"> • Executive Director, Planning and Land Use Services • Director, Planning and Development 	<p>Limited to amendments to the Planning and Design Code:</p> <ul style="list-style-type: none"> • which are initiated by the Commission, and where such amendments are adopted by the Minister under section 73(10)(c) of the Act as outlined in the relevant engagement report; or • where the delegate forms the opinion that no reasonable objections have been made in response to public consultation on the proposed Code Amendment; or

SCHEDULE 1

			<ul style="list-style-type: none"> • where the delegate forms the opinion that all objections made in response to public consultation on the proposed Code Amendment have been adequately addressed through changes to the proposed Code Amendment, as reflected in the relevant engagement report.
Section 74(3)(c)	The power to determine whether material is relevant to be included in the report prepared pursuant to section 74(3).	<ul style="list-style-type: none"> • Executive Director, Planning and Land Use Services • Director, Planning and Development 	<p>Limited to amendments to the Planning and Design Code:</p> <ul style="list-style-type: none"> • which are initiated by the Commission, and where such amendments are adopted by the Minister under section 73(10)(c) of the Act as outlined in the relevant engagement report; or • where the delegate forms the opinion that no reasonable

SCHEDULE 1

			<p>objections have been made in response to public consultation on the proposed Code Amendment; or</p> <ul style="list-style-type: none"> • where the delegate forms the opinion that all objections made in response to public consultation on the proposed Code Amendment have been adequately addressed through changes to the proposed Code Amendment, as reflected in the relevant engagement report.
Section 76	Minor or operational amendments		
Section 76(4) <i>Section 22(1)(b)</i>	The function of receiving and responding to consultation from the Minister before the making of an amendment under section 76.	<ul style="list-style-type: none"> • Executive Director, Planning and Land Use Services • Director, Planning and Development 	
Division 5	Determination of relevant authority		
Section 94	Relevant authority - Commission		