

→ STATE
PLANNING
REFORM

Amending the
Planning and Design Code
Introductory Guide

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Government of South Australia
Department of Planning,
Transport and Infrastructure

saplanningportal.sa.gov.au

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EXECUTIVE SUMMARY

The Planning and Design Code (the Code) is a fundamental cornerstone of the *Planning, Development and Infrastructure Act 2016* (the Act). It consolidates the planning policies contained in South Australia's 72 development plans into one set of planning rules thereby enabling a more efficient and useable planning system.

The Act sets out the Code amendment process under which designated entities will be able to commence an amendment. This guide provides information on how this process will work and will be supported by a new Practice Direction and Practitioner's toolkit. At this stage no amendments to regulations are proposed to support the code amendment process. In summary the new Code Amendment process:

- Provides a clear process for private developers and landowners to lodge a proposal to initiate.
- In addition to councils, Joint Planning Boards and Government Agencies can prepare Code amendments.
- The Commission will be conducting regular strategic code amendment and technical code amendments to keep the Code contemporary. The Commission will publish an annual work program which will be developed in collaboration with key stakeholders.
- To ensure the integrity of the Code there will be clear parameters about who can seek to amend what parts of the Code.
- The Department will have a specialist technical Code writing team that will write the code policy as instructed by those preparing the code amendment. Enabling the entity to focus on investigations, policy intent and engagement.
- There will be greater flexibility about the requirements at the initiation stage of the project depending on the complexity of the change and the level of certainty that is required.
- Whilst there are additional steps in the code amendment process compared to the Development Plan Amendment process, appropriate delegations will put into action to enable straightforward amendments to progress through a quick process. It is also envisaged the process more timely due with the introduction of detailed guidance on policy and investigative matters.
- Engagement is tailored to the characteristics of the code amendment and the community (Community Engagement Charter).

Some key terms used in this document include:

Act – this is the *Planning, Development and Infrastructure Act 2016*

Charter means the Community Engagement Charter

Chief Executive – this is the Chief Executive of the Department of Planning, Transport and Infrastructure (the Department)

Code – this is the Planning and Design Code under the Act

Code amendment means an amendment to the Planning and Design Code

Code drafting principles – these are the principles set out in Appendix I of this guide

Commission – this is the State Planning Commission under the Act

Department– this is the Department of Planning, Transport and Infrastructure

Designated entity means a person or entity authorised or approved to prepare a draft of a proposal to amend the Code

DPA means a Development Plan Amendment under the *Development Act 1993*

ERDC- the Environment, Resources and Development Committee of Parliament

Minister – this is the Minister for Planning

Proponent means the Chief Executive, 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

Private Proponent means a provider of essential infrastructure or a person who has a legal or beneficial interest in land

The Community Engagement Charter- the Charter

2 PURPOSE OF THIS GUIDE

The Planning and Design Code (the Code) is a fundamental cornerstone of the *Planning, Development and Infrastructure Act 2016* (the Act). It consolidates the planning policies contained in South Australia's 72 Development plans into one book of planning rules. Coupled with a SA Planning Database the Code will make it simpler and easier for anyone to access planning rules, thereby enabling a more efficient and useable planning system.

The Act sets out the Code amendment process. Councils and other designated entities will be able to commence a code amendment when the Code becomes operational in the relevant area.

This Guide has been prepared to provide more information on how the code amendment process will work. It will be supplemented over time with a practitioner's toolkit on the SA Planning Portal that will include comprehensive procedures, guidance and templates. It is intended that the final package will provide certainty and transparency to stakeholders with the intent to minimise delays and costs.

2.1 What's New?

There are many similarities between the current Development Plan Amendment (DPA) process under the *Development Act 1993* and the Code amendment process. Table 1 compares the process that currently applies for a council-prepared DPA with the process that will be required for a Code amendment.

This guide sets out the most significant differences in the new system followed by detailed information which will depend on who is preparing the Code amendment.

Table I: Requirements for a council-prepared DPA compared to the new Code amendment process

	<i>Development Act 1993</i> Council Development Plan Amendment	<i>Planning, Development and Infrastructure Act 2016</i> Council Code Amendment
Commencement	Council prepares Statement of Intent (SOI) in accordance with regulation 9 of <i>Development Regulations</i> . Review by planner satisfying regulation 86 ¹	Council prepares a proposal to initiate in accordance with Practice Direction 2. Note: A code amendment may be drafted at this point and a separate document may not be required.
Agreement to Initiate	Minister initiates Development Plan Amendment by signing SOI	Commission provides advice to the Minister. Minister agrees to initiate and signs off proposal and may set conditions
Investigations and Preparation	Council undertakes investigations, prepares DPA and writes draft policy	Council prepares investigations, prepares code amendment* and prepares drafting instructions for Code policy writing *if a draft code amendment had not already been completed
Engagement	Council CEO certifies DPA Statutory consultation (8 weeks consultation, notice in Government Gazette and local newspaper Paper & public meeting(s)) ²	Council conducts tailored engagement in accordance with the Charter and the engagement process
Post-engagement	Council prepares a summary of consultations and proposed amendments report Council CEO certifies DPA	Council prepares an engagement report in accordance with Practice Direction 2
Independent Advice	The Development Policy Advisory Committee provides advice for local heritage listings and at the Minister's request	The Commission provides advice, assesses engagement and prepares a consultation report for ERDC
Decision	The Minister makes a decision to approve, refuse or amend	The Minister makes a decision to approve, refuse or amend
Parliamentary Review	ERDC consideration	ERDC consideration

¹ Note- Accreditation is not required in the Code Amendment process

² Note- A public meeting is not prescribed for a Code Amendment

2.2 The Transition Process

A request to initiate a code amendment can commence from the date that the Code comes into effect for that council area. On this date the current development plans for these councils will be revoked. There are transitional arrangements in place under the *Planning, Development and Infrastructure (Transitional Provisions) Regulations 2017* that will enable existing DPAs that have completed consultation to be continued and transition into the Code on application to the Minister. Applications to do this must be made within three months of the Code becoming operational for that council area. DPAs considered in the transitional period will be referred to the Commission for its preparation of advice to the Minister. The Department of Planning, Transport and Infrastructure (DPTI) is working closely with councils that have active DPAs to work through the transition process.

The only exception to this are DPAs relating to the designation of one or more places as places of local heritage value, where the DPA can be lodged for approval any time up to 31 December 2020. A separate guide has been prepared for councils that would like to commence or continue a DPA that is relevant to the possible designation of contributory items as places of local heritage value and it is recommended that councils meet with DPTI before commencing this process.

3 KEY COMPONENTS OF THE CODE AMENDMENT PROCESS

3.1 Roles and Responsibilities

The State Planning Commission

The Commission is responsible for ensuring the Code is maintained, reflects contemporary values relevant to planning, and responds readily to emerging trends or issues. The Commission provides independent advice to the Minister on Code amendments, particularly at the initiation stage, and may also run Code amendment processes. The Commission is also responsible for maintaining the Community Engagement Charter (the Charter) and for ensuring Code amendments comply with the principles and requirements of the Charter.

The Minister for Planning

The Minister is responsible for approving the initiation of Code amendments by persons and entities other than the Commission, and for the final approval of any amendments to the Code.

Environment, Resources and Development Committee of Parliament

The ERDC will continue to provide oversight following the amendment of the Code. No change to the process has occurred with the exception that the ERDC must consult the relevant Council/s if it resolves to suggest an amendment to the Minister.

Who can initiate a Code amendment?

A wide range of proponents can initiate a Code amendment in addition to the Commission and a council:

- The Chief Executive of the Department
- An agency or instrumentality of the Crown
- A joint planning board
- A scheme coordinator³
- A provider of essential infrastructure (private proponent)
- A person who has an interest in the land - where the person is seeking to alter the way in which the Code affects that land (private proponent).

Once initiated, all proponents can undertake the Code amendment process with the exception of private proponents. The Chief Executive of the Department is responsible for the Code amendment process for private proponents.

A provider of essential infrastructure or a person who has an interest in the land may also approach a council to undertake a Code amendment on their behalf. If the council agrees, it will be the proponent for the Code amendment. The council may seek to recover its cost in undertaking the Code amendment process in accordance with its own policies.

³ A scheme coordinator oversees Infrastructure Schemes- for more information refer to www.saplanningportal.sa.gov.au/_data/assets/pdf_file/0005/526055/Infrastructure_Schemes_-_Toolkit_for_Practitioners_-_Initiating_and_Establishing_an_Infrastructure_Scheme.pdf

Planning consultants

It is recommended that private proponents engage a planning consultant to seek advice about initiating a Code Amendment and the preparation of the initiation proposal. It is also likely that many councils, other entities and the Department will utilise the assistance of planning consultants when preparing a Code amendment.

Table 2: Roles of entities in the Code amendment process

	Initiation	Investigate	Prepare Code amendment	Engagement	Finalise Code amendment after engagement	Decision
The Commission	<p>Initiates own code amendment (s73(2)(a))</p> <p>Provides advice to Minister on decision to initiate any other code amendment (s73(2)(b))</p>	DPTI investigates issues on behalf of the Commission	DPTI prepares Code amendments on behalf of the Commission	DPTI undertakes community engagement on behalf of the Commission	DPTI finalises Code amendment and prepares engagement report for the Commission to sign off	<p>The Commission provides advice to the Minister on matters determined by the Minister to be considered significant and/or where there has been a recovery of costs.</p> <p>The Commission ensures Code amendments comply with the principles and requirements of the Charter by assessing the Engagement Report at the approval stage.</p> <p>The Commission prepares the consultation report for ERDC.</p>
The Minister for Planning	Approves the initiation of all Code amendments except for Commission led (s73(2)(b))	n/a	n/a	n/a	n/a	<p>Makes final decision, options:</p> <ul style="list-style-type: none"> - adopt - make alterations - divide the amendment - not proceed

	Initiation	Investigate	Prepare Code amendment	Engagement	Finalise Code amendment after engagement	Decision
The Chief Executive of the Department for Planning, Transport and Infrastructure	Can initiate Code amendments (s73(2)(b)(i))	DPTI investigates issues	DPTI prepares Code amendment	DPTI undertakes community engagement	DPTI finalises Code amendments and prepares engagement reports	The Minister makes final decision
Joint Planning Boards Councils Government Agencies Scheme Coordinators	Prepare a proposal to initiate (s73(2)(b)(ii, iii, iv, vi))	Investigate issues	Prepare Code amendments	Undertake engagement	finalises Code amendment & prepares engagement reports	The Minister makes final decision
Persons interested in the land Providers of essential infrastructure	Can initiate Code amendments (s73(2)(b)(v,vii)) If initiated, they are may be asked to recover costs (s73(4)(b))	DPTI investigates issues on behalf of the Chief Executive. Asked to provide specialist investigations to support the proposal.	DPTI prepares Code amendment on behalf of the Chief Executive.	DPTI undertakes community engagement on behalf of the Chief Executive. Proponents may be asked to conduct engagement before this.	DPTI finalises Code amendments and prepares engagement reports	The Minister makes final decision

3.2 The Community Engagement Charter

The Charter establishes an outcome-based, measurable approach for engaging communities on planning policy, strategies and schemes. It provides a flexible framework that enables fit-for purpose engagement rather than prescriptive minimum standards applied under the *Development Act 1993*.

The engagement process for all Code amendments must comply with the principles of the Charter:

- Engagement is genuine
- Engagement is inclusive and respectful
- Engagement is fit for purpose
- Engagement is informed and transparent
- Engagement processes are reviewed and improved.

The engagement is therefore tailored to the characteristics of the community and the Code amendment. Practice Direction 2⁴ sets out the process for tailoring engagements.

At the end of the Code amendment process, designated entities are required to analyse the engagement against their engagement plan and the Charter's principles as part of preparing the engagement report. The requirements for the engagement report are provided in Practice Direction 2.

The engagement report is provided to the Commission to assess against the principles of the Charter and for the preparation of its consultation report to the ERDC⁵. The engagement report is then referred to the Minister for a decision.

To assist practitioners, a Charter toolkit is available on the SA Planning Portal. The toolkit helps practitioners fulfil their obligations under the Charter when planning for engagement by providing step-by-step guidance, together with a range of templates, case studies and examples.

3.3 SA Planning Database

The Code will be presented through the SA Planning Database made accessible through the SA Planning Portal. Its format and structure have been carefully configured to optimise its potential to provide a powerful platform for inquiry. In particular, the capacity to identify the planning rules for a particular type of development at a specified location is a key objective of the new format and structure.

The database will deliver the rules and procedures (including the level of assessment, notification requirements and mandatory state agency referrals) that apply to a development application to ensure accuracy, transparency, consistency and efficiency, irrespective of location or kind of development.

The Department will be responsible for maintaining and updating the database, including mapping, to ensure its integrity in terms of expression, use of definitions and structure; and to determine that general policy drafting principles are abided by.

⁴ Practice Direction #2- Preparation and Amendment of Designated Instruments
(www.saplanningportal.sa.gov.au/_data/assets/pdf_file/0010/485155/Practice_Direction_2_-_Preparation_and_Amendment_of_Designated_Instruments_2019.pdf)

⁵ In many instances this will be delegated to the Department.

Consultation software connected to the database will enable designated entities to consult with communities using a direct link to the policy and mapping database as part of the consultation process. The software has an online submission function and designated entities will be able to tailor the consultation by entering targeted questions to assist with consultation feedback. It also provides functions to assist the designated entity in summarising submissions.

When consultation occurs on a draft Code amendment, the designated entity will be given access to view the draft Code policy being amended, plus the mapping provided through the consultation software. This is an option for consultation and should be part of the overall engagement strategy for the Code amendment.

The Code amendment processes described in Part 4 of this guide includes the interactions required for the planning database.

3.4 Code Drafting

The Act requires the Code to provide a single place for planning policy which must be easily understood and provide consistency in its interpretation and application. Appendix A shows the drafting principles used to draft policies for the Code.

The continued success of the Code will depend on strict management of the content being amended and an understanding of the impact of amending one component of the Code on another.

Designated entities will be required to forward policy drafting instructions to the Department's policy writing team who will draft the policy required for Code from a technical perspective (including ensuring that linkages and terminology are consistent with definitions etc.). This will need to occur before public consultation on the proposed amendment and may require further consideration and refinement. The role of the specialised team is to prepare a draft of the amendments that reflect the policy that has been proposed, not to make an assessment of the policy intent. The draft amendments will be provided to the designated entities for their approval and for consultation purposes.

3.5 Ability to amend layers of the Code

The layers proposed to be amended in the Code amendment must be outlined in the proposal to initiate (see Table 5). The Commission will provide advice to the Minister on the scope of the amendment and the Minister will then make the decision on the suitability of the proposed amendment. As each layer applies either in a state-wide or region wide context, local variations to the policies will be restricted in overlays, general policy, zones and subzones. Variation to policies or the creation of a new zone or subzone may be supported if justification is provided that the policy requirements are unique and policy is not available in the current Code. Variations can also occur through the Technical and Numeric Variation Overlay. Table 3, provides an outline of where amendments would not require detailed justification to amend the Code.

Table 3: Likely scope of amendments for different proponents

Code Layer	Supportive Scope of amendments
<p>Overlay</p> <p>Overlays are the primary mechanism to spatially express State Planning Policies (SPPs)⁶, and pick up planning issues of state interest and locationally specific issues.</p> <p>Overlays:</p> <ul style="list-style-type: none"> • can span multiple zones and sub-zones and more than one overlay can apply to the same area • take precedence over other Code policies • may also have procedural effects in relation to referrals and assessment pathways: <ul style="list-style-type: none"> ○ referrals can largely be expected to be contained in overlays where specialised assessment expertise is required to protect a matter of state interest ○ overlays can add or remove envisaged development types (including altering the assessment pathway) as well as the policies and rules which apply. 	<p>Overlays can be amended by those responsible for the issue or by the Commission.</p> <p>For example, a proponent may seek to alter an overlay for which it has a referral or seek changes to amend the spatial extent of a layer but not an amendment to the policy, e.g.</p> <ul style="list-style-type: none"> • a council may wish to add to its local heritage layer • a private proponent initiated code amendment may propose a change the extent of a noise overlay associated with a rezoning • a provider of infrastructure may seek to alter an overlay for an infrastructure corridor.
<p>Zones</p> <p>Zones are the primary organising layer of the Code. All land within South Australia is included within a zone. Zones set out policies and rules primarily relating to land use, land use intensity and built form characteristics (such as building setbacks and heights) that are anticipated – in effect outlining ‘what’ can happen in an area. Zones also identify envisaged land uses and the relevant assessment criteria, as well as procedural matters (including Categories of Development [assessment pathways], public notification requirements and, where relevant, referrals).</p> <p>Local variations cannot be included within a zone. Any variation to a zone is achieved through the application of an overlay or sub-zone.</p>	<p>The Commission will be primarily responsible for the number of zones and zone policy, including the assessment table.</p> <p>Any proponent may initiate an amendment to rezone land from one zone to another Code zone. (a spatial amendment).</p> <p>Anyone can request the Commission to consider a Code amendment to change zone policy as part of its regular review.</p>

⁶ State Planning Policies set out a framework for land use in South Australia that aims to improve the liveability, sustainability and prosperity of the state. They represent the highest level of policy in our new planning system and address the economic, environmental and social planning priorities for South Australia.

Code Layer	Supportive Scope of amendments
<p>The assessment table is the organising feature that brings together all the various parts of the Code and enables them to be delivered digitally. Assessment tables comprise a matrix that assigns development types to the categories of development (assessment pathways) and identifies the assessment criteria that are applicable to each development type.</p>	
<p>Sub-zones</p>	
<p>Policies in sub-zones apply to variations in the character of a particular part of a zone and cannot apply in more than one zone. A sub-zone can change the assessment pathway for a development type from deemed-to-satisfy to performance-assessed (but not to restricted). This will accommodate instances where an element of a development requires ‘on merit’ consideration in the sub-zone.</p>	<p>Any proponent may initiate an amendment to rezone land from one subzone to another subzone in the Code library (a spatial amendment).</p> <p>A proposal to amend a sub-zone policy may be supported where that sub-zone is limited spatially and the proponent or joint proponents has/have a clear interest in the entirety of the area affected.</p> <p>The creation of a new sub-zone will be considered if the current suite of sub-zone and supporting policy do not adequately cover the planning issues.</p>
<p>Technical and Numeric Variation Overlays</p>	
<p>Technical and Numeric Variation Overlays apply a suite of spatial data across areas of the state. The requirements specified in these overlays effectively become part of a zone’s, subzone’s or overlay’s policies, and can vary one discrete policy (such as site areas or frontage width) without the need to apply an entirely new zone/sub-zone.</p> <p>The application of these overlays allows the Code to maintain a succinct suite of zones and sub-zones while respecting the many and varied different attributes and features of the state’s built, productive and natural environments.</p>	<p>Any proponent can seek the amendment of an attribute or the inclusion of an attribute to apply to zones with Technical and Numeric Variations.</p>

Code Layer	Supportive Scope of amendments
General Development Policies	
General Development Policies broadly relate to how a development should occur. These policies address the functional requirements for a development type or class such as minimisation of overshadowing for a multi-storey building. General Development Policies will be linked to specific development types listed in a zone/sub-zone Classification Table.	The Commission will be primarily responsible for General Development Policies. Anyone can request the Commission to consider a Code amendment to change a General Development Policy as part of its regular review.
Concept Plan Overlays	
A concept plan has an active policy role in the future staging of development and the provision of infrastructure (particularly for growth areas).	Anyone can propose a concept plan that is about the staging of development and the provision of infrastructure.

Table 4: Proponents for Proposing and Initiating Code Amendments - Summary

	Spatial Changes (overlay, zone, sub-zone)	Policy Overlay, General, Zone	Policy Sub-zone	Technical & Numerical Value overlay	Complying Change s75	Minor or Operational Change S76
Minister					Yes	Yes
Commission	Yes	Yes	Yes	Yes	Request to Minister	Request to Minister
CEO, DPTI	Yes	Yes	Yes	Yes	Request to Minister	Request to Minister
Joint Planning Board	Yes	Request to Commission	Limited	Yes	Request to Minister	Request to Minister
Council	Yes	Request to Commission	Limited	Yes	Request to Minister	Request to Minister
Agency	Yes	Request to Commission	Limited	Yes	Request to Minister	Request to Minister
Persons Interested in the land Providers of essential infrastructure	Yes	Request to Commission	Limited	Yes	No	Request to Minister

3.5 Strategic Analysis

A Code amendment must comply with the State Planning Policies (SPPs) and recommendations of regional plans should also be considered where relevant. Initiation proposals must include an assessment of the proposed amendment against these documents.

State Planning Policies

The SPPs identify the high-level planning priorities of the state and relate to current and future opportunities and challenges. Their purpose is to provide guidance about the intent of the government's strategic directions for land-use planning. SPPs prevail over regional plans in our planning system.

The SPPs will be updated from time to time to include additional state significant spatial layers that will form overlays and designate referral areas in the Code. Criteria may also be included to provide guidance on how to determine the applicability of spatial areas such as coastal protection areas.

Proponents must take account of the following when proposing a Code amendment:

- all SPPs relevant to the area in which the amendment or the issue is being considered for amendment, including the principles of good planning
- the expected population growth and capacity for accommodating the anticipated growth
- the strategic needs of the existing zone e.g. the strategic impact of the loss of land for employment, food production etc.
- the infrastructure needed to support the anticipated growth
- the performance-based policy to facilitate opportunities or mitigate challenges

Refer to table I of the SPPs on ways to resolve conflicting priorities.

Regional plans

Joint planning boards (or the Commission where there is no joint planning board) will prepare regional plans. These plans provide direction for local level planning and development based on a long-term vision (15 to 30 years) and establish a framework for the management of regional infrastructure and the public realm. The plans also make recommendations about the application and operation of the Code for specific areas. Where SPPs can be spatially applied, it is intended that state interests will be mapped within regional plans.

The *30-Year Plan for Greater Adelaide – 2017 Update*, along with the other volumes of the South Australian Planning Strategy, will serve as the state's regional plans until the new plans are developed.

Changes to the SPPs and regional plans (including sub-region plans) will be a trigger for a potential Code amendment by the Commission, or a joint planning board for a regional plan.

An assessment of the proposed Code amendment against the SPPs and the relevant regional plan should be provided in the proposal to initiate and the Code amendment at the consultation stage.

For more information on the SPPs and regional plans refer to the SA Planning Portal.

3.6 State Planning Commission - Strategic and Technical Reviews

The Commission's 2019-2020 Strategic Plan outlines its priorities for 'Leading on Planning Policy', which includes investigating: land supply in Greater Adelaide; infill impacts in established suburbs; rural living and peri-urban settlements; and demographic forecasts. These investigations will assist in the preparation of amendments to the SPPs, the preparation of regional plans and the preparation of Code amendments.

3.6.1 Strategic Code Amendments

The Commission will take the lead in undertaking Code amendments of strategic importance (social, economic and/or environmental) for the state. The first version of the Code focuses on reviewing the South Australian Planning Policy Library and rewriting it into the new Code framework. During the phased implementation of the Code only limited policy reform was undertaken.

After the introduction of the Code across the state, the Commission will consult with government agencies, councils and other stakeholders to develop its future program of amendments. The issues that have already been identified through the policy discussion series will be prioritised for future Commission-led Code amendments.

Throughout this process, the Commission will seek collaborative partnerships with councils, joint planning boards and government agencies to resolve and investigate policy issues of regional applicability and encourage councils to implement changes to accommodate local issues.

3.6.2 Regular Technical Review

The Commission will undertake annual or bi-annual reviews to update the Code to address technical matters. The SA Planning Portal will include a template for practitioners to request a technical amendment to the Code, which will be added to the register for policy review and potential Code amendment.

The Commission will establish a program of work to address matters that are to be adopted or addressed and that will require Code amendment, which will be published on the SA Planning Portal.

3.7 Other Code Amendment Processes

The Act also provides for other options to amend the Code in recognition of work undertaken in the preparation a regional plan or an assessment of major development. It also provides an avenue to correct errors and to put policy on interim effect during the engagement of a Code amendment to ensure that development contrary to the proposed amendment doesn't occur during the process. (See 3.7.3 Early Commencement)

State Planning Commission's Goal

Our Goal

An outstanding planning system that:

-  Engages and serves the citizens of South Australia in building prosperous communities.
-  Is based on evidence and research.
-  Leads to effective stewardship of the State's assets and resources
-  Is ambitious, enterprising and aspirational.

The Commission will work collaboratively with, and help coordinate, the variety of interests that operate in the planning domain. It will endeavor to be open and transparent in its deliberations.

3.7.1 Local Heritage (section 67)

The requirements for local heritage listings in the *Development Act 1993* have been translated directly into the Act, provided the designation of a place as a place of local heritage value identifies the extent (e.g. a component or feature) of the place that forms or contributes to the heritage significance.

Under the previous Act there was no legislative requirement that the Minister seek the advice of an independent advisory committee at the approval stage if the owner of the land objects to the amendment however, the Commission now requires this through Practice Direction 2.

Owners of a place that has been listed as a place of local heritage value also now have a right of appeal (see section 202 (1)(a)) to the Environment Resources and Development Court.

Updated guidance on the undertaking of a Code amendment to list a new place of local heritage significance, including interpretation on the application of the criteria, will be made available in 2020.

3.7.2 Significant Trees (section 68)

The requirements for declaring a tree or a stand of trees ‘significant’ as prescribed in the *Development Act 1993* have been translated directly in the Act without change.

3.7.2 Complying Changes proposed in Regional Plans (section 75)

Complying changes to the Code are a fast-track process that allows for zone or sub-zone boundary changes or an overlay change as result of the establishment of/or an amendment to, a regional plan.

To enable this to occur the proposed policy changes must be clearly identified during preparation and consultation (in accordance with the Charter) of the regional plan, or a relevant amendment to a regional plan. These changes must be clearly identified as a recommended Code amendment in the final regional plan, or amendment, subject to approval by the Minister.

The Minister may make a decision on a complying change after receiving advice from the Commission, and the amendment will take effect from the date specified in an instrument published on the SA Planning Portal. It is possible for a complying change and a regional plan amendment to be approved at the same time. No referral to the ERDC is required.

3.7.3 Minor or Operational Change (section 76)

The Minister may make a minor or operational change to the Code by Government Gazette. The Act identifies what is classed as ‘minor or operational’ as follows:

- To introduce changes in form that do not alter an underlying policy
- To remove errors, irrelevant material, duplication or inconsistencies
- To provide consistency with any provisions made by the regulations
- To give effect to the adoption, amendment or revocation to a precinct plan under the *Urban Renewal Act 1995* (see below)
- To provide consistency with a change to an Environment and Food Production Area
- To provide consistency with development substantially commenced or completed which has been impact assessed by the Minister. The impact assessment must have included a section about the intended Code change
- To include a state heritage place or change the designation of a place from being a state heritage place to a local heritage place (on the basis of a recommendation from the South Australian Heritage Council)

- To remove the listing of a state heritage place or local heritage place that has been demolished
- To ensure the Code accords with any plan, policy, standard, report or document prepared under another Act as listed below:
 - a coastal management plan approved by the Governor under the *Coast Protection Act 1972*
 - an environment protection policy under the *Environment Protection Act 1993*
 - a management plan for a park or reserve adopted under the *National Parks and Wildlife Act 1972*
 - the list or amendment to the list of places entered, either on a provisional or permanent basis, in the State Heritage Register under the *Heritage Places Act 1993*
 - any regulation relating to the development of land under the *Electricity Act 1996*
 - a management plan under the *Fisheries Management Act 2007*
 - an aquaculture policy under the *Aquaculture Act 2001*
 - an NRM plan prepared under the *Natural Resources Management Act 2004*.

External parties may write to the Department to identify a need for a minor or operational change. In making these changes, the Act requires the Minister to consult with the Commission⁷. The change takes effect from the date specified in the Gazette notice and no referral to the ERDC is required.

3.7.4 Precinct Plan Amendments to the Code

Precinct master plans and a precinct implementation plans are prepared for precincts declared under the *Urban Renewal Act 1995*. These document include similar steps to the Code amendment process (including public consultation, ministerial approval and parliamentary oversight) and cover a broader range of issues than a Code amendment process. The Minister may amend the Code under section 76 of the Act at the precinct master plan stage and must amend the Code following the approval of a precinct implementation plan. Refer to www.sa.gov.au/topics/planning-and-property/planning-and-land-management/about-the-planning-strategy-for-south-australia for more information about precinct plans.

3.7.5 Early Commencement (section 78)

The early commencement provision of the Act replaces the interim development control prescribed under the *Development Act 1993*. This provision enables the Minister to put draft policy into effect at the consultation phase for twelve months to ensure that development does not occur contrary to proposed policy prior to the completion of the Code amendment process.

In making a decision for early commencement, the Minister must form the opinion that it is necessary in the interest of the orderly and proper development of an area of the state, or that an amendment to the Code should come into operation without delay to counter applications for undesirable⁸ development ahead of the outcome of the consideration of the amendment.

To ensure that ‘early commencement’ does not facilitate development while the draft policy is being considered, the Act provides additional guidance about the assessment of development applications against the policy on interim effect. If a development application is lodged during the early commencement period, the application must be assessed against the previous policy of the Code as well as the policy on interim effect. If the assessment differs, a decision cannot be made until the policy is no longer on early commencement. If the early commencement policy decreases the consultation requirements, then the original policy must be the policy used for assessment purposes.

⁷ In most instances this will be delegated to the Department.

⁸ Undesirable development is development that would detract from, or negate, an object of the amendment.

4 THE CODE AMENDMENT PROCESS

4.1 Preparing a proposal to initiate a Code amendment

The Act requires that the Minister be responsible for approving the initiation of Code amendments after consideration of advice from the Commission. Some Code amendments are straightforward while others can involve a combination of complex strategic, investigative and community issues.

The Act does not define what information needs to be provided at this initiation stage and the following options are available for proponents:

Option 1: For straightforward rezoning requests, a draft Code amendment may be prepared at the time of initiation. This will enable the amendment (with drafting instructions) to be lodged for initiation and, once approved, proceed to consultation. The Minister can however request additional investigations and conditions.

Option 2: For more complex Code amendments that require greater certainty prior to commencement, the application for initiation must be a detailed scoping document (similar to a Statement of Intent under the *Development Act 1993*).

The proposal to initiate a Code amendment should be prepared by a planning practitioner/consultant, particularly for the assessment of the proposal against the SPPs and region plans, and to identify issues and investigations required.

It is recommended that the proponent's consultant engages with the relevant council and relevant joint planning board in preparing a proposal to initiate a Code amendment. This will identify whether the proposal fits in with strategic and infrastructure planning and will assist in identifying investigation requirements.

For a more complex rezoning, it is recommended that the proponent has early discussions with relevant government agencies to assist in understanding any environmental or infrastructure issues, and any investigative requirements that may be necessary. The relevant council or the Department can assist in facilitating these meetings.

It is also recommended that a pre-initiation meeting be held with the Code amendment team of the Department prior to formally lodging a proposal to initiate an amendment. Where further direction is required, the advice of the Commission may also be sought.

4.1.1 Initiation Requirements

A well-defined scope for a Code amendment will assist in providing certainty in the process, quicker timeframes and reduced variations. Practice Direction 2 outlines the information required to propose the initiation of a Code amendment, refer to table 5. Most of the requirements reflect the existing requirements for development plan amendments listed in Regulation 9 of the current Development Regulations. The extent of documentation should reflect the complexity of the proposal. Minor straightforward code amendments should require minimal documentation whilst more strategically and issue complex code amendments may require significant justification to commence the process.

Table 5: Information Requirements for preparing a proposal to initiate

Scope An explanation of the reasons for the preparation of the amendment; a description of the changes in circumstance leading the need for the amendment; and the issues to be addressed.

Scope of Code Amendment	An outline of any overlays, general policies, zones or sub-zones being considered for amendment; the intended spatial application of the proposed changes to overlays, general policies, zones or sub-zones over the identified area
Area Affected	A map or description of the area affected by the proposed amendment.
State Planning Policies	Identification of the relevant State Planning Policies and an assessment of the amendment’s consistency with those policies.
Regional Plans	An indication of how the amendments proposed relate to the regional plan and relevant infrastructure planning.
Investigations	<p>An outline of investigations that may have already been undertaken and those that will be undertaken, to address the strategic and social, economic and environmental issues of the proposed amendment.</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>It is the Commission’s expectation that policy amendments will be justified with evidence-based investigations, substantiation and relevant data.</p> </div> <p>The Department can provide a standard investigations list to assist with this. It is recommended that private proponents meet with the Department to discuss their investigations.</p>
Infrastructure Provision	<p>Proponents will be required to provide an explanation of any infrastructure provision required, how the infrastructure will be provided, and whether it is likely that an infrastructure agreement or agreements will be entered into in connection with the Code amendment process.</p> <p>If the requirements cannot be resolved through the development application process the proponent must provide a solution for the funding and development of any required infrastructure. The Infrastructure Scheme Toolkit provides information regarding the tools available for coordinating infrastructure.</p>
Council and Joint Planning Board comments	Proponents must demonstrate that their proposal has been discussed with the relevant council and relevant regional planning board.
Timeframes	Designated entities must provide an outline of the proposed timeframe for each step of the process.
Recovery of Costs	Designated entities must identify whether they will be seeking to recover costs and, if so, from whom.

Consultation	Private proponents will need to outline any consultation that has already occurred and copies of correspondence from the relevant council and agency consultation in preparing the proposal to initiate. Agencies, councils and joint planning boards will need to prepare an engagement plan to ensure compliance with the Charter.
Local Heritage	Proponents must provide a heritage review prepared by a heritage architect, historian or similar in accordance with the Commission’s guidelines to be prepared under section 67 (2)(c).
Significant Trees	Proponents must provide an assessment of these trees against the criteria under section 68(1)(b) of the Act.

The Act also states that the Commission and the Minister may add further requirements or conditions for a Code amendment during the consideration of an initiation request if this is considered necessary. The Minister may approve the initiation with conditions which could include anything from additional investigations or timeframes to complete work, to requiring approval to commence consultation. The intent is to reduce additional requirements being added to the scope of the Code amendment by getting the documentation right at the beginning.

4.2 Code Amendments prepared by a Council, Joint Planning Board, Government Agency, Infrastructure Scheme Coordinator

Councils and Joint Planning Boards

A council or a joint planning board may seek to:

- rezone areas using the current zone, overlay and sub-zone structure
- propose to amend a TNV
- seek to amend the spatial extent of an overlay
- designate a place or area as having local heritage value
- declare a tree, or stand of trees, as significant
- in exceptional circumstances, prepare/amend a zone or create a sub-zone.

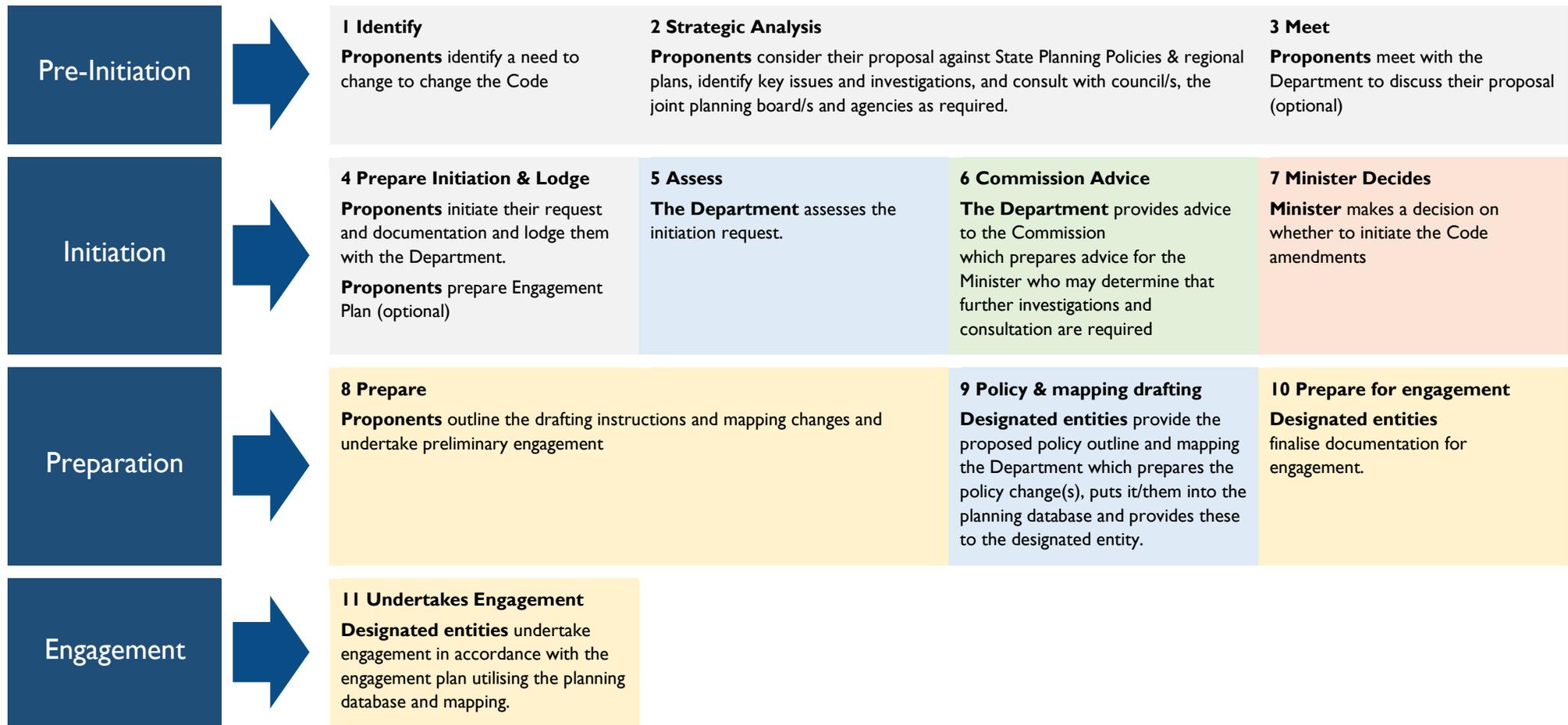
Government Agencies

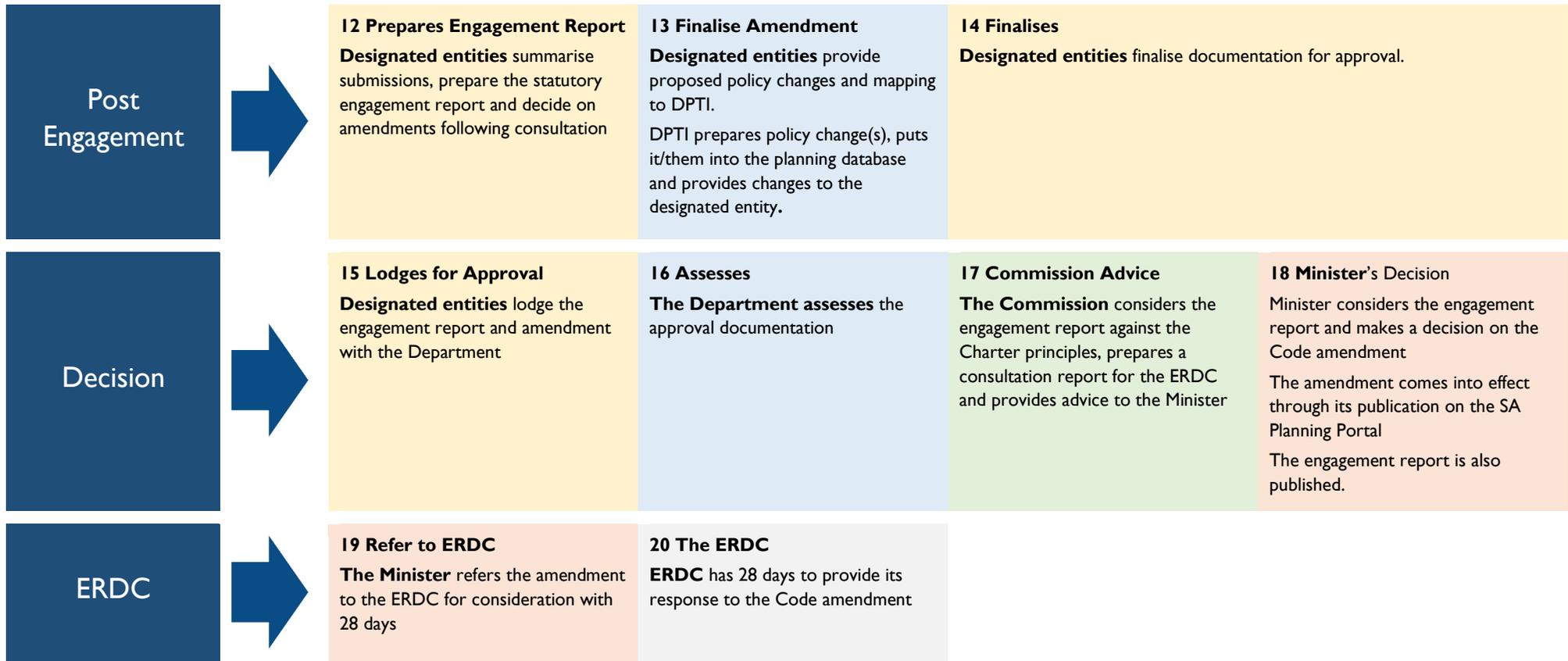
Government agencies can seek to initiate amendments to the Code, which can include overlays and zones connected with referrals under the Act.

Infrastructure Scheme Coordinator

An infrastructure scheme is a mechanism used for the coordination and delivery of infrastructure in response to the needs and impacts of a proposed development. An Infrastructure Scheme Coordinator is responsible for preparing, developing and implementing these schemes and can initiate a Code amendment to be undertaken alongside the development of an infrastructure scheme.

Table 6: The Code Amendment Process - Councils, Agencies, Joint Planning Boards, Scheme Coordinators





4.3 Code Amendment Process for Private Proponents.

Persons who have an interest in the land may propose the initiation of a Code amendment to change a zone to another zone.

There are two ways to request a zone change - through a request to the relevant council or to the Minister.

If a request is made to a council, and the council agrees it becomes the proponent that initiates the Code amendment and will advise the person of its process and decision making criteria.

The council is able to conduct privately funded Code amendments in accordance with its own policies.

The alternative is a request directly to the Minister. This process can be considered if the proponent is willing to pay for a Department to run the code amendment process and the proposal is consistent with the State Planning Policies and the regional plan (if relevant). It is recommended that proponents engage a planning consultant for advice and preparation of the proposal.

It is expected that the proponent will include specialist planning investigations to support the amendment, which may become conditions to the initiation. Examples of specialist investigations that may be required include traffic analysis, site contamination, air and noise emissions, infrastructure requirements and retail studies.

Providers of essential infrastructure can also propose initiation of a Code amendment to insert infrastructure corridors into overlays, rezone land required for infrastructure facilities and associated works, and/or provide protective buffers to infrastructure.

Essential infrastructure includes:

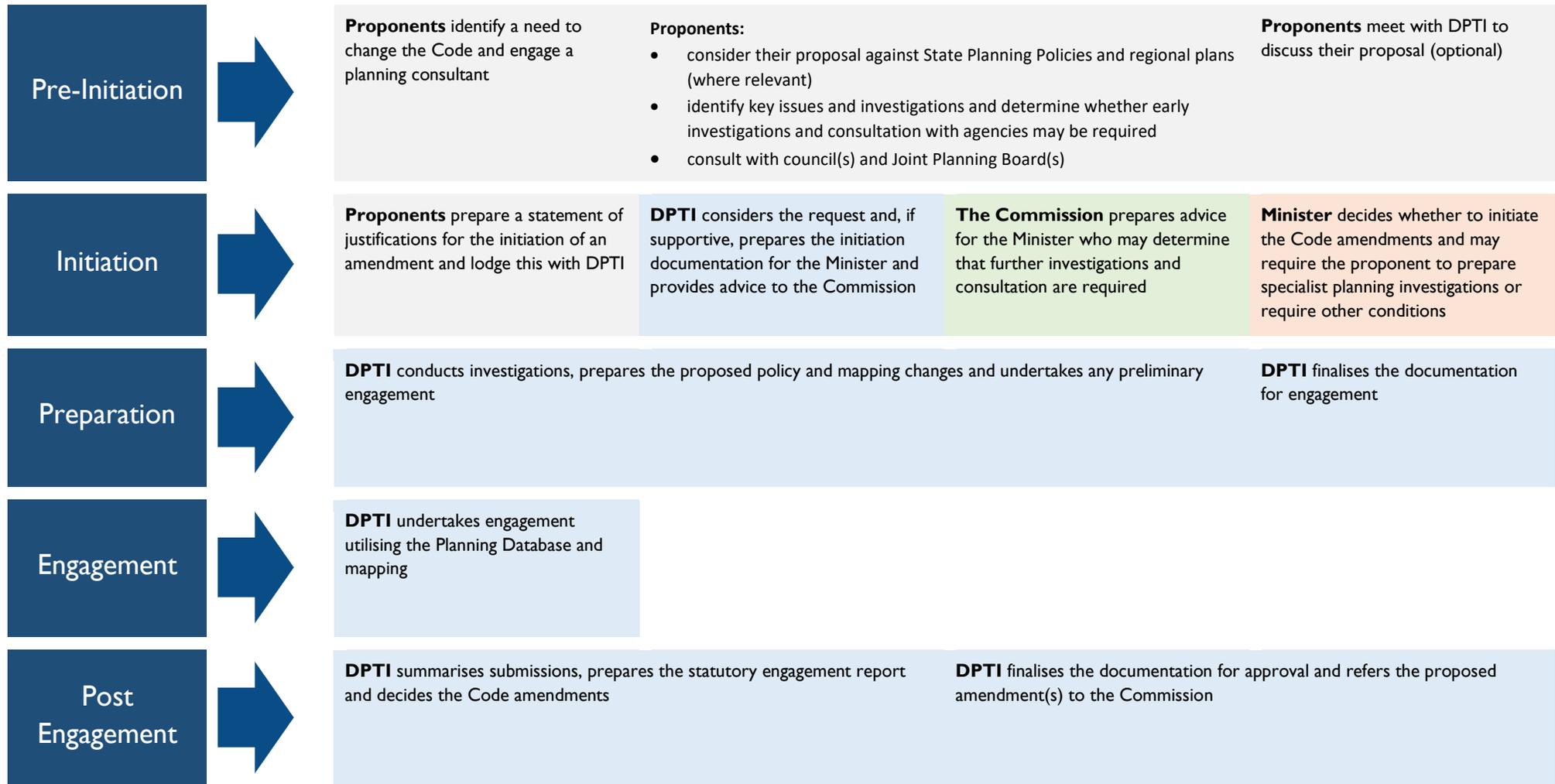
- water infrastructure and sewerage infrastructure (*water industry act 2012*)
- communications network
- electrical infrastructure
- gas infrastructure
- transport networks or facilities
- coast protection works of sand replenishment facilities
- health, education or community facilities.

When the Minister has initiated a Code amendment at the direct request of a person interested in land or a provider of essential infrastructure, the Chief Executive of the Department becomes the designated entity responsible for the Code amendment preparation and will seek to recover reasonable costs for undertaking the work.

Recovery of Costs

Further information about the recovery of 'reasonable costs' by the Department will be provided prior to implementation. Consideration may also be given to charging the proponent an application fee in the future.

Table 7: The Code Amendment Process for Private Proponents



Decision



The Commission considers the engagement report against the Charter principles, prepares a consultation report for the ERDC and provides advice to the Minister.

Minister considers the engagement report and makes a decision on the amendment
The amendment comes into effect through its publication on the SA Planning Portal
The engagement report is also published

ERDC

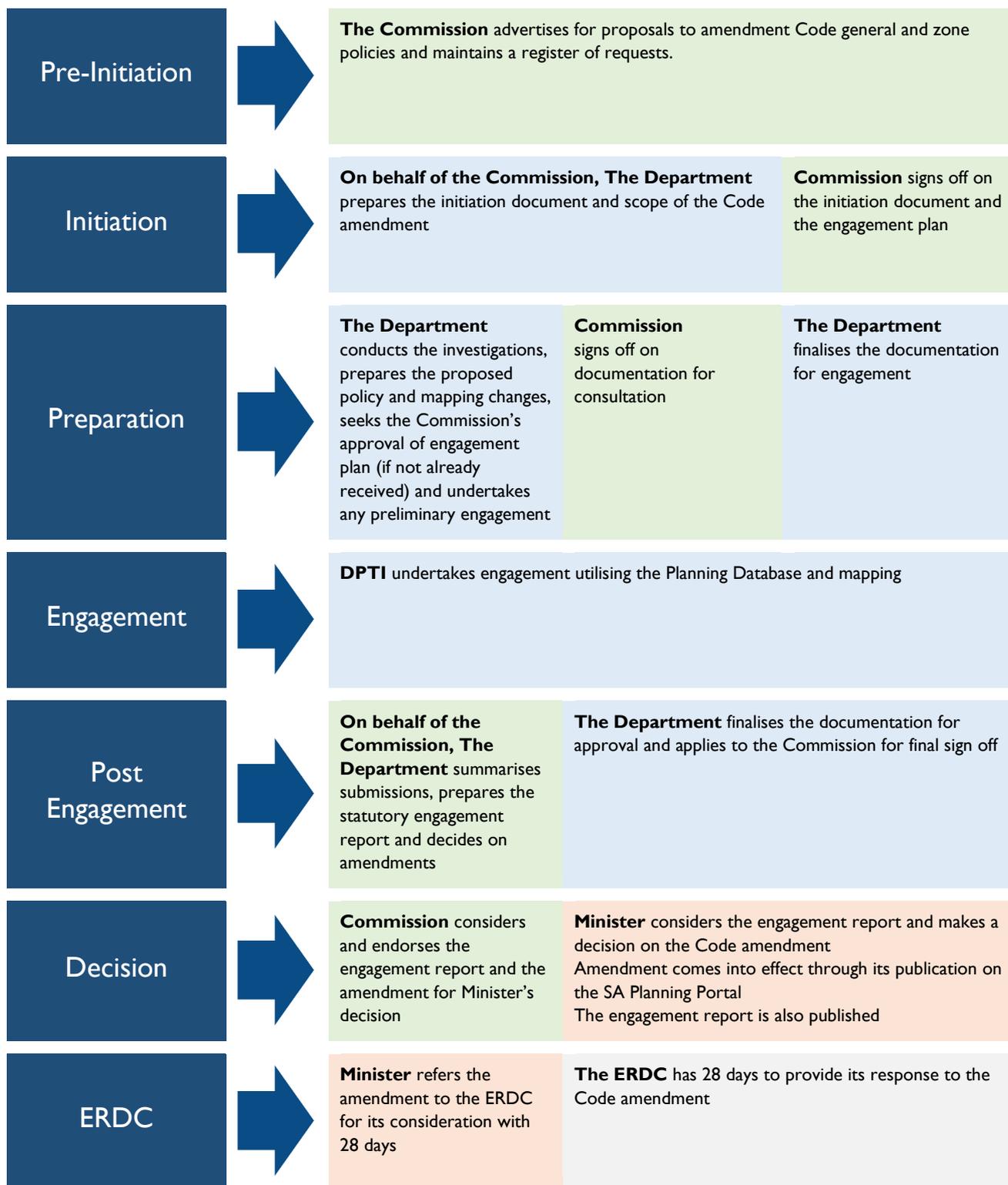


Minister refers the amendment to the ERDC for consideration with 28 days

The ERDC has 28 days to provide its response to the Code amendment

4.4 The State Planning Commission Code amendments

Refer to 3.6 about State Planning Commission Amendments. The process is described below.



4.5 Timeframe Management

The Act does not stipulate any requirements regarding the timeframes for Code amendments. Under the *Development Act 1993*, an 'agreement' on a Statement of Intent includes an agreement by both parties on the anticipated timeframes for undertaking each step. As the Minister can set conditions on the approval to commence a Code amendment, the new Code will include timeframes for the designated entity to undertake each step. The Department will also set its own performance targets for the processing of Code amendments.

APPENDIX I - DEVELOPING PLANNING AND DESIGN CODE CONTENT

Universal Drafting Principles

The following 10 principles set the foundation for the form and content of the Code, and all proposed amendments to the Code will be measured against them.

1. A policy set out in the Code must implement a state planning policy and should implement a regional plan (including a sub-regional part where relevant). The Code must not be inconsistent with any of these instruments.
2. Code policies guide 'the point in time' assessment of an application for planning consent.

NB: Policies do must not seek to control the ongoing management of land. This is done through compliance with the relevant development approval and conditions, a statutory licensing scheme, and/or approvals under other Acts.
3. Code content must be directly relevant to the assessment of development.
4. Code policies must not reproduce other standards, guidelines, information or other matters that are more appropriately managed or set out in other legislation.
5. A policy must not contradict the National Construction Code.
6. A policy must be clearly worded, concise and easily understood, and provide consistency in drafting, interpretation and application.

NB: It is essential that a term used in more than one place in the Code has the same meaning. Sentences must be structured simply and logically. Complicated, unusual grammatical constructions, jargon and legalisms must be avoided.
7. Code policies must provide a consistent and coherent scheme across the Code and not contradict any other policy.
8. The criteria for accepted and deemed-to-satisfy development, and for referrals and notifications, must generally be measurable and not of a nature that requires some form of assessment to determine if they apply in a particular case.
9. General Development Policies are to be written only once. The same policy must not be repeated in a different General Development Policy.