

## Agenda Report for Decision

**Meeting Date: 8 July 2021**

<b>Item Name</b>	DPA Transition Delegations
<b>Presenters</b>	Nadia Gencarelli, Brett Steiner
<b>Purpose of Report</b>	Decision
<b>Item Number</b>	4.4
<b>Confidentiality</b>	Not Confidential (Release Immediately)
<b>Related Decisions</b>	N/A

### Recommendation

The Commission resolves to:

1. Approve the designation of this item as Not Confidential (Release Immediately).
2. Delegate its powers and functions to the Director, Planning and Development, Planning and Land Use Services in the Attorney-General's Department:
  - (a) under Regulation 8(1) of the *Planning, Development and Infrastructure (Transitional Provisions) Regulations 2017* (the Transitional Regulations) to receive and respond (if required) to consultation from the Minister for Planning and Local Government on a Development Plan Amendment (but excluding Local Heritage Development Plan Amendments where an owner objection has been received during consultation); and
  - (b) under section 74(3) of the *Planning, Development and Infrastructure Act 2016*, to prepare and provide a report regarding an amendment to the Planning and Design Code, which gives effect to a Development Plan Amendment (including a Local Heritage Development Plan Amendment).

### Background

Under clause 9 of Schedule 8 of the *Planning, Development and Infrastructure Act 2016* (PDI Act), until the designated day, a Development Plan could continue to be amended under the relevant provisions of the *Development Act 1993*.

By proclamation on 4 March 2019, the 'designated day' for the purpose of clause 9 of Schedule 8 of the PDI Act was declared as 19 March 2021. As a result, from 19 March 2021, remaining Development Plan Amendments (DPAs) cannot be approved under the relevant provisions of the *Development Act 1993*. Instead, outstanding DPAs must now be approved by the Minister under the PDI Act and the *Planning, Development and Infrastructure (Transitional Provisions) Regulations 2017* (Transitional Regulations).

Regulation 8(1) of the Transitional Regulations requires Councils to have released the DPA for public consultation in accordance with the requirements of the *Development Act 1993* and prepared a report under section 25(13) of that Act. Regulation 8(1) then requires the Minister to consult with the State Planning Commission (the Commission) before proceeding with adoption or alteration of a DPA. This regulation was introduced to ensure that the Amendment could be transitioned to the Planning and Design Code.

Following approval of a DPA, the Minister may then, by notice in the Gazette, also amend the Planning and Design Code to give effect to the DPA, under Regulation 8(2). This amendment to the Code then triggers a requirement for the Minister to refer the amendment to the Environment, Resources and Development Committee of Parliament (ERDC) under section 74(2) of the PDI Act. Under section 74(3) of the PDI Act, the referred Code Amendment must be accompanied by a Report prepared by the Commission.

Extracts of the relevant legislation are contained in **Attachment 1**.

## Discussion

The following Council-led DPAs have been lodged for approval prior to 19 July 2021 under section 8(5)(a) of the Transitional Regulations, or prior to 1 July 2021 under 8(5)(b), of the Transitional Regulations:

DPA Name	Council	Summary
Kilkenny Mixed Use (Residential and Commercial)	Charles Sturt	Rezoning industrial land for residential / mixed use
Kanmantoo Mine	Mount Barker	Rezoning rural land for employment uses
Residential Character Areas	Mitcham	Introducing new character areas
Corner Days and Regency Roads, Croydon	Port Adelaide Enfield	Rezoning industrial land for residential / mixed use
Heritage in Transition	Gawler	Elevating Representative Buildings to Local Heritage Places
Local Heritage in Transition	Mount Barker	Elevating Representative Buildings to Local Heritage Places
Local Heritage in Transition	Holdfast Bay	Elevating Representative Buildings to Local Heritage Places
Local Heritage in Transition	Walkerville	Elevating Representative Buildings to Local Heritage Places

### *Development Plan Amendments*

All of the above DPAs have been drafted in a way that transitions to the Planning and Design Code (the Code) without loss of policy intent. Each Council has discussed the transition process with the Department and has informed its Elected Members of the new policy framework under the Code.

In order to expedite the DPA approval process, the Department is seeking delegation from the Commission for the purposes of being consulted with by the Minister under Regulation 8(1) of the Transitional Regulations and reporting to the ERDC under section 74(3) of the PDI Act for all remaining Development Plan Amendments which are required to be transitioned into the Code (with the exception of advice on Local Heritage DPAs as noted below).

It is noted that the DPA process under the *Development Act 1993* did not require input from the Development Policy Advisory Committee (whose functions have now been subsumed by the Commission). As a result, the Commission's involvement in the statutory process for Council-led

DPA is limited, and it is considered appropriate for the Commission's transitional functions to be delegated to the Department, where the Council has managed the DPA consultation process, in line with the Development Act process.

#### *Local Heritage in Transition DPAs*

With respect to the remaining Local Heritage DPAs, the Commission previously had a role in fulfilling the functions of the former Local Heritage Advisory Committee under the Development Act, and it is considered appropriate for the Commission to continue to provide such advice for transitional DPAs.

As a result, for Local Heritage in Transition DPAs, the Department will continue to seek the Commission's advice on any properties for which an owner objection has been received during consultation, prior to providing the DPA to the Minister for approval. This is to ensure consistency in the Local Heritage listing process and to manage public expectations about being heard by an independent body.

#### Attachments:

1. Legislation extracts #17236320

Prepared by: Nadia Gencarelli

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Endorsed by: Anita Allen

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Date: 29 June 2021

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## ATTACHMENT – LEGISLATION EXTRACTS

### **Planning, Development and Infrastructure Act 2016**

#### **9—Planning and Design Code**

- (1) *The Planning and Design Code is not required to provide for all of the matters referred to in section 66(2) until the designated day. 19.3.2021—Planning, Development and Infrastructure Act 2016 Transitional provisions—Schedule 8 Published under the Legislation Revision and Publication Act 2002 31*
- (2) *Until the designated day, a Development Plan under the repealed Act (as in force at a relevant time) will have effect for the purposes of this Act as if it formed part of the Planning and Design Code (subject to the operation of this clause).*
- (3) *If the Minister considers that a Development Plan should be amended, including by the removal or alteration of material in the Development Plan—*
  - (a) *because of provision made by the Planning and Design Code; or*
  - (b) *because of an inconsistency between the Development Plan and the Planning and Design Code, the Minister may make the amendment in such manner as the Minister thinks fit.*
- (4) *The Minister must give notice of an amendment under subclause (3) in such manner as the Minister thinks fit.*
- (5) *An amendment under subclause (3) will have effect from a day stated in the notice of the amendment (and will have effect for the purposes of this Act, and for the purposes of the repealed Act as if it had been made under that Act (and without the need to take any other step under that Act)).*
- (6) *In addition (and without limiting subclause (3)), until the designated day, a Development Plan may continue to be amended under Part 3 Division 2 Subdivision 2 of the repealed Act but subject to the following qualifications:*
  - (a) *a council must not commence the process under section 25 of the repealed Act without the approval of the Minister;*
  - (b) *sections 25, 26 and 28 of the repealed Act will apply subject to any modifications made by the regulations for the purposes of this subclause;*
  - (c) *without limiting paragraph (b), the Minister may require that a DPA under the repealed Act that is under consideration under section 25 of the repealed Act on the designated day be divided into 2 or more parts so that those parts will be dealt with separately under the repealed Act and, in so doing, may direct that 1 or more parts not proceed any further (and any such direction will have effect accordingly);*
  - (d) *sections 27 and 29 of the repealed Act will continue to apply.*
- (7) *Without limiting a preceding subclause, the Minister may, by notice in the Gazette, revoke a Development Plan if or when the Minister considers that the Development Plan is no longer required or appropriate for the purposes of this Act (and, if relevant, for the purposes of the repealed Act).*
- (8) *A reference in any other Act (other than the repealed Act), regulation, rule or by-law to a Development Plan will, unless the context otherwise requires, be taken to include a reference to the Planning and Design Code.*

#### **74—Parliamentary scrutiny**

- (2) *The Minister must, within 28 days after a designated instrument takes effect, refer the designated instrument to the ERD Committee.*
- (3) *A designated instrument referred under this section must be accompanied by a report prepared by the Commission that sets out—*
  - (a) *the reason for the designated instrument; and*

- (b) *information about the consultation that was undertaken in the preparation of the designated instrument; and*
- (c) *any other material considered relevant by the Commission; and*
- (d) *any other information or material prescribed by the regulations.*

**Planning, Development and Infrastructure (Transitional Provisions) Regulations 2017**

**8—Adoption of DPAs**

(1) *In addition to clause 9 of Schedule 8 of the PDI Act, if—*

- (a) *a DPA has been prepared by a council under section 25 of the repealed Act; and*
- (b) *the requirements of section 25 of the repealed Act relating to public consultation have been completed and a report prepared under section 25(13) of that Act (whether before or after the commencement of this regulation); and*
- (c) *the council applies to the Minister under this subregulation in accordance with any requirements determined by the Minister, the Minister may, after consultation with the Commission—*
- (d) *adopt an amendment proposed in the report; or*
- (e) *alter an amendment proposed in the report and then proceed to adopt the amendment as altered;  
or*
- (f) *decline to adopt an amendment proposed in the report.*

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(2) *If the Minister adopts an amendment (or an amendment as altered) under subregulation (1), the Minister may, by notice in the Gazette, amend the Planning and Design Code to give effect to the amendment, subject to such modifications as may, in the opinion of the Minister, be necessary on account of the amendment being adopted as an amendment to the Planning and Design Code rather than as an amendment to a Development Plan.*