

## PRIVATELY FUNDED PLANNING AND DESIGN CODE AMENDMENTS PROCEDURE

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Responsible Division	Growth
Related Documents	Privately Funded Development Code Amendments Policy
Applicable Legislation	<i>Planning, Development and Infrastructure Act 2016</i> <i>Local Government Act 1999</i>

### Introduction

This procedure must be read in conjunction with the *Privately Funded Planning and Design Code Amendments Policy*. This procedure is compliant with relevant legislation and Council documentation.

### Definitions

*The Planning and Design Code (the Code)* is the single source of the State's planning rules that guide development in South Australia. Planning authorities use these planning controls to assess new development proposals.

*A Proposal to Initiate a Code Amendment* is the first step in the process for amending the Code and is a document that contains:

- the rationale for the proposed amendment
- the affected area of the proposed amendment
- the strategic alignment of the proposed amendment

*A Code Amendment* is a document that describes proposed changes to the spatial application of the Code or amendments to policies within the Code. A Code Amendment includes a statutory process for undertaking changes to the Code.

The Code Amendment process involves a series of stages and approvals, and includes undertaking investigations to inform the proposed zoning or policy changes.

*Private funder* means one or more private persons or organisations proposing to fund the undertaking of a Code Amendment where they may benefit from any changes to zoning or development policies resulting from the Amendment.

*Designated funder* means a person or entity authorised or approved to prepare a draft of a proposal to prepare or amend a designated instrument under section 73 of the Planning, Development and Infrastructure Act 2016 (PDI Act).

*Strategic Management Plans* refers to a suite of documents described under section 122 of the *Local Government Act 1999* that serve several inter-related purposes and identify Council's forecasts and objectives for its area over a period of at least 4 years.

*Community Engagement Charter* is a document that provides the statutory obligations for engagement on Code Amendments.

## **PROCESS**

The process for assessing and processing requests to undertake privately funded Code Amendments is provided below and summarised in the flow chart in the Appendix

### **1. Statement of Justification**

1.1 A 'Statement of Justification' (the Statement) must first be submitted by the applicant for Council to consider a proposal to undertake a privately funded Code Amendment.

1.2 The Statement must be prepared by an Accredited Professional or suitably qualified professional.

1.3 The Statement must include:

- 1.3.1 A description of the land including current ownership;
- 1.3.2 an outline of the issue(s) needing to be addressed;
- 1.3.3 an outline of how it is considered that these issues could be addressed (changes to the spatial application of the Code or changes to applicable Code policy, or a combination thereof);
- 1.3.4 details of how the proposed amendment is consistent with, or seeks to achieve Council's strategic objectives outlined in relevant Council strategies, plans and policies;
- 1.3.5 how the proposed amendment will contribute to the wellbeing, prosperity and/or general amenity of the Alexandrina Council area;
- 1.3.6 how the proposed amendment will address any social, environmental or economic matters;
- 1.3.7 how the proposed amendment is consistent with relevant State Planning Policies;
- 1.3.8 how the proposed amendment is consistent with, or seeks to achieve the relevant Regional Plan (currently the 30 Year Plan for Greater Adelaide);
- 1.3.9 detail how the proposed amendment is consistent with the Principles of Good Planning outlined in section 14 of the PDI Act 2016;
- 1.3.10 details of the anticipated time and resources required to undertake the Code Amendment;
- 1.3.11 details of any previous technical, design, master planning or other investigations that have been undertaken that may support the proposal; and
- 1.3.12 outline the willingness to enter into an Agreement with Council and fund the costs of the preparation and negotiation of such Agreement, as well as the costs associated with the Code Amendment. The terms of the Agreement will be provided by the Council prior to the Council's consideration of the Code Amendment initiation documentation. Council will ultimately drive the entire process including procurement and management of consultants.

1.4 The Statement, once received, will be assessed against the criteria set out in clause 2.1 to 2.8 (below).

## 2. Assessment Criteria

2.1 In order to determine whether or not Council should proceed to initiate a proposal for a privately funded Code Amendment, the details and proposed outcomes provided in the Statement of Justification will initially be assessed by Administration, against the following criteria:

### *Strategic alignment*

- 2.1.1 The proposal is consistent with the Planning Strategy for South Australia that is relevant at the time of the proposed Code Amendment;
- 2.1.2 The proposal is consistent with relevant State Planning Policies;
- 2.1.3 The proposal is consistent with key Council strategic and policy documents, including its Strategic Management Plans;
- 2.1.4 On balance, the proposal will deliver social, environmental, economic or wellbeing benefits to the local or broader Alexandrina Council community; and
- 2.1.5 The proposal is consistent with the Principles of Good Planning (s14 of the *PDI Act 2016*)

### *Other considerations:*

- 2.1.6 The policy outcome or investigations being sought have been identified in Council's Strategic Planning Documentation or other relevant documents;
- 2.1.7 The proposal could facilitate wider precinct or area benefits and investigations (ie beyond the affected site or area); and
- 2.1.8 The proposed Code Amendment is on the Council's planning policy program or could be reasonably incorporated.

In undertaking the assessment against the above criteria, the following should be noted:

- ✓ if the proposed policy or zoning outcome is not consistent with the South Australian Planning Strategy, Council will not proceed with a privately funded Code Amendment.
- ✓ the proposal should be consistent with Council's strategic directions and policy documents. In the absence of local strategic direction, consideration could be given to the private funder funding further strategic work, with more favourable consideration given where it can be demonstrated that there are significant social, wellbeing, environmental, economic or built environment benefits associated with the proposed policy outcome.
- ✓ In determining whether to accept proposals, the following will be considered:
  - Code Amendment priorities currently being undertaken or identified by Council
  - Availability of resources
  - Ability to outsource components of the Code Amendment
  - Preliminary investigations into the proposal

Administration will be responsible for project management, reporting, procurement and managing consultation. An emphasis will therefore be placed on current work commitments and capacities.

2.2 The scope of the Amendment will need to be agreed between the private funder and the Council. Council is under no obligation to accept a proposal for a Privately Funded Code Amendment.



- 2.3 Once the Statement of Justification has been considered by Administration, a recommendation will be presented to Council for consideration whether to process or decline to proceed with a Proposal to Initiate and subsequent Code Amendment Process.

### 3. Project Management and Procurement Process

If Council agrees to initiate a proposal for a Privately Funded Code Amendment:

- 3.1 The Council will maintain ultimate control of the Code Amendment.
- 3.2 Council will engage, or use from its own resources suitably qualified and independent advice in accordance with its obligations under the *PDI Act 2016*.
- 3.3 Council will undertake itself or engage its own independent consultant(s) in accordance with Council's Procurement (Contract and Tendering) Policy to review background documents, prepare the Proposal to Initiate and undertake the Amendment process. Should a consultant undertake this process they will be required to confirm that there is no conflict of interest in providing this service to Council.
- 3.4 The private funder's role during the tender or selection of consultants to undertake any of the associated Code Amendment work, or in assessing the work or finding of the consultants, or in Council's consideration of the Amendment at any time after an Agreement has been entered into as outlined below, will be determined during the establishment of this Agreement.
- 3.5 Any consultant(s) appointed to undertake the privately funded Code Amendment (or components of) will report directly to Administration and/or Council's nominated project manager.
- 3.6 Key stages of the Code Amendment will be presented to Council for consideration prior to being formally submitted for agreement or approval (as required).
- 3.7 Feedback and commentary received during the statutory community engagement process of the proposed Code Amendment will be provided to the private funder for consideration.
- 3.8 The feedback and commentary and any response to it from the private funder will be considered by Administration and by Council in deliberating whether to proceed, amend or decline to proceed with a Code Amendment.

### 3. Legal Arrangements

A formal Agreement shall be entered into between Council and the private funder. The Deed will outline the legal procedures, including the roles of the parties, legislative requirements and procedure, and project and financial management.

Fundamental considerations in preparing the Deed include the following:

#### *Project management*

- 4.1 Agreed Scope and cost of the Amendment.
- 4.2 Provision to seek specific experts or technical advice as required and independent review of background documents, with related expenses to be wholly funded by the private funder.
- 4.3 Broadly outlines the nature of investigations to be undertaken and to be considered in preparing the Code Amendment Process, which will form the basis of a consultant's brief (where required).

- 4.4 Provision to refer to the consultant's brief to define the work to be undertaken by Council's appointed consultants to prepare the Code Amendment.

*Term, roles and expectations*

- 4.5 There shall be no expectation that the privately funded Code Amendment will lead to any predetermined outcome and, at all times, the Code Amendment and Council's handling of the process will be subject to the requirements of the *PDI Act 2016*.
- 4.6 An acknowledgement that while Council may prepare a proposal to initiate the Code Amendment, the final version of the Code Amendment will be determined by the Minister responsible for administering the *PDI Act 2016* and Council does not have control over what the final version of the Code Amendment might be.
- 4.7 An Acknowledgement that in considering the outcomes of investigations or public consultation undertaken during the Code Amendment process, that Council may resolve:
- not to proceed with the Code Amendment; or
  - to recommend changes to the proposed Amendment.
- 4.8 An ability for Council to continue with the Code Amendment (at its own expense) and use any materials prepared if the private funder decides to withdraw from the process at any stage.
- 4.9 The private funder must acknowledge that the authorisation of the Code Amendment incorporating the rezoning or policy change contemplated by the Deed does not give the private funder, or any person with an interest in the property, any additional rights under the *PDI Act 2016*. The private funder must also acknowledge that Council, or any other relevant planning authority must assess any subsequent development application in respect to the subject land or area affected in accordance with the current procedures in the *PDI Act 2016*.
- 4.10 The Proposal to Initiate and the draft Code Amendment must clearly state that the Code Amendment is privately funded and confirm that there will be no conflict of interest in its preparation.
- 4.11 The private funder will have no rights to control or direct any process in the preparation of, or investigations required to inform, the Code Amendment, other than through a written and/or verbal submission as part of the statutory community engagement process.
- 4.12 The Agreement may, however, include a forum for facilitating ongoing regular communication between Council and the private funder.
- 4.13 Council reserves the right to ease proceeding with a Privately Funded Code Amendment at any state.

*Funding obligations and arrangements*

- 4.14 Unless varied by the Council, the private funder shall pay the full cost of Council's independent consultants to prepare the Code Amendment and may also be required to contribute additional funds for Administration from time to time to manage the Code Amendment process. The agreed amount will depend on the complexity and level of Administration's involvement in managing the project, with an emphasis on achieving a cost neutral outcome for Council.
- 4.15 The private funder will also fund any legal costs associated with preparation of the Code Amendment, including legal review, legal proceedings and dispute resolution, or judicial review proceedings in relation to the Code Amendment process.

- 4.16 The dollar figure of the financial contribution that will be provided by the private funder to Council to prepare the Proposal to Initiate and the draft Code Amendment should be expressed as a maximum figure. Any increases to this figure during the Code Amendment process shall be by mutual agreement.
- 4.17 The payment schedule for the consultant undertaking the Code Amendment will be devised to minimise the financial risk to Council and will ensure Council is reimbursed for legal costs associated with the preparation and negotiation of the Agreement.
- 4.18 If scheduled payments are not received by Council from the private funder, work on the project will immediately cease and Council will seek to recover any costs already incurred.
- 4.19 For higher value or cost Code Amendments, payment in advance of a bank guarantee may be required.

### **Availability of Policy and Procedure**

The Policy and Procedure will be available for inspection at the Council's offices during normal business hours and on the Council's website [www.alexandrina.sa.gov.au](http://www.alexandrina.sa.gov.au). Copies can also be provided to interested members of the community upon payment of a fee in accordance with Council's Schedule of Fees and Charges.

### **Appealing of Decision**

There is no appeal available for a decision made under this Policy.

## APPENDIX A

