



Privately Funded Development Plan Amendments Policy

Reference Number:	6.3
Type:	Council
Category:	Development and Infrastructure
Relevant Community Plan Outcome:	<ul style="list-style-type: none">• An urban environment that is adaptive to a changing and growing City• Be bold and innovative in our practices, leadership and decision making• Practise transparent and accountable governance.
Responsible Officer(s):	Manager Urban Projects
First Issued/Approved:	July 2009
Minutes Reference:	CoS 5/03/2018, Item 3.11
Last Reviewed:	March 2018
Next Review Due:	March 2020
Applicable Legislation:	Development Act 1993 and Planning, Development and Infrastructure Act 2016
Related Policies:	Nil
Related Procedures:	Nil

Introduction

The *Development Act 1993* enables the Minister for Planning or a Council to undertake a Development Plan Amendment (DPA). The Act does not prevent Council from receiving funds from external parties to assist with the DPA process. In fact, given limited Council resources, it is prudent that Council provides such an option to proponents of developments to ensure timely and responsive changes to the Development Plan. Council has had a policy to enable and manage privately funded DPAs since July 2009.

This policy does not remove the need to adhere to all statutory requirements (as a minimum) when undertaking the DPA process.

1. Purpose

To guide in the assessment and undertaking of privately funded DPAs in a clear and transparent manner

2. Scope

This policy applies when a third party seeks to fund a Council initiated DPA through an agreement with Council based on one of the following options:

Option 1: DPA undertaken by Council

The private funder provides financial resources to the Council to undertake the DPA process (either internally or through the procurement of external consultants or a combination of both).

Option 2: DPA undertaken by private funder

The private funder funds, procures and manages as much of the DPA process as possible and provides funds for Council to procure external consultants to undertake independent peer reviews of the draft DPA , responses to all written and verbal submissions on the DPA and the approval version of the DPA (at the discretion of Council).

It is Council's decision, at its absolute discretion, which of the two privately funded DPA options is appropriate based on its consideration of the nature of the proposal and available Council resources at the time.

3. Policy Statement

3.1 Criteria to consider Privately Funded DPAs

In order to determine whether or not Council should proceed with a Privately Funded DPA, the DPA should be assessed against the following criteria to determine if the DPA has merit.

- (a) The proposed policy change(s) is consistent with the State Government's Planning Strategy for Metropolitan Adelaide (30 Year Plan for Greater Adelaide) and/or future Regional Plans applying to the subject land.
- (b) The proposed policy change is consistent with relevant key Council Strategic Documents.
- (c) The existing zoning and/or planning policy arrangements for the subject land are considered to be outdated and limit reasonable development expectations for the subject land.
- (d) When considered with regard to potential 'triple bottom line' outcomes (ie social, environmental and economic), the resultant development is likely to have a net positive impact on the subject and adjoining land, any potentially affected communities of interest, the broader Council area and the State.
- (e) Whether the DPA process can be effectively managed and resourced by Council staff given other Council priorities and ongoing demands on Council resources.

3.2 Statement of Justification

In the first instance, the proponent seeking Council support for a privately funded DPA will be required to prepare a brief 'Statement of Justification' to support such a proposal. This statement should clearly identify the following:

- (a) The subject land and current land ownership.
- (b) In broad terms, the policy outcomes that are being sought in undertaking a DPA.
- (c) Consistency with criteria (a) to (d) in Section 3.1 above.
- (d) The preferred DPA option identified in Section 2 above.

Council will assess the proposal, consider any resource implications, undertake preliminary investigations, and/or consult State Government departments / agencies in determining whether to support the proposal.

A decision to proceed with or reject a proposal for a privately funded DPA will be made by the Elected Member body. Council is under no obligation to accept a proposal for a privately funded DPA.

3.3 Project Management and the Procurement Process

Option 1: DPA undertaken by Council

The cost of the DPA investigations, document preparation, consultation and other costs as per the Deed of Agreement, will be borne by the private funder and paid into a fund as agreed and directed by Council. Council will either manage the procurement process for engaging a consultant to undertake a Privately Funded DPA, undertake the DPA investigations internally, and/or procure specific external advice as required. A consultant undertaking the privately funded DPA (or specific investigations) will report directly to Council staff, and project management of the DPA process will be undertaken by Council staff.

In selecting a consultant to undertake the Privately Funded DPA an open or select tender process will be undertaken in accordance with Council's procurement policies.

Option 2: DPA undertaken by private funder

The private funder undertakes to engage suitably qualified consultants, including one who meets the requirements of the *Development Act 1993* and *Development Regulations 2008*, to:

- (a) Prepare a draft Statement of Intent (SOI).
- (b) Undertake investigations in accordance with the agreed SOI.
- (c) Prepare the required DPA documentation in accordance with the *Development Act 1993* and *Development Regulations 2008*.
- (d) Review and respond to all written and verbal submissions on the draft DPA.
- (e) Prepare the approval version of the DPA.

At the discretion of Council the private funder will also agree to an independent peer review of the draft DPA (prior to consultation), all responses to the written and verbal submissions, and/or the approval version of the DPA. The cost of the peer review(s) will be borne by the private funder and paid into a fund as agreed and directed by Council. Council will be responsible for procuring the services of a suitably qualified consultant to undertake the independent peer review(s). The consultant undertaking the independent peer review will report directly to Council staff.

Under both options, at key stages of the DPA process (eg endorsement of the SOI, endorsement of the draft DPA for consultation, endorsement of the approval version of the DPA) the Elected Member body will need to endorse the documentation prior to proceeding to the next stage.

3.4 Legal Arrangements

A legal instrument in the form of a Deed of Agreement will be required to be entered into between Council and a private funder. As a minimum, the deed of Agreement will include references to the following:

- State that a private funder is funding an open and transparent DPA process, which provides no guarantees that any DPA outcome sought by the private funder will be provided.
- Outline the heads of agreement and legal procedures, including the roles of the parties, legal requirements and procedures, and project and financial management.
- Define in detail the nature of the DPA including the area to be covered, the purpose of the DPA and what the DPA investigations will encompass.
- Acknowledge that Council maintains ultimate control of the DPA process, in that key stages are presented to the Elected Member body for consideration and endorsement prior to proceeding to the next stage.
- Acknowledge that some parts of the DPA process cannot be outsourced and management, policy oversight and processing will remain the responsibility of Council staff, and therefore managed according to Council priorities, meeting schedules and timeframes.
- Acknowledge that while Council may initiate a DPA, ultimately the decision on its authorisation rests with the Minister for Planning.
- Detail what may happen if the DPA is either not authorised, or authorised with amendments that may not suit the private funder.
- State that the DPA process will proceed at the expense of the private funder and acknowledge that the private funder will fund any additional investigations that may be required by Council following consideration of a draft DPA and/or following consultation.
- Acknowledge that the private funder will fund any legal costs associated with the DPA process, including legal review, legal proceedings or judicial review proceedings.

Council is under no obligation to commence the DPA process (by submitting a SOI to the Minister for Planning) until the Deed of Agreement is signed by all relevant parties. All DPA documentation will explicitly indicate that the DPA is a privately funded DPA.

4. Definitions

Key Term / Acronym	Definition
Development Plan Amendment (DPA)	A Development Plan Amendment or DPA is a document that describes proposed changes to a Development Plan. The DPA process involves a series of stages and approvals, and includes undertaking and documenting investigations to inform and justify the proposed policy changes to the Development Plan.
Statement of Intent (SOI)	A Statement of Intent or SOI is a document that outlines the scope, timing, consultation requirement and nature of investigations to be carried out in preparing a DPA. A Council is required to prepare a SOI under Section 25(1) of the <i>Development Act 1993</i> to reach agreement with the Minister for Planning to initiate a DPA.
Private funder	Means one or more private persons or organisations proposing to fund the undertaking of a DPA affecting their (and potentially adjacent) land to facilitate future development outcomes on the land.
Deed of Agreement	A Deed of Agreement is a legally binding agreement signed by the private funder and the Council. It contains the agreed legal obligations and responsibilities of both parties in undertaking a privately funded DPA.