



## Privately Funded Code Amendments Policy

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|----------------------------------|---|
| Reference Number:                | 6.3   |
| Type:                            | Council   |
| Category:                        | Development and Infrastructure  |
| Relevant Community Plan Outcome: | <ul style="list-style-type: none"><li>• An urban environment that is adaptive to a changing and growing City</li><li>• Be bold and innovative in our practices, leadership and decision making</li><li>• Practise transparent and accountable governance.</li></ul> |
| Responsible Officer(s):          | Manager Urban Projects  |
| First Issued/Approved:           | July 2009   |
| Minutes Reference:               | CoS 4/03/2024, Item 4.10  |
| Last Reviewed:                   | March 2024  |
| Next Review Due:                 | March 2026  |
| Applicable Legislation:          | <i>Planning, Development and Infrastructure Act 2016</i>  |
| Related Policies:                | Nil   |
| Related Procedures:              | Nil   |

### Introduction

The *Planning, Development and Infrastructure Act 2016* (**Act**) enables the Council to initiate a Code Amendment (**CA**) on behalf of another party (**Proponent**). The Proponent may be a landowner or a developer with an interest in land.

Section 73(9) of the Act enables the Council to enter into an agreement with a Proponent for the recovery of costs incurred by the Council during the CA process. Given limited Council resources, it is prudent that the Council provides such an option to Proponents so as to facilitate timely and responsive changes to the South Australian Planning and Design Code (**Code**). Council has had a policy to enable and manage Privately Funded CAs (formerly known as Development Plan Amendments under the *Development Act 1993*) since July 2009.

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

## 1. Resources

The following resources will be of assistance to those looking for additional information:

1. *Planning, Development and Infrastructure Act 2016*
2. *Planning, Development and Infrastructure (General) Regulations 2016 (Regulations)*
3. State Planning Commission - Practice Direction 2 - Preparation and Amendment of Designated Instruments (**Practice Direction**)
4. State Planning Commission - Community Engagement Charter
5. Amending the Planning & Design Code: Introductory Guide – Department of Planning, Transport and Infrastructure

## 2. Purpose

To guide in the assessment and undertaking of Privately Funded CAs in a clear and transparent manner

## 3. Scope

This Policy applies when a Proponent seeks to fund a Council-initiated CA through an agreement with Council:

The Proponent provides financial resources to the Council to initiate and progress the CA process (either internally or through Council procuring external consultants or a combination of both). Cost recovery of Council staff involvement across the process including procuring services, managing customers and the community, Council and stakeholder feedback, managing consultants, speaking to and meeting with proponents, reviewing documents and drafting reports. Further advice about costs and charges can be provided by Council staff on request. A project and fee proposal would be provided for agreement between the proponent and Council.

## 4. Policy Statement

### 4.1 Criteria to consider Privately Funded CAs

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

- (a) The proposed policy change(s) is consistent with the Government's State Planning Policies and the Planning Strategy for Metropolitan Adelaide (30 Year Plan for Greater Adelaide – 2017 Update) and/or future Regional Plans applying to the subject land.
- (b) The proposed policy change is consistent with relevant key Council Strategic Documents.
- (c) For Code Amendments involving rezoning that would facilitate medium or higher net residential densities, the Proponent's willingness to commit to development outcomes that deliver benefits to the community over and above those ordinarily achieved. Without necessarily limiting the matters which the Council may have regard to, the following are examples of outcomes that support this criterion:
  - i. The provision of a minimum of 15% or more (subject to review of the size and nature of the proposed rezoning) public open space within the Affected Area.
  - ii. The provision of a minimum of 25% urban tree canopy within the Affected Area (including public and private land) including provision for appropriate tree species to maximise canopy cover, use of common service trenches in roadways and service connections beneath crossovers to maximise tree plantings in road verges.

- iii. The provision of Water Sensitive Urban Design (WSUD) and recycling water connections within the Affected Area.
  - iv. 'Net Zero' initiatives including provision for no gas infrastructure, the use of solar energy and battery storage, the use of light colour roofs, green roof and wall designs for apartment developments and low emissions construction practices for future development and public realm.
  - v. Deployment of smart technologies such as provision for EV charging, parking sensors and smart public lighting.
  - vi. Reduction of transport emissions through initiatives such as provision for pedestrian and cycling connectivity within the Affected Area and to the surrounding neighbourhood, connections to public transport routes and rideshare opportunities including parking.
  - vii. The provision of land and/or associated costs to construct pedestrian/cycling and road infrastructure outside the Affected Area if identified as a requirement through traffic investigation findings as part of the CA process.
  - viii. A contribution toward network costs e.g. drainage, associated with infrastructure to support the development.
  - ix. Commitment to investigate placemaking, social infrastructure and public art opportunities within the affected area.
- (d) 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.
  - (e) 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.
  - (f) Whether the Privately Funded CA process can be effectively managed and resourced by Council staff given other Council priorities and ongoing demands on Council resources.

#### 4.2 Statement of Justification

In the first instance, the Proponent seeking Council support for a Privately Funded CA will be required to prepare a brief Statement of Justification (**SOJ**) 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 the CA.
- (c) Consistency with criteria (a) to (e) in Section 4.1 above.

On receipt of a SOJ, the Council will assess the proposal, consider any resource implications, undertake preliminary investigations, and/or consult State Government departments / agencies in determining whether or not to support the proposal.

A decision to proceed with or decline a proposal for a Privately Funded CA will be made by the Council. Council is under no obligation to accept a proposal for a Privately Funded CA.

Where the Council has agreed to proceed, but before any further steps can be taken, the Proponent will be expected to enter into a Deed of Agreement, the purpose of which is to define the process and respective obligations in more detail and will include the costed project plan for agreement.

### **4.3 Project Management and the Procurement Process**

The cost of the Privately Funded CA investigations, document preparation, consultation and other costs as per the Deed of Agreement, will be borne by the Proponent and paid into a fund as agreed and directed by Council. Council will either manage the procurement process for engaging a consultant(s) to undertake a Privately Funded CA, undertake the investigations internally, and/or procure specific external advice as required. The proponent may be involved in assessing suitable consultants. A consultant(s) undertaking the Privately Funded CA (or specific investigations) will report directly to Council staff, and project management of the process will be undertaken by Council staff.

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

At key stages of the CA process (e.g. endorsement of the SOJ, endorsement of the CA initiation, endorsement of the draft CA for consultation, endorsement of the approval version of the CA) the Council will need to approve the documentation prior to proceeding to the next stage.

### **4.4 Legal Arrangements**

A legal instrument in the form of a Deed of Agreement will be required to be entered into between Council and a Proponent. The purpose of the Deed of Agreement is to create a legally binding framework between the parties with an acknowledgment that the process is undertaken at the cost and risk of the Proponent. A template Deed of Agreement may be made available to a potential Proponent on request.

As a minimum, the Deed of Agreement will include references to the following:

- State that a Proponent is funding an open and transparent CA process, which provides no guarantees that any CA outcome sought by the Proponent 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 CA including the area to be covered, the purpose of the CA and what the CA investigations will encompass.
- Acknowledge that Council maintains ultimate control of the CA process, in that key stages are presented to the Council for consideration and endorsement prior to proceeding to the next stage.
- Acknowledge that some parts of the CA 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 CA, ultimately the decision on its authorisation rests with the Commission and the Minister.
- Detail what may happen if the CA is either not authorised or authorised with amendments that may not suit the Proponent.
- State that the CA process will proceed at the expense of the Proponent and acknowledge that the Proponent will fund any additional investigations that may be required by Council following consideration of a draft CA and/or following consultation.

- Acknowledge that the Proponent will fund any legal costs associated with the CA process, including legal review, legal proceedings or judicial review proceedings.
- Include a costed project plan that provides for cost recovery for Council staff time and any additional costs borne by Council (consultant costs etc) in meeting the requirements of a CA.
- Where a Code Amendment involves rezoning to facilitate residential development for medium and/or higher net densities – commitment by the Proponent to the outcomes identified in Section 4.1, part (c).

Council is under no obligation to commence the CA process (by submitting a proposal to the Minister for approval under section 73(2)(b)) until the Deed of Agreement is signed by all relevant parties. All CA documentation will explicitly indicate that the CA is a Privately Funded CA.

## 5. Definitions

| Key Term / Acronym               | Definition  |
|----------------------------------|---|
| Act                              | Means the <i>Planning, Development and Infrastructure Act 2016</i> .  |
| Code                             | Means the South Australia Planning and Design Code.   |
| Code Amendment (CA)              | Means a proposal to amend the Code under, and in accordance with, section 73 of the Act. The CA process involves a series of stages and approvals and includes undertaking and documenting investigations to inform and justify the proposed policy changes to the Code.                              |
| Commission                       | Means the State Planning Commission   |
| Council                          | Means the elected member body and includes a duly authorised committee or delegate of the Council.  |
| Deed of Agreement                | Means a legally binding agreement signed by the Proponent and the Council containing the agreed legal obligations and responsibilities of both parties in undertaking a Privately Funded CA.  |
| Minister                         | Means the Minister for Planning and Local Government.   |
| Practice Direction               | Means Practice Direction 2 - Preparation and Amendment of Designated Instruments as issued on the SA Planning Portal.   |
| Proponent                        | Means one or more persons or entities proposing to fund the undertaking of a CA affecting land (and potentially adjacent) land to facilitate future development outcomes on the land.   |
| Privately Funded CA              | Means a CA that is undertaken by Council on behalf of a Proponent with approval of the Minister for Planning.   |
| Regulations                      | Means the <i>Planning, Development and Infrastructure (General) Regulations 2016</i> .  |
| Statement of Justification (SOJ) | Means a document prepared by a Proponent that describes, and provides justification for, the Proponent's proposal for a Privately Funded CA. The purpose of a SOJ is to assist the Council to determine whether or not to proceed with the Privately Funded CA (subject to approval of the Minister). |