

# Privately Funded Development Plan Amendments Policy



## 1. RATIONALE

The Development Plan is a document that contains the planning controls that guide what can and cannot be developed in a council area. Planning authorities use these planning controls to assess new development proposals.

A Development Plan Amendment (DPA) is a document that describes proposed changes to a Development Plan and includes a statutory process required to be undertaken when either the Council or the Minister for Planning seeks to amend land use zoning and/or the policies contained within the Development Plan.

Privately funded DPAs are a legitimate approach that may be used to expedite and resource the preparation of a DPA, particularly where its preparation has not been budgeted for or identified as a priority by the Minister or Council through the Development Plan Review process under Section 30 of the *Development Act 1993*.

Council is under no obligation to agree to a privately funded DPA.

## 2. PURPOSE

The purpose of this policy is to guide Council in the assessment and processing of privately funded DPAs in a clear and transparent manner and clarify Council's requirements and relationships with the potential private funder.

## 3. SCOPE

This policy applies when a private funder seeks to fund a Council initiated DPA through an agreement with Council based on one of the following models.

### Model 1

The private funder provides financial resources but the entire DPA process, including the procurement and management of consultants is undertaken by Council with the private funder given no additional opportunity to input into the DPA process beyond that available to any other person.

### Model 2

The private funder funds, procures and manages as much of the DPA process as possible but provides funds for Council to procure and engage its own consultants to undertake an independent peer review of the DPA.

It is Council's decision which of the two models of privately funded DPAs is appropriate based on its consideration of the proposal and the needs of the area in which it is located.

## 4. PROCESS / IMPLEMENTATION (Summarised in the Flow Chart in the Appendix)

### **Statement of Justification**

In requesting Council's endorsement to proceed with a Privately Funded DPA a 'Statement of Justification' should be submitted by the private funder which outlines the level of consistency with the criteria below, and clearly outlines the policy outcome that is being sought.

Council will make an assessment of the 'Statement of Justification', consider point (e) below, make necessary preliminary investigations and consultations with Government Agencies to understand

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policy positions of the Agencies and determine whether to proceed with the preparation and lodgement of the Statement of Intent which is required for the agreement of the Minister for Planning to begin the DPA.

Council has the right to reject a proposed DPA.

## Criteria to consider Privately Funded DPAs

In order to determine whether or not Council should proceed with a privately funded DPA, the DPA proposal should be assessed against the following criteria:

- a) The proposed policy change is consistent with the State Government's Planning Strategy for Metropolitan Adelaide (30 Year Plan for Greater Adelaide).
- b) The proposed policy change is consistent with Council's Strategic Vision for the City.
- c) The existing zoning is outdated and not in alignment with the other policy directions of the Government and Council resulting in appropriate development being restricted on the land.
- d) Appropriate consideration has been given to likely social, environmental, economic and physical benefits and costs arising from the proposal.
- e) Whether the proposed DPA can be appropriately managed, taking into consideration the timing of other priorities and projects within Council's policy program and the resources available.

## Deed of Agreement

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

- state that a private funder is funding an open and transparent process which provides no guarantee that any Development Plan 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, in that key stages are presented to Council for consideration prior to being submitted to the Minister for agreement or endorsement. The key stages that are considered by Council include: Statement of Intent, draft investigations and policy for Public and Agency Consultation, hearing public submissions and Approval;
- acknowledge that the capacity for Council to process the privately funded DPA will be influenced by Council's other policy priorities, and projected timing will be estimated accordingly;

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- acknowledge that some parts of the DPA process cannot be outsourced and management, policy oversight and processing will be required to be undertaken by Council staff, therefore the DPA will be managed according to Council priorities and subsequent timeframes;
- acknowledge that while the Council may initiate a DPA, ultimately the decision on its authorisation is a decision of the Minister for Planning, and not the Council, and that the Council has no control over this decision;
- detail what happens if the DPA is either not authorised by the Minister or authorised with amendments that do not suit the interest of the private funder (essentially it should be agreed that the private funder must accept that scenario and still be responsible for the cost of the DPAs preparation and that there will be no refund of any funds expended by the private funder);
- be prepared at the expense of the private funder and acknowledge that the private funder will fund any additional investigations that are required by Council following public and agency consultation;
- acknowledge that the private funder will fund any legal costs associated with preparation of the DPA, including legal review, legal proceedings or judicial review proceedings in relation to the DPA process; and
- acknowledge that the Deed shall not in any way affect Council's standing as the relevant authority to assess applications for development approval in respect of land affected by a privately funded DPA.

Council will indicate within the Statement of Intent, at the time of public consultation, and as part of the explanatory statement and statement of investigations that it has received payment for preparation of the DPA but has sought independent advice.

Preparation of the DPA will not commence until such time as notice of agreement has been received from the Minister for Planning to the Statement of Intent.

## **Project Management and Procurement**

### Model 1

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 (*Privately Funded DPA Fund*) as directed by Council.

Council will manage the selection and procurement process for engaging a consultant(s) to undertake the DPA. The consultant(s) undertaking the privately funded DPA will report directly to Council staff and project management of the DPA process will be undertaken by Council staff.

In selecting a consultant(s) to undertake the Privately Funded DPA the procurement process will be undertaken in accordance with Council's Procurement Policy.

### Model 2

A Privately Funded DPA under this model will require Peer Review.

The cost of the Peer Review will be borne by the private funder, and paid into a fund (*Privately Funded DPA Fund*) as directed by Council.

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If Council agrees to proceed with a privately funded DPA under this model, the private funder will engage suitably qualified consultants, including one who meets the requirements of the Development Act and Regulations to prepare the relevant DPA documents.

Council will engage a suitably qualified and independent consultant or consultants, including a consultant who meets the requirements of the Development Act and Regulations, to undertake a Peer Review of the relevant investigations and DPA documents.

The Peer Review will review:

- the DPA documents prior to consultation occurring. This will include a review of the investigations and an assessment against the Statement of Intent agreed by the Minister for Planning;
- the Government Agency consultation responses to the draft DPA and policy changes as a result of the consultation;
- the Public consultation responses to the draft DPA and policy changes as a result of the consultation; and
- the approval version of the DPA.

In selecting a consultant(s) to undertake the Peer Review, the procurement process will be undertaken in accordance with Council's Procurement Policy.

The consultant undertaking the peer review will report directly to Council staff.

## 5. DEFINITIONS

**Development Plan** is a document that contains the planning controls that guide what can and cannot be developed in a council area. Planning authorities use these planning controls to assess new development proposals.

**Development Plan Amendment (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 investigations to inform the proposed zoning or policy changes.

**Development Plan Review** is a process required under Section 30 of the Development 1993, whereby all councils must periodically review their Development Plan at least every five years to ensure it remains up to date and aligns with the State's Planning Strategy. This process results in preparation of a Strategic Directions Report and program of Development Plan Amendments for agreement with the Minister for Planning.

**Planning Strategy** is a document empowered under Section 22 of the Development Act 1993 that outlines the State Government's direction for land use change and development in South Australia. The relevant volume applying to the City of Marion is currently 'The 30-Year Plan for Greater Adelaide'.

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

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**Statement of Intent (SOI)** is a document that outlines the scope, timing, consultation requirements and nature of investigations to be carried out in preparing a Development Plan Amendment. Council is required to prepare a SOI under Section 25(1) of the Development Act 1993 to reach agreement with the Minister for Planning to initiate a Development Plan Amendment.

**Statement of Justification** is a document to be submitted to Council under this Procedure and its overarching Policy to justify a request for Council to consider initiating a privately funded Development Plan Amendment. This Statement will be assessed and considered against the criteria outlined in this Procedure.

## 6. DELEGATION

The decision whether or not to initiate a privately funded Development Plan Amendment is delegated to Council.

## 7. REFERENCES

- Development Act 1993
- Development Regulations 2008
- Local Government Act 1999

## 8. REVIEW AND EVALUATION

This policy will be reviewed after the first 12 months of operation, and then once in every term of Council.

Revision Ref. No.	Approved/ Amended/ Rescinded	Ratified Date	Evaluation Date	Council Committee EMG	Resolution Number	Document Reference
		GC140715R05	July 2016	Council	R05	n/a
<b>Policy Manager and Department responsible</b>				<b>Manager Development Services/Development Services</b>		

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## Privately Funded Development Plan Amendments Flow Chart

