

1. RATIONALE

The Planning and Design Code (**'the Code'**) 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 Planning and Design Code Amendment (**'Code Amendment'**) is a document that describes proposed changes to the Code and includes a statutory process required to be undertaken when either the Council, the Minister for Planning or other party seeks to amend land use zoning and/or the policies contained within the Code.

Privately funded Code Amendments are a legitimate approach that may be used to expedite and resource the preparation of a Code Amendment, particularly where its preparation has not been budgeted for or identified as a priority by the Minister or Council.

2. POLICY STATEMENT

Proposals for privately funded Code Amendments may be submitted to Council by Private Funders in accordance with this Policy. Council determines whether to endorse proposals having regard to the assessment criteria in this Policy and taking into consideration the timing of other priorities and projects within Council's policy program and the resources available. Council is under no obligation to endorse a proposal.

Where Council endorsement is provided, two process models are available to proceed with privately funded Code Amendments:

- **Model 1:** The Private Funder provides financial resources but the entire Code Amendment process, including the procurement and management of consultants, is undertaken by Council with the Private Funder given no additional opportunity to input into the Code Amendment process beyond that available to any other person.
- **Model 2:** The Private Funder funds, procures and manages as much of the Code Amendment process as possible but provides funds for Council to procure and engage its own consultants to undertake an independent peer review of the Code Amendment.

Council decides which of the two models for privately funded Code Amendments is appropriate after considering the proposal and the needs of the area in which it is located.

The ultimate decision to initiate a Code Amendment rests with the Minister for Planning.

3. OBJECTIVES

The primary objectives of this Policy are:

- To guide Council in the assessment and processing of privately funded Code Amendments and clarify Council's requirements and relationships with the potential Private Funder.
- To expedite and resource the preparation of a Code Amendment, particularly where its preparation has not been budgeted for or identified as a priority by the Minister or Council.

4. POLICY SCOPE AND IMPLEMENTATION

Scope

This policy applies when a Private Funder seeks to fund a Council initiated Code Amendment through an agreement with Council.

Implementation

4.1 Statement of Justification

When requesting Council's endorsement to proceed with a privately funded Code Amendment, the Private Funder must submit a Statement of Justification which outlines the level of consistency with the criteria in Section 4.2 below and the policy outcome sought.

Upon receipt of a Statement of Justification, Council will:

- undertake an assessment of the Statement of Justification against the criteria in Section 4.2 below;
- consider whether the proposed Code Amendment can be appropriately managed, taking into consideration the timing of other priorities and projects within Council's policy program and the resources available;
- conduct any necessary preliminary investigations and consultations with Government Agencies to understand policy positions of the Agencies; and
- determine whether to proceed with the preparation and lodgement of a Proposal to Initiate which must be submitted to the Minister for Planning for agreement to begin the Code Amendment.

Council may, at its absolute discretion, determine to endorse or not endorse a proposed Code Amendment.

4.2 Criteria to consider a Privately Funded Code Amendment

When determining whether to proceed with a privately funded Code Amendment, Council will assess the Code Amendment proposal 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 and/or policy 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.

4.3 Deed of Agreement

If Council provides endorsement for a proposed Code Amendment, a legal instrument in the form of a Deed of Agreement must be entered into between Council and the 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 Code 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 Code Amendment including the area to be covered, the purpose of the Code Amendment and what the Code Amendment investigations will encompass;
- acknowledge that Council maintains ultimate control of the Code Amendment, 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: 'Proposal to Initiate', draft Code Amendment (including investigations and policy) for Agency and Community Engagement, hearing public submissions and draft Code Amendment for Approval;
- acknowledge that the capacity for Council to process the privately funded Code Amendment will be influenced by Council's other policy priorities, and projected timing will be estimated accordingly;
- acknowledge that some parts of the Code Amendment process cannot be outsourced and management, policy oversight and processing will be required to be undertaken by Council staff, therefore the Code Amendment will be managed according to Council priorities and subsequent timeframes;
- acknowledge that while the Council may initiate a Code Amendment, 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 Code Amendment 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 Code Amendment's 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 Agency and Community Engagement;
- acknowledge that the Private Funder will fund any legal costs associated with preparation of the Code Amendment, including legal review, legal proceedings or judicial review proceedings in relation to the Code Amendment 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 Code Amendment.

Council will indicate within the Proposal to Initiate, at the time of public consultation, and as part of the Code Amendment document that it has received payment for preparation of the Code Amendment but has sought independent advice.

Preparation of the Code Amendment will not commence until such time as notice of agreement has been received from the Minister for Planning regarding the Proposal to Initiate.

4.4 Project Management and Procurement

4.3.1 Model 1

The cost of the Code Amendment 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 Code Amendment Fund) as directed by Council.

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

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

4.3.2 Model 2

A Privately Funded Code Amendment under Model 2 requires peer review. The cost of the peer review will be borne by the Private Funder and paid into a fund (Privately Funded Code Amendment Fund) as directed by Council.

If Council agrees to proceed with a privately funded Code Amendment under Model 2, the Private Funder will engage suitably qualified consultants, including one who meets the requirements of the Planning, Development and Infrastructure Act and associated Regulations.

Council will engage a suitably qualified and independent consultant(s), including a consultant who meets the requirements of the Planning, Development and Infrastructure Act and associated Regulations, to undertake a peer review of the relevant investigations and Code Amendment documents.

The peer review will encompass a review of:

- the Code Amendment documents prior to consultation occurring. This will include a review of the investigations and an assessment against the Proposal to Initiate agreed by the Minister for Planning;
- the Government Agency engagement responses to the draft Code Amendment and policy changes as a result of the engagement;

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- the Public consultation responses to the draft Code Amendment and policy changes as a result of the engagement; and
- the Approval Version of the Code Amendment.

The procurement process for selecting a consultant(s) to undertake the peer review is undertaken in accordance with Council's Procurement Policy.

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

5. DEFINITIONS

<i>Term</i>	<i>Definition</i>
Code Amendment	A document that describes proposed 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.
Planning and Design Code (the Code)	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.
Private Funder	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.
Proposal to Initiate	A document that outlines the scope, timing, engagement/consultation requirements and nature of investigations to be carried out in preparing a Code Amendment. Council is required to prepare a Proposal to Initiate under Section 73(2)(b) of the Planning, Development and Infrastructure Act 2016 to reach agreement with the Minister for Planning to initiate a Code Amendment.
Statement of Justification	A document to be submitted to Council under this Policy to justify a request for Council to consider initiating a privately funded Code Amendment. This Statement will be assessed and considered against the criteria outlined in this Policy.
State Planning Policies	Policies outlining the State's overarching goals or requirements for the planning system.

6. ROLES AND RESPONSIBILITIES

<i>Role</i>	<i>Responsibility</i>
Administration	<ul style="list-style-type: none">• Provide report to Council for consideration.
Council	<ul style="list-style-type: none">• Consider report provided by Administration and decide whether to endorse a proposal for a privately funded Code Amendment.

7. REFERENCES

City of Marion

- *Procurement Policy*

Other

- *Planning, Development and Infrastructure Act 2016*
- *Planning, Development and Infrastructure (General) Regulations 2017*
- *Local Government Act 1999*

8. REVIEW AND EVALUATION

This Policy will be reviewed by Council every four years in accordance with the City of Marion Policy Framework or sooner if required.

Privately Funded Planning and Design Code Amendments Policy

Privately Funded Code Amendment Flow Chart

