

# Externally Funded Development Plan Amendment (DPA) Procedure

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## 1. Purpose

The purpose of this procedure is to guide Council's consideration of requests for externally funded Development Plan Amendments (DPA) and their subsequent administration.

## 2. Policy principles

Externally Funded DPAs should:

- be undertaken in accordance with the *Development Act 1993* and *Development Regulations 2008*
- align with the strategic direction of the City of Onkaparinga and the State Government's planning strategies
- support the efficient and effective delivery of suitable social, environmental or economic changes to land use policy
- provide for the improved delivery of broad community needs, such as the provision of land for housing, employment opportunities and commercial outcomes
- not advantage particular private interests at the expense of broader community interest
- be managed in a fair, expedient and transparent manner as prescribed by this procedure.

## 3. Background information

Council initiates DPAs according to its DPA program established through the Strategic Directions Report as prescribed under Section 30 of the Development Act 1993 and approved by the Minister for Planning.

Resourcing to deliver our DPA program is determined by the availability of dedicated staff and the setting of Project and Capital Works budgets each financial year.

An externally funded DPA occurs where a third party funds the preparation of a DPA to change the Development Plan relating to a parcel(s) of land usually in the ownership or control of the third party (often a developer). The change to land use policy sought by the DPA will often seek to allow for a different form of development than allowed for under existing planning policies.

Council has made available this 'externally funded DPA procedure' to enable a proponent to request a particular DPA to be brought forward in our DPA program, or initiate a new DPA not anticipated by the program (assuming strategic alignment). Externally funded DPAs are a way to enable important policy changes to be made to the Development Plan in a timelier manner without compromising other scheduled policy outcomes or where Council funds are not available. It also provides an opportunity to reduce a future resource burden for council, which is considered reasonable given that often only one or a smaller number of land owners stand to benefit from externally funded DPAs.

The use of this procedure to support an externally funded DPA is predicated on consistency of the request with council's and state government's strategic directions, as outlined in respective plans and strategies.

An externally funded DPA needs to be managed in a considered, transparent and fair manner that mitigates risks to council and the community, such as adverse or unfair policy outcomes or mismanaged conflicts of interest.

## 4. Definitions

**Act** means *Development Act 1993* and/or *Development Regulations 2008*.

**Affected area** means the land that is subject of the request.

**Consultant** means a suitably qualified, planning practitioner(s) as prescribed by section 86 of the Act.

**Council** means the City of Onkaparinga, and includes any relevant committee and/or staff.

**Externally Funded DPA** means when a third party proponent funds the preparation of a DPA to change the Development Plan relating to the affected area.

**Proponent** means the person or organisation proposing and funding the externally funded DPA.

**Statement of Justification** means the outline of the policy change being sought, identification of the land and proponent and how the DPA will be funded.

## 5. Operating procedure

### 5.1. Statement of Justification

When requesting an externally funded DPA for consideration, a 'Statement of Justification' prepared by a qualified professional in accordance with section 86 of the Act must be submitted by the proponent, which:

1. identifies the proponent, key stakeholders and landowner (if not the proponent)
2. identifies and describes the affected area, its current zoning and existing land uses and any improvements
3. clearly outlines the policy outcome that is being sought and where relevant, the proposed zone module of the South Australian Planning Policy Library

4. includes relevant planning investigations and/or other associated documentation to support the externally funded DPA request (including the current status and availability of infrastructure i.e. water, sewer and road network)
5. provides an assessment and outlines the level of consistency with each criteria listed in section 5.2, or where the request departs from the criteria, provides detailed justification why council should consider the request.

## 5.2. Assessment of Externally Funded DPA proposals

Upon receipt of a request for an externally funded DPA, the request and Statement of Justification will be assessed against the following criteria, consistent with the process shown in Figure 1.

- a) The proposed policy change is identified in or consistent with Council's Strategic Directions Report and associated DPA program.

*If so, proceed to criterion (e), otherwise proceed to criterion (b).*

- b) The proposed policy change is identified in or consistent with directions within The 30-Year Plan for Greater Adelaide.

*If so, proceed to criterion (c), otherwise **STOP** do not proceed further.*

- c) The proposed policy change is consistent with strategic directions contained in Council's Community Plan and supporting strategies.

*If so, proceed to criterion (d), otherwise **STOP** do not proceed further.*

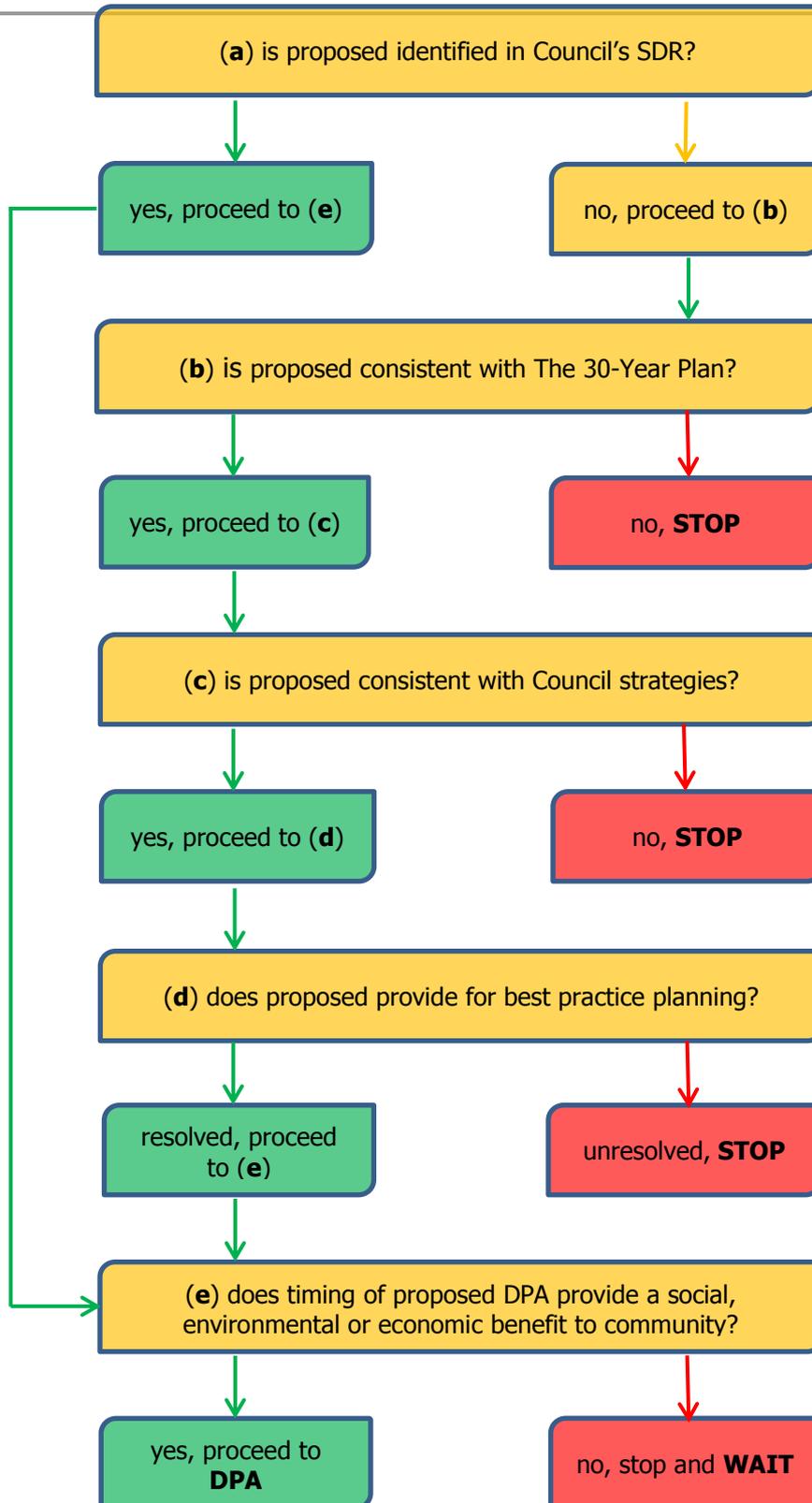
- d) the proposed policy change responds to emerging best practice planning policy and will address an identifiable gap in existing planning policy.

*If so, proceed to criterion (e), otherwise council and/or proponent will need to **RESOLVE** this through further investigations.*

*Once **RESOLVED** proceed to (e), in the event the investigations cannot be resolved, **STOP**.*

- e) The timing of the proposed DPA provides social, economic or environmental benefits to community life and does not disadvantage our communities.

*If not, **STOP** and **WAIT** until the timing is right; otherwise **PROCEED** with externally funded DPA.*



**Figure 1 Externally Funded DPA Assessment Flow Chart**

### **5.3. Approval to proceed**

The decision to proceed or not with an externally funded DPA will be made having regard to the assessment of the request under section 5.2 above.

### **5.4. Procedure progression**

Within three weeks of a request and Statement of Justification being received, notification of the request and proponent will be provided to elected members via Weekly News item.

Within three months of receipt of the request and Statement of Justification, a report will be provided to the Council seeking a decision to proceed or not, or seeking further information from the proponent.

If further information is requested, the proponent has three months from the date of the request for further information to provide the requested information otherwise council may decline the request to proceed with an externally funded DPA.

Information on the status and progress of the DPA will be publicly available via council's Project Register and reported to the Council at the key stages of the externally funded DPA process.

### **5.5. Funding**

The proponent of an externally funded DPA will fund all consultancy and legal costs associated with the request.

The proponent will be required to enter into a binding legal agreement with council, which details the roles and responsibilities of each party and the agreed funding amount and arrangement.

### **5.6. Process options**

The procedure provides for two distinct DPA management models and an option to consider a hybrid of the two depending on the nature of the proposal and consider factors such as site complexities and sensitivities, workloads and alignment to council and state strategies.

Council will determine the appropriate process to undertake the externally funded DPA. An option analysis framework has been developed to assist with this determination (refer section 5.7). Notwithstanding which option is selected, the Council maintains complete and ultimate control of the DPA, noting final approval rests with the Minister for Planning.

Each option requires that key stages of the DPA process will be presented to the Council for noting and/or approval. Key stages include; Statement of Intent, draft DPA for public and agency consultation, public hearing, Summary of Consultation and Proposed Amendments report (SCPA) and final DPA prior to submission to the Minister for Planning.

Further, for any of the options council can procure an independent peer review (at the proponent's cost) of the final DPA by a suitably qualified consultant prior to formal submission of the DPA and associated documents to the Minister for Planning for authorisation.

## **Option 1: Proponent led / proponent funded**

For DPAs that may have limited community, culture, heritage environmental or political sensitivities, few affected land owners and strong strategic alignment, council should consider a management model whereby the proponent leads, funds and manages the DPA in its entirety, with council peer reviewing key outcomes (with independent expert advice) and approving content at key milestones.

## **Option 2: Council led / proponent funded**

Conversely, where there are known sensitivities and site complexities, or a high number of affected land owners, it is recommended that Council manages the entire DPA process with the proponent kept at 'arm's length' but funding the DPA in its entirety, including the investigations, writing of the draft DPA and policy, responses to agency and public consultation submissions and the development of the final DPA documentation and associated council reports.

## **Option 3: Hybrid Option**

Lastly, the procedure provides flexibility of approach to consider an option that may not be as resolute in its approach as either of the defined options above. An example of this approach may be for council to be involved in the day-to-day management of the project but allow for the proponent to prepare the investigations. Likewise, due to sensitivities we may wish to prepare all of the internal reports and draft the DPA policy (or procure independent expert advice ourselves) but be informed by investigations procured by the proponent.

## **Peer Review**

Notwithstanding which option is chosen, council has the ability to engage an independent peer review of the outputs at any stage of the process (at the full cost to the proponent), which would be additional to staff peer review and advice from relevant state government agencies.

## **Consultant selection**

Where option 2 has been determined as the appropriate process, council will undertake the selection and procurement process to engage a consultant(s) through a tender process in accordance with its procurement policies and procedures. The selected consultant(s) will then report directly to council. Conversely, option 1 allows for the proponent to engage its own consultants (providing they are suitably qualified with demonstrated experience). The selection of consultants in a hybrid option will differ depending on the site and project sensitivities, and will be determined at the time of agreement with the proponent.

**The following Options Analysis is to assist council in the determination of the most relevant option, with any option selected at the discretion of the relevant Director.**

### 5.7. Options Analysis

Selection Criteria	Score (circle number)		
	<b>1 (low risk)</b> <b>2 (high risk)</b> <b>3 (medium risk)</b>		
Does the affected area and/or proposed rezoning theme have unresolved community, culture, heritage environmental or political sensitivities?	No	option 1	1
	Yes	option 3	2
	Yes*	option 2	N/A
<i>* if more than two unresolved sensitivities, automatic default to Option 2.</i>			
Does the affected area have a sensitive interface?	No	option 1	1
	Part	option 3	2
	Yes	option 2	3
Is the affected area in private (a) and/or multi ownership (b)?	a	option 1	1
	b	option 3	2
	a & b	option 2	3
Does council have a budget allocated for the DPA?	No	option 1	1
	Part	option 3	2
	Yes	option 2	3
Are current council investigations publically available that are relevant to the affected area / zone / theme?	Yes	option 1	1
	Part	option 3	2
	No	option 2	3
<b>Total</b>			
<b>Option 1: Proponent led / proponent funded</b>	<b>≤ 7</b>		
<b>Option 2: Council led / proponent funded</b>	<b>≥ 12</b>		
<b>Option 3: Hybrid Option</b>	<b>8 to 11</b>		
<b>Option recommendation</b>	OPTION 1 / 2 / 3		

*The electronic copy is the approved version.*

Before using a printed copy, verify that it is the current version.

### **5.8. Contractual arrangements**

The legal instrument in the form of a contract between council and the proponent will detail the heads of agreement and pertinent procedures. Any legal agreement, deed or contract is subject to the *Freedom of Information Act 1991*.

#### **Key elements include:**

##### **Scope**

- outlines nature of the investigations to be undertaken
- includes provision to engage specific experts (including peer review) if required at any stage of the DPA process (and to be funded by proponent)
- requires council provide the consultant's brief to the proponent for comment.

##### **Roles**

- the Statement of Intent and DPA must clearly state at the beginning of the document that it is an externally funded DPA
- notes that the proponent may be asked for information as part of the DPA investigations
- clearly identifies that the proponent has no right of control over the process or final decision of the DPA outcome
- notes that the proponent can provide written submissions, including a submission as part of the statutory public consultation process
- notes council will use its best endeavours to achieve final approval of the DPA (subject DPA investigation findings and recommendations), acknowledging that unforeseen circumstances may delay the DPA process.

##### **Financial management**

- the proponent shall provide an upfront payment to council to cover legal costs associated with the drafting (and finalising) of the funding agreement prior to the funding agreement being created and entered into
- the proponent is responsible to pay the full cost of preparing the DPA and where options 2 or 3 apply, including an additional 20 per cent of the DPA cost towards the project management of the DPA process
- the proponent shall pay any legal costs that may be incurred in preparing the DPA up until the point it is submitted to the Minister for Planning for authorisation
- will include the 'agreed financial contribution' to be provided by the proponent to prepare the draft DPA, which will be expressed as a maximum figure (although noting that additional funds may be required)
- where relevant, will include the payment schedule for the selected consultant(s) undertaking the DPA to minimise any financial risk to council
- where a higher value DPA has been identified, an upfront payment or a bank guarantee may be appropriate

- note that where council has not received payment by the scheduled date, work on the project will cease until such payment has been received
- inclusion of clause for circumstances where the initial investigations may justify additional investigations (e.g. by specialist sub-consultants), which may then require additional funding by the proponent.

**Outcomes**

- identifies that there should not be any expectation that the funding of the DPA will lead to a pre-defined outcome (any decision on the DPA outcome will be subject to investigations required under the Act)
- identifies that while council may initiate the DPA for the proponent, the final version of the DPA will be determined by the Minister for Planning
- the proponent shall acknowledge that the authorisation of the DPA incorporating the rezoning as contemplated by the Agreement does not confer any rights to the proponent, or any person with an interest in the property
- the proponent shall accept that council must deal with any subsequent development application in respect to the land in accordance with the requirements of the Act.

**6. References**

Nil

**7. Attachments**

Nil

**Responsible officer:** Manager Projects and Development Policy

**Department:** Finance and Commercial

**Adopted/approved by:** Strategic Directions Committee

**Date adopted/approved:** 7 June 2016

**Next review:** June 2021

**Date(s) of previous review(s):** June 2011

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