

POLICY– COUNCIL

Externally Funded Code Amendment

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1. Document control

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2. Preamble

The contents of and the commitments that the Council makes in this policy are not intended to be, and should not be, interpreted to be any more than a statement of the Council's general position in relation to those matters, and to facilitate its aspirations wherever it is reasonable to do so.

3. Policy purpose

The purpose of this policy is to guide the Council in the consideration, initiation and processing of Externally Funded Code Amendments in a clear and transparent manner.

It is acknowledged that any legislative requirement which affects the Council will take precedence over the Council's policies and procedures.

4. Scope

This policy applies when a Proponent requests that the Council acts as the Designated Entity in undertaking a Code Amendment process and seeks to fund a Council-initiated Code Amendment through an agreement with the Council.

5. Definitions

Act	Means the <i>Planning, Development and Infrastructure Act 2016</i> .
Affected Area	Means the area of land to which the proposed Code Amendment applies.
Agreement	Means a legally binding agreement signed by the Proponent and the Council containing the obligations and responsibilities of both parties in undertaking an Externally Funded Code Amendment.
Code	Means the Planning and Design Code under the Act.
Code Amendment	Means a proposal to amend the Code under, and in accordance with, section 73 of the Act. The Code Amendment 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.
Designated Entity	Means a person or entity authorised or approved to prepare a draft of a proposal to prepare or amend a designated instrument under section 73 of the Act.
Externally Funded Code Amendment	Means a Code Amendment undertaken by the Council at the request of, and with financial assistance from, a Proponent with approval of the Minister.
Minister	Means the Minister having administrative responsibility for the Act.
Practice Direction	Means Practice Direction 2 - Preparation and Amendment of Designated Instruments as issued on the SA Planning Portal, as amended from time to time.
Proponent	Means one or more persons or entities proposing to fund the undertaking of a Code Amendment affecting land (and potentially adjacent land) to facilitate future development outcomes on the land.
Proposal to Initiate	Means a formal proposal to initiate a Code Amendment prepared under section 73(2)(b) of the Act. This document outlines the scope, timing, engagement/consultation requirements and nature of investigations to be carried out in preparing a Code Amendment, and forms the basis of the Minister's decision to proceed (or not proceed as the case may be) under section 73(4) of the Act.
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 an Externally Funded Code

	Amendment. The purpose of a SOJ is to assist the Council to determine whether or not to proceed with the Externally Funded Code Amendment (subject to approval of the Minister).
State Planning Policies	Policies outlining the State's overarching goals or requirements for the planning system.
Structure Plan	Means a planning instrument for the coordination of future land use, zoning, subdivision, open space, infrastructure funding and delivery and other key features and constraints that influence development of an affected area.

6. Strategic context

The *Planning, Development and Infrastructure Act 2016* (Act) enables the council as a Designated Entity to initiate a Code Amendment 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 Code Amendment process. Given limited Council resources, it is desirable that the Council provides an option for Proponents to agree to contribute financially where necessary to facilitate timely and responsive changes to the Code.

The Council has had a policy to enable and manage Externally Funded Code Amendments (formerly known as Development Plan Amendments under the (repealed) *Development Act 1993*) since June 2011.

This policy does not remove the need to adhere to all statutory requirements in accordance with the Act when undertaking the Code Amendment process.

6.1 ROLES AND RESPONSIBILITIES

ROLE	RESPONSIBILITY
Council Administration	Assess Statement of Justification against the State Planning Policies and provide a report to the Council for consideration.
Council	Consider report provided by Council Administration and decide whether to endorse a proposal for an Externally Funded Code Amendment.

7. Policy

A proposal for an Externally Funded Code Amendment may be submitted to the Council by a Proponent in accordance with this Policy.

The Council can determine whether to endorse a proposal 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. The Council is under no obligation to endorse a proposal.

Where Council endorsement is provided, two process options are available to proceed with an Externally Funded Code Amendment:

Option 1: Code Amendment – managed with investigations procured/undertaken by Council but funded by Proponent

The Proponent provides financial resources to the Council as the Designated Entity to seek approval from the Minister to initiate a Code Amendment and manage the Code Amendment

process (either internally or through the procurement of external consultants or a combination of both) with the Proponent having limited opportunity to provide further input into the Code Amendment process.

Option 2: Code Amendment - Proponent directly funds and manages investigations and documentation to support Code Amendment and overseen by Council

The Proponent funds, procures and manages certain aspects of the Code Amendment process (as agreed with the Council) and provides funds for the Council to undertake the remaining aspects of the process and, at the discretion of the Council, to procure external consultants to undertake independent peer review of any work undertaken by the Proponent.

7.1 CRITERIA TO CONSIDER EXTERNALLY FUNDED CODE AMENDMENTS

To determine whether Council should agree to proceed or not with an Externally Funded Code Amendment, the proposal must be assessed against the following criteria to determine if it has merit.

- (a) The extent to which the proposed policy change(s) is consistent with the State Government's State Planning Policies and the Planning Strategy for Metropolitan Adelaide (30 Year Plan for Greater Adelaide or its update) and/or future Regional Plans applying to the subject land.
- (b) The extent to which the proposed policy change is consistent with relevant key Council Strategic Documents (e.g. Community Plan and/or the Onkaparinga Local Area Plan).
- (c) Whether or not a Structure Plan has been prepared for the Affected Area involving community engagement in accordance with the Commission's Community Engagement Charter and in consultation with and to the satisfaction of the Council. Where no structure planning has been undertaken, the extent to which the Proponent is committed to prepare, fund, consult upon and deliver a Structure Plan to the Council's satisfaction prior to the formal commencement of a Code Amendment (noting that a Structure Plan may not be required where the Proponent can demonstrate it is unlikely to provide benefit to the Code Amendment process).
- (d) The extent to which 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 against 'triple bottom line' outcomes (i.e., social, environmental and economic), the extent to which any 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) The extent to which the Externally Funded Code Amendment process can be effectively managed and resourced by Council administration given other Council priorities and ongoing demands on Council resources.

7.2 STATEMENT OF JUSTIFICATION

In the first instance, the Proponent in seeking Council support for an Externally Funded Code Amendment is required to prepare and submit to Council a brief Statement of Justification (SOJ) on the proposal. This SOJ should clearly identify the following:

- (a) The Affected Area and current land ownership and the Proponent's interest in the land.
- (b) In broad terms, the policy outcomes that are being sought in undertaking the Code Amendment.
- (c) Consistency with criteria (a) to (e) in Section 7.1 above.
- (d) The preferred option identified in Section 7 above.

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

Council administration will prepare a report for the Council's consideration. The Council will then determine whether to proceed or not with an Externally Funded Code Amendment. Council is under no obligation to proceed with a proposal.

Should the Council agree to proceed, before any further steps are taken, the Proponent will be expected to enter into an Agreement, the purpose of which is to define the process and respective obligations in more detail and to make the Proponent financially accountable for relevant processes undertaken by Council.

7.3 PROJECT MANAGEMENT AND THE PROCUREMENT PROCESS

Option 1: Code Amendment – managed with investigations procured/undertaken by Council but funded by Proponent

The cost of the Structure Planning process (where applicable) and subsequent Externally Funded Code Amendment investigations, document preparation, consultation and other costs as per the Agreement, will be borne by the Proponent and paid into a fund as agreed and directed by Council. Council (staff) will undertake the investigations internally, procure specific external advice as required, or manage the procurement process for engaging a consultant to substantially manage the Externally Funded Code Amendment. A consultant undertaking the Externally Funded Code Amendment (or specific investigations) will report directly to the Council, and project management of the process will be undertaken by Council staff.

In selecting a consultant to undertake any work to inform the Externally Funded Code Amendment, an open or select tender process will be undertaken in accordance with the council's procurement policies.

Option 2: Code Amendment - Proponent directly funds and manages investigations and documentation to support Code Amendment and overseen by Council

The Proponent undertakes to engage suitably qualified consultants to do any one or more of the following (as agreed and documented in the Agreement):

- (a) prepare a Structure Plan over the Affected Area including undertaking community engagement in accordance with the Commission's Community Engagement Charter and in consultation with and the satisfaction of the Council
- (b) prepare a Proposal to Initiate to the Commission as required under clause 7(1) and (2) of the Practice Direction
- (c) subject to agreement of the Minister - prepare a draft of the relevant proposal under s 73(6)(a) of the Act
- (d) carry out such investigations or obtain such information specified by the Commission
- (e) prepare the required documentation in accordance with the Act, Regulations and Practice Direction
- (f) assist to prepare materials as necessary to meet public and agency consultation requirements
- (g) review and prepare a draft response to written and verbal submissions received through public and agency consultation
- (h) prepare the approval version of the draft Code Amendment
- (i) prepare a draft report to the Commission under s 73(7) and (8) of the Act
- (j) such other matters as may be necessary or expedient as required by the Council.

The Proponent also agrees to reimburse the Council for costs and disbursements associated with undertaking those parts of the process which the Proponent cannot undertake, or as otherwise agreed.

At the discretion of the Council, the Proponent will also agree to meet the costs of undertaking an independent peer review of any work undertaken by, or on behalf of, the Proponent. The cost of the peer review(s) will be borne by the Proponent and paid into a fund as agreed and directed by the 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 the Council.

Under both options, at key stages of the Code Amendment process (e.g., endorsement of the SOJ, endorsement of the Proposal to Initiate, endorsement of the draft Code Amendment 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.

7.4 LEGAL ARRANGEMENTS

A legal instrument in the form of an Agreement will be required to be entered into between the Council and a Proponent. The purpose of the 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 Agreement may be made available to a potential Proponent on request.

As a minimum, the Agreement will include the following:

- State that a Proponent is funding an open and transparent Code Amendment process, which provides no guarantees that any Code Amendment 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 Code Amendment including the Affected Area, the purpose of the Code Amendment and any necessary investigations.
- Acknowledge that the Council maintains ultimate control of the Code Amendment 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 Code Amendment process cannot be outsourced and management, policy oversight and processing will remain the responsibility of the Council, and therefore managed according to Council priorities, meeting schedules and timeframes.
- Acknowledge that while the Council may initiate a Code Amendment, ultimately the decision on its authorisation rests with the Commission and the Minister.
- Detail what may happen if the Code Amendment is either not authorised or authorised with amendments that may not suit the Proponent.
- State that the Code Amendment process will proceed at the expense of the Proponent and acknowledge that the Proponent will fund any additional investigations that may be required following consideration of a draft Code Amendment, consultation, or referral to the Commission and/or Minister.
- Acknowledge that the Proponent will fund any legal costs associated with the Code Amendment process, including legal review (if required) or judicial review proceedings.

The Council is under no obligation to commence the Code Amendment process (by submitting a proposal to the Minister for approval under section 73(2)(b)) until the Agreement is signed by all

relevant parties. All Code Amendment documentation will explicitly indicate that the process is an Externally Funded Code Amendment.

8. Relevant legislation and references

- *Planning, Development and Infrastructure Act 2016*
- *Planning, Development and Infrastructure (General) Regulations 2017*
- State Planning Commission - PRACTICE DIRECTION 2 Preparation and Amendment of Designated Instruments
- State Planning Commission - Community Engagement Charter
- State Planning Commission – Code Amendment Toolkit
- *Local Government Act 1999*

9. Further information

For further information on this Policy please contact:

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A copy is available for inspection, downloading or printing from our website www.onkaparingacity.com.au.