

# Privately Funded Code Amendment Policy



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| Responsible Officer              | Director – Development and Community Services |
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| Due date of next Review          | July 2029                                     |

## 1. Introduction

- 1.1 The *Planning, Development and Infrastructure Act 2016* (Act) enables a wide range of proponents to initiate an amendment to the Planning and Design Code including:
- The State Planning Commission
  - A Council
  - Chief Executive Officer of the Attorney General's Department
  - A Government agency or instrumentality of the Crown
  - A Joint Planning Board
  - Infrastructure Scheme Coordinator
  - A provider of essential infrastructure
  - A person who has interest in the subject land (a private proponent).
- 1.2 While a private proponent may now initiate a proposal to amend the Code, there may also be circumstances where a private proponent requests that Council initiate a proposal to amend the Code on their behalf.
- 1.3 Section 73(9) of the Act enables Council to enter into an agreement with a private proponent for the recovery of costs incurred by Council during the Code Amendment process.

## 2. Purpose

- 2.1 To provide a consistent, transparent framework for assessing and managing a request by a private proponent to wholly or partly fund a Code Amendment (to update the Planning and Design Code), ensuring the delivery of strategic outcomes for Council and the community while establishing a clear process for conducting and recovering associated costs.
- 2.2 Where a private proponent wishes to initiate a Code Amendment, the general default is for the proponent to proceed under the provisions of the Act. This applies unless the proposal involves additional elements beyond the proponent's capacity, or where Council determines it may have an interest in the matter. In such cases, Council's role will be limited to facilitation of the process only.

## 3. Definitions

- 3.1 **Act** - means the Planning, Development and Infrastructure Act 2016.
- 3.2 **Applicant** - a person or entity requesting that Council enter into a privately-funded Code Amendment.
- 3.3 **Accredited Professional** - a person that is registered under the Accredited Professionals Scheme.
- 3.4 **Code Amendment** - means a proposal to change the policies, rules, or mapping within the Code under, and in accordance with, section 73 of the Act.
- 3.5 **Planning and Design Code** - the planning rules and policies that guide what can be developed in South Australia.
- 3.6 **Privately Funded Code Amendment** - means a Code Amendment that is fully or partially funded by the Applicant and undertaken by Council on behalf of the Applicant.

## 4. Policy

### 4.1 Request to Conduct a Privately Funded Code Amendment

- 4.1.1 Requests for Council to undertake a privately funded Code Amendment must be made in writing by the Applicant to the Chief Executive Officer.
- 4.1.2 The request must be accompanied by a 'Statement of Support' prepared by an Accredited Professional or suitably qualified professional.
- 4.1.3 The Statement must outline the need for a Code Amendment and will include:
  - 4.1.3.1 Identification of the land subject to the Code Amendment
  - 4.1.3.2 Identification of the current ownership of the subject land, and if the applicant is not the owner, the applicant's relationship to the land
  - 4.1.3.3 The reason why Council is being asked to undertake the Code Amendment
  - 4.1.3.4 The outcomes being sought by the policy change proposed in the Code Amendment
  - 4.1.3.5 Analysis of the proposal against the Principles outlined in 4.2.1 below, and
  - 4.1.3.6 Acknowledgement of the requirements to enter into a Deed of Agreement before the commencement of investigations and to fund the costs associated with the Code Amendment.
- 4.1.4 Council may request the applicant to provide other information in support of the proposal. Any response to a Council request will be at the expense of the Applicant.

### 4.2 Principles for Considering a Privately Funded Code Amendment

- 4.2.1 In determining whether Council should agree to a privately funded Code Amendment, Council will first consider the strategic merits of the proposed Code change, including (but not limited to):
  - 4.2.1.1 Whether the intent of the Code Amendment aligns with Council's strategic objectives and any other relevant Council strategies, plans, policies, or design frameworks and guidelines.
  - 4.2.1.2 Whether the intent of the Code Amendment aligns with the relevant State Planning Policies, the relevant Regional Plan and any relevant Subregional plan, including whether the affected area has been spatially identified in the Regional Plan as appropriate for the intended change.
  - 4.2.1.3 Whether the proposed policy change has considerable social, economic and/or environmental impact or merit.
  - 4.2.1.4 Whether the proposed policy change is consistent with the Principles of Good Planning (s14 of the *PDI Act 2016*).
  - 4.2.1.5 Whether the proposed policy change will affect a broad or limited cross section of the community.

- 4.2.1.6 Whether the existing Planning and Design Code policies unnecessarily restrict appropriate development on the site and/or are considered out of date and in need of review.
- 4.2.2 If Council considers the intent of the Code Amendment demonstrates strategic merit in line with the above principles, Council will then consider the resourcing and logistical implications of the intended Code Amendment, including (but not limited to):
  - 4.2.2.1 Council's capacity to undertake the Code Amendment, including the required timing and administrative/management resources.
  - 4.2.2.2 The feasibility of the Applicant undertaking their own Code Amendment and any potential benefits or implications of Council conducting the Code Amendment rather than the Applicant.
  - 4.2.2.3 Whether the Minister has previously considered the same or similar Code Amendment request and the outcome of that consideration.
  - 4.2.2.4 The level of potential risks to Council in proceeding with the Code Amendment

### **4.3 Consideration and Management of Requests**

- 4.3.1 A decision to proceed with or reject a request to undertake a privately funded Council-led Code Amendment will be the decision of Council, on advice from Council's Strategic Growth and Economic Activation Committee.
- 4.3.2 Council is not obligated to undertake a Code Amendment as requested or in the form requested by the Applicant
- 4.3.3 The reasons for proceeding with or rejecting a proposed privately funded Code Amendment will be provided in writing to the Applicant.

### **4.4 Obligations of Council and Applicant (private funder)**

- 4.4.1 If Council agrees to proceed with the Code Amendment and the Applicant agrees to enter into a Deed of Agreement and fund the costs associated with the Code Amendment, then:
  - 4.4.1.1 Council becomes the proponent for the entirety of the Code Amendment process, and
  - 4.4.1.2 The Applicant becomes the private funder.
- 4.4.2 Council will manage the Code Amendment process as outlined in Section 73 of the Act (subject to any alternative arrangements as agreed between Council and the Applicant on a case by case basis).
- 4.4.3 Council maintains ultimate control of the Code Amendment process and reserves the right to cease proceeding with the Code Amendment at any stage without entitlement for the Applicant to recover costs. Council's consideration to cease a Code Amendment may be for a variety of reasons, including but not limited to:
  - 4.4.3.1 Conflict with strategic planning objectives
  - 4.4.3.2 Lack of community or stakeholder support
  - 4.4.3.3 New planning or environmental information
  - 4.4.3.4 Changes to State planning policy or legislation
  - 4.4.3.5 Non-compliance or failure by the proponent
  - 4.4.3.6 Resourcing or capacity constraints
  - 4.4.3.7 Legal or governance concerns.
- 4.4.4 Council will undertake itself or engage its own independent consultant(s) in accordance with Council's Procurement Policy to review background documents, prepare the Proposal to Initiate and undertake the Amendment process. Should a consultant undertake this process they will be required to confirm that there is no conflict of interest in providing this service to Council.
- 4.4.5 Any consultant(s) appointed to undertake the privately funded Code Amendment (or components of) will report directly to Council's nominated project manager.

- 4.4.6 Key stages of the Code Amendment will be presented to Council's Strategic Growth and Economic Activation Committee for consideration prior to being formally submitted to Council for agreement or approval (as required).
- 4.4.7 Council does not and cannot give any assurances as to the outcome of the Code Amendment.
- 4.4.8 At all stages the Code Amendment documentation will declare the private funding arrangement.

## 4.5 Funding and Legal Arrangements

- 4.5.1 To facilitate the process and to detail the obligations of each party, Council will require an agreement be entered into between Council and the Applicant before submitting the Code initiation documentation to the Minister. Council will determine the form of the agreement, which may include the following terms and provisions
  - 4.5.1.1 The roles of the parties, legal requirements and procedures, and project and financial management
  - 4.5.1.2 Detail of the Code Amendment including the area to be covered, the purpose of the Amendment, and what the investigations will encompass
  - 4.5.1.3 That Council maintains control of the Code Amendment process, in that key stages are presented to Council for consideration and endorsement prior to proceeding with the next stage
  - 4.5.1.4 That the management of the process will be undertaken according to Council priorities, meeting schedules and timeframes
  - 4.5.1.5 That Council may outsource part(s) of the process to a suitably qualified consultant engaged through Council's procurement policy
  - 4.5.1.6 That the ultimate decision to approve or refuse the Code Amendment rests with the State Planning Commission and the Minister
  - 4.5.1.7 Detail what may happen if the Code Amendment is either not approved or approved with amendments that may not suit the private funder
  - 4.5.1.8 The Code Amendment process will proceed at the expense of the private funder, including any legal costs associated with the process, including drafting the legal agreement, legal review, legal proceedings, or judicial review proceedings.
  - 4.5.1.9 The payment schedule for undertaking the Code Amendment will be devised to minimise the financial risk to Council
  - 4.5.1.10 That Council may request a deposit, payment in advance or a bank guarantee where required
  - 4.5.1.11 Scheduled payments should coincide with milestone commencement. Where a scheduled payment is not received by Council from the private funder, work on the project will immediately cease.

## 5. Policy Responsibility

The Director – Development and Community Services is responsible for ensuring the proper operation of this Policy.

## 6. Availability/Accessibility

- 6.1 This Policy and Council's [Fees & Charges Register](#) are available to be downloaded free of charge from Council's website: [www.mid-murray.sa.gov.au](http://www.mid-murray.sa.gov.au).
- 6.2 This Policy is available for inspection at Council's principal office during ordinary business hours. Hard copies, for a fee in accordance with Council's schedule of Fees and Charges, can be provided upon request.

## 7. Legislative Framework / Other References

- 7.1 [Local Government Act 1999](#)
- 7.2 [Planning, Development and Infrastructure Act 2016](#)
- 7.3 [Code Amendment Toolkit](#)
- 7.4 [Community Engagement Charter Toolkit](#)
- 7.5 [Guide to the Planning and Design Code](#)

## 8. Document History

This Policy shall be reviewed at least every four (4) years or more frequently if legislation or Council requires.

| Version | Adopted      | Minute     | Description of Change |
|---------|--------------|------------|-----------------------|
| 1       | 15 July 2025 | C07-25/032 | Adopted               |