



City of Salisbury Values: Respectful, Accountable, Collaborative, Helpful

Private Proponent Planning and Design Code Amendment Policy

Approved by:	Council
Responsible Division:	City Shaping, City Development
First Issued/Approved:	23 August 2021
Last Reviewed:	25 March 2024 (Resolution No. 0633/2024)
Next Review Date:	2027

1. Purpose

The Planning and Design Code (the Code) established under the *Planning, Development and Infrastructure Act 2016* (the Act) provides policy for assessment of development applications across the State.

The State Planning Commission is responsible for preparing and maintaining the Code. It is responsible for the standard set of overlays, zones and policies that apply across the State.

To ensure that our Council grows in an orderly, economic, socially and sustainable manner it is important that land is zoned appropriately to meet our community and economic growth needs.

The zones that apply to land can be amended through a code amendment process. With approval of the Minister for Planning a code amendment may be initiated by a range of entities (named under the Act as designated entities), including private proponents. Private proponents must have a legal interest in the subject land. Private proponent Code Amendments can be used to complement Council and State Government funded Code Amendments to ensure the Code can facilitate future development aligned to Council's City Plan and Urban Growth Strategy.

Private Proponent Code Amendments

The City of Salisbury supports Private Code Amendments that seek to improve our community's liveability, housing choices and economic prosperity.

Council seeks to work with proponents in a collaborative manner to minimise delay and unnecessary disruptions.

Council encourages that proponents, or their representatives, meet with Council staff early in the consideration of a rezoning process to seek informal preliminary advice. This will also assist Council to consider actions it may need to commence to further investigate a proposal.

The State Planning Commission's *Practice Direction 2- Preparation and Amendment of Designated Instruments* requires that private proponent's receive comments from the relevant Council Chief Executive prior to lodging the initiation proposal for a Code Amendment with the State Government's Planning Department for assessment.

This gives Council the opportunity to provide the proponent and State Government, advice in relation to its indicative support or otherwise, and to shape the investigations required for the Code Amendment. Council may also provide guidance on how to best engage with Council administration, Elected Members, and the community, as well as how Council can assist in the engagement process.

It should be noted that proponents are required to pay fees to the State for Code Amendment administration.

Privately Funded Code Amendments

There may be circumstances where Council is asked to prepare a Code Amendment for one or more private proponents (i.e that Council be the designated entity). For instance, if for orderly and economic reasons the land to be rezoned incorporates land that is not of a legal connection to the proponent, or it would streamline a process by bringing together multiple landowners. Section 73 (9) of the Act prescribes that Council may enter into an agreement with the proponent/s for the recovery of costs.

It should be noted that the Chief Executive of the Planning Department may also pursuant to section 73 (4)(b) of the Act undertake a Code Amendment on behalf of a person or entity and charge reasonable costs in doing so.

Code Amendment Process

The Code Amendment process is prescribed under section 73 of the Act and supported by Practice Direction 2.

Once a Code Amendment is initiated by the Minister for Planning, the designated entity is responsible for preparing the necessary investigations and information as outlined in the initiation proposal.

The Code Amendment must be subject to engagement in accordance with the Community Engagement Charter. Stakeholders can review the Amendment and provide submissions through the State Government's SA Planning Portal (PlanSA).

The proponent is responsible for preparing a report on the engagement and lodging the final amendment proposal with the Planning Department for assessment and for forwarding to the Minister for Planning for a decision.

2. Scope

This policy applies to Code Amendments and proposals by private proponents and their representatives in particular:

- Criteria for the formulation of Council advice on a proposed change to the Code
- Criteria for Council undertaking a developer funded Code Amendment
- Project management, the procurement process, payment and legal arrangements for developer funded Code Amendments
- Expectations for private proponents and their representatives in engaging with Council during the Code Amendment process.

The policy is applicable to the Council, private proponents and their respective representatives.

3. Legislative Requirements and Corporate Policy Context

- *Planning, Development and Infrastructure Act 2016* (the Act)
- Planning, Development and Infrastructure (General) Regulations 2017
- Practice Direction 2- Preparation and Amendment of Designated Instruments issued by the State Planning Commission (Practice Direction 2)
- *Local Government Act 1999*

4. Interpretation/Definitions

- **Code** – the Planning and Design Code.
- **Designated Entity**- the entity that is preparing the Code Amendment and undertaking the engagement process.
- **A private proponent** - a person who has interest in the land where the person is seeking to alter the way in which the Planning and Design Code affects the land (Private Proponent).
- **Peer Review** – a review undertaken by an independent Planning Consultant.
- **Chief Executive of the Planning Department** – is responsible for assisting the Minister in the administration of the Act.
- **Planning Department**- the Department responsible for assisting the Minister in the administration of the Act.

5. Policy Statements

5.1 Chief Executive advice on Code Amendment Proposals

In accordance with the State Planning Commission's Practice Direction 2- Preparation and Amendment of Designated Instruments a proposal to initiate is required to be referred to a council for the Chief Executive's comment.

It is expected that a complete draft proposal consistent with the requirements of Practice Direction 2 and the template on the SA Planning portal is provided.

On receipt of these proposals, the proposal will be referred to relevant sections of the Council for comment.

It is recommended that a minimum of six weeks is given to Council for this process.

At this stage, it is important that the proposal to initiate incorporates all the envisaged investigations, especially around infrastructure requirements.

In providing support and comment on private proponent Code Amendment proposals where the private proponent will be the designated entity, the proposal to initiate a Code Amendment will be assessed against the following criteria:

- (a) Consistency with the State Planning Policies, including the principles of good planning and the Regional Plan for Greater Adelaide
- (b) Consistency with Council strategic documents including:
 - a. The City Plan
 - b. Urban Growth Strategy
 - c. West of Port Wakefield Road Strategic Growth Framework
 - d. Other current Code Amendments
- (c) The detailed infrastructure requirements needed including social infrastructure to support the anticipated growth.
- (d) The social, economic and/or environmental merits.

5.2 Privately Funded Council led Code Amendments

Council will consider the following criteria in determining whether to be a designated entity/proponent for a Code Amendment funded by one or more private entities:

- (a) The criteria under 5.1.
- (b) The reasons why the private entity wishes Council to undertake the Code Amendment (including why the Private Proponent cannot undertake the Code Amendment itself, and whether they have already approached the Department, and, if so, any response received).
- (c) For support, the rezoning proposal should include additional land as well as land that the proponent has a legal interest, and/or there is more than one private proponent in close proximity to each other.
- (d) Whether the proposed Code Amendment can be appropriately project managed by Council staff (taking into consideration the timing of other priorities and projects within Council's policy program) and the resources available.

In requesting Council's endorsement to proceed with a Privately Funded Code Amendment the private proponent should submit to the Council either:

- (a) a draft 'Proposal to Initiate a Code Amendment' in the template provided through the PlanSA website and which is consistent with Practice Direction 2; and

- (b) any additional information that responds to the criteria in sections 5.1 and 5.2 above, if not already addressed in a 'Proposal to Initiate a Code Amendment'.

Council will then assess the information, make necessary preliminary investigations and consultation 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 a Code Amendment which is required for the agreement of the Minister to begin the Code Amendment.

Council at all times retains the right to reject a proposal to initiate a Privately Funded Code Amendment.

The reasons for proceeding with, or rejecting, a proposed Privately Funded Code Amendment will be recorded and communicated to the Private Proponent/s.

5.3 Project Management and the Procurement Process

5.3.1 Subject to Ministerial approval to proceed, if Council is the designated entity for a Privately Funded Code Amendment it will require an agreement under section 73(9) of the Act between the Council and the Private Proponent for recovery of costs incurred by the Council in relation to the Code Amendment process. Those costs may include (but are not necessarily limited to):

- (a) Preparation of a draft of the relevant proposal
- (b) Community consultation
- (c) Compliance with conditions of the Minister's approval to proceed, and any requirements of the State Planning Commission, or as prescribed by the regulations (if any)
- (d) Preparation of a section 73(7) report to the Minister (including independent Council review if the initial draft report is prepared by, or on instruction of the Private Proponent)
- (e) Publication on the SA Planning Portal
- (f) Disbursements (including printing, postage, advertising etc)
- (g) A project management and administration fee.

The cost of the Code Amendment Process will be borne by the Private Proponent/s funding the Code Amendment and paid into a fund as directed by Council. Where the Council has, at the Private Proponent's request, expended material resources to obtain the Minister's approval to proceed with a Code Amendment, the Council may also seek to recover those costs.

5.3.2 If Council agrees to proceed with a Privately Funded Code Amendment, generally (and subject to any alternative arrangements as agreed to by the Council on a case-by-case basis):

5.3.2.1 The Private Proponent will engage a suitably qualified consultant to prepare the draft Code Amendment, in accordance with the agreed proposal to initiate and associated conditions, the Act and Practice Direction 2.

5.3.2.2 Council will undertake a Peer Review of the draft Code Amendment and may need to engage a consultant to do so depending on the nature and complexity of the Code Amendment and the resource capacity of Council.

The Peer Review will:

(a) review the draft Code Amendment against the Proposal to Initiate a Code Amendment approved by the Minister for Planning, and against the requirements of section 73(6) of the PDI Act.

(b) review the mapping changes, documentation for community engagement, all responses received during consultation, and finalised policy changes and documentation including the draft report to the Minister under section 73(7) of the PDI Act.

Selection of a consultant to undertake the Peer Review will be undertaken in accordance with Council's Procurement Policy. In selecting a consultant, the Council will enquire as to any current or prior relationship with the Private Proponent which could affect, or be perceived to affect, the consultant's independence.

5.3.3 The capacity for Council to process a Privately Funded Code Amendment will be influenced by Council's other policy priorities, and projected timing will be estimated accordingly. It is acknowledged 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 Code Amendments will be managed according to Council priorities and subsequent timeframes.

5.3.4 Any consultant undertaking any Peer Review will report directly to Council staff.

- 5.3.5 Council maintains ultimate control of the Code Amendment process, and key stages will be presented to Council for consideration, prior to being submitted to the Minister for agreement or endorsement.
- 5.3.6 Council will publicly indicate that it has received payment for preparation of the Code Amendment.

5.4 Payment and Legal Arrangements

- 5.4.1 A legally binding Deed between Council and the third party funding the Code Amendment will be prepared which will outline applicable agreement and legal procedures. The Deed will be executed upon approval on the Initiation of the Code Amendment by the Minister.

The legal agreement will contain at least the following:

- (a) The nature of the arrangements, including the project management and administration fee to be paid, and the time when payment is to be made.
- (b) Details about 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 (the Code Amendment principles).
- (c) Details about the responsibilities of each of the parties in relation to preparation of the Code Amendment and documentation, and draft Code Amendment.
- (d) An acknowledgment by the Private Proponent funding the Code Amendment that it is a Council document and as such may be amended at the direction of Council.
- (e) An acknowledgment by the Private Proponent that after complying with the requirements of section 76(6) of the PDI Act, the Council may choose to not proceed with the Code Amendment.
- (f) An acknowledgement by the Private Proponent that timing and processing of the Code Amendment will be dependent upon the timing and priorities of other Council projects and the availability of staff resourcing.
- (g) An acknowledgment by the Private Proponent that while the Council may initiate a Code Amendment, ultimately the decision on its authorisation is a decision of the Minister, and not the Council, and that the Council has no control over the outcome.

- (h) An acceptance that if the Code Amendment is either not authorised by the Minister, or is authorised with amendments that do not suit the interest of the Private Proponent, the Private Proponent must abide the event and is still responsible for the cost of the Code Amendment process.
- (i) Agreement that the Private Proponent will fund any legal costs associated with preparation of the Code Amendment, including legal review and representation in any legal proceedings or judicial review proceedings that are brought in relation to the Code Amendment process (should the Council be involved or choose to participate in such proceedings).
- (j) Acknowledgement that Council may require additional investigations to be undertaken, as directed by the Minister, and may charge the Private Proponent for the cost of these additional investigations.

The Private Proponent will pay the full cost of the Code Amendment process including an appropriate project management fee as determined (see below).

5.5 Project Management and Administration Fee

- 5.5.1 The Private Proponent will pay to Council a project management and administration fee to cover a portion of the Council resourcing costs for management of the Code Amendment process. The fee will be a fixed rate, based on the scope and complexity of the Code Amendment and the estimated hours of input required of Council staff. This will be determined by the General Manager City Development, once the Proposal to Initiate a Code Amendment has been agreed by the Minister, and details incorporated into the Deed of Agreement.
- 5.5.2 The project management fee may be split into several payments, details of which will be incorporated into the Deed, with the first payment payable upon approval by the Minister of the Proposal to Initiate a Code Amendment. The Code Amendment may not proceed until payment is received.

6 Related Policies and Procedures

Council Procurement Policy / Procedure

7 Approval and Change History

Version	Approval Date	Approval By	Change
2	March 2024	Council (0633/2024)	Addition of requirements for private proponent prepared Code Amendment and review of private proponent funded Code Amendments.

8 Availability

- 8.1 The Policy is available to be downloaded, free of charge, from Council's website www.salisbury.sa.gov.au
- 8.2 The Policy will be available for inspection without charge at the Civic Centre during ordinary business hours and a copy may be purchased at a fee as set annually by Council.

City of Salisbury Community Hub
34 Church Street, Salisbury SA 5108
Telephone: 84068222
Email: city@salisbury.sa.gov.au

9 Review

This policy will be reviewed within 12 months of a Council election or as dictated by legislation changes or changes to related Policies and Procedures, or as deemed necessary by Council.

Further Information

For further information on this Policy please contact:

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