



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

## Privately Funded Planning and Design Code Amendments

Approved by:	Council
Responsible Division:	Economic Development and Urban Policy, City Development
First Issued/Approved:	23 August 2021
Last Reviewed:	23 August 2021
Next Review Date:	August 2023

### 1. Introduction/Purpose

An up to date Planning and Design Code is important in ensuring that the City grows in an orderly and economically, socially and environmentally sustainable manner. The Council recognises the importance of the Code and the role it plays in enabling the objectives of the City Plan. Current and best practice planning policies also assist with ensuring that potential conflicts and impacts from development are minimised. High quality sustainable development improves the wellbeing, prosperity and general amenity of the city.

The PDI Act allows the initiation of Code Amendments by a range of entities, including Private Proponents. Privately Funded Code Amendments can be used to complement Council and State Government funded Code Amendments to ensure the Code is capable of facilitating future development in an appropriate and sustainable manner, in alignment with the City of Salisbury values. However, it is important to consider how these privately funded Code Amendments fit within the overall strategic objectives of the Council and that they are prioritised accordingly given the available resources.

Section 73(9) of the PDI Act anticipates that a designated entity (which includes a Council) may enter into an agreement with 'a person' for the recovery of costs incurred by the designated entity in relation to a Code Amendment process. As such, the Council is able to initiate a Code Amendment process on behalf of a Private Proponent.

The Code Amendment process is a statutory process undertaken pursuant to the provisions of the PDI Act and involves the Minister, the Commission, various State authorities and community consultation. It is a lengthy process that can take anywhere from 6 to 18 months or more and there is no guarantee of support from Council, the Commission, or State Agencies. Applicants have no right of appeal in relation to the outcomes of a Code Amendment request or process.

## 2. Scope

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
- Planning, Development and Infrastructure (General) Regulations 2017 Practice Directions issued by the State Planning Commission
- Local Government Act 1999

## 4. Interpretation/Definitions

1. Code – Planning and Design Code
2. Designated Entity-
  - a. Council.
  - b. Chief Executive of the Attorney General's Department (Chief Executive).
  - c. Agency or Instrumentality of the Crown.
  - d. A Joint Planning Board.
  - e. An Infrastructure Scheme Coordinator.
  - f. A provider of essential infrastructure (which may include a Private Proponent such as a telecommunications carrier or energy company).
  - g. 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).
3. Designated Instrument – includes the Planning and Design Code.
4. Peer Review – a review undertaken by an independent Planning Consultant.

5. 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.
5. Policy Statements
    1. In order to determine whether or not Council should proceed with a privately funded Code Amendment, the Amendment proposal will be assessed against the following criteria:
      - (a) The relevant State Planning Policies, including the principles of good planning
      - (b) The expected population growth and capacity for accommodating the anticipated growth
      - (c) The strategic needs of the existing zone
      - (d) The infrastructure needed to support the anticipated growth
      - (e) The performance-based policy to facilitate opportunities or mitigate challenges
      - (f) Relevant Regional Plans, including, but not limited to, the 30 Year Plan for Greater Adelaide- 2017 Update.
      - (g) The proposed policy change is consistent with Council Strategic Documents such as the City Plan, Growth Action Plan and the like and any other proposed or current Code Amendments
      - (h) The proposed policy change has demonstrated and considerable social, economic and/or environmental merit
      - (i) The reasons why the Private Proponent wishes Council to undertake the Code Amendment (including whether the Private Proponent has already approached the Department of Planning, Transport and Infrastructure, the Minister or the Commission and, if so, any response received)
      - (j) 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 a 'Statement of Justification' should be submitted by the Private Proponent which outlines the level of consistency with the above criteria (a) through (i) and clearly outlines the policy outcome that is being sought.

Council will then assess the 'Statement of Justification', make 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 a Code Amendment which is required for the agreement of the Minister to begin the Code Amendment, after taking advice from the Commission.

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.

## 6. Project Management and the Procurement Process

1. Subject to Ministerial approval to proceed, a Privately Funded Code Amendment will require an agreement under section 73(9) of the PDI 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. Independent Peer Review of the draft proposal (if the initial draft is prepared by or on instruction of the Private Proponent).
  - c. Consultation.
  - d. Compliance with conditions of the Minister's approval to proceed, and any requirements of the Commission or as prescribed by the regulations (if any).
  - e. Preparation of a section 73(7) report to the Minister (including independent peer review if the initial draft report is prepared by or on instruction of the Private Proponent).
  - f. Publication on the SA planning portal.
  - g. Disbursements (including printing, postage, advertising etc).
  - h. A project management fee.

The cost of the Code Amendment Process will be borne by the Private Proponent 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.

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):
  - 2.1 The Private Proponent will engage suitably qualified consultants to prepare the draft Code Amendment, including a timetable, investigations, instructions for the drafting of proposed policy amendments, any maps to an industry standard, heritage data sheets, significant tree data sheets, identification and assessment of proposed inconsistencies with State Planning Policies if applicable, explanation and summary of investigations and how these support the amendment, explanation of how infrastructure will be provided, and other requirements as directed in any relevant Practice Directions issued by the Commission.
  - 2.2 Council will engage a suitably qualified and independent consultant to undertake a Peer Review of the draft Code Amendment.
  - 2.3 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 drafting instructions and mapping changes and 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.
  - 2.4 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.
- 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.
- 4 The consultant undertaking the Peer Review will report directly to Council staff.

- 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.
- 6 Council will publicly indicate that it has received payment for preparation of the Code Amendment but has sought independent advice.

#### 7. Payment and Legal Arrangements

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.
2. The legal agreement will contain at least the following:
  - a. The nature of the arrangements, including the project management 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 be 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.
- k. The Private Proponent will pay the full cost of the Code Amendment process including an appropriate project management fee as determined (see below).

#### 8. Project Management Fee

1. The Private Proponent will pay to Council a project management fee to cover a portion of the Council resourcing costs for management of the Code Amendment process. The project management 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.
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.

9. Related Policies and Procedures

Council Procurement Policy / Procedure

10. Approval and Change History

Version	Approval Date	Approval By	Change
1	23/08/2021	Council	

11. Availability

11.1 The Policy is available to be downloaded, free of charge, from Council's website [www.salisbury.sa.gov.au](http://www.salisbury.sa.gov.au).

11.2 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](mailto:city@salisbury.sa.gov.au)

12. 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:

Responsible Officer: Principal Planner – Land Use Policy  
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