

Non-Government Funded DPA Policy



1. Policy Statement

Council supports use of non-government funding for preparation of Development Plan Amendments where they are undertaken in accordance with this policy, with transparency regarding the funding and prepared independently from the proponent.

2. Scope

This policy applies when a non-government organisation proposes to fund the work required to change the Development Plan in the City of Playford.

3. Definitions

The Development Plan is a document that contains the planning controls that guide what can and cannot be developed in a council area. Planning authorities use these planning controls to assess new development proposals.

A **Development Plan Amendment (DPA)** is a document that describes proposed changes to a Development Plan and includes a statutory process required to be undertaken when either the Council or the Minister for Planning seeks to amend land use zoning and/or the policies contained within the Development Plan.

Non-government funded refers to funding which is usually provided by a private or community organisation or individual and not where the funding is made available by a government organisation.

4. Legislation and References

Development Act, 1993, Section 24 and 25.
Development Regulations, 2008.

5. Policy

Purpose/Objective

The need to amend and update Council's Development Plan may arise for a number of reasons including:

- direction from the State Government Planning Strategy;

	Policy No.:	N/A	Version No.:	2
	ECM Document Set No.:	2377014	Initial Date of Adoption:	23 Mar 2010
	Authorised by:	Council (Resolution 2433)	Date of Current Version:	15 Dec 2015
	Document Maintained by:	Strategy & Policy	Next Review Date:	Dec 2019

Electronic version is the controlled version. Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the current version.

- recommendations made through Council strategic reports and documents;
- recommendations made in a study that Council has undertaken;
- a suggestion or request from an Elected Member, Council, or the public;
- the need to address an issue or improve a policy that is identified by staff or the Council Development Assessment Panel as requiring review.

An up to date Development Plan is important to ensure that the Council area develops in an orderly, economically, socially and environmentally sustainable manner. 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 function and amenity of the City and the well-being and prosperity of its community.

Under Sections 24 and 25 of the Development Act 1993, only a Council or the Minister for Planning can prepare a DPA. There is however, no prohibition in the Act on the funding of a DPA by a third party.

Non-government funded DPAs offer an opportunity to complement Council and State Government funded DPAs by providing additional resources to ensure Council's Development Plan is kept up to date.

It is important to note that the DPA process is a statutory process involving the Minister for Planning, various State authorities and community consultation. It can be a lengthy process that can take 12 to 18 months and often more and there is no guarantee of Council or State Government support for the rezoning proposal. There is also no formal right of appeal. The purpose of this policy is to guide Council in the assessment and processing of proposals for non-government funded DPAs in a clear and transparent manner.

Principles

A non-government funded DPA offers a legitimate approach for Council to consider in meeting its responsibilities to keep the Development Plan up to date.

A non-government funded DPA may be used to expedite and resource the preparation of a DPA where Council considers that a proposal has planning merit and meets its assessment criteria (see points a) to d) below).

Council is under no obligation to agree to a non-government funded DPA and the statutory process under the *Development Act 1993* remains exactly the same as where the DPA is funded by Council. Council has the ability to decline to proceed at key stages of the process as it ordinarily would.

The preparation of a non-government funded DPA requires a transparent and well documented process which is clearly understood and agreed by both the Council and the proponent.

Process and criteria for consideration

Non-government funding of a Development Plan Amendment requires additional considerations which add to the process for consideration of a Development Plan Amendment. The additional steps are not part of the statutory process. The first step is called a Statement of Justification.

The Statement of Justification provides an opportunity for the proponent to provide initial justification for the use of the non-government funded Development Plan Amendment process, before preparing a full Statement of Intent (as required by the Development Act) and before any contractual arrangements are entered into. The Statement of Justification will need to address the following criteria:

- a) The proposed policy change is consistent with the State Government's Planning Strategy for Metropolitan Adelaide (30 Year Plan for Greater Adelaide) and the Housing and Employment Land Supply Program,
- b) The proposed policy change is consistent with Council Strategic Documents such as the Playford Community Vision 2043, Strategic Directions Report / Section 30 Development Plan Review and any other proposed or current Development Plan Amendments.
- c) The existing zoning is out-dated and not in alignment with the other policy directions of the Government or Council resulting in appropriate development being restricted on the land.
- d) Whether the proposed development or proposal is supportable from social, environmental and economic perspective (triple bottom line).

Council will also need to give consideration at this stage as to whether it has sufficient capacity, and wishes to give reasonable priority, to manage the administration of the DPA throughout the process. Although the funding is a very significant assistance, there are significant administrative resources required to ensure that the DPA is appropriately managed.

If Council agrees to the Statement of Justification for non-government funding of a DPA, the next step is to prepare **a legal instrument in the form of a contract / Deed of Agreement** between Council and any non-government funder. While the precise form of the agreement will be subject to legal advice, it is anticipated that the agreement will:

- state that non-government funding is to be undertaken in an open and transparent process which provides no guarantee that any Development Plan outcome sought by the non-government funder will be provided;
- outline the heads of agreement, including the roles of the parties, legal requirements and procedures, and project and financial management;
- define the nature of the DPA including the area to be covered, the purpose of the DPA and what the DPA investigations will encompass;
- acknowledge that Council maintains ultimate control of the DPA, in that key stages are presented to Council for consideration prior to being submitted to the Minister for agreement or endorsement. The key stages that are considered by Council include: Statement of Intent, draft investigations and policy for Public and Agency Consultation, hearing public submissions and Approval. The agreement will acknowledge that Council cannot be fettered in its ability under the Act to make decisions, including potentially to not proceed with a DPA.
- indicate that the proponent will be kept informed of progress at key stages and that consultation may occur between Council staff and the proponent if it is seen as potentially benefiting the quality of proposed policy;
- acknowledge that some parts of the DPA process cannot be outsourced and management, policy oversight and processing will be required to be undertaken by Council staff, therefore the DPA will be managed according to Council priorities and subsequent timeframes;
- acknowledge that while the Council may initiate a DPA, ultimately the decision on its approval is for the Minister for Planning, and not the Council, and that the Council has no control over this decision;
- detail what happens if the DPA is either not authorised by the Minister or authorised with amendments that do not suit the interest of the non-government funder (essentially it should be agreed that the non-government funder must accept that scenario and still be responsible for the cost of the DPAs preparation and that there will be no refund of any funds expended by the non-government funder);
- be prepared at the expense of the non-government funder and acknowledge that the non-government funder will fund any additional investigations that may be required by Council;

- include a payment schedule to cover the full cost of the consultant and an additional 20% to assist administrative costs;
- acknowledge that the non-government funder may be required to fund any legal costs associated with preparation of the DPA, including legal review, legal proceedings or judicial review proceedings in relation to the DPA process; and
- acknowledge that the Deed shall not in any way affect Council's standing as the relevant authority to assess applications for development approval in respect of land affected by a non-government funded DPA.

Following preparation and signing of the agreement, the formal Development Plan Amendment process can commence with the preparation of a Statement of Intent and will follow the procedures set out in the *Development Act 1993*. The Statement of Intent may be prepared by Council staff or can be outsourced in accordance with Council's procurement policies. Council will retain responsibility for the procurement process. Outsourcing will ordinarily be for the whole of the Development Plan Amendment process excluding those components which are required to be managed by Council (for example the public hearing and preparation of reports to Council).

Council will indicate within the Statement of Intent, at the time of public consultation, and as part of the explanatory statement and statement of investigations that it has received payment for preparation of the DPA but has sought independent advice.

Preparation of the DPA will not commence until such time as notice of agreement has been received from the Minister for Planning to the Statement of Intent.

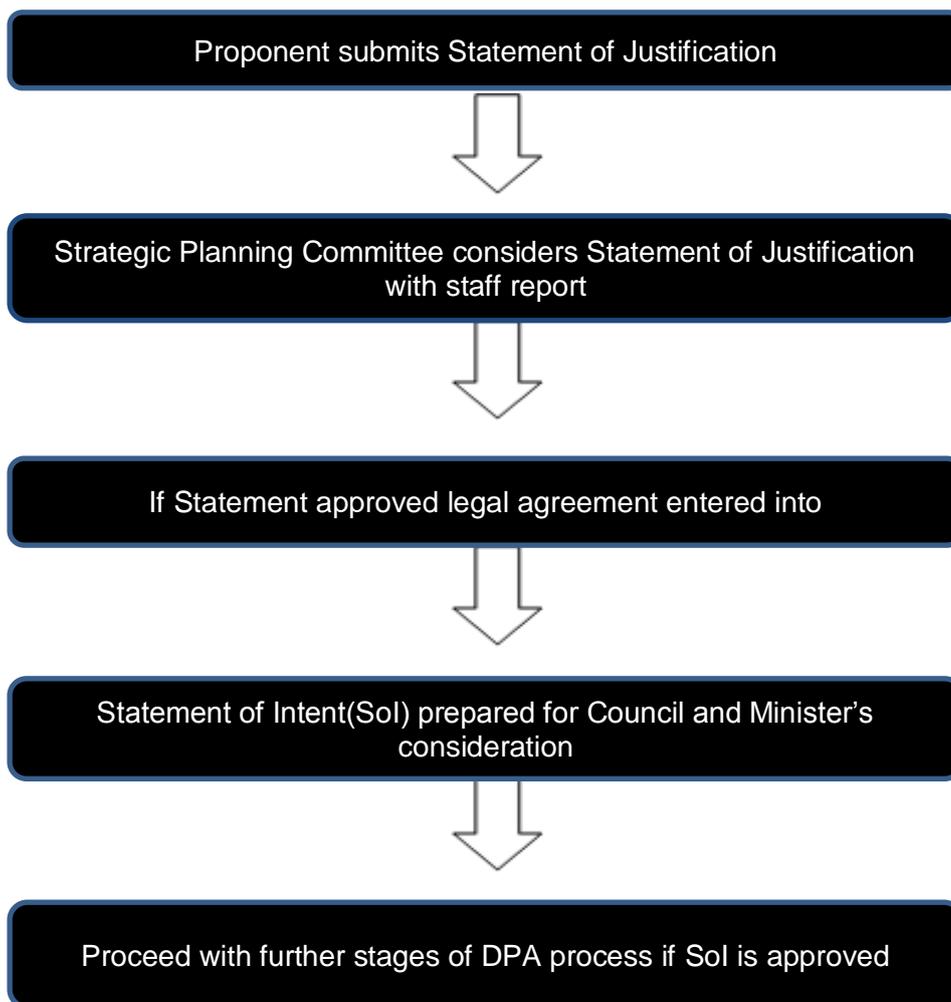
6. Responsibilities

The Strategy and Policy Team will be responsible for ensuring compliance with the policy and communicating the policy to proponents.

7. Relevance to Strategic Plan

The Council and State strategies will be strongly considered in determining whether a Development Plan Amendment should be progressed with the assistance of non-government funding.

Flow –chart: Non-government funded DPA policy



8. Approval and Change History

Version	Approval Date	Approval by	Change
1	23/03/2010	Council	New Policy
2	15/12/2015	Council	Entire policy reworked.