

# Privately Funded Code Amendments Procedure

Procedure Author	General Manager – Strategy & Corporate
Date of next review	May 2025

## 1. Purpose

While a significant range of proponents may, with the approval of the Minister for Planning (the Minister), initiate a Code Amendment pursuant to Section 73 of the *Planning Development and Infrastructure Act 2016* (the Act), the Act specifically provides for persons with an interest in land to initiate a Code Amendment.

Approval from the Minister is required to initiate a Code Amendment. However, a person with an interest in land may request the Council to undertake a Code Amendment with Council seeking the approval of the Minister for the initiation.

This Procedure commences at the point that a request is made to the Council to initiate a Code Amendment.

The purpose of this procedure is to outline the process relating to the Council's consideration of a Code Amendment where the Council has been requested to undertake a Code Amendment by a private proponent.

## 2. References and Supporting Documentation

This Procedure is to be read in conjunction with the Privately Funded Code Amendments Policy.

## 3. Application

Policy Planner Specialist	<p>Monitor any changes to State Government legislation, policies or procedures that may impact on Council's procedures or policy.</p> <p>Liaise with any potential proponents undertaking, or giving consideration to preparing, a privately funded Code Amendment regarding these procedures and related policies.</p>
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## 4. Procedure

### 4.1 Statement of Justification

The Council may as an initial step in the process of considering a Code amendment request from a private proponent, require the proponent to prepare and submit to the Council for its consideration a statement of justification.

This involves the proponent providing a brief statement outlining the justification for the request to Council to undertake a Code Amendment, without necessarily including the initiation documents required to be considered by the Council and the Minister. A Statement

of Justification also provides an early opportunity to consider the resource requirements and the private funding.

The Council may consider it appropriate to provide the option for Private Proponents to prepare and submit to the Council a Statement of Justification at the same time as the Code Amendment Proposal to Initiate (the documentation required to be submitted to the Minister) is to be considered by the Council.

The Statement of Justification should address the following matters and such other matters as the Council may require:

- a) Whether the proposed Code Amendment demonstrates the potential for consistency (subject to further investigation as necessary) with Council's strategic plan, the relevant regional plan (currently the 30 Year Plan for Greater Adelaide) and is supportable from a social, environmental and economic perspective.
- b) The willingness of the Private Proponent to fund the costs associated with the Code Amendment and to enter into an agreement with Council on terms provided by the Council prior to the Council's consideration of the Code amendment initiation documentation.
- c) Whether it is the Private Proponent's intention that the Council will drive the entire process including the procurement and management of consultants, or whether the Private Proponent intends to manage key elements of the process (excluding community engagement, internal Council processes and independent peer review if undertaken). Council will determine which process will be followed.

#### **4.1.1 Legal agreement**

If Council agrees to the Statement of Justification, or to both the Statement of Justification and Code amendment initiation documentation (where these are combined), the Council may require an agreement be entered into by the Council and the Private Proponent before submitting the Code initiation documentation to the Minister. The Council will determine the form of the agreement and may include the following terms and provisions:

- a) The funding of the costs associated with Code Amendment by the Private Proponent is to be undertaken in an open and transparent manner and is not to be taken as any assurance or indication that the Code Amendment outcome sought by the proponent will be realised;
- b) The roles of the parties to the agreement, legal requirements and procedures, and project and financial management;
- c) The nature of the Code Amendment including the area to be covered, the purpose of the amendment and what the investigations will encompass;
- d) An acknowledgement by the Private Proponent that the Council maintains ultimate control of the Code Amendment, in that key stages are reported to the elected body of the Council for consideration prior to being submitted to the Minister for Planning for adoption;
- e) An acknowledgement that Council cannot be fettered in its discretion under the Act to make decisions, including potentially to not proceed with a Code Amendment;
- f) An indication 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;

- g) An acknowledgement 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 the Code Amendment process will be managed according to Council priorities and timeframes;
- h) An acknowledgement that while the Council may initiate a Code Amendment, ultimately the decision on its adoption is for the Minister, and not the Council, and that the Council has no control over this decision;
- i) An acknowledgement and acceptance by the Private Proponent that even in the event the Code Amendment is not adopted by the Minister, or adopted with amendments, the proponent is still responsible for the costs associated with the Code Amendment preparation and that there will be no refund of any funds expended by the Private Proponent;
- j) The costs of the preparation of the agreement are to be borne by the Private Proponent including legal costs associated with preparation of the Code Amendment, including legal review and all legal proceedings including judicial review proceedings that may be commenced in relation to the process;
- k) The Private Proponent will be responsible for any costs associated with any additional investigations that may be required by Council;
- l) The costs associated with the Code amendment to be paid by the Proponent will include the full costs of any consultants as required by the Council and an additional 20% towards administrative costs;
- m) An acknowledgement that the agreement does not and shall not in any way affect a relevant authority's role and powers to assess applications for development approval in respect of land affected by a privately funded Code amendment.

#### **4.1.2 Code Amendment process**

- 4.1.2.1 Following preparation and signing of an agreement between the Council and the Private Proponent and/or the approval by the Minister of the Proposal to Initiate, the formal Code Amendment process can commence/proceed and will follow the procedures set out in the Act, related regulations and Practice Directions.
- 4.1.2.2 The Council will retain responsibility for the procurement process unless the Council agrees otherwise. The Council may engage external consultants in relation to the Code Amendment process where that process is to be undertaken by the Council. If the proponent has indicated a desire to appoint and manage consultants to undertake the Code Amendment and Council is agreeable, this will not include those components of the process which are required to be undertaken by the Council such as community engagement and preparation of Council reports which the Council determines to undertake.
- 4.1.2.3 Council will indicate within all publicly available documentation that it has, or intends to receive payment for the costs associated with the Code Amendment and/or that the proponent is, or intends to be, responsible for commissioning elements of the related work.

- 4.1.2.4 The Code Amendment will not progress beyond the Proposal to Initiate being submitted to the Minister, until such time as notice of approval under Section 73 2(b)(vii) of the Act has been received from the Minister.

## 5. Feedback

Your feedback on this procedure is invited and can be directed to the Manager Governance via email to [governance@playford.sa.gov.au](mailto:governance@playford.sa.gov.au) or by calling the Customer Contact Team on 8256 0333.

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### Administration use only

ECM document set no.	3958279
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Policy link	Privately Funded Code Amendments Policy
Procedure author	General Manager – Strategy & Corporate
Endorsed by	Council
Resolution no.	4614
Legal requirement	N/A
Review schedule	4 Years
Date of current version	May 2021
Date of next review	May 2025

### Version history

Version no.	Approval date	Approval by	Change
1	25 May 2021	Ordinary Council Resolution No. 4614	New Procedure

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