

Council Policy

Privately Funded Development Plan Amendments



COUNCIL POLICY

 <p>Adelaide Hills COUNCIL</p>	PRIVATELY FUNDED DEVELOPMENT PLAN AMENDMENTS
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PRIVATELY FUNDED DEVELOPMENT PLAN AMENDMENTS

1. INTRODUCTION

This Policy is intended to guide Council in the assessment and processing of requests to undertake a Privately (or Developer) Funded Development Plan Amendment (DPA) in order to ensure openness and transparency in the process, and to ensure a well considered and consistent decision making in this regard.

Pursuant to Sections 24 and 25 of the Development Act, 1993, only the Minister or a local council(s) can prepare a Development Plan Amendment resulting in a rezoning of land or change in development policy. There is no mechanism for a developer or other third party to make or seek changes to a Council Development Plan (e.g. to rezone land). However, a private funder/developer and Council can enter into an agreement for the preparation of a specific DPA where all associated costs are covered by the private funder and councils undertake the preparation of the DPA. This Policy provides guidelines and parameters for the consideration of such requests.

A Privately Funded DPA is defined here as a Development Plan Amendment where the required investigations and any other associated work in the preparation of a specific DPA is funded by a third party who may or may not benefit in some way from any change in zoning and/or planning policy being investigated during the DPA process.

Having a regularly up-dated Development Plan is important to ensure that the Council area adapts, changes and responds to emerging planning issues and trends in an orderly and economic manner. Planning policies that are current, and that assist in minimizing potential land use conflicts and negative impacts from development, are critical in guiding development and encouraging beneficial development practices. Well-considered and high quality development improves the wellbeing, prosperity and general amenity of the Council area.

Current State Government policy identifies the Adelaide Hills as a location where lands of environmental and primary production significance should be protected, and where some limited growth in townships and urban areas can occur. However, as infrastructure capacity in these areas is limited, investigative work is required to determine where such growth should and can occur, where infrastructure capacity requires upgrading, and how this should occur. Privately (or Developer) Funded DPAs are one model that can complement Council and State Government funded re-zonings or policy changes.

2. OBJECTIVES

The purpose of this policy is to guide Council in its consideration of any proposal to undertake a privately Funded DPA. This guidance covers whether the proposal is appropriate in its specific circumstances, and how the process of the DPA may differ from a DPA undertaken by the Council.

The policy applies when one or more private persons or organizations approaches Council to fund the preparation of a Development Plan Amendment where they are likely to benefit from any changes to zoning or development policies resulting from the DPA, and that DPA may affect all or part of the area of the Adelaide Hills Council.

3. DEFINITIONS

Term/Acronym	Definition
DPA	Development Plan Amendment
PFDPA	Privately Funded Development Plan Amendment
Private Funder	One or more private persons or organizations proposing to fund the undertaking of a Development Plan Amendment where they are likely to benefit from any changes to zoning or development policies resulting from the DPA.
Applicant	Person(s) who have applied to Council to undertake a privately funded DPA
SPDPC	Council's "Strategic Planning & Development Policy Committee" established pursuant to Section 101 of the Development Act 1993
SOI	Statement of Intent – required as the initial stage of the DPA process

4. POLICY STATEMENT

Matters relating to Privately Funded DPAs are to be the responsibility of the Council's Strategic Planning & Development Policy Committee.

4.1 Requirements for a Privately Funded DPA proposal

A proposal to undertake a Privately Funded DPA must:

- be in the **form specified by Council**
- include a **Statement of Justification** as specified below.

The "Statement of Justification" should clearly state:

- the level of consistency with the "strategic criteria" listed in 4.2 below;
- the policy outcome or rezoning being sought; and,
- the nature of the benefit the funder expects to gain from this process.

The '*Statement of Justification*' must also have regard to this Privately Funded DPA Policy and the legal arrangements noted in Section 4.4 of this Policy.

In undertaking the assessment against the Strategic Criteria (refer to Section 4.2), the following should be noted:

- (a) Council will not proceed with assessing a proposal to undertake a privately funded DPA if:
 - (i) The proposed policy change is not consistent with the State Government's 30 Year Plan for Greater Adelaide; and/or

- (ii) Council does not have capacity to process the proposed DPA. (The capacity for Council to process privately funded DPAs will be influenced by existing workloads and priorities. It is acknowledged that the full DPA process cannot be outsourced and consideration will be given to current staff work commitments); and/or,
 - (iii) The applicant and Council do not agree on an amount to be paid to Council subject to item 4.4 below, to meet the costs of consultants to conduct the investigations and related work required to prepare the DPA; and/or,
 - (iv) That the agreed amount is not placed in an independently managed Trust Fund at the applicants expense, or paid to Council in advance in a lump sum or in such staged payments as agreed with the Council; and/or,
 - (v) The applicant does not agree to permit Council to solely control the process of formulating and preparing the DPA.
- (b) Council will only proceed with assessing the proposal if:
- (i) The proposal is consistent with Council's Strategic Direction and key strategy documents, and;
 - (ii) The proposal will result in significant social, environmental or economic benefits as a result of the proposed rezoning or policy change;
 - (iii) Where Council has no current strategic opinion on the planning issue at hand, then the private funder undertakes to also fund required investigations to enable Council to form an opinion in that regard.

4.2 Strategic Criteria to apply in assessing a proposal for a Privately Funded DPA

In order to determine whether or not Council should proceed with a Privately Funded DPA, the DPA should be assessed against the following criteria to determine if the DPA has merit.

Strategic Criteria

- (a) The proposed policy or zoning change is consistent with the State Government's 30 Year Plan for Greater Adelaide as it pertains to the Council area.
- (b) Triple bottom line considerations (social, environmental and economic) relating to the proposed policy or zoning change.
- (c) The proposed policy or zoning change is consistent with key Council Strategic Documents e.g. Strategic Management Plan and any related Planning Policies etc.

Other Considerations

- (a) The proposed policy or zoning change is identified in Section 30 (s30) Development Plan Review or Strategic Directions Report.
- (b) The proposed DPA is contained in the Council's planning policy program.

In undertaking the assessment against the above Strategic Criteria and considerations, the following should be noted:

- (a) If the proposal is not consistent with the Strategic Criteria, or is not consistent with the State Government Planning Strategy for the District, then Council should proceed no further with the matter and should reject the offer to fund a DPA.
- (b) If the site is constrained by economic factors (e.g. the current zoning does not allow redevelopment) or infrastructure capacity is sufficient to cater for the new development and does not require significant upgrades or capital input from Council, or there are high

ranking social, environmental or economic benefits in the rezoning, then Council may support the proposed privately funded DPA.

- (c) The DPA should be consistent with Council's Strategic Directions and associated documents. In the absence of strategic direction, consideration could be given to the party funding the strategic work, if the proposed policy change ranks highly under (b).
- (d) The proposed DPA should be considered along with timing and other priorities in the planning policy program. The capacity for Council to process privately funded DPAs will be influenced by existing workloads and priorities. It is acknowledged that the full DPA process cannot be outsourced and consideration will be given to current work commitments.

4.3 Project Management and the Procurement Process

The applicant is to have no role in the selection of consultants to undertake any of the associated DPA work, or in assessing the work or findings of the consultants, in Council reviews of the consultants work, or in Council's consideration of the DPA at any point after the funding agreement has been entered into.

Council will conduct and manage the selection and procurement process for engaging of any consultants to undertake a Privately Funded DPA. The consultant(s) undertaking the privately funded DPA will report directly to Council staff, and project management of the DPA process will be undertaken by Council staff.

It should be noted that the DPA will be at all times a Council DPA, with Council's Strategic Planning & Development Policy Committee considering the DPA and making key decisions prior to the DPA being submitted to the Minister for agreement or endorsement. These key decisions in the process are the endorsement of the Statement of Intent, conducting public and agency consultation, hearing public submissions and endorsing the DPA itself for submission to the Minister for approval.

In selecting a consultant to undertake the Privately Funded DPA, an open or select tender process will be undertaken in accordance with Council's Purchasing & Procurement Policy.

4.4 Legal Arrangements

If Council agrees to proceed with the preparation of a Privately Funded DPA, then a formal Deed of Agreement shall be entered into between Council and the applicant which must outline the heads of agreement and any associated legal procedures.

The following key considerations are to be addressed in the legal agreement:

Project management

- (a) Provision to seek specific experts, as required, with related expenses to be wholly funded by the private funder for the DPA.
- (b) Provision to indicate the nature of the investigations to be undertaken in the Statement of Intent, and for the nature of the investigations stated in the SOI, and agreed with the Minister, to form the basis of the consultants brief for the actual investigations to be undertaken.
- (c) Provision to refer to the consultants brief to define the work to be undertaken by the consultants to prepare the DPA.

Procedures

- (d) There is to be no expectation that the privately funded DPA will lead to any pre-defined outcome which may benefit the private funder and that at all times the DPA will be subject to the requirements of the Development Act and Regulations.
- (e) Acknowledge that while Council may initiate the DPA, the final version of the DPA will be determined by the Minister for Planning and Urban Development, and that Council will not have control over this final version.
- (f) Acknowledge that Council reserves the right to either not proceed with the final DPA or forward it to the Minister for approval once completed.
- (g) The private funder is to acknowledge that the authorisation of the DPA incorporating the rezoning or policy change contemplated by the Deed, does not give the private funder, or any person with an interest in the property, any additional rights under the Development Act 1993. The private funder is to also acknowledge that Council must assess any development application in respect of the subject land in accordance with the current development control procedures outlined in the Development Act 1993.
- (h) The Statement of Intent and draft DPA must clearly state, at the beginning of the document, that the DPA is a Privately Funded DPA.
- (i) It is to be acknowledged that the private funder has no right to control or direct any process in the preparation of, or investigations required to inform, the DPA, other than a through a written submission during the public consultation process.

Financial Management

- (j) The dollar figure of the financial contribution that will be provided by the private funder to Council to prepare the draft DPA should be expressed as a maximum figure. Further, it is agreed that any increases to this figure during the DPA formulation process shall be by mutual agreement.
- (k) The payment schedule for the consultant undertaking the DPA will be devised to minimise the financial risk to Council.
- (l) If scheduled payments are not received by Council from the private funder, work on the project will immediately cease.
- (m) For higher value DPA's, payment in advance or a bank guarantee may be required.
- (n) The private funder shall pay the full cost of consultants to prepare the DPA and shall also contribute an additional 20%, or more as agreed, of the DPA cost, depending on complexity and the level of Council staff involvement towards the project management of the DPA process, to ensure a cost neutral outcome to Council.

Legal Issues

- (o) The private funder will fund any legal costs associated with preparation of the Deed of Agreement, as well as any legal costs associated with the preparation of the DPA, including the preparation of any legal arrangements, legal review, legal proceedings or judicial review proceedings in relation to the DPA process.

4.5 Privately Funded Development Plan Amendments Flow Chart

The following flow chart outlines the process for consideration of a Privately Funded DPA.

