


# *Council Policy*

## Privately Funded (Council-led) Code Amendments



# COUNCIL POLICY

 <b>Adelaide Hills</b> COUNCIL	<b>Privately Funded (Council-led) Code Amendments</b>
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<b>Policy Number:</b>	<b>Dev-10</b>
<b>Responsible Department(s):</b>	<b>Development and Regulatory Services</b>
<b>Relevant Delegations:</b>	<b>As per the Delegations Register and as detailed in this Policy</b>
<b>Other Relevant Policies:</b>	<b>Nil</b>
<b>Relevant Procedure(s):</b>	<b>Nil</b>
<b>Relevant Legislation:</b>	<b>Planning , Development &amp; Infrastructure Act 2016</b>
<b>Policies and Procedures Superseded by this policy on its Adoption:</b>	<b>Nil</b>
<b>Adoption Authority:</b>	<b>Council</b>
<b>Date of Adoption:</b>	<b>28 September 2021</b>
<b>Effective From:</b>	<b>28 September 2021</b>
<b>Minute Reference for Adoption:</b>	<b>Item 12.4, 208/21</b>
<b>Next Review:</b>	<b>No later than October 2024 or as required by legislation or changed circumstances</b>

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## Version Control

Version No.	Date of Effect	Description of Change(s)	Approval
1.0	28/09/2021	New Policy	Council

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## PRIVATELY FUNDED (COUNCIL-LED) CODE AMENDMENT POLICY

### 1. INTRODUCTION

- 1.1 Section 73(2) of the Planning Development & Infrastructure Act 2016 (PDI Act) allows a range of designated entities to propose to amend a designated instrument including the Planning and Design Code (the Code).
- 1.2 Section 73(9) of the PDI Act allows Councils to enter into agreement with a person for the recovery of costs incurred in relation to a Code Amendment.
- 1.3 This Policy outlines the process which will be applied by the Council in determining how to respond to a request for a privately funded Council-led Code Amendment, as well as the process for undertaking and recovering costs associated with the Code Amendment, should the Council resolve to proceed.
- 1.4 This Policy Applies in addition to any other statutory requirements or processes relating to Code Amendments which may apply, including but not limited to requirements outlined in:
  - 1.4.1 Planning Development and Infrastructure Act 2016 (The Act)
  - 1.4.2 Planning Development and Infrastructure (General) Regulations 2017 (the Regulations)
  - 1.4.3 Practice Direction 2 – Preparation and Amendment of Designated Instruments (Practice Direction)
  - 1.4.4 State Planning Commission – Community Engagement Charter

### 2. OBJECTIVES

- 2.1 To establish a consistent and transparent process for dealing with requests for privately funded Council-led Code Amendments and should the Council elect to proceed with such a request, the process for conducting and recovering costs for the Code Amendment.

### 3. DEFINITIONS

- 3.1 **“Applicant”** - a person or entity requesting that the Council enter into a privately-funded Code Amendment
- 3.2 **“private funder”** - an Applicant, if and when the Council has resolved to proceed with the Code Amendment process
- 3.3 **“third party”** -a person or entity other than the Adelaide Hills Council, including but not limited to the State Planning Commission, the Minister for Planning and Local Government, another Council(s), a private land owner or developer, or other agency or entity
- 3.4 **“adjacent land”** - land which is abutting the Adelaide Hills Council Local Government Area boundary or is separated only by a road, reserve or similar

## **4. POLICY STATEMENT**

### **Requests to Conduct a Privately Funded Code Amendment**

- 4.1 Requests for Council to undertake a privately funded Code Amendment must be made in writing to the Chief Executive Officer. The request must provide a Statement of Justification outlining the need for a privately funded Code Amendment and will include:
- 4.1.1 Identification of the land subject to the Code Amendment
  - 4.1.2 Identification of the current ownership of the subject land, and if the applicant is not the owner, the applicant's relationship to the land
  - 4.1.3 The reason why Council is being asked to undertake the Code Amendment
  - 4.1.4 The outcomes being sought by the policy change proposed in the Code Amendment
  - 4.1.5 Analysis of the proposal against the Principles outlined in 4.4 below, and
  - 4.1.6 Acknowledgement of the requirements to enter into a Deed of Agreement prior to the commencement of investigations, and to fund the costs associated with the Code Amendment.
- 4.2 The Council may request the applicant to provide other information in addition to the Statement of Justification in support of the proposal. Any response to a Council request will be at the expense of the private funder.

### **Principles for Considering a Privately Funded Code Amendment**

- 4.3 In determining whether or not the Council should enter into an agreement for a privately funded Code Amendment, the Council will first consider the strategic merits of the proposed Code change, including (but not limited to):
- 4.3.1 Whether the intent of the Code Amendment aligns with the relevant State Planning Policies, the relevant Regional Plan (including the current 30 Year Plan for Greater Adelaide in the absence of any Regional Plan established under the Act) and any relevant Subregional plan, including whether the affected area has been spatially identified in the Regional Plan as appropriate for the intended change.
  - 4.3.2 Whether the intent of the Code Amendment aligns with the Council's strategic objectives and any other relevant Council strategies, plans, policies or design frameworks and guidelines.
  - 4.3.3 Whether the proposed policy change has considerable social, economic and/or environmental impact or merit.
  - 4.3.4 Whether the proposed policy change will affect a broad or limited cross section of the community.
  - 4.3.5 Whether the existing Planning and Design Code policies unnecessarily restrict appropriate development on the site and/or are considered out of date and in need of review.
- 4.4 If the Council considers the intent of the Code Amendment demonstrates strategic merit in line with the above principles, the Council will then consider the resourcing and logistical implications of the intended Code Amendment, including (but not limited to):

- 4.4.1 The Council's capacity to undertake the Code Amendment including the required timing and administrative/management resources.
- 4.4.2 The feasibility of the Applicant undertaking their own Code Amendment and any potential benefits or implications of the Council conducting the Code Amendment rather than the Applicant.
- 4.4.3 Whether the Minister has previously considered the same or similar Code Amendment request and the outcome of that consideration.
- 4.4.4 The level of potential risks to the Council in proceeding with the Code Amendment

### **Consideration and Management of Requests**

- 4.5 A decision to proceed with or reject a request to undertake a privately-funded Council-led Code Amendment will be the decision of the Council.
- 4.6 The Council is not obligated to undertake a Code Amendment as requested or in the form requested by the Applicant.
- 4.7 The reasons for proceeding with or rejecting a proposed privately-funded Code Amendment will be provided in writing to the Applicant.

### **Obligations of Council and the Private Funder**

- 4.8 If the Council agrees to proceed with the Code Amendment and the Applicant agrees to enter into a Deed of Agreement and fund the costs associated with the Code Amendment, then:
  - 4.8.1 The Council becomes the proponent for the entirety of the Code Amendment process, and
  - 4.8.2 The Applicant becomes the private funder.
- 4.9 The Council will manage the Code Amendment process as outlined in Section 73 of the Act (subject to any alternative arrangements as agreed between the Council and the private funder on a case by case basis).
- 4.10 The Council maintains ultimate control of the Code Amendment process and reserves the right to cease proceeding with the Code Amendment at any stage without entitlement for the private funder to recover costs.
- 4.11 The Council does not and cannot give any assurances as to the outcome of the Code Amendment.
- 4.12 At all stages the Code Amendment documentation will declare the private funding arrangement.

### **Funding and Legal Arrangements**

- 4.13 To facilitate the process and to detail the obligations of each party, the Council will require an agreement be entered into between the Council and the private funder before submitting the Code initiation documentation to the Minister. The Council will determine the form of the agreement, which may include the following terms and provisions:
  - 4.13.1 the roles of the parties, legal requirements and procedures, and project and financial management

- 4.13.2 detail of the Code Amendment including the area to be covered, the purpose of the Amendment and what the investigations will encompass
- 4.13.3 that the Council maintains control of the Code Amendment process, in that key stages are presented to the Council for consideration and endorsement prior to proceeding with the next stage
- 4.13.4 that the management of the process will be undertaken according to Council priorities, meeting schedules and timeframes
- 4.13.5 that the Council may outsource part(s) of the process to a suitably qualified consultant engaged through the Council's procurement policy
- 4.13.6 that the ultimate decision to approve or refuse the Code Amendment rests with the State Planning Commission and the Minister
- 4.13.7 detail what may happen if the Code Amendment is either not approved, or approved with amendments that may not suit the private funder
- 4.13.8 the Code Amendment process will proceed at the expense of the private funder, including any legal costs associated with the process including drafting the legal agreement, legal review, legal proceedings or judicial review proceedings.
- 4.13.9 the payment schedule for undertaking the Code Amendment will be devised to minimise the financial risk to Council
- 4.13.10 that the Council may request a deposit, payment in advance or a bank guarantee where required
- 4.13.11 scheduled payments should coincide with milestone commencement. Where a scheduled payment is not received by Council from the private funder, work on the project will immediately cease.

## **5. DELEGATION**

- 5.1 The Chief Executive Officer has the delegation to:
- Approve, amend and review any procedures that shall be consistent with this Policy; and
  - Make any formatting, nomenclature or other minor changes to the Policy during the period of its currency.

## **6. AVAILABILITY OF THE POLICY**

- 6.1 This Policy will be available for inspection at the Council's Offices during ordinary business hours and via the Council's website [www.ahc.sa.gov.au](http://www.ahc.sa.gov.au). Copies will also be provided to the public upon request, and upon payment of a fee in accordance with the Council's Schedule of Fees and Charges.