

	<h2>Privately Funded Development Plan Amendments Policy</h2>	<b>Version No:</b>	1.0
		<b>Issued:</b>	July 2017
		<b>Last Review:</b>	18 July 2017
		<b>Next Review:</b>	February 2020

Name of Council	Wudinna District Council
File reference	9.63
Responsibility:	Governance
Minutes reference:	10.7.1a
Next review date:	Council will endeavour to review this policy every three years or upon Legislative change.
Applicable Legislation:	<i>Development Act 1993</i> (Sections 24 and 25) and Local Government Act 1999
Related Policies and Procedures:	Council Procurement Policy/Procedure

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## 1. PREAMBLE

A Development Plan Amendment (DPA) is the 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 a Development Plan.

The need to amend and update Council's Development Plan can arise due to several factors including:

- Direction from the State Government Planning Strategy
- Recommendations made through Council strategic reports and documents
- Recommendations made in a study that Council has undertaken
- A request from an Elected Member, Council, landowner or stakeholder
- The need to address an issue or improve a policy that is identified by staff or the Council Development Assessment Panel as being inadequate

A Council led amendment can only be initiated upon endorsement of a Statement of Intent (SOI) by Council, and agreement to the SOI by the Minister for Planning.

An up to date Development Plan is important in ensuring that the Council grows in an orderly and economically, socially and environmentally sustainable manner. The Council recognises the importance of its Development Plan being adaptable and responsive and the role it plays in enabling the objectives of its Council 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 Council.

Current State Government strategies and Development opportunities identify the Wudinna District Council as a location for significant infrastructure investment and future population and employment growth. To facilitate this growth it is likely that updates and improvements will be required to the Development Plan policy.

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## 2. SCOPE

The *Development Act 1993* only authorises the Minister or a Council to prepare a DPA. There is, however, no prohibition in the Act on the funding of a DPA by a third party.

Privately Funded DPAs are one model that can be used to complement Council and State Government funded DPAs to ensure Council's Development Plan is capable of facilitating future development in an appropriate and sustainable manner. However, it is important to consider how these DPA's fit within the overall strategic objectives of the District and that they are prioritised accordingly given the resources available.

The DPA process is a statutory process undertaken pursuant to the provisions of the *Development Act 1993* and involves the Minister for Urban Development and Planning, 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 Council or State Government support for the rezoning proposal. Applicants have no right of appeal.

## 3. POLICY PURPOSE/OBJECTIVES

- This policy applies when a third party seeks to prepare a DPA in a privately funded arrangement with Council
- Council will require the DPA to be peer reviewed by an independent Planning Consultant with the peer review costs to be borne by the third party funding the DPA
- A project management fee is payable by the proponent to Council for management of the DPA process.

This policy seeks to set out the requirements and process.

## 4. DEFINITIONS

- DPA – Development Plan Amendment
- Third Party – the party funding the preparation of the DPA (other than Council or the Minister for Urban Development and Planning)

## 5. POLICY STATEMENT

In order to determine whether or not Council should proceed with a Privately Funded DPA, the DPA proposal will be assessed against the following criteria:

- a) The proposed policy change is consistent with the State Government's Planning Strategy for Eyre and Western Region, the Housing and Employment Land Supply Program, and aligns with key directions for State Significant Areas (if applicable)
- b) The proposed policy change is consistent with Council Strategic Documents such as the Community Plan and Corporate Plan and the like and any other proposed or current Development Plan Amendments
- c) The proposed policy change has considerable social, economic and/or environmental merit
- d) The zoning is outdated and not in alignment with the other policy directions of the State and Council resulting in appropriate development being restricted on the land which could otherwise occur having regard to these criteria.
- e) The proposed policy change is identified in, or consistent with, recommendations in Council's Section 30 Development Plan Review or Strategic Directions Report. Alternatively, where the proposed policy change is not identified, or consistent with those documents, there are nevertheless compelling reasons for proceeding with a DPA.
- f) Whether the proposed DPA 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.

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In requesting Council's endorsement to proceed with a Privately Funded DPA a 'Statement of Justification' should be submitted by the third party which outlines the level of consistency with the above strategic criteria (a) through (e), and clearly outlines the policy outcome that is being sought.

Council will then make an assessment of 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 the Statement of Intent which is required for the agreement of the Minister for Planning to begin the DPA. Council has the right to reject a proposed DPA.

The reasons for proceeding with, or rejecting, a proposed Privately Funded DPA will be recorded and communicated with the requesting party.

### 5.1 Project Management and the Procurement Process

- 1) A Privately Funded DPA will require a Peer Review.
- 2) The cost of the Peer Review will be borne by the third party funding the DPA, and paid into a fund as directed by Council.
- 3) If Council agrees to proceed with a Privately Funded DPA, the third party will engage a suitably qualified consultant who meets the requirements of the Development Act and Regulations to prepare the draft Statement of Intent and DPA.
- 4) Council will engage a suitably qualified and independent consultant who meets the requirements of the Development Act and Regulations to undertake a Peer Review of the draft DPA.
- 5) The Peer Review will:
  - a. Review the draft DPA against the Statement of Intent agreed by the Minister for Planning, and provide advice regarding the adequacy of policy content and general appropriateness of the DPA
  - b. Review the Government Agency Consultation responses to the draft DPA and policy changes as a result of the Consultation; and
  - c. Review the Public Consultation responses to the draft DPA and policy changes as a result of the Consultation.
- 6) 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 funding party which could affect, or be perceived to affect, the consultant's independence.
- 7) The capacity for Council to process a Privately Funded DPA will be influenced by Council's other policy priorities, and projected timing will be estimated accordingly. It is acknowledged 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 DPAs will be managed according to Council priorities and subsequent timeframes.
- 8) The consultant undertaking the peer review will report directly to Council staff.
- 9) Council maintains ultimate control of the DPA, and key stages will be presented to Council for consideration, prior to being submitted to the Minister for Planning for agreement or endorsement.
- 10) 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.
- 11) Preparation of the DPA will not commence until such time as a notice of agreement has been received from the Minister for Planning to the Statement of Intent.

### 5.2 Payment and Legal Arrangements

- 1) A legally binding Deed between Council and the third party funding the DPA will be prepared which will outline agreement and legal procedures. The Deed will be executed upon approval of the SOI by the Minister for Planning.

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- 2) The legal agreement will contain details of 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) Defines in detail the nature of the DPA including the area to be covered, the purpose of the DPA and what the DPA investigations will encompass (the DPA principles)
  - c) Details the responsibilities of each of the parties in relation to preparation of the SOI, draft DPA, undertaking investigations, preparation of consultation materials etc.
  - d) An acknowledgment by the party funding the DPA that it is a Council document and as such may be amended at the direction of Council;
  - e) An acknowledgment by the third party that Council may choose to not proceed with the DPA at any stage;
  - f) An acknowledgement by the third part that timing and processing of the DPA will be dependent upon the timing and priorities of other Council projects and the availability of staff resourcing;
  - g) An acknowledgment by the third party and the Council that while the Council may initiate a DPA, ultimately the decision on its authorisation is a decision of the Minister for Planning, and not the Council, and that the Council has no control over this process;
  - h) Details of what happens if the DPA is either not authorised by the Minister or authorised with amendments that do not suit the interest of the third party (essentially it should be agreed that the person funding the DPA must accept that scenario and still be responsible for the cost of the DPAs preparation);
  - i) Agreement that the third party will 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;
  - j) Acknowledgement that Council may require additional investigations to be undertaken, beyond those identified in the Statement of Intent, and may charge the third party for the cost of these additional investigations.
  - k) Acknowledgement 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 Privately Funded DPA.
  - l) The third party will pay the full cost of the peer review, and the appropriate project management fee as determined (see below).

### 5.3 Project Management Fee

- 1) The third party will pay to Council a project management fee to cover a portion of the Council resourcing costs for management of the DPA process. The project management fee will be a fixed rate, based on the scope and complexity of the DPA and the estimated hours of input required of Council Staff. This will be determined by the Chief Executive Officer, once the SOI 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 of Agreement, with the first payment payable upon SOI approval by the Minister. The DPA may not proceed until payment is received.

## 6. AVAILABILITY OF POLICY

This Policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website [www.wudinna.sa.gov.au](http://www.wudinna.sa.gov.au). Copies will also be provided to interested members of the community upon request and upon payment of a fee in accordance with Council's Schedule of Fees and Charges.