

	<h2>Privately Funded Planning &amp; Design Code Amendments Policy</h2>	<b>Version No:</b>	2.1
		<b>Issued:</b>	July 2017
		<b>Last Review:</b>	November 2021
		<b>Next Review:</b>	October 2022

Name of Council	Wudinna District Council
GDS40 File reference	5.8
Responsibility:	Strategic Management
Minutes reference:	10.4.1 – 16 November 2021
Next review date:	Council will endeavour to review this policy every three years or upon Legislative change.
Applicable Legislation:	Planning, Development and Infrastructure Act 2016 (Section 73) Planning and Design Code Government of South Australia DIT – Amending the Planning and Design Code Introductory Guide, November 2019 Practise Direction 2 – Preparation and Amendment of Designated Instruments Initiating and Establishing an Infrastructure Scheme: A Toolkit for Practitioners – December 2018
Related Policies and Procedures:	Council Procurement Policy/Procedure

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**1. PREAMBLE**

The Planning, Development and Infrastructure Act 2016 sets out the Code (The Planning and Design Code) amendment process under which designated entities will be able to commence an code amendment.

A wide range of proponents can initiate a Code amendment in addition to the Commission and a council:

- The Chief Executive of the Department
- An agency or instrumentality of the Crown
- A joint planning board
- A scheme coordinator
- A provider of essential infrastructure (private proponent)
- A person who has an interest in the land - where the person is seeking to alter the way in which the Code affects that land (private proponent).

A Council led proposal to amend a designated instrument may be initiated with the approval of the Minister acting on the advice of the Commission. A Code amendment must comply with the State Planning Policies (SPPs) and recommendations of regional plans. Joint planning boards or the Commission where there is no joint planning board will prepare regional plans. These plans provide direction for local level planning and development based on a long-term vision (15 to 30 years) and establish a framework for the management of regional infrastructure and the public realm. The plans also make recommendations about the application and operation of the Code for specific areas. Where SPPs can be spatially applied, it is intended that state interests will be mapped within regional plans.

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## 2. SCOPE

The Planning and Design Code (the Code) is a fundamental cornerstone of the Planning, Development and Infrastructure Act 2016 (the Act). It consolidates the planning policies contained in development plans into one set of planning rules thereby enabling a more efficient and useable planning system.

The Act sets out the Code amendment process under which designated entities will be able to commence a Code Amendment. Proponent A proposal to amend a designated instrument may be initiated by council with the approval of the Minister, acting on the advice of the commission.

Council as designated entity may enter into an agreement with a person for the recovery of costs incurred by the designated entity in relation to an amendment of the Planning and Design Code or a design standard under section 73(9) of the Act subject to certain requirements. Privately Funded code amendments are one model that can be used to complement Council and State Government funded Code Amendment to ensure the Planning and Design Code is capable of facilitating future development in an appropriate and sustainable manner. However, it is important to consider how these Code amendments fit within the overall strategic objectives of the District and that they are prioritised accordingly given the resources available.

The Act requires that the Minister be responsible for approving the initiation of Code amendments after consideration of advice from the Commission. Code Amendment is a statutory process undertaken pursuant to the provisions of the *Planning, Development and Infrastructure Act 2016* and involves the Minister for Planning, various State authorities and the engagement process for all Code amendments must comply with the Community Engagement Charter. It is a lengthy statutory process and proponents should be aware that Council cannot provide any assurances as to the outcome, Council is not required to consider undertaking a Code amendment as requested by a proponent at all or in the form requested and there is no guarantee of Council or State Government support for the proposal. Applicants have no right of appeal.

## 3. POLICY PURPOSE/OBJECTIVES

- This policy applies when a provider of essential infrastructure or a person who has an interest in the land may approach a council to undertake a Code amendment on their behalf.
- Council may require private proponents to engage a planning consultant to seek advice about initiating a Code Amendment and the preparation of the initiation proposal. It is also likely that council, other entities and the Department will utilise the assistance of planning consultants when preparing a Code amendment and/or may require the Code amendment to be peer reviewed by an independent Planning Consultant with the peer review costs to be borne by the proponent.
- Council as designated entity may enter into an agreement with a person for the recovery of cost incurred by the designated entity in relation to an amendment of the Planning and Design Code or a design standard under section 73(9) of the Act.

This policy seeks to set out the requirements and process.

## 4. DEFINITIONS AND MEANINGS

- Code – Planning and Design Code
- the Act – Planning, Development and Infrastructure Act 2016
- SPPs – State Planning Policies
- Private proponent – a provider of essential infrastructure (private proponent) and/or a person who has an interest in the land; where the person is seeking to alter the way in which the Code affects that land (private proponent). Code Amendment Scheme coordinator – oversees infrastructure schemes

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### 5. POLICY STATEMENT

The Council may seek to initiate a privately funded Code amendment having regard to the following criteria but not limited thereto:

- 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 Code 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 Code Amendment.
- f) Whether the proposed Code amendment 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.

In requesting Council's endorsement to proceed with a Privately Funded Code Amendment a 'Statement of Justification' should be submitted by the proponent 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 may then make an assessment of the 'Statement of Justification', may 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 Code Amendment. Council has the right to reject and not consider undertaking a proposed Code Amendment and at any stage.

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

#### 5.1 Project Management and the Procurement Process

- 1) A Privately Funded Code Amendment will require a Peer Review.
- 2) The cost of the Peer Review will be borne by the proponent funding the Code Amendment, and paid into a fund as directed by Council.
- 3) If Council agrees to proceed with a Privately Funded Code Amendment, the proponent will engage a suitably qualified consultant who meets the requirements of the PDI Act 2016 and Regulations to prepare the draft Statement of Intent and Code Amendment.
- 4) Council will engage a suitably qualified and independent consultant who meets the requirements of the PDI Act 2016 and Regulations to undertake a Peer Review of the draft Code Amendment.
- 5) The Peer Review will:
  - a. Review the draft Code Amendment 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 Code Amendment;
  - b. Review the Government Agency Consultation responses to the draft Code Amendment and policy changes as a result of the Consultation; and
  - c. Review the Public Consultation responses to the draft Code Amendment and policy changes as a result of the Consultation.

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- 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 Code Amendment will be influenced by Council's other policy priorities, and projected timing will be estimated accordingly. It is acknowledged 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 Code Amendments 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 Code Amendment, 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 Code Amendment but has sought independent advice.
- 11) Preparation of the Code Amendment 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 proponent funding the Code Amendment 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.
- 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 Code Amendment including the area to be covered, the purpose of the Code Amendment and what the Code Amendment investigations will encompass (the Code Amendment principles)
  - c) Details the responsibilities of each of the parties in relation to preparation of the SOI, draft Code Amendments, undertaking investigations, preparation of consultation materials etc.
  - d) An acknowledgment by the party funding the Code Amendment that it is a Council document and as such may be amended at the direction of Council;
  - e) An acknowledgment by the proponent that Council may choose to not proceed with the Code Amendment at any stage;
  - f) An acknowledgement by the third part that timing and processing of the Code Amendment will be dependent upon the timing and priorities of other Council projects and the availability of staff resourcing;
  - g) An acknowledgment by the proponent and the Council that while the Council may initiate a Code Amendment, 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 Code Amendment is either not authorised by the Minister or authorised with amendments that do not suit the interest of the proponent (essentially it should be agreed that the person funding the Code Amendment must accept that scenario and still be responsible for the cost of the Code Amendments preparation);
  - i) Agreement that the proponent will fund any legal costs associated with preparation of the Code Amendment, including legal review, legal proceedings or judicial review proceedings in relation to the Code Amendment process;

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- j) Acknowledgement that Council may require additional investigations to be undertaken, beyond those identified in the Statement of Intent, and may charge the proponent 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 Code Amendment.
- l) The proponent 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 proponent will pay to Council a project management fee to cover a portion of the Council resourcing costs for management of the Code Amendment process. The project management fee may be a fixed rate, based on the scope and complexity of the Code Amendment 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 Code Amendment 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.