

TITLE: PRIVATELY FUNDED CODE AMENDMENT POLICY

1. PURPOSE

This policy has the following purpose;

- To ensure an open and transparent process for accepting private funds for investigations into potential planning policies and/or the preparation of amendments to the *Planning and Design Code*, including addressing any potential conflicts of interest.
- To ensure adherence to the legislated requirement outlined in the *Planning, Development and Infrastructure Act* (2016) for the rationale and processing of Code Amendments, and
- To mitigate any risks to Council associated with receiving private funds associated with preparation of a Code Amendment

2. SCOPE

This Policy is applicable to Elected Members, Council's internal staff, Developers and Land owners.

3. DEFINITIONS

For the purpose of this policy:

- "Act" is the Planning, Development and Infrastructure Act 2016.
- "Charter" means the Community Engagement Charter.
- "Code" means the Planning and Design Code under the Act
- "Code Amendment" means an amendment to the Planning and Design Code.
- "Commission" means the State Planning Commission under the Act.
- "Consultants" means a company or person(s) engaged by Council to provide assets, goods, works or services.
- "Council" means the Mount Barker District Council.
- "Department" means the Attorney General's Department.

- “Designated entity” means a person or entity authorised or approved to prepare a draft of a proposal to amend the Code (as listed in Section 73 (2) of the Act).
- “Minister” means the Minister for Planning and Local Government.
- “Policy” is a Council policy
- “Privately Funded Code Amendment” is defined as when a third party funds the investigation of work and/or drafts the Amendment required to change the Planning and Design Code zoning, policies and or mapping.
- “Private Proponent” means a provider of essential infrastructure or a person who has a legal or beneficial interest in the land.

4. ROLES & RESPONSIBILITIES

Council:

- Approve and adopt/update policy

Manager Strategic and Community Planning:

- Update Policy as required in accordance with legislative changes

5. POLICY PRINCIPLES

This policy adheres to the following principles;

- Payment of private funds to Council for investigations into planning policies should be separated from the Code Amendment process.
- The private proponent should cover all costs in the initiation, preparation and authorisation of the Proposal to Initiate, the draft Code Amendment, Engagement Plan (under the Charter), peer review, Engagement Report, legal agreements and any court costs associated with legal challenges.
- The legal agreement between Council and the private proponent should state that a private proponent is funding an open and transparent process which provides no guarantee that the private proponent will receive any advantage from the Code Amendment.
- At all stages the Code Amendment should declare the private funding through the public release of the legal agreement via inclusion in the Proposal to Initiate and the Code Amendment.
- Council will maintain control, independence and planning professionalism in the Code Amendment process, and ensure the investigations are impartial and conducted by professional and qualified person.
- Council can at any time withdraw the Code Amendment.
- Only Code Amendments with a strategic context should be pursued.

6. POLICY STATEMENT

The preparation and maintenance of the Code is the responsibility of the Commission, however a number of designated entities can propose changes to the Code.

Code Amendments can range from minor technical changes to a significant re-zoning or policy change, which affects the development potential of a site or area.

A landowner or infrastructure provider (a private party) has three options when considering a Code Amendment:

1. Undertake their own Code Amendment;
2. Request the Attorney-General's Department to undertake a Code Amendment on their behalf; or
3. Enter into a privately-funded Code Amendment arrangement with the Council (as per Section 73(9) of the Act).

It is important to note that in option 3 the Council is the designated entity for undertaking the Code Amendment rather than the private party (as in option 1).

6.1 Request to undertake a privately funded Code Amendment

Prior to pursuing a privately funded Code Amendment a private proponent must submit a Statement of Strategic Context to enable Council to determine whether to proceed with the venture. These statements should be forwarded to the General Manager of Council's Planning and Development Department.

This Statement must be prepared by a qualified professional who meets the requirements of a level 1 Accredited Professional.

The statement of strategic context must include:

1. Identification of the land (subject area) and the ownership details / arrangements
2. An outline of the issue needing to be addressed,
3. An outline of the proposed amendment to the Code Plan,
4. A statement of how the proposed amendment relates to Council's last Strategic Directions Report or Regional Plan,
5. A statement of how the proposed amendment relates to social, economic and environmental issues,
6. A statement of how the proposed amendment relates to the State Government's 30 Year Plan for Greater Adelaide and Planning Strategy,
7. Any other matters determined by Council as relevant.

6.2 Assessment of proposal

The Statement of Strategic Context will be assessed by Council's Planning staff on its merits against the seven criteria outlined within procedure 6.1, and presented to Council for determination as to whether the request should proceed or be refused (see attachment 1 – Privately Funded Code Amendment Process).

The reasons for proceeding with or rejecting a proposed privately funded Code Amendment will be recorded and communicated with the private proponent.

6.3 Legal agreement and project cost estimates

Prior to pursuing a privately funded Code Amendment a private proponent must sign a legal agreement drafted by Council. The agreement will include details of the following:

1. The nature of the arrangements and agreed figure on the cost of preparing the Code Amendment and peer review, and the time when payment is to be made;
2. Defines in detail the nature of the Code Amendment including the area to be covered, the purpose of the Code Amendment and what the investigations will encompass (the principles);
3. An acknowledgement by the party funding the Code Amendment that the Code Amendment will be prepared at the direction of Council and that the party funding the Code Amendment will have no right to control or direct the progress or form of the Code Amendment apart from making written submissions to the Council as a part of the consultation process;
4. An acknowledgement by the Council that it will use its best endeavours and strive to achieve authorisation of the Code Amendment which incorporates the agreed principles, cognisant of the timing of other Council policy priorities;
5. An acknowledgement by the third party and the Council that while the Council may initiate a Code Amendment, ultimately the decision on its authorisation is a decision by the Minister and not the Council, and that the Council has no control over this process;
6. 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 third party;
7. Agreement that the third part will fund any legal costs associated with the preparation of the Code Amendment, including legal review, legal proceedings or judicial review proceedings in relation to the Code Amendment process;
8. Acknowledgment that the deed shall not in any way affect Council's standing as the relevant authority to assess application for development approval in respect of land affected by a Privately Funded Code Amendment.

6.4 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 third party 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 third party will engage a suitably qualified consultant who has the qualifications and experience that is equivalent to a Accredited Professional – Planning Level 1 to prepare the draft Code Amendment.
4. Council will engage a suitably qualified and independent consultant (equivalent to a Accredited Professional – Planning Level 1) to undertake a Peer Review of the draft Code Amendment.
5. The Peer Review will;
 - a. Review the draft Code Amendment against the Proposal to Initiate agreed by the Minister; and
 - b. Review 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
6. Selection of a consultant to undertake the peer review will be undertaken by the Council 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.
8. The consultant undertaking the peer review shall report directly to appropriate Council Staff.
9. Council maintains ultimate control of the Code Amendment, and key stages will be presented to Council for consideration, prior to it being submitted to the Minister for agreement or endorsement.
10. At all stages the Code Amendment will declare the private funding through the public release of the legal agreement via inclusion in the Proposal to Initiate and Code Amendment.
11. Council reserves the right to cease proceeding with a Privately Funded Code Amendment at any stage.

7. TRAINING / EDUCATION

N/A

8. DOCUMENT REVIEW

This Policy will be reviewed:

- every three years; or
- earlier in the event of changes to legislation or related Policies and Procedures or ;
- if deemed necessary by the Manager, Strategic and Community Planning.

9. FURTHER INFORMATION

For further information on this Policy, please contact:

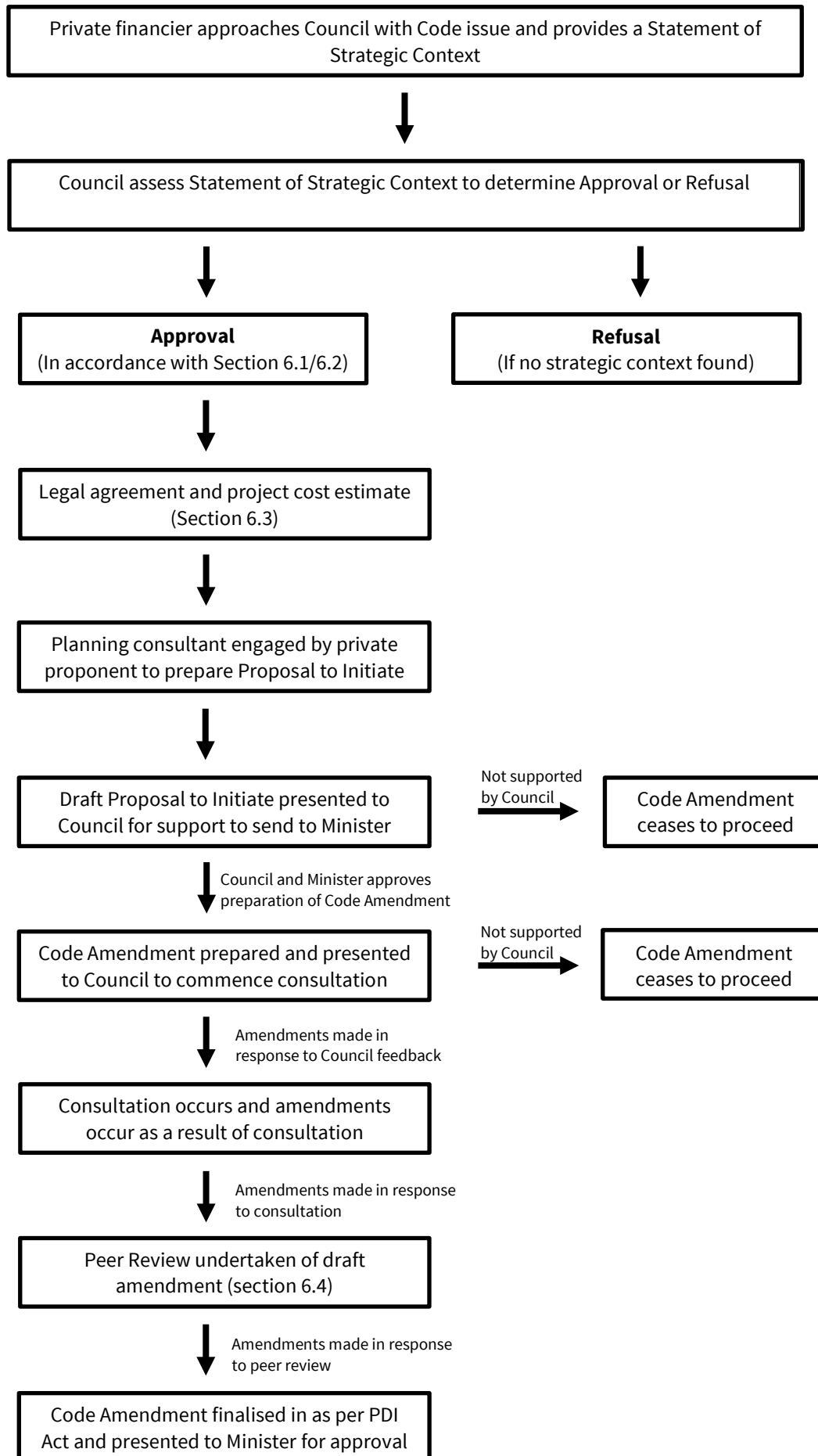
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Attachment 1 – Process for Privately Funded Code Amendments



REFERENCE NUMBER	DOC/21/166925		
PREVIOUS DOCUMENT NUMBER:	DOC/18/74194		
INTERNAL GOVERNANCE:			
Author	Name Glenn Searle	Title Senior Strategic Planner	Date 6/10/21
Responsible General Manager:	Marc Voortman	General Manager Planning and Community	October 2021
Reviewed by CEO	Andrew Stuart		October 2021
REVIEWED BY CGG			Date of Meeting
APPROVED BY (DOCUMENT OWNER):	Council		
	OM20211101.15	1 November 2021	
APPLICABLE LEGISLATION AND RELATED DOCUMENTS:	Planning, Development and Infrastructure Act 2016 Local Government Act 1999 Planning, Development and Infrastructure General Regulations 2017 Practice Direction 2 – Preparation and Amendment of Designated Instruments Community Engagement Charter		
MOUNT BARKER 2035 – DISTRICT STRATEGIC PLAN REFERENCE:	Economic Prosperity EP Goal 3: Add value to the growth of the district by exploiting new economy opportunities aligned with the key strengths of liveability, sustainability and low emissions.		
REVIEW CYCLE	It is recognised that from time to time circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively. Examples include a change to the name of a Council department, a change to the name of a State or Federal Department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be by resolution of Council (if statutory) or the Chief Executive Officer (if administrative).		
NEXT REVIEW DATE	November 2024		
DOCUMENT HISTORY:			
DOCUMENT VERSION	DATE	AUTHOR (PERSON TO WHOM CHANGES ARE TO BE RECOMMENDED)	NATURE OF CHANGE
VERSION 1.0	November 2021	Glenn Searle	

VERSION 2.0	26 August 2022	Glenn Searle	Updated document management details
DOCUMENT LOCATION:	Council website 26 August 2022 Available for inspection, downloading or printing from our website www.mountbarker.sa.gov.au		
	This Policy is available for inspection, during business hours at: Mount Barker District Council, Level 1, 6 Dutton Road, Mount Barker		