

Third Party and Privately Funded Code Amendment Policy



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Other key internal stakeholders	
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PREAMBLE

The Planning and Design Code (the Code) is the designated instrument under the *Planning, Development and Infrastructure Act 2016* (PDI Act) containing the state-wide planning rules that guide what can and cannot be developed in a particular area. Planning authorities use these rules to assess development applications.

In addition to the State Planning Commission (the Commission), a wide range of Proponents can initiate an amendment to the Code through the Code Amendment process, including:

- a. A council
- b. The Chief Executive of the Attorney-General's Department
- c. A Government agency or instrumentality of the Crown
- d. A Joint Planning Board
- e. An Infrastructure Scheme Coordinator
- f. A provider of essential infrastructure (which may also be a private proponent such as a telecommunications carrier or energy company)
- g. A person who has interest in the land where the person is seeking to alter the way in which the Code affects the land (a private proponent such as a developer or landowner).

Once the initiation has been approved by the Minister of Planning (the Minister), all proponents can undertake the Code Amendment process with the exception of Private Proponents. The Chief Executive of the Attorney General's Department is responsible for the Code Amendment process for private proponents.

A private proponent may also approach Council to undertake a Code Amendment on their behalf. If it agrees, Council will become the proponent for the Code Amendment. Council is able to conduct privately-funded Code amendments and seek to recover its costs in accordance with this policy.

Council may also be consulted at various stages in the Code Amendment process initiated by third party proponents, for example:

- a. One of the requirements in relation to initiating a Code Amendment for all proponents in section 73 of the Act is to demonstrate that the proposal has been discussed with the relevant council.
- b. All Code Amendments no matter which entity initiates the process, must undergo community engagement in accordance with the Community Engagement Charter. Council will therefore have the opportunity to make a submission during the engagement period.
- c. The Environment, Resources and Development Committee (ERDC) of Parliament must consult the relevant council/s if it resolves to suggest an amendment to the Minister.

1. PURPOSE

This Policy provides guidance in relation to:

- a. The consideration of requests from private proponents for Council to conduct a privately-funded Code Amendment on their behalf
- b. Council's requirements and processes when conducting privately-funded Code Amendments
- c. The recovery of costs where Council agrees to conduct a Code Amendment on behalf of a private proponent
- d. Requests for Council to respond to proposed Code Amendments by the Commission, ERDC or other designated entities (such as State Government agencies or other councils)
- e. The type of responses that can be provided and who can provide those responses when a proposed Code Amendment prepared by a third party is undergoing consultation and Council has been invited to respond.

This policy applies to any amendment to the Planning and Design Code proposed by a third party as it applies to the City of Tea Tree Gully.

2. POLICY

2.1 Requests to conduct a privately-funded Code Amendment

Privately-funded Code Amendments initiated by third-parties can facilitate policy changes to the Planning and Design Code to unlock development opportunities, if they are considered to align with Council's strategic objectives and can be resourced appropriately.

There are several additional steps and processes associated with privately-funded Code Amendments. These are primarily associated with funding and probity. Further influences also apply regarding timing, resourcing, procurement, risk management and community engagement.

2.2 Submitting a request

Requests for Council to undertake a privately-funded Code Amendment on behalf of a third-party must be made in writing to the Chief Executive Officer (CEO). The request must include a Statement of Justification outlining the need for a privately-funded Code Amendment. This will include:

1. Identification of the land subject to the Code Amendment and current ownership of the land
2. The outcomes being sought by the policy change proposed in the Code Amendment
3. The reasons why Council is being asked to manage the Code Amendment
4. Analysis of the proposal against Principles 1 – 5 refer below
5. Acknowledgement of the requirement to enter into a Deed of Agreement prior to the commencement of investigations, and to fund the costs associated with the Code Amendment.

2.3 Principles for considering a privately-funded Code Amendment

The following principles will be considered when determining whether or not Council should agree to conduct a Code Amendment process on behalf of a private proponent:

1. Whether the intent of the Code Amendment aligns with the relevant State Planning Policies, relevant Regional Plans and the current 30 Year Plan for Greater Adelaide (in the absence of any Regional Plan)
2. Whether the intent of the Code Amendment aligns with Council's strategic objectives and any other relevant Council strategies, plans and policies
3. Whether the current policies in the Code unnecessarily restrict appropriate development on the site
4. Whether the Code Amendment affects a broad or limited cross section of the community
5. Whether the proposed policy change has considerable social, economic and/or environment impact / merit
6. Whether the Code Amendment can be appropriately project managed by Council staff, taking into consideration the timing of other priorities and projects and the resources available.

2.4 Consideration and management of requests

Council will assess the request against the above principles, consider any resource implications, may undertake preliminary investigations and/or consult State Government departments / agencies in determining whether to undertake a privately-funded Code Amendment. A decision to proceed with or reject a request to undertake a privately-funded Code Amendment will be the decision of the Council.

Council at all times retains the right to reject a request to prepare a privately-funded Code Amendment. The reasons for proceeding with or rejecting a proposed privately-funded Code Amendment will be recorded and communicated with the private proponent.

2.5 Obligations of Council and the private funder

If Council agrees to prepare the Code Amendment requested by a third party, and the third party agrees to enter into a Deed of Agreement and fund the costs associated with the Code Amendment, then:

1. Council becomes the proponent for the entirety of the Code Amendment process, and
2. The third party becomes the private funder.

Council will manage the Code Amendment process (subject to any alternative arrangements as agreed between the Council and the private funder on a case by case basis) including:

1. The initiation proposal in accordance with section 73 of the PDI Act
2. Investigations in accordance with the approved initiation request
3. Instructions for the drafting of proposed policy amendments
4. Any maps prepared to industry standard
5. All Code Amendment consultation documentation
6. Presentations at Council meetings or workshops, as required

7. A review and response to all written and verbal submissions on the draft Code Amendment
8. Preparation of the approval version of the Code Amendment
9. Other requirements as directed in any relevant Practice Directions issued by the Commission.
10. Procurement and supervision of consultants, in accordance with Council's Procurement Policy, that may be required to prepare documentation, conduct investigations or provide technical advice.

2.6 Funding and legal arrangements

To facilitate the process and to detail the obligations of each party, a Deed of Agreement will be required between Council and a private funder. The Deed of Agreement will outline a schedule of expenses for which the private funder will be required to cover, and the methodology for the proposed Code Amendment. The Council reserves the exclusive right to amend the methodology at any time during the Amendment process, including the decision to seek advice from consultants or technical experts to assist with investigations.

The private funder will pay the full cost of the Code Amendment process including an appropriate project management fee as determined. The project management fee will vary depending on the complexity of the Code Amendment and resources required to manage the Code Amendment process.

Council is under no obligation to commence the Code Amendment process (by initiating the Code amendment with the Minister) until the Deed of Agreement is signed by all relevant parties.

Council is officially the proponent of the privately funded Code Amendment. Council maintains ultimate control of the Code Amendment process, and key stages will be presented to Council for consideration, prior to being submitted to the Minister for consideration. All Code Amendment documents will indicate that the Code Amendment is privately-funded.

Council may determine at any stage of the Code Amendment process to not proceed with the Code Amendment due to feedback received from stakeholders or other reasons considered to be reasonable in the opinion of Council.

2.7 Responding to consultation of a draft Code Amendment proposed by a third party

There may be instances where Council is notified during the engagement process of a Code Amendment proposed by a third party that affects land within the City of Tea Tree Gully. This provides Council with the opportunity to provide feedback to the third party and the relevant State Government Department responsible for Code Amendments.

Other instances where Council may be engaged in a third party Code Amendment process is during the initiation phase for a private proponent Code Amendment, or the Commission or EDRC directly seeks Council comments on an amendment to the Code. There is no legal requirement for Council to provide comment on a Code Amendment.

The timeframe to provide for feedback on a Code Amendment is legislated and as a consequence, there may not be sufficient time to prepare a report for the Policy and Strategic Development Committee to seek feedback.

The CEO will therefore provide feedback in instances where the policy change is minor and/or a technical matter that is of limited social, economic, environmental or political interest in the City of Tea Tree Gully community, as determined by the CEO. In all other cases, the CEO will prepare a report for consideration by the Policy and Strategic Development Committee in the first instance, or Council if timing is critical.

3. DEFINITIONS

For the purposes of this policy the following definitions apply:

CEO

Refers to the Chief Executive Officer (including their delegate) of the City of Tea Tree Gully.

Council

Refers to the elected body of the Council or employees acting under delegation or authorisation.

Planning and Design Code (Code)

Is established under section 65 of the *Planning Development and Infrastructure Act 2016*. The Code contains overlays, zones, maps and planning rules that guide what can or cannot be developed in a particular area.

Code Amendment

Code Amendment(s) is the instrument by which the Planning and Design Code is amended in accordance with section 73 of the *Planning Development and Infrastructure Act (PDI Act)*. It is a legal process that can be initiated by a range of proponents listed in section 73(2)(b) of the PDI Act. The Planning and Design Code needs to be amended over time to introduce changes in zoning or to reflect changes in local and state government policy. It can take eight to 18 months to complete the process, depending on the complexity of the amendment.

Private proponent

Either a provider of essential infrastructure or a person who has an interest in the land (such as a developer or landowner) and is seeking to initiate a Code Amendment, as per section 73(2)(b) of the *Planning Development and Infrastructure Act 2016*.

Private funder

Refers to the party making the request to fund a Code Amendment undertaken by Council.

Third party proponent

Refers to any proponent listed in section 73(2) of the *Planning Development and Infrastructure Act 2016* initiating a Code Amendment, other than the City of Tea Tree Gully. Can include private proponents.

4. LEGISLATIVE FRAMEWORK

There is no legislative requirement for Council to have a policy relating to providing feedback on a Code Amendment.

The following legislation applies to this Policy:

- a. Planning Development and Infrastructure Act 2016
- b. Planning Development and Infrastructure (General) Regulations 2017
- c. Practice Directions issued by State Planning Commission
- d. Local Government Act 1999

4.1 Other references

Internal documents including:

- a. Council's Fees and Charges Register
- b. Council's Procurement Policy

External documents including:

- a. *Amending the Planning and Design Code - Introductory Guide* - Department of Planning, Transport and Infrastructure (November 2019).
- b. *Practice Direction 2 – Preparing an Amendment of Designated Instruments* – State Planning Commission (28 November 2019).

5. STRATEGIC PLAN/POLICY

5.1 Strategic Plan

The following strategic objectives in Council's Strategic Plan 2025 are the most relevant to this report:

Objective	Comments
	Community
<i>People can have a say in decisions that affect them and the key decisions of the Council</i>	This policy provides an overview of how Council will respond to consultation in relation to a Code Amendment from a third party.
	Environment
<i>Environmentally valuable places and sites that are flourishing and well cared for</i>	Code Amendments by third parties can affect planning policies relating to conservation and open space areas.
<i>We are resilient to climate change and equipped to manage the impact of extreme weather events</i>	Code Amendments by a third party can alter planning policies that relate to environmental hazards, such as flooding and bushfires, and climate change resilience.
<i>Our tree canopy is increasing</i>	Code Amendments by a third party can alter planning policies that relate to significant and regulated trees, and landscaping requirements.

Economy	
<i>Modbury Precinct is revitalised as the city's key activity</i>	Code Amendments by third parties can affect policies in the Urban Activity Centre Zone.
<i>A population profile that supports a growing economy</i>	Code Amendments by a third party can alter planning policies that impact on population growth and economic activities in the City.
<i>A local economy that is resilient and thrives, where businesses are supported to grow and prosper, provide local jobs and sustain our community and visitors and utilise technology to improve the livability of our city</i>	Code Amendments by a third party can alter planning policies that can result in changes to our local economy e.g. new commercial, industrial and retail land being developed in our City or other areas.
<i>People are supported to develop their leadership and employment capabilities</i>	Code Amendments by a third party can alter planning policies can impact on local resources for residents including access to education, community facilities and employment.
<i>Support the efficient use of land for valuable mineral extraction and energy resources</i>	Code Amendments by third parties can affect policies in the Resources Extraction Zone.
Places	
<i>Streets, paths, open spaces and parks are appealing, safe and accessible</i>	Code Amendments by a third party can alter planning policies that relate to community safety and accessibility in public places and spaces.
<i>Neighbourhoods are easy to move around and are well connected with pedestrian and cycle paths that offer an alternative to cars</i>	Code Amendments by a third party can alter planning policies that relate pedestrian and cycle connectedness and accessibility.
<i>Buildings and places are energy efficient, well designed and display a uniqueness of character and identity</i>	Code Amendments by a third party can alter planning policies that relate to energy efficiency and the character of our city.
<i>Housing is well designed and affordable and responds to the changing needs of existing and future residents</i>	Code Amendments by a third party can alter planning policies that relate to the development of new housing.
Leadership	
<i>Leadership and advocacy is focused on the long term interests of the community</i>	The principles listed in this policy will be considered when a privately-funded Code Amendment is requested.
<i>Planning considers current and future community needs</i>	Third party Code Amendments can complement Council Code Amendments and unlock development opportunities but will be considered on balance with the principles listed in this policy.
<i>Delivery of services is sustainable and adaptable</i>	Whether the delivery of Council's current priorities and projects will be impacted is a consideration as to whether a privately funded Code Amendment can be appropriately managed by Council staff.

<i>Decision making is informed, based on evidence and is consistent</i>	The principles listed in this policy will be considered when a privately-funded Code Amendment is requested.
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5.2 Organisation Plan

Our Strategic Plan is supported by an Organisation Plan which focuses on four key themes of organisational excellence. The themes most relevant to this report are: Customer Care; Learning & Growth; Future Capability; Sustainable Operations.

6. POLICY IMPLEMENTATION

This Policy will be implemented by the Chief Executive Officer or relevant portfolio director and managed in accordance with Council's scheme of delegations.