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**NAME OF POLICY:** Responding to Code Amendments and Code Amendment Requests

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**POLICY MANUAL:** Governance

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## BACKGROUND

The *Planning and Design Code* (the Code) is a State-wide planning policy instrument, established under the *Planning Development and Infrastructure Act 2016* (the Act), which has replaced all council Development Plans across South Australia. The Code commenced operation in metropolitan Adelaide on 19 March 2021.

## DISCUSSION

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

- (a) the Commission acting on its own initiative or at the request of the Minister for Planning and Local Government; or
- (b) with the approval of the Minister, acting on the advice of the Commission—
  - (i) the Chief Executive of the Attorney-General's Department; or
  - (ii) another agency or instrumentality of the Crown; or
  - (iii) a joint planning board; or
  - (iv) a council; or
  - (v) a provider of essential infrastructure; or
  - (vi) an infrastructure scheme coordinator; or
  - (vii) a person who has an interest in land and who is seeking to alter the way in which the Planning and Design Code or a design standard affects that land (e.g. a land owner)

Changes to the Code are referred to as *Code Amendments* and can range from minor technical changes to a significant re-zoning or policy change which affects the development potential of a site or area. Due to the establishment of a single State-wide Code, some Code Amendments may have no impact on the City of Norwood Payneham & St Peters while other Code Amendments may impact on the City of Norwood Payneham & St Peters to varying degrees. For example, a change to policies which are used to assess development, or a proposed rezoning within the City of Norwood Payneham & St Peters. The extent of consultation associated with a Code Amendment will vary and as a result, the Council will not be directly notified of every Code Amendment. However, in respect to Code Amendments which have received final approval, the Environment Resources and Development Committee of Parliament must, in their review of the Code Amendment, consult with the relevant council(s) prior to providing any response to the Minister.

Although a landowner or infrastructure provider (a private party) can propose their own Code Amendment, they can also request the Attorney-General's Department to undertake a Code Amendment on their behalf. Section 73(9) of the Act also enables the Council to enter into an agreement with a person or entity for the recovery of costs incurred in relation to a Code Amendment. This provides a private party with a third option of entering into a privately-funded Code Amendment arrangement with the Council. It is important to note that in these circumstances, the Council is the proponent undertaking the Code Amendment rather than the private party.

## KEY PRINCIPLES

This Policy establishes a consistent and transparent process for dealing with requests for privately-funded Council Code Amendments and should the Council accept the request, the process of conducting and recovering costs for the Code Amendment. This Policy also seeks to provide a consistent and transparent process for dealing with a range of proposed third party Code Amendments. The level of response will be commensurate with the potential impact on the City of Norwood Payneham & St Peters.

## 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 the Council to enter into an 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 followed by the Council in determining how to respond to a request for a privately-funded Council Code Amendment, as well as the process for undertaking and recovering costs associated with the Code Amendment, should the Council determine to proceed. This Policy also outlines the process which will be followed by the Council in determining whether and how to respond to a proposed third party Code Amendment.
- 1.4 This Policy applies in addition to any other statutory requirements or process 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. Definitions & Interpretations

- 2.1 **‘Applicant’** in this instance refers to the person or entity requesting that the Council enter into a privately-funded Code Amendment
- 2.2 **‘private funder’** in this instance refers to the Applicant, if and when the Council has determined to proceed with the Code Amendment process
- 2.3 **‘third party’** in this instance refers to a person or entity other than the City of Norwood Payneham & St Peters, 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
- 2.4 **‘adjacent land’** in this instance refers to land which is abutting the Norwood Payneham & St Peters Local Government Area boundary or is separated only by a road, reserve or similar

## Privately-funded Code Amendments

### 3. Requests to conduct a privately-funded Code Amendment

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

- 3.1.1 Identification of the land subject to the Code Amendment;
  - 3.1.2 Identification of the current ownership of the subject land, and if the applicant is not the owner, the applicant's relationship to the land;
  - 3.1.3 The outcomes being sought by the policy change proposed in the Code Amendment;
  - 3.1.4 The reasons why Council is being asked to undertake the Code Amendment;
  - 3.1.5 Analysis of the proposal against the Principles outlined in 4.1 below; and
  - 3.1.6 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.
- 3.2 The Council may request the applicant to provide other information in addition to the Statement of Justification in support of the proposal.

#### **4. Principles for considering a privately-funded Code Amendment**

- 4.1 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 intended Code change, including (but not limited to):
- 4.1.1 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.
  - 4.1.2 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.
  - 4.1.3 Whether the proposed policy change has considerable social, economic and/or environmental impact or merit.
  - 4.1.4 Whether the proposed policy change will affect a broad or limited cross section of the community.
  - 4.1.5 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.
- 4.2 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):
- 4.2.1 The Council's capacity to undertake the Code Amendment including the required timing and administrative / management resources.
  - 4.2.2 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.
  - 4.2.3 Whether the Minister has previously considered the same or similar Code Amendment request and the outcome of that consideration.
  - 4.2.4 The level of potential risks to the Council in proceeding with the Code Amendment.
- #### **5. Consideration and management of requests**
- 5.1 A decision to proceed with or reject a request to undertake a privately-funded Code Amendment will be the decision of the Council.
  - 5.2 The Council is not required to consider undertaking a Code Amendment as requested by the proponent at all or in the form requested.

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

## **6. Obligations of Council and the private funder**

- 6.1 If the Council agrees to prepare the Code Amendment as requested by the Applicant and the Applicant agrees to enter into a Deed of Agreement and fund the costs associated with the Code Amendment, then:
- 6.1.1 The Council becomes the proponent for the entirety of the Code Amendment process, and
- 6.1.2 The Applicant becomes the private funder.
- 6.2 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).
- 6.3 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.
- 6.4 The Council does not and cannot give any assurances as to the outcome of the Code Amendment.
- 6.5 At all stages the Code Amendment documentation will declare the private funding arrangement.

## **7. Funding and Legal Arrangements**

- 7.1 To facilitate the process and to detail the obligations of each party, the Council will require an agreement be entered into by 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:
- 7.1.1 the roles of the parties, legal requirements and procedures, and project and financial management
- 7.1.2 define in detail the nature of the Code Amendment including the area to be covered, the purpose of the Amendment and what the investigations will encompass
- 7.1.3 that the Council maintains ultimate 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
- 7.1.4 that the management of the process will be undertaken according to Council priorities, meeting schedules and timeframes
- 7.1.5 that the Council may outsource part(s) of the process to a suitably qualified consultant engaged through the Council's procurement policy
- 7.1.6 acknowledgement that ultimately the decision to approve or refuse the Code Amendment rests with the State Planning Commission and the Minister
- 7.1.7 detail what may happen if the Code Amendment is either not approved, or approved with amendments that may not suit the private funder
- 7.1.8 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.

## **Responding to Third Party Code Amendments**

### **8. Code Amendments – Pre-consultation**

- 8.1 In relation to a third party Code Amendment which has been initiated but not yet released for public consultation (e.g pre-consultation comment), any response may be provided by Council's staff.
- 8.2 Pursuant to Section 174(2) of the *Local Government Act 1999*, a person is entitled, on payment of a fee fixed by the council, to a copy of an entry made in the Council's assessment record. For the purposes of community consultation, the proponent of a Code Amendment may seek to obtain from the Council the names and addresses of owners of properties which may be affected by the proposed Code Amendment. The Council will endeavour to provide this information within a reasonable timeframe, for the required fee as published in the Council's *Fees and Charges* document.

### **9. Code Amendments – On consultation**

- 9.1 In respect to a third party Code Amendment which is released for public consultation and which does not propose to amend the Code as it applies to the City of Norwood Payneham & St Peters and does not directly affect adjacent land, any formal submission response may be provided by the Council's staff.
- 9.2 In respect to a third party Code Amendment released for public consultation and which does not propose to amend the Code as it applies to the City of Norwood Payneham & St Peters but does directly affect adjacent land:
- 9.2.1 if, in the opinion of the *General Manager, Urban Planning & Environment* (or his/her delegate) the Code Amendment is unlikely to have a significant impact on the City of Norwood Payneham & St Peters (including but not limited to impacts on the environment or infrastructure) any formal submission response may be provided by Council staff and a copy of the response will be provided to Elected Members via the *Elected Members Weekly Communique*; or
- 9.2.2 if, in the opinion of the *General Manager, Urban Planning & Environment* (or his/her delegate) the Code Amendment is likely to have a significant impact on the City of Norwood Payneham & St Peters (including but not limited to impacts on the environment or infrastructure) a draft submission response will be prepared by Council staff and presented to the Council for consideration and endorsement unless the response is required within a timeframe which does not permit formal consideration by the Council, in which case a submission response will be provided by the Chief Executive Officer.
- 9.3 In respect to a third party Code Amendment which proposes to amend the Code as it applies to land within the City of Norwood Payneham & St Peters:
- 9.3.1 if, in the opinion of to the *General Manager, Urban Planning & Environment*, the proposed amendment is minor or technical and is unlikely to have an definitive change in development outcomes, any formal submission response may be provided by Council staff and a copy of the response will be provided to Elected Members via the *Elected Members Weekly Communique*; or
- 9.3.2 if, in the opinion of to the *General Manager, Urban Planning & Environment*, the proposed amendment could result in a definitive change in development outcomes, a draft response will be prepared and presented to the Council for consideration and endorsement unless the response is required within a timeframe which does not permit formal consideration by the Council, in which case a response will be provided by the Chief Executive Officer.

## **10. Code Amendments – Post consultation**

- 10.1 In respect to a third party Code Amendment which has concluded consultation but is not yet in operation any response which is not otherwise governed by legislation or practice direction, may be provided by Council's staff, in line with any formal submission the Council may have made.
- 10.2 In respect to a third party Code Amendment which has been determined by the Minister for Planning and Local Government (either approved or refused) and for which the Council provided a formal submission during consultation, a summary of the process outcome will be provided to Elected Members via the *Elected Members Weekly Communique*.
- 10.3 In respect to a third party Code Amendment which has been approved by the Minister for Planning and Local Government and is the subject of a review of the Environment Resources and Development Committee (ERDC) of Parliament, any response to consultation by the ERDC may be provided by Council Staff.

## **REVIEW PROCESS**

The Council will review this Policy within two (2) years of the adoption date of the Policy, or otherwise as required from time-to-time.

## **INFORMATION**

The contact officer for further information at the City of Norwood Payneham & St Peters is Council's Senior Urban Planner, telephone 8366 4561.

## **ADOPTION OF THE POLICY**

This Policy was adopted by Council on 2 August 2021.

## **TO BE REVIEWED**

August 2023.