



Privately Funded Development Plan Amendment Policy

Approved by	Council
First Approved	17/02/2020 (CNC276/19-20)
Review Frequency	Biannually
Last Reviewed	N/A
Next Review	01/06/2020
Document Number	POL202038320
File	18.63.1.1
Responsible Officer	Group Manager of Planning, Environment and Regulatory Services
Policies Related	Code of Conduct for Council Members Code of Conduct for Council Employees Procurement Policy Community Engagement and Consultation Policy
Applicable Legislation	<i>Development Act 1993 and Development Regulations 2008.</i>

1. Introduction

- 1.1. This Privately Funded Development Plan Amendment Policy (“**the Policy**”) has been prepared by the Corporation of the Town of Walkerville (“**the Organisation**”) in accordance and compliance with the provisions of section 25 of the *Development Act 1993* (SA) (“**the Act**”).
- 1.2. The purpose of the Policy is to provide information and guidance to elected members of Council (“the Elected Members”), employees of Council (“Employees”) and Developers and Land Owners.
- 1.3. This policy is to be read in conjunction with related procedures prepared by Council Administration as required.
- 1.4. This Policy is to be read in conjunction with other policies adopted by Council from time to time.

2. Policy Objective

- 2.1. The Organisation will have regard to the following Objectives when carrying out a Development Plan Amendment on behalf of a Developer:
 - 2.1.1. 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 *Town of Walkerville Development Plan*, including addressing any potential conflicts of interest.
 - 2.1.2. To ensure adherence to the legislated requirements outlined in the Development Act (1993) for the rationale and processing of Development Plan Amendments (DPA); and
 - 2.1.3. To mitigate any risks to Council associated with receiving private funds associated with the preparation of a Statement of Intent (SOI) and DPA.

3. Legislative Framework

- 3.1. The manner in which Council carries out a Development Plan Amendment is governed by section 25 of the Act.
- 3.2. The process outlined under section 25 of the Act is summarised in Attachment 1 found at the end of this policy.

4. Policy Principles

- 4.1. This policy adheres to the following principles:
 - 4.1.1. Payment of private funds to Council for investigations into planning policies should be separated from the DPA process.
 - 4.1.2. The private financier should cover all costs in the initiation, preparing and authorisation of the SOI, DPA, peer review and any court costs associated with legal challenges.
 - 4.1.3. The legal agreement between the Council and private financier should state that a private financier is funding an open and transparent process which provides no guarantee that the financier will receive any advantage from the DPA.
 - 4.1.4. At all stages the DPA should declare the private funding through the public release of the legal agreement via inclusion in the Statement of Intent and DPA.
 - 4.1.5. Council will maintain control, independence and planning professionalism in the DPA process, and ensure DPA investigations are impartial and conducted by professional and qualified persons.
 - 4.1.6. Council can at any time withdraw the DPA.
 - 4.1.7. Only DPAs with a strategic context should be pursued.

5. Definitions

- 5.1. **Consultants** shall mean a company or person(s) engaged by Council to provide assets, goods, works or services.
- 5.2. **DPA** – shall mean a Development Plan Amendment as defined by the Development Act 1993
- 5.3. **SOI** – shall mean a Statement of Intent as defined by the Development Act 1993
- 5.4. **Third Party** shall mean the party funding the preparation of the DPA (other than Council or the Minister for Planning).

6. Roles and Responsibilities

- 6.1. Council: Approve and adopt/update policy
- 6.2. Group Manager of Planning, Environment and Regulatory Services: update Policy as required in accordance with legislative changes

7. Specific Policy Information

- 7.1. Statement of Strategic Context
 - 7.1.1. Prior to pursuing a privately funded DPA a private financier 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 Group Manager of Planning, Environment and Regulatory Services. This Statement must be prepared by a qualified professional who meets the requirements of Section 86 of the Development Regulations.

7.1.2. The statement of strategic context must include:

- 7.1.2.1. An outline of the issue needing to be addressed;
- 7.1.2.2. An outline of the proposed amendment to the Development Plan;
- 7.1.2.3. A Statement of how the proposed amendment relates to Council's last Strategic Directions Report;
- 7.1.2.4. A statement of how the proposed amendments relates to social, economic and environmental issues;
- 7.1.2.5. A statement of how proposed amendments relate to the State Government's 30 Year Plan for Greater Adelaide and Planning Strategy.
- 7.1.2.6. Any other matters determined by Council as relevant.

7.2. Assessment of Statement of Strategic Context

- 7.2.1. A Statement of Strategic Context will be assessed by Council's Planning staff on its merits against the six criteria outlined within procedure 5.1, and presented to Council's Strategic Planning and Development Policy Committee for determination as to whether the request should follow Process A, Process B or be Refused (see attachment 1 – Privately Funded DPA Process).

7.3. Legal Agreement and Project Cost Estimates

- 7.3.1. Should Process A or B be determined, prior to pursuing a private funded DPA a private financier must sign a legal agreement drafted by Council. The agreement will include details of the following:
 - 7.3.1.1. The nature of the arrangements and agreed figure on the cost of preparing the DPA and peer review, and the time when payment is to be made;
 - 7.3.1.2. 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);
 - 7.3.1.3. An acknowledgement by the party funding the DPA that the DPA will be prepared at the direction of Council and that the party funding the DPA will have no right to control or direct the progress or form of the DPA apart from making written submissions to the Council as a part of the consultation process;
 - 7.3.1.4. An acknowledgement by the Council that it will use its best endeavours and strive to achieve authorisation of the DPA which incorporates the agreed DPA principles, cognisant of the timing of other Council policy priorities;
 - 7.3.1.5. An acknowledgement by the third party and the Council that while the Council may initiate a DPA, ultimately the decision on its authorisation

is a decision by the Minister for Planning and not the Council, and that the Council has no control over this process;

- 7.3.1.6. 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;
- 7.3.1.7. Agreement that the third part will fund any legal costs associated with the preparation of the DPA, including legal review, legal proceedings or judicial review proceedings in relation to the DPA process;
- 7.3.1.8. 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 DPA.

7.4. Project Management and the Procurement Process

- 7.4.1. A privately funded DPA will require a Peer Review.
- 7.4.2. 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.
- 7.4.3. 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 DPA.
- 7.4.4. 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.
- 7.4.5. The Peer Review will;
 - 7.4.5.1. Review the draft DPA against the Statement of Intent agreed by the Minister for Planning; and
 - 7.4.5.2. Review Government Agency consultation responses to the draft DPA and policy changes as a result of the Consultation; and Privately Funded DPA Policy
 - 7.4.5.3. Review the Public Consultation responses to the draft DPA and policy changes as a result of the consultation
- 7.4.6. 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.
- 7.4.7. 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.
- 7.4.8. The consultant undertaking the peer review shall report directly to qualified Council Staff as required by Section 86 of the Development Regulations.
- 7.4.9. Council maintains ultimate control of the DPA, and key stages will be presented to Council for consideration, prior to it being submitted to the Minister for Planning for agreement or endorsement.

- 7.4.10. At all stages the DPA will declare the private funding through the public release of the legal agreement via inclusion in the Statement of Intent and DPA.
- 7.4.11. Council reserves the right to cease proceeding with a Privately Funded DPA at any stage.

8. Policy Maintenance and Review

- 8.1. This Policy will be available for inspection at the Council Office, 66 Walkerville Terrace, Gilberton during ordinary business hours and on Council's website www.walkerville.sa.gov.au. Copies will be provided to interested parties upon request for the payment as per Councils Fees & Charges listing.
- 8.2. Council will undertake a review and evaluation of this Policy at least once every two years and following general council elections in accordance with Council's strategic management planning framework. Council may, in any event, conduct a review and evaluation of the effectiveness of this Policy at any time.
- 8.3. The Chief Executive Officer will report to the Elected Members on the outcome of any such review and will make recommendations for amendments, alterations or substitutions as may be required.
- 8.4. If this Policy is amended, altered or substituted in accordance with the above, it will not apply retrospectively.

Attachment 1 - Process for Privately Funded DPAs

