

Privately Funded Code Amendment Policy

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Responsible Officer:	Director Environment and Place, B Cant
Relevant Legislation:	<i>Development Act 1993 Development Regulations 2008 Local Government Act 1999 Planning, Development and Infrastructure Act 2016 Planning, Development and Infrastructure (Transitional Provisions) (Code) Variation Regulations 2019</i>
Related Policies/References:	Community Engagement (Public Consultation) Policy Procurement Policy <i>Amending the Planning and Design Code – Introductory Guide</i> , Department of Planning, Transport and Infrastructure (November 2019) <i>Practice Direction 2 – Preparing an Amendment of Designated Instruments</i> , State Planning Commission (28 November 2019)

1. Introduction

- 1.1. The Planning and Design Code (the Code) is a key designated instrument of the Planning, Development and Infrastructure Act 2016 (the Act). It contains the planning policies and rules which are used to guide development across the State.
- 1.2. The Act sets out the process under which designated entities will be able to commence an amendment to the Code.
- 1.3. A Code Amendment is a document that describes proposed changes to the Code and includes a statutory process required to be undertaken when amending land use zoning and/or the policies contained within the Code.
- 1.4. Under Section 73(2)(b)(vii) of the Act, the following proponents can initiate an amendment to the Code through a Code Amendment process:
 - 1.4.1. State Planning Commission;
 - 1.4.2. Council;
 - 1.4.3. Chief Executive of the Attorney-General's Department;
 - 1.4.4. A Government agency or instrumentality of the Crown;
 - 1.4.5. Joint Planning Board;
 - 1.4.6. Infrastructure Scheme Coordinator;

- 1.4.7. Provider of essential infrastructure (private proponent); and
- 1.4.8. A person who has interest in the subject land (private proponent).
- 1.5. Once initiated, all proponents can undertake the Code Amendment process with the exception of private proponents. The Chief Executive of the Department for Infrastructure and Transport is responsible for the Code amendment process for private proponents.
- 1.6. A provider of essential infrastructure or a person who has an interest in the land may also approach Council to undertake a Code Amendment on their behalf. If Council agrees, it will act as the proponent for the Code Amendment. Council may seek to recover its cost in undertaking the Code Amendment process in accordance with its own policies.
- 1.7. Practice Direction 2, issued pursuant to Section 42 of the Planning, Development and Infrastructure Act 2016, outlines the information required to propose the initiation of a Code Amendment and the process for preparing a Code Amendment for consultation and approval.
- 1.8. The City of Burnside is committed to providing an open and transparent process for the private funding of the preparation of amendments to the Code in order to mitigate risks to Council and the community and address potential conflicts of interest.

2. Strategic Plan Desired Outcomes

Principles: Spans across all Strategic Plan Principles

Theme: Spans across all Strategic Plan Themes

Goals: Spans across all Strategic Plan Goals

Priorities: Spans across all Strategic Plan Priorities

3. Our Approach

- 3.1. Regularly review, update and adopt leading governance, risk management and administrative processes.
- 3.2. Balance future development and existing historic character through complementary and sustainable development practices.
- 3.3. Enhance the character, amenity, safety, and accessibility of the City through promoting sympathetic and sustainable development.
- 3.4. Provide a range of opportunities for the community to actively engage and participate in Council's decision making activities.
- 3.5. Provide sufficient resources to meet current and future needs of the community.

4. Legislative Requirements and Corporate Policy Context

- 4.1. Section 73(2)(b)(vii) of the Act gives an opportunity to amend the Planning and Design Code to any "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".

5. Interpretation

For the purpose of this policy:

- 5.1. "A 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.

- 5.2. "Act" is the Planning, Development and Infrastructure Act 2016.
- 5.3. "Applicant" means the company or person(s) external to the Council or the Minister for Planning who has proposed and is funding or partly funding the preparation of the Code Amendment.
- 5.4. "Charter" means the Community Engagement Charter.
- 5.5. "Chief Executive" is the Chief Executive of the Department for Infrastructure and Transport(the Department)
- 5.6. "Code" means the Planning and Design Code under the Act
- 5.7. "Code Amendment" means an amendment to the Planning and Design Code.
- 5.8. "Code drafting principles" are the principles set out in Appendix 1 of the State Government's, 'Amending the Planning and Design Code – Introductory Guide'.
- 5.9. "Commission" means the State Planning Commission under the Act.
- 5.10. "Consultants" means a company or person(s) engaged by Council to provide assets, goods, works or services.
- 5.11. "Council" means the City of Burnside.
- 5.12. "Definition" means an example of policies.
- 5.13. "Department" means the Department for Infrastructure and Transport.
- 5.14. "Designated entity" means a person or entity authorised or approved to prepare a draft of a proposal to amend the Code.
- 5.15. "DPA" means a Development Plan Amendment as defined by the Development Act 1993.
- 5.16. "ERDC" is the Environment, Resources and Development Committee of Parliament.
- 5.17. "Minister" means the Minister for Planning.
- 5.18. "Policy" is a Council policy
- 5.19. "Private Proponent" means a provider of essential infrastructure or a person who has a legal or beneficial interest in the land.
- 5.20. "Proponent" means the Chief Executive, another agency or instrumentality of the Crown, a joint planning board, a council, a provider of essential infrastructure, a scheme co-ordinator, or a person who has an interest in land as listed in section 73 (2)(b) of the Act.
- 5.21. "Sensitive Information" is information or an opinion about an individual's Political opinions.

6. Policy Objective/Scope/Actions

Objectives

- 6.1. To guide how Council manages and considers requests from third parties to undertake privately funded Code Amendments.
- 6.2. 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.
- 6.3. To ensure adherence to the legislated requirements outlined in the *Planning, Development and Infrastructure Act 2016* for the rationale and processing of Code Amendments.

- 6.4. To mitigate any risks to Council associated with receiving private funds associated with the preparation of a Code Amendment.

Principles

- 6.5. Privately funded investigations into planning policies and any subsequent Code Amendments should adhere to the process outlined in Appendices 1 and 2.
- 6.6. The Applicant should cover all costs in the initiation, preparation, community consultations and authorisation of the Code Amendment, peer review and any court costs associated with legal challenges.
- 6.7. The legal agreement between the Council and the applicant should state that an applicant is funding an open and transparent process which provides no guarantee that the financier will receive any advantage from the Code Amendment.
- 6.8. At all stages the Code Amendment should declare the private funding through the public release of the legal agreement via inclusion in the initiation proposal and Code Amendment.
- 6.9. Council will maintain control, independence and planning professionalism in the Code Amendment process, and ensure investigations are impartial and conducted by professional and qualified persons.
- 6.10. Council may at any time withdraw, reject or cease the process of the Code Amendment.
- 6.11. Council has the right to refuse investigations into Code Amendments. In these cases the proponent may or may not choose to apply directly to the State Government.

Initial Assessment of Applications

- 6.12. Prior to agreeing to proceed with a privately funded Code Amendment, the applicant must submit to Council a Statement of Strategic Context to enable Council to determine whether to proceed with the Code Amendment.
- 6.13. This Statement must be prepared by a suitably qualified professional.
- 6.14. The Statement of Strategic Context must include:
 - 6.14.1. An outline of the issue needing to be addressed;
 - 6.14.2. An outline of the proposed amendment to the Code;
 - 6.14.3. A statement of how the proposed amendment relates to Council's Strategic objectives and any other relevant Council strategies, plans and policies, including from an environmental and heritage perspective;
 - 6.14.4. A statement of how the proposed amendment relates to social, economic and environmental issues;
 - 6.14.5. A statement of how the proposed amendment relates to relevant State Planning Policies including the State Government's 30 Year Plan for Greater Adelaide and Planning Strategy;
 - 6.14.6. Details of the anticipated time and resources required to undertake the Code Amendment; and
 - 6.14.7. Any other matters determined by Council as relevant.
- 6.15. A Statement of Strategic Context will be reviewed by Council's Administration, under CEO delegation, on its merits against the criteria outlined in points 6.12 to 6.14.

- 6.16. A recommendation will then be presented to Council for consideration as to whether to continue with the Code Amendment (see Appendix 1 - Privately Funded Code Amendment Process).
- 6.17. Council also has the ability to pass the Code Amendment on to the State Government, if Council has a conflict of interest, does not have the required resources to complete, or for any other reason.

Undertaking Draft Code Amendment

- 6.18. If Council decides that the Statement of Strategic Context is able to progress, Council will engage a suitably qualified consultant who meets the requirements of the *Planning, Development and Infrastructure Act 2016* to prepare the draft Code Amendment, in accordance with Council's Procurement Policy.
- 6.19. Project management of the Code Amendment process will be undertaken by Council staff. The consultant undertaking the privately funded Code Amendment will report directly to Council staff.
- 6.20. The draft Code Amendment will be released for public consultation and feedback prior to being submitted to the Minister for Planning for agreement. Feedback and commentary received from the public during this period will be provided to the applicant for consideration and response. The feedback and commentary, and any response from the applicant will be considered by the Administration and by Council as part of the decision-making about whether to continue, amend or discontinue with the Privately Funded Code Amendment.
- 6.21. It should be noted that Council maintains ultimate control of the Code Amendment, in that key stages are presented to Council for consideration prior to being submitted to the Minister for agreement or endorsement. The key stages that are considered by Council include: Proposal to initiate; Draft investigations and policy for Public and Agency Consultation; Responses to public engagement; and Approval.
- 6.22. 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.
- 6.23. Council reserves the right to cease proceeding with a Privately Funded Code Amendment at any stage.
- 6.24. 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 a Code Amendment and Code Amendment.

Legal Agreement and Project Cost Estimates

- 6.25. The applicant will make payment of the project cost into a fund as directed by Council.
- 6.26. Should Council agree to continue with the Privately Funded Code Amendment process, the applicant must sign a legal agreement drafted by Council. The agreement will include details of the following:
 - 6.26.1. The nature of the arrangements and agreed figure on the cost of preparing the Code Amendment, peer review, and the time when payment is to be made;
 - 6.26.2. Details of 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);
 - 6.26.3. An acknowledgement by the applicant funding the Code Amendment that the Code Amendment will be prepared at the direction of Council and that the applicant 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;

- 6.26.4. 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 Code Amendment principles, cognisant of the timing of other Council policy priorities;
- 6.26.5. An acknowledgement by the applicant and the Council that while the Council may agree to and process the Code Amendment, 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;
- 6.26.6. Agreement as to 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 applicant;
- 6.26.7. Agreement that the applicant 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;
- 6.26.8. Acknowledgment that the legal agreement 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.

7. Review and Authority

- 7.1. This Policy will be reviewed every four years at maximum in line with Council's Policies and Protocols Framework.

8. Availability

- 8.1. The Policy is available to be downloaded, free of charge, from Council's website www.burnside.sa.gov.au
- 8.2. The Policy will be available for inspection, free of charge, at the Civic Centre during ordinary business hours and a copy may be purchased at a fee as set annually by Council.

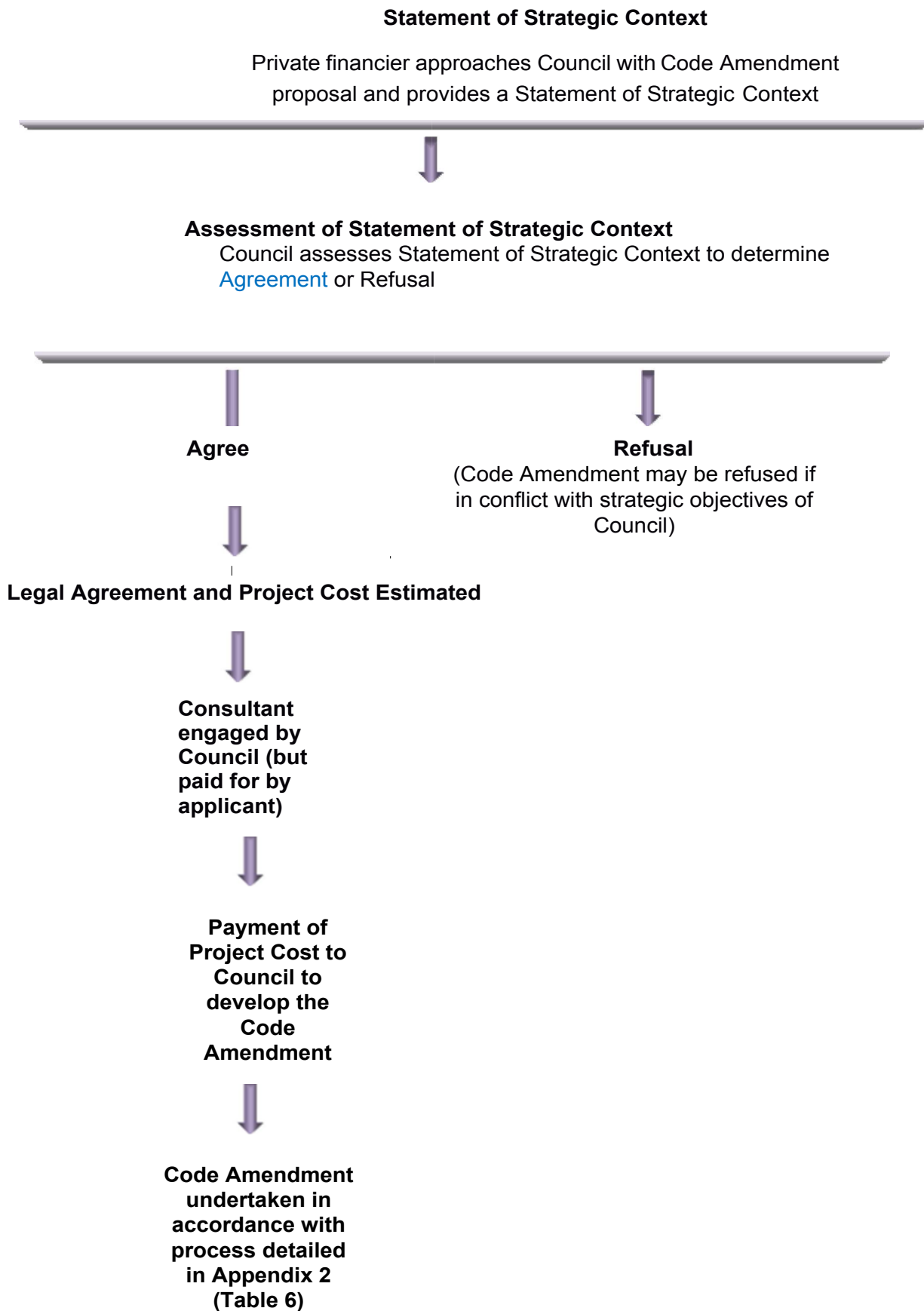
City of Burnside Civic Centre; 401 Greenhill Road, Tasmore SA 5065 Telephone; 8366 4200; Email; burnside@burnside.sa.gov.au Office hours: Monday to Friday, 8.30am to 5.00pm (except public holidays)

9. Further Information

- 9.1. For further information about this policy please contact:
City of Burnside Civic Centre; 401 Greenhill Road, Tasmore SA 5065
Telephone; 8366 4200; Email; burnside@burnside.sa.gov.au

Appendix 1

Process for Privately Funded Code Amendment –



Appendix 2

Table 6: The Code Amendment Process - Councils, Agencies, Joint Planning Boards, Scheme Coordinators

Pre-Initiation	1 Identify Proponents identify a need to change to change the Code	2 Strategic Analysis Proponents consider their proposal against State Planning Policies & regional plans, identify key issues and investigations, and consult with council/s, the joint planning board/s and agencies as required.	3 Meet Proponents meet with the Department to discuss their proposal (optional)
	4 Prepare Initiation & Lodge Proponents initiate their request and documentation and lodge them with the Department. Proponents prepare Engagement Plan (optional)	5 Assess The Department assesses the initiation request.	6 Commission Advice The Department provides advice to the Commission which prepares advice for the Minister who may determine that further investigations and consultation are required
Initiation	7 Minister Decides Minister makes a decision on whether to initiate the Code amendments		
	8 Prepare Proponents outline the drafting instructions and mapping changes and undertake preliminary engagement	9 Policy & mapping drafting Designated entities provide the proposed policy outline and mapping the Department which prepares the policy change(s), puts it/them into the planning database and provides these to the designated entity.	10 Prepare for engagement Designated entities finalise documentation for engagement.
Preparation	11 Undertakes Engagement Designated entities undertake engagement in accordance with the engagement plan utilising the planning database and mapping.		
	12 Prepares Engagement Report Designated entities summarise submissions, prepare the statutory engagement report and decide on amendments following consultation	13 Finalise Amendment Designated entities provide proposed policy changes and mapping to DPTI. DPTI prepares policy change(s), puts it/them into the planning database and provides changes to the designated entity.	14 Finalises Designated entities finalise documentation for approval.
Engagement			
	15 Lodges for Approval Designated entities lodge the engagement report and amendment with the Department	16 Assesses The Department assesses the approval documentation	17 Commission Advice The Commission considers the engagement report against the Charter principles, prepares a consultation report for the ERDC and provides advice to the Minister
Post Engagement	18 Minister's Decision Minister considers the engagement report and makes a decision on the Code amendment The amendment comes into effect through its publication on the SA Planning Portal The engagement report is also published.		
	19 Refer to ERDC The Minister refers the amendment to the ERDC for consideration with 28 days	20 The ERDC ERDC has 28 days to provide its response to the Code amendment	
Decision			
	ERDC		