

Policy Section:	3. Development, Environment & Regulatory Services
Policy Name:	Proponent-Funded Code Amendments
Classification:	Corporate – Council Policy
Adopted:	23 February 2021
Frequency of Review:	Biennial
Last Review:	January 2021
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Responsible Officer(s):	Manager Development Environment and Regulatory Services
Policy and Code of Practice Manual File Ref:	CC10/2601
Council File Reference:	CR21/9558
Legislation Authority:	Planning, Development and Infrastructure Act 2016
Related Policies and Codes:	N/A
Related Procedures:	Practice Direction 2 Preparation and Amendment of Designated Instruments

1. PURPOSE

This policy enables Council to receive resources from third parties to support the preparation of rezoning instruments (Code Amendments) while ensuring that Council receives advice from appropriately qualified and independent persons on the content of any such Code Amendment and retains absolute control over the processes and outcomes involved.

- 2.1 The Planning and Design Code is the single source of planning policy for every council area across South Australia.
- 2.2 A progressive and up to date Planning and Design Code is important to ensure that growth and development in the Town of Gawler is orderly, economic and sustainable, and that high quality development outcomes are achieved for the benefit of current and future communities.
- 2.3 The resources required to monitor and update the Planning and Design Code, keeping it continually relevant and at the forefront of emerging opportunities, are considerable. Accessing external funding from private individuals and developers is one option for enhancing Council's capacity to update zoning rules.
- 2.4 Under the Planning, Development and Infrastructure Act 2016 a wide range of proponents in addition to a Council can initiate a Code amendment, these

include:

- The State Planning Commission
- An agency or instrumentality of the Crown
- A joint Planning Board
- A Scheme Coordinator
- A provider of essential infrastructure (private proponent)
- 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.

2.5 Although the Act allows third parties to initiate changes to the Planning and Design Code, in some instances opportunities may arise which are mutually advantageous and it be the preference of a third party that Council be the project lead.

2.6 This mechanism can enable Council to supplement existing resources to progress zoning changes which may otherwise not have been progressed, or may have progressed more slowly.

2.7 However given that the Code amendment is being advanced at the cost of a third party, Council must ensure that the investigations are fair and manifestly seen to be so and that the merits of all reasonable policy options are openly assessed by a qualified person independent of the proponent.

3. DEFINITIONS

3.1 The Planning and Design Code comprises the zoning rules applying to any particular piece of land and defines the nature and extent of development that can occur on that land.

3.2 Code Amendment is an instrument that changes the zoning of land and can be prepared and progressed by Council or a third party according to the processes set out in Section 73 of the *Planning, Development and Infrastructure Act 2016*.

3.3 Proponent means a third party that seeks to enter, or has entered, into an agreement with Council to contribute resources in support of preparation of a Code Amendment and where that party will benefit from any changes to zoning that result from the Code Amendment.

3.4 Third party means any person or entity other than Council or the Minister who has an interest in the outcome of a Code Amendment.

4. OBJECTIVE

4.1 To enable Council to receive external funding or resources to support preparation of Code Amendments that will benefit the communities of the Town of Gawler.

4.2 To enable third parties to propose and, at Council's discretion, fund or provide the investigations and policy proposals required to progress a Code Amendment.

4.3 To ensure that Council receives independent professional advice in relation to all proponent-funded Code Amendments from an appropriately qualified person who is independent of the proponent and has no actual or perceived conflict of interest in relation to the Code Amendment.

- 4.4 To ensure probity, transparency and disclosure in all arrangements associated with proponent-funded Code Amendments.

5. PRINCIPLES

5.1 Council Control

- 5.1.1 Council will determine whether or not to initiate a proponent-funded Code Amendment based on consideration of the overall community benefit that will be generated and the availability of financial and staff resources.
- 5.1.2 Council will at all times retain absolute discretion and control over the process and content of any proponent-funded Code Amendment. Council will not enter into any arrangement that would diminish or abrogate Council's Code Amendment responsibilities under the *Planning, Development and Infrastructure Act 2016*. Council will require the proponent to acknowledge that contributing resources to a Code Amendment in no way gives the proponent any certainty as to the outcome of the Code Amendment process.

5.2 Ministers Role

Council acknowledges that, pursuant to Section 73 of the *Planning, Development and Infrastructure Act 2016*, the Minister for Planning is responsible for determining whether or not a Code Amendment can proceed beyond the proposal stage, and for determining whether or not to approve any Code Amendment that Council may submit. Council will not enter into any arrangement that would imply or infer any diminution in the Minister's Code Amendment responsibilities under the Act.

5.3 Advice to Council

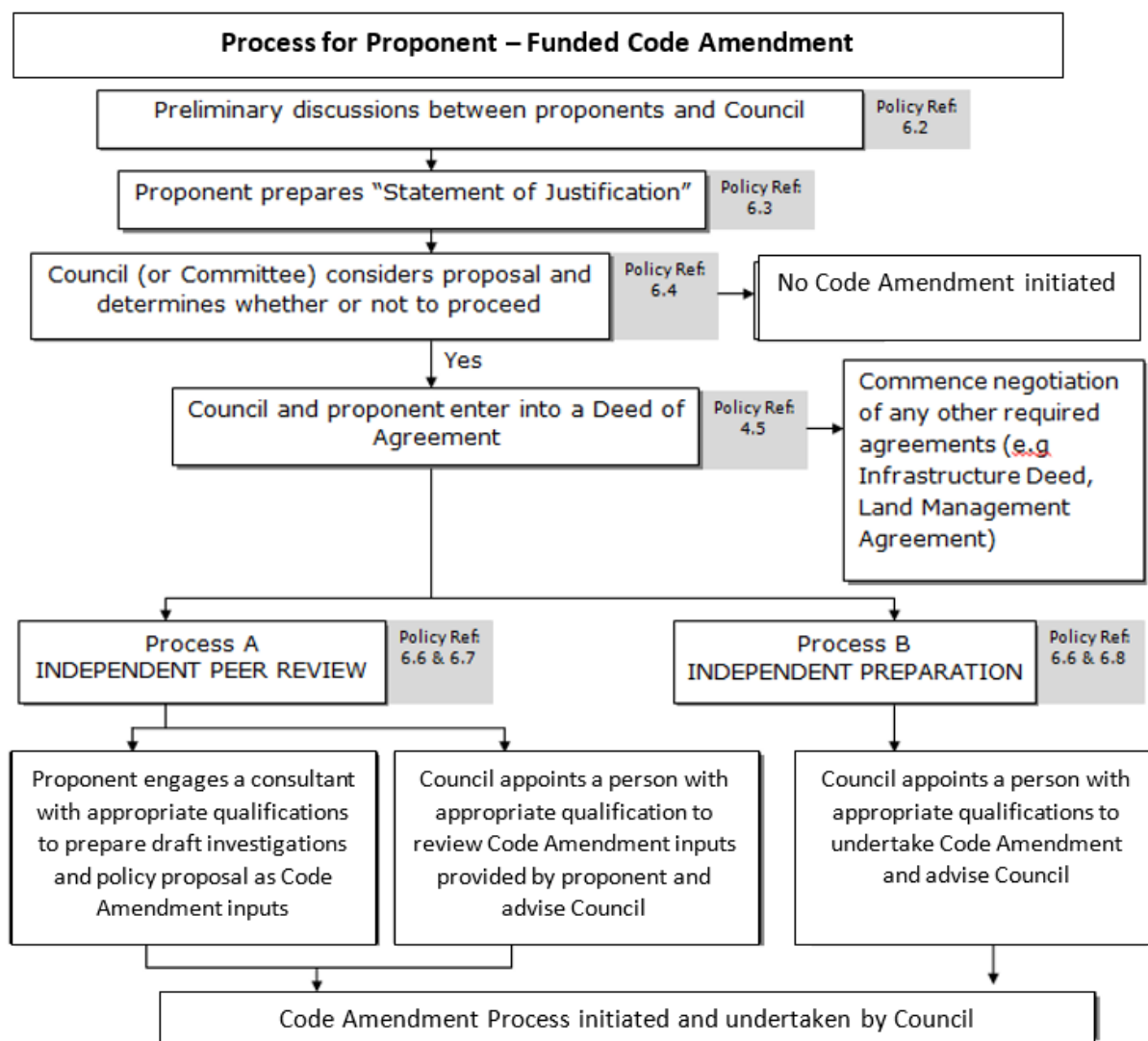
Council will obtain advice on the content of every proponent-funded Code Amendment from an authorised person (a designated entity) pursuant to Section 73 of the *Planning, Development and Infrastructure Act 2016* and who is independent of the proponent. This advice may be provided either by a Council officer or by a consultant retained by Council. All costs of which will be covered by the proponent.

5.4 Legal Agreements

- 5.4.1 Council will require that the process, roles and responsibilities involved in preparing any proponent-funded Code Amendment be reflected in a Deed of Agreement between Council and the proponent.
- 5.4.2 Council will also require that legal agreement(s) be drawn up and entered into to guarantee appropriate funding and provision of any infrastructure required to support development arising from a proponent-funded Code Amendment. Any such agreements must be executed prior to the submission of the Code Amendment to the Minister for final approval.

6. PROCEDURE

6.1 The procedures involved in preparing a proponent-funded Code Amendment are summarised in the diagram below.



6.2 Preliminary Discussions

6.2.1 Council staff will discuss with proponents the opportunity for, and the potential scope and nature of, a proponent-funded Code Amendment.

6.2.2 These discussions are an essential precursor to any formal request and will provide a forum for identifying key issues, alignment with Council policy and the potential scope of investigations required.

6.3 Statement of Justification

6.3.1 The proponent will prepare and lodge with Council a short statement setting out the key elements of the rezoning proposal and the reasons why, in the view of the proponent, it would be appropriate for Council to enter into a proponent-funded Code Amendment agreement. The statement is to be a concise summary document that:

- 6.3.1.1 identifies the reasons the Code Amendment is needed;
 - 6.3.1.2 describes the broad zoning outcome that is being sought;
 - 6.3.1.3 outlines the economic, social and environmental benefits this zoning change would have;
 - 6.3.1.4 identifies any known infrastructure constraints and proposes investigations and arrangements that will ensure infrastructure is provided to support development arising from the rezoning; and
 - 6.3.1.5 attaches any technical, design, master planning, development application or other investigations that may have previously been prepared and which support the proposed zoning change.
- 6.3.2 The role of the statement is to assist Council in assessing the proposal and to decide whether or not to initiate a proponent-funded Code Amendment. Accordingly, it is necessary only to canvass the key issues at a high level. It is not expected that preparing the statement will require commissioning of any substantive research, reports or investigations, as these will be commissioned at the investigative stage should Council decide to progress the matter.
- 6.4 Council Decides Whether to Proceed
 - 6.4.1 Council staff will then assess the proposal and make a recommendation to Council (or the appropriate Committee of Council), which will then consider and decide whether or not to proceed with a proponent-funded Code Amendment.
 - 6.4.2 In assessing the merits of the proposal, Council staff will have regard to the extent to which:
 - 6.4.2.1 the proposal is consistent with the Planning Strategy for South Australia and any other relevant policy or strategy of State Government;
 - 6.4.2.2 the proposal is consistent with Council's Strategic Management Plans and any other relevant strategic and policy documents of Council;
 - 6.4.2.3 the proposal is supported by any relevant resolutions or decisions of Council;
 - 6.4.2.4 arrangements will be established to ensure the timely and cost-effective provision of infrastructure required to support development that will occur as a result of the rezoning (including the proponent's willingness to enter into appropriate legal agreements as required);
 - 6.4.2.5 economic, social and environmental benefits are likely to arise from the proposal; and
 - 6.4.2.6 Council funds and staff resources can be made available to manage the Code Amendment.
 - 6.4.3 If Council (or the appropriate Committee of Council) determines that a proponent-funded Code Amendment is not required or appropriate in the circumstances, the proponent will be advised and no further action will be taken under this policy.

Deed of Agreement

- 6.5.1 If Council (or the appropriate Committee of Council) determines to proceed with the Code Amendment, a Deed of Agreement will be drawn up between Council and the proponent which identifies:
- 6.5.1.1 the roles and responsibilities of the parties;
 - 6.5.1.2 legislative requirements;
 - 6.5.1.3 the procedural pathway to be followed (refer 6.6 below);
 - 6.5.1.4 project management;
 - 6.5.1.5 financial management (all costs associated with the Code Amendment and its processing are to be accommodated; and
 - 6.5.1.6 the need for any other agreements to be progressed in association with the rezoning (including for example an Infrastructure Deed and/or a Land Management Agreement).
- 6.5.2 The Deed of Agreement will oblige the proponent to acknowledge that:
- 6.5.2.1 the full cost of any and all investigations and policy development that may be reasonably required to support the Code Amendment, according to the terms of any proposal agreed between Council and the Minister, will be met by the proponent;
 - 6.5.2.2 the proponent will be asked to meet or contribute to any costs associated with Council retaining an appropriately qualified person to advise Council on the content of the Code Amendment;
 - 6.5.2.3 Council retains absolute discretion over whether to seek approval from the Minister for any Code Amendment, and if so with what content, and that contributing resources to a Code Amendment in no way gives the proponent any certainty as to the outcome of the Code Amendment process;
 - 6.5.2.4 Council has no control over any decision that the Minister might make in relation to the Code Amendment;
 - 6.5.2.5 all investigations, reports and documents prepared in relation to the Code Amendment become the property of Council once submitted and Council has ability to use those documents for any purpose; and
 - 6.5.2.6 Council will require that any supporting legal agreements (e.g. Infrastructure Deed and/or Land Management Agreement) are finalised and executed prior to Council submitting any Code Amendment to the Minister for approval.
- 6.5.3 In addition, the proponent will be required to contribute towards Council's costs in managing the Code Amendment (including, but not limited to, costs involved in managing the process, undertaking public and/or agency consultation, preparing reports to Council and commissioning the independent preparation or review of documents).

- 6.5.4 The Deed of Agreement may be drawn up by Council's solicitors or by the proponent's solicitors. If the Deed is prepared by the proponent's solicitors, Council will obtain its own independent legal advice (at the proponents cost) before entering into the Deed. Costs of which will be covered by the proponent.

6.6 Choosing the Process Pathway

- 6.6.1 Once the Deed of Agreement has been executed by both parties, the process of commissioning and initiating the Code Amendment can begin according to one of two process pathways.
- 6.6.2 Council will determine which process pathway the Code Amendment will follow based on an assessment of the policy implications of the Code Amendment and any other relevant considerations.
- 6.6.3 Process A (Independent Peer Review) is most suitable for use in situations where the proponent comprises, or is authorised to represent, the majority of the owners of land proposed for rezoning and where that rezoning has few or no implications for other land.
- 6.6.4 Process B (Independent Preparation) is most suitable for use in situations where the Code Amendment will rezone or significantly affect interests and/or areas of land that the proponent does not control or represent.
- 6.6.5 Both options require that Council receive advice on investigations and policy proposals from an appropriately qualified person who is independent of the proponent and has no actual or perceived conflict or bias in relation to the Code Amendment.

6.7 Code Amendment Procurement Process – Process A (Independent Peer View)

- 6.7.1 Under this process option, the proponent is responsible for commissioning investigations and preparing policy proposals that are then reviewed by an appropriately qualified person who is independent of the proponent. Council will then decide whether and how to carry these investigations and policy proposals forward in the Code Amendment process.
- 6.7.2 The proponent must retain an appropriately qualified consultant along with any other specialist advisers that may be required, to undertake the required investigations and prepare policy proposals for submission to Council.
- 6.7.3 Concurrently, Council will appoint its own advisor to provide advice to Council on the outputs submitted by the proponent's consultant. This advisor may be a Council officer or a consultant. The advisor must be independent of the proponent and must have no actual or perceived conflict or bias in relation to the Code Amendment.
- 6.7.4 The Code Amendment process then proceeds, commencing with the preparation of a draft proposal which is prepared by the proponent's consultant and then submitted to Council for review by Council's advisor before being considered by Council for submission to the Minister.
- 6.7.5 The proponent will meet all of the costs associated with the proponent's consultant team including the costs involved in Council retaining its own advisor. The proponent will also be asked to

contribute to Council's costs in managing the Code Amendment process.

6.8 Code Amendment Procurement Process – Process B (Independent Preparation)

6.8.1 Under this option, Council appoints an appropriately qualified person to undertake the required investigations and prepare Code Amendment policy proposals. This person may be an officer of Council or an external consultant, must be independent of the proponent and have no actual or perceived conflict or bias in relation to the Code Amendment. Council will also appoint other specialist advisers that may be required.

6.8.2 The Code Amendment process then proceeds, commencing with the preparation of a draft proposal which Council can consider for lodgement with the Minister.

6.8.3 The proponent meets all of the costs associated with the preparation of the Code Amendment and will be required to contribute to Council's costs in managing the Code Amendment process.

6. REVIEW AND EVALUATION

The effectiveness of this Policy will be reviewed on a biennial basis upon the full implementation of the *Planning, Development and Infrastructure Act 2016*.

The Chief Executive Officer will report to council on the outcome of the evaluation and if relevant make recommendations for amendments, alteration or substitution of a new Policy.

The Policy will not be altered or substituted so as to affect a process already commenced.

8. FURTHER INFORMATION

Further information about this Policy can be obtained by:-

Telephone: 8522 9211

Email: council@gawler.sa.gov.au

Appointment: Town of Gawler Administration Centre, 43 High Street, Gawler East.

Letter: PO Box 130, Gawler SA 5118

9. AVAILABILITY OF POLICY

The Policy is available for inspection during ordinary business hours at the Council principal office, Town of Gawler Administration Centre 43 High Street, Gawler East or is available on the Council website at www.gawler.sa.gov.au.

A copy of this Policy will be provided to interested parties upon request, for a fee as contained in the Register of Fees and Charges.