



**PRIVATELY FUNDED DEVELOPMENT PLAN AMENDMENTS**

Policy Type:	Council Policy
Responsible Department:	City Design, City Development
Responsible Officer:	Principal Policy Planner
Related Policies and Procedures:	Staff Code of Conduct
Date Adopted:	24 June 2019, C0022/19
Last Council review:	24 June 2019
Next review date:	June 2022
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**1. POLICY STATEMENT**

The Development Act 1993 enables the Minister for Planning or a Council to undertake a Development Plan Amendment (DPA).

The Act does not prevent Council from receiving funds from external parties to assist with the DPA process. With limited Council resources, it is prudent that Council provides for such an option to land owners and proponents of developments to allow for timely and responsive changes to the Development Plan that may otherwise be unduly delayed if part of overall program of policy review.

This policy does not remove the need to adhere to all statutory requirements (as a minimum) when undertaking the DPA process.

Purpose of policy is to guide the assessment and undertaking of privately funded DPAs in a clear and transparent manner.

**2. COMMUNITY GOAL**

Community Living

*People value our City with its enviable lifestyle, activities, facilities and services*

*1.3 Our City meets the needs of all generations*

*1.4 Our Community is proud to be part of our City*

*1.5 Our City is connected and accessible*

### Environmental Stewardship

*We will maintain and enhance our urban environment, and strengthen our City's resilience to climate change by providing leadership to our community*

*2.1 Unley's urban forest is maintained and enhanced*

*2.3 The energy efficiency of the City is increased and carbon footprint reduced*

*2.4 Efficient, effective and sustainable water management is ensured*

*2.5 The City's resilience to climate change is increased*

### Economic Prosperity

*Our businesses are valued because of the range of goods, services and facilities they provide, and new businesses are supported, not burdened with bureaucracy*

*3.1 Unley is recognised as an easy place to do business*

*3.2 Thriving Main streets and other business activities operate across our City*

### Civic Leadership

*Council will listen to the community and make transparent decisions for the long-term benefit of the City*

## **3. POLICY OBJECTIVES**

This policy applies when a third party seeks to fund a Council initiated DPA through an agreement with Council based on one of the following options:

### ***Option 1: DPA undertaken by Council***

The private funder provides financial resources to the Council to undertake the DPA process (either internally or through the procurement of external consultants or a combination of both).

### ***Option 2: DPA undertaken by private funder***

The private funder funds, procures and manages as much of the DPA process as possible and provides funds for Council to procure external consultants and/or internal resources to undertake independent peer reviews of the draft SOI and draft DPA, support conduct of appropriate public consultation and Public Meeting, and review responses to all written and verbal submissions on the DPA and the approval version of the DPA (at the discretion of Council).

It is Council's decision, at its absolute discretion, which of the two privately funded DPA options is appropriate based on its consideration of the nature of the proposal and available Council resources at the time.

## **4. PRINCIPLES**

In order to determine whether or not Council should proceed with a Privately Funded DPA, the DPA should be assessed against the following criteria to determine if the DPA has merit:

- (a) The proposed policy change(s) is consistent with the State Government's Planning Strategy for Metropolitan Adelaide (30 Year Plan for Greater Adelaide) and/or future Regional Plans applying to the subject land;

- (b) The proposed policy change is consistent with relevant key Council Strategic Plans and Documents;
- (c) The existing zoning and/or planning policy arrangements for the subject land are considered to be outdated and limit reasonable development expectations for the subject land;
- (d) When considered with regard to potential 'triple bottom line' outcomes (ie social, environmental and economic), the resultant development is likely to have a net positive impact on the subject and adjoining land, any potentially affected communities of interest, the broader Council area and the State;
- (e) Whether the DPA process can be effectively managed and resourced by Council staff given other Council priorities and ongoing demands on Council resources.

## 5. POLICY

The Policy outlines Council's position, the key steps and requirements.

### ***Statement of Justification***

In the first instance, the proponent seeking Council support for a privately funded DPA will be required to prepare a brief 'Statement of Justification' to support such a proposal. This statement should clearly identify the following:

- (a) The subject land and current land ownership.
- (b) In broad terms, the policy outcomes that are being sought in undertaking a DPA.
- (c) Consistency with criteria (a) to (d) in Section 4 Principles above.
- (d) The preferred DPA option identified in Section 3 Policy Objectives above.

Council will assess the proposal, consider any resource implications, undertake preliminary investigations, and/or consult State Government departments / agencies in determining whether to support the proposal.

A decision to proceed with or reject a proposal for a privately funded DPA will be made by the Elected Member body. Council is under no obligation to accept a proposal for a privately funded DPA.

### ***Project Management and the Procurement Process***

#### ***Option 1: DPA undertaken by Council***

The cost of the DPA investigations, document preparation, consultation and other costs as per the Deed of Agreement, will be borne by the private funder and paid into a fund as agreed and directed by Council.

Council will either manage the procurement process for engaging a consultant to undertake a Privately Funded DPA, undertake the DPA investigations internally, and/or procure specific external advice as required. A consultant undertaking the privately funded DPA (or specific investigations) will report directly to Council staff, and project management of the DPA process will be undertaken by Council staff.

In selecting a consultant to undertake the Privately Funded DPA an open or select tender process will be undertaken in accordance with Council's procurement policies.

### ***Option 2: DPA undertaken by private funder***

The private funder undertakes to engage suitably qualified consultants, including one who meets the requirements of the Development Act 1993 and Development Regulations 2008, to:

- (a) Prepare a draft Statement of Intent (SOI).
- (b) Undertake investigations in accordance with the agreed SOI.
- (c) Prepare the required DPA documentation in accordance with the Development Act 1993 and Development Regulations 2008.
- (d) Review and respond to all written and verbal submissions on the draft DPA.
- (e) Prepare the approval version of the DPA.

At the discretion of Council the private funder will also agree to an independent peer review of the draft SOI and draft DPA (prior to consultation), support conduct of appropriate public consultation and Public Meeting, and review of all responses to the written and verbal submissions, and the approval version of the DPA.

The cost of the peer review(s) will be borne by the private funder and paid into a fund as agreed and directed by Council. Council will be responsible for procuring the services of a suitably qualified consultant to undertake the independent peer review(s).

The consultant undertaking the independent peer review will report directly to Council staff.

Under both options, at key stages of the DPA process (eg endorsement of the SOI, endorsement of the draft DPA for consultation, endorsement of the approval version of the DPA) the Elected Member body will need to endorse the documentation prior to proceeding to the next stage.

### ***Legal Arrangements***

A legal instrument in the form of a Deed of Agreement will be required to be entered into between Council and a private funder. As a minimum, the deed of Agreement will include references to the following:

- State that a private funder is funding an open and transparent DPA process, which provides no guarantees that any DPA outcome sought by the private funder will be provided.
- Outline the heads of agreement and legal procedures, including the roles of the parties, legal requirements and procedures, and project and financial management.
- Define 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.
- Acknowledge that Council maintains ultimate control of the DPA process, in that key stages are presented to the Elected Member body for consideration and endorsement prior to proceeding to the next stage.
- Acknowledge that some parts of the DPA process cannot be outsourced and management, policy oversight and processing will remain the responsibility of Council staff, and therefore managed according to Council priorities, meeting schedules and timeframes.
- Acknowledge that while Council may initiate a DPA, ultimately the decision on its authorisation rests with the Minister for Planning.

- Detail what may happen if the DPA is either not authorised or authorised with amendments that may not suit the private funder.
- State that the DPA process will proceed at the expense of the private funder and acknowledge that the private funder will fund any additional investigations that may be required by Council following consideration of a draft DPA and/or following consultation.
- Acknowledge that the private funder will fund any legal costs associated with the DPA process, including legal review, legal proceedings or judicial review proceedings.

Council is under no obligation to commence the DPA process (by submitting a SOI to the Minister for Planning) until the Deed of Agreement is signed by all relevant parties. All DPA documentation will explicitly indicate that the DPA is a privately funded DPA.

## 6. DEFINITIONS

Key Term / Acronym	Definition
Development Plan Amendment (DPA)	A Development Plan Amendment or DPA is a document that describes proposed changes to a Development Plan. The DPA process involves a series of stages and approvals and includes undertaking and documenting investigations to inform and justify the proposed policy changes to the Development Plan.
Statement of Intent (SOI)	A Statement of Intent or SOI is a document that outlines the scope, timing, consultation requirement and nature of investigations to be carried out in preparing a DPA. A Council is required to prepare a SOI under Section 25(1) of the Development Act 1993 to reach agreement with the Minister for Planning to initiate a DPA.
Private funder	Means one or more private persons or organisations proposing to fund the undertaking of a DPA affecting their (and potentially adjacent) land to facilitate future development outcomes on the land.
Deed of Agreement	A Deed of Agreement is a legally binding agreement signed by the private funder and the Council. It contains the agreed legal obligations and responsibilities of both parties in undertaking a privately funded DPA.

## 7. LEGISLATION/REFERENCES

This is an optional voluntary policy in relation to the preparation of DPA's pursuant to the *Development Act 1993* and *Development Regulations 2008*.

## 8. POLICY DELEGATIONS

Nil applicable

## 9. ROLES/RESPONSIBILITIES

- Principal Policy Planner – review and advice on behalf of the council.
- Chief Executive Officer – review and necessary certification of DPA.

## 10. AVAILABILITY

The policy is available for public inspection during normal office hours from;  
Civic Centre  
181 Unley Road  
Unley SA 5061

A copy may be purchased for a fee as determined annually by Council.

It is also available for viewing, download and printing free of charge from the Council's website, [www.unley.sa.gov.au](http://www.unley.sa.gov.au)

## 11. DOCUMENT HISTORY

<b>Date:</b>	<b>Council/Committee/Internal</b>	<b>Comment:</b>
11/06/2019	City Strategy and Development Policy Committee (Item 2.1)	Recommended to Council for endorsement
24/06/2019	Council (Item 3.1)	Endorsed by Council