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1. PREAMBLE

This procedure provides a framework for Council to assess and process requests from private entities or third parties to undertake privately funded Development Plan Amendments under the *Development Act 1993*, and to clarify Council’s requirements and relationships with private funders.

1.1 Background

A privately funded Development Plan Amendment (DPA) refers to when a third party funds the investigation work required to change Development Plan zoning and/or policy, and Council (or the Minister) undertakes the preparation of the DPA in accordance with its obligations under the *Development Act 1993*.

Privately funded DPAs are a legitimate model that may be used to expedite and resource the preparation of a DPA, particularly where its preparation has not been budgeted for or identified as a priority by the Minister or Council through the periodic Development Plan Review process under Section 30 of the *Development Act 1993*.

1.2 Purpose

The purpose of this procedure is to provide a framework to guide Council in assessing and processing requests from private entities or third parties to undertake privately funded DPAs, and clarify Council’s requirements and relationships with the potential private funder. This will ensure openness and transparency in the process, well considered and consistent decision making and that Council meets its obligations under the *Development Act 1993*.

1.3 Scope

This procedure applies when a private entity or third party seeks to fund investigations required to initiate or make changes to the Holdfast Bay (City) Development Plan as part of a privately funded DPA in the City of Holdfast Bay, which is being considered under Council’s Privately Funded Development Plan Amendments Policy.

1.4 Definitions

Development Plan is a document that contains the planning controls that guide what can and cannot be developed in a council area. Planning authorities use these planning controls to assess new development proposals.

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Development Plan Amendment (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 investigations to inform the proposed zoning or policy changes.

Statement of Intent (SOI) is a document that outlines the scope, timing, consultation requirements and nature of investigations to be carried out in preparing a Development Plan Amendment. 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 Development Plan Amendment.

Private funder means one or more private persons or organisations proposing to fund the undertaking of a Development Plan Amendment where they may benefit from any changes to zoning or development policies resulting from the Amendment.

Statement of Justification is a document to be submitted to Council under this Procedure and its overarching Policy to justify a request for Council to consider initiating a privately funded Development Plan Amendment. This Statement will be assessed and considered against the criteria outlined in this Procedure.

Development Plan Review is a process required under Section 30 of the *Development Act 1993*, whereby all councils must periodically review their Development Plan at least every five years to ensure it remains up to date and aligns with the State's Planning Strategy. This process results in preparation of a Strategic Directions Report and program of Development Plan Amendments for agreement with the Minister for Planning.

Planning Strategy is a document empowered under Section 22 of the *Development Act 1993* that outlines the State Government's direction for land use change and development in South Australia. The relevant volume applying to the City of Holdfast Bay is currently The 30-Year Plan for Greater Adelaide.

Strategic Management Plans refers to a suite of documents described under Section 122 of the *Local Government Act 1999* that serve several inter-related purposes and identify Council's forecasts and objectives for its area over a period of at least 4 years. Council's must comprehensively review these plans within 2 years of each general election of the council.

1.5 Strategic Reference

Placemaking: Creating vibrant and safe places
Placemaking: Developing walkable connected neighbourhoods
Placemaking: Building character and celebrating history
Placemaking: Housing a diverse population
Culture: Supporting excellent, efficient operations

2. PRINCIPLES

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The process for assessing and processing requests to undertake privately funded DPAs is provided below.

2.1 Statement of Justification

In submitting a request for Council to consider initiating a privately funded DPA, a 'Statement of Justification' will first be submitted for Council's consideration.

This Statement will be assessed against a range of criteria set out in clause 2.2 below (and accordingly should respond to this criteria) and must clearly outline:

- a. the reason(s) the DPA is needed, and
- b. the broad policy and/or rezoning outcome that is being sought.

Details of any previous technical, design, master planning or other investigations that have been undertaken that may support the proposal should also be provided.

2.2 Assessment Criteria

In order to determine whether or not Council should proceed to initiate investigations for a privately funded DPA, the details and proposed outcomes provided in the Statement of Justification will be assessed against the following criteria:

Strategic alignment

- a. The proposal is consistent with the Planning Strategy for South Australia (currently the 30-Year Plan for Greater Adelaide)
- b. The proposal is consistent with key Council strategic and policy documents, including its Strategic Management Plans
- c. Appropriate consideration has been given to likely social, environmental, economic and physical benefits and costs arising from the proposal

Other Considerations:

- d. The policy outcome or investigations being sought have been identified in Council's Strategic Directions Report (as part of Council's last Section 30 Development Plan Review)
- e. The proposal could facilitate wider precinct or area benefits and investigations (i.e. beyond the affected site or area)
- f. The proposed DPA is on the Council's planning policy program (as agreed with the Minister) or could be reasonably incorporated.

In undertaking the assessment against the above criteria, the following should be noted:

- If the proposed policy or zoning outcome is not consistent with the South Australian Planning Strategy, Council will not proceed

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- The proposal should be consistent with Council's strategic directions and policy documents. In the absence of local strategic direction, consideration could be given to the party funding further strategic work, with more favourable consideration given where it can be demonstrated that there are significant social, environmental, economic or physical (built environment) benefits associated with the proposed policy outcome
- The proposal must be considered along with the timing of other DPAs and priorities identified in Council's current DPA program, and as agreed with the Minister as part of the Section 30 Development Plan Review process. The capacity for Council to process privately funded DPAs will be influenced by existing workloads, available resources and priorities. Importantly, while aspects of the DPA process can be outsourced, Council staff will be responsible for project management, reporting, procurement and managing consultation. An emphasis will therefore be placed on current work commitments and capacities.

2.3 Project Management and Procurement Process

If Council agrees to initiate a privately funded DPA process, Council will maintain ultimate control of the DPA and seek qualified and independent advice in accordance with its obligations under the *Development Act 1993*.

Council will therefore engage its own independent consultant(s) in accordance with Council's Procurement (Contract and Tendering) Policy to review background documents, prepare the Statement of Intent (SOI) and undertake the DPA. The private funder is to have no role in the tender or selection of consultants to undertake any of the associated DPA work, or in assessing the work or findings of the consultants, or in Council's consideration of the DPA at any time after a legal funding agreement has been entered into as outlined in clause 2.4 below.

The consultant(s) undertaking the privately funded DPA will report directly to Council staff and/or Council's nominated project manager. As part of the procurement process, the consultant will be required to confirm that there is no conflict in interest in providing these services to Council.

Key stages of the DPA will be presented to Council for consideration prior to being submitted to the Minister for agreement or approval (where required). This includes the SOI, Public and Agency Consultation, draft documents, hearing of public submissions and Approval.

2.4 Legal Arrangements

A formal Deed of Agreement shall be entered into between Council and the private funder. The Deed will outline the heads of agreement and legal procedures, including the roles of the parties, legislative requirements and procedures, and project and financial management.

Fundamental considerations in preparing the Deed include the following:

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Project management

- Provision to seek specific experts or technical advice as required and independent review of background documents, with related expenses to be wholly funded by the private funder
- Broadly outline the nature of investigations to be undertaken and to be considered in preparing the SOI and DPA, which will form the basis of the consultant's brief
- Provision to refer to the consultant's brief to define the work to be undertaken by Council's appointed consultants to prepare the DPA.

Terms, roles and expectations

- There shall be no expectation that the privately funded DPA will lead to any pre-determined outcome and, at all times, the DPA and Council's handling of the process will be subject to the requirements of the *Development Act 1993* and its Regulations
- An acknowledgement that while Council may initiate the DPA, the final version of the DPA will be determined by the Minister responsible for administering the *Development Act 1993* and Council does not have control over what the final version of the DPA might be
- An acknowledgement that Council may decide not to proceed with the DPA based on investigations formed following the SOI, or recommend alterations or decline to proceed with the DPA following statutory consultation
- An ability for Council to continue with the DPA (at its own expense) and use any materials prepared if the private funder decides to withdraw from the process at any stage
- The private funder must acknowledge that the authorisation of the DPA incorporating the rezoning or policy change contemplated by the Deed does not give the private funder, or any person with an interest in the property, any additional rights under the *Development Act 1993*. The private funder must also acknowledge that Council or any other relevant planning authority must assess any subsequent development application in respect to the subject land or area affected in accordance with the current development control procedures in the Development Act
- The SOI and draft DPA must clearly state that the DPA is privately funded and confirm that there will be no conflict of interest in its preparation
- The private funder will have no rights to control or direct any process in the preparation of, or investigations required to inform, the DPA, other than through a written and/or verbal submission as part of the statutory public consultation process
- The legal instrument may, however, include a forum for facilitating ongoing regular communication between Council and the private funder.

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Funding obligations and arrangements

- The private funder shall pay the full cost of Council's independent consultants to prepare the DPA and may also be required to contribute additional funds for Council staff time to manage the DPA process. The agreed amount will depend on the complexity and level of Council staff involvement in managing the project, with an emphasis on achieving a cost neutral outcome for Council
- The private funder will also fund any legal costs associated with preparation of the DPA, including legal review, legal proceedings and dispute resolution, or judicial review proceedings in relation to the DPA process
- The dollar figure of the financial contribution that will be provided by the private funder to Council to prepare the SOI and draft DPA should be expressed as a maximum figure. Any increases to this figure during the DPA process shall be by mutual agreement
- The payment schedule for the consultant undertaking the DPA will be devised to minimise the financial risk to Council
- If scheduled payments are not received by Council from the private funder, work on the project will immediately cease
- For higher value or cost DPAs, payment in advance or a bank guarantee may be required.

3. REFERENCES

3.1 Legislation

- *Development Act 1993*
- *Development Regulations 2008*
- *Local Government Act 1999*

3.2 Other References

- Privately Funded Development Plan Amendments Policy
- Development Plan Amendment Practitioners Guide (and associated templates), Government of South Australia