

SCS-042 Private Planning Scheme Amendment Fee Policy

TRIM Reference: D21/207970 Due for Review: August 2023
Responsible Officer: Manager Planning and Development

Purpose

This policy outlines Surf Coast Shire Council's (Council) process for the apportionment of costs associated with privately requested planning scheme amendments, including where direct costs are incurred that exceed or are outside the ambit of the prescribed fees.

Policy Principles

This policy assists Surf Coast Shire Council in ensuring a transparent and equitable process for the recovery of costs associated with the private amendment process.

Scope

This policy applies to Council, its employees and all applicants (proponents) seeking to undertake a private planning scheme amendment.

This policy covers the charging of fees directly associated with the private amendment process that are over and above the fees prescribed pursuant to section 6 of the Regulations. It does not cover the method for determining the strategic merit or prioritising amendments.

Policy

Regulation 6 of the Regulations sets out the fees for each stage of an amendment to a planning scheme.

Subregulation (1) states that:

The fee for the whole or any part of a stage of the process for amending a planning scheme specified in Column 1 of the Table at the foot of this regulation is the fee specified in Column 2 of that Table corresponding to that stage.

Subregulation (4) states that:

A fee prescribed in subregulation (1) or (3) relating to a stage of the process of amending a planning scheme is to be paid:

- (a) By the person who requested the amendment to the person specified in Column 3 of the Table at the foot of this regulation corresponding to that stage; and*
- (b) At the time specified in Column 4 of that Table corresponding to that stage.*

Table			
<i>Column 1</i> <i>Stage in the process for amending a planning scheme</i>	<i>Column 2</i> <i>Fee</i>	<i>Column 3</i> <i>Person to whom fee is paid</i>	<i>Column 4</i> <i>Time at which fee must be paid</i>
Stage 1 which consists of: a. considering a request to amend a planning scheme; and b. taking action required by Division 1 of Part 3 of the Act; and c. considering any submissions which do not seek a change to the amendment; and d. if applicable, abandoning the amendment.	206 fee units	The Planning authority	The time at which the amendment is requested.
Stage 2 which consists of: a. considering: i. up to and including 10 submissions which seek a change to an amendment, and where necessary referring the submissions to a panel; or ii. 11 to (and including) 20 submissions which seek a change to an amendment, and where necessary referring the submissions to a panel; or iii. submissions that exceed 20 submissions which seek to change an amendment, and where necessary referring the submissions to a panel; and b. providing assistance to a panel in accordance with section 158 of the Act, and c. making a submission to a panel appointed under Part 8 of the Act at a hearing referred to in section 24(b) of the Act; and d. considering the panel's report in accordance with section 27 of the Act; and e. after considering submissions and the panel's report abandoning the amendment.	1021 fee units; or 2040 fee units; or 2727 fee units	The planning authority	Before the planning authority considers submissions.
Stage 3 which consists of: a. adopting the amendment or a part of the amendment in accordance with section 29 of the Act; and b. submitting the amendment for approval by the Minister in accordance with section 31 of the Act; and c. giving the notice of the approval of the amendment required by section 36(2) of the Act.	32.5 fee units if the Minister is not the planning authority or nil fee if the Minister is the planning authority	The planning authority	Before the planning authority adopts the amendment.
Stage 4 which consists of: a. consideration by the Minister of a request to approve the amendment in accordance with section 35 of the Act; and b. giving notice of approval of the amendment in accordance with section 36(1) of the Act.	32.5 fee units if the Minister is not the planning authority or nil fee units if the Minister is the planning authority.	The Minister	At the time the planning authority submits the amendment to the Minister for approval.

It is policy that Surf Coast Shire Council will process private amendments only where:

- the applicant agrees to pay the prescribed fees; and
- the applicant voluntarily agrees to pay any direct costs that exceed the prescribed fees or any direct costs that exceed a budget formally allocated by council; and

- council's strategic Land Use Planning Coordinator or delegate determines that suitable human resources are available to project manage the amendment; and
- the amendment supports or implements the Municipal Planning Strategy; or
- the Council resolves that the amendment may be processed; and
- evidence of the voluntary agreement referenced at dot point 2 of this clause is provided in writing.

Council reviews its strategic work plan annually, prioritising projects and amendments and allocating funds to priority projects and amendments accordingly. Where an amendment is a council amendment, it cannot commence unless the amendment is on council's strategic work plan and a budget has been allocated.

Private amendments are not on council's strategic work plan and have no allocated budget. Without funds, the amendment cannot proceed. Where the amendment is a private amendment it is policy to afford applicants the opportunity to:

- add the amendment to council's strategic work plan where the request will be considered at the next annual budget review. All projects and amendments on council's strategic work plan will be subject to the same prioritisation and budget allocation process; or
- request that council process the amendment as a privately funded amendment (private amendment).

Where the amendment is a private amendment, fees will be charged in accordance with Section 6 of the Regulations with the stage 1 fee being inclusive of advertising costs and the stage 2 fee being inclusive of the costs associated with the provision of secretarial assistance during that stage.

The fees set out in Section 6 of the Regulations do not account for all direct costs that may be incurred during a planning scheme amendment process. Costs that are beyond the ambit of the prescribed fees include:

- the portion of a fee charged by Planning Panels Victoria that exceeds the stage 2 fee prescribed by Section 6 of the Regulations; and
- legal fees associated with the preparation and lodgement of a S173 agreement (or similar) where the S173 agreement forms part of the amendment; and
- expert witnesses and reports where the applicant (proponent) requests council to engage the expert to support the amendment or technical aspects of the amendment at a panel hearing; and
- professional advocates at a Planning Panel acting on behalf of Council.

The use of expert witnesses and professional advocates is discretionary. They can also be critical to an amendment.

Before council processes a private amendment, funding of the amendment will be assured by the applicant through the provision of a written agreement. The agreement will evidence that the applicant has:

- agreed to pay the prescribed fee
- voluntarily agreed to pay to council, any difference between the prescribed fee and the fee required to be paid by Planning Panels Victoria (PPV) where the PPV fee exceeds the prescribed fee

- voluntarily agreed to pay all legal costs associated with the preparation and lodgement of a related section 173 Agreement and any other legal costs directly associated with the amendment
- voluntarily agreed to pay the cost of discretionary work or professional services that are requested by the applicant (proponent) in writing.

Records will be kept of all negotiations and agreements between council and the applicant pertaining to the apportionment of such costs.

Local Government Act 2020 Principles

Principles	Applicable to policy	If yes, provide details
Governance Principles (Consideration of the Governance Principles under s.9 of LGA 2020)	Yes	<i>Consistent with the Act and Regulations, ensuring a consistent and transparent process for the equitable recovery of private amendment costs</i>
Community Engagement (Consideration of Community Engagement Principles under s.56 LGA 2020)	No	
Public Transparency (Consideration of Public Transparency Principles under s.58 of LGA 2020)	Yes	Clear policy is publicly available, ensuring that the process to recover private amendment costs is transparent
Strategies and Plans (Consideration of Strategic Planning Principles under s.89 of LGA 2020)	No	
Financial Management (Consideration of Financial Management Principles under s.101 of LGA 2020)	Yes	<i>Clear and equitable method to recover private amendment costs, ensuring that once started, a private amendment can proceed to its conclusion.</i>
Service Performance (Consideration of Service Performance Principles under s.106 of LGA 2020)	Yes	Ensures an equitable process for the recovery of private amendment costs.

Definitions

Applicant: a private individual or company (proponent) who initiates a private amendment. The applicant may or may not be the land owner.

Council amendment: a planning scheme amendment initiated by Council. These amendments are included on council's strategic work plan.

Fee unit: The Regulations set fees in fee units. The fee unit value is adjusted annually under the Monetary Units Act 2004 and published in the Government Gazette.

Planning authority: while the Victorian Minister for Planning and Council each act as the planning authority within a set context, for the purpose of this policy the planning authority is Council.

Planning Panel: an independent panel appointed by the Minister for Planning under Part 8 of the Planning and Environment Act 1987. The panel may also be referred to as Planning Panels Victoria.

Prescribed fee: a fee prescribed by the Regulations.

Private amendment: a planning scheme amendment that is initiated by a private individual and/or company where the main beneficiary of the amendment is the applicant or owner.

S173 agreement: a legal agreement made under Section 173 of the Planning and Environment Act 1987.

Strategic work plan: an annual work plan listing council's proposed strategic land use projects and planning scheme amendments.

The Act: *Planning and Environment Act 1987*

The Regulations: *Planning and Environment (Fees) Regulations 2016*

Related Procedure

Not applicable

References

Planning and Environment Act 1987

Planning and Environment (Fees) Regulations 2016

Document History

Version	Document History	Approved by – Date
1	<i>Adopted</i>	<i>Council Resolution – 27 August 2019</i>
2	<i>Amended</i>	<i>Council Resolution – 23 November 2021</i>