

# BAROSSA ASSESSMENT PANEL

## OPERATING AND MEETING PROCEDURES



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### 1. APPLICATION

- 1.1 These procedures apply and are in relation to the Barossa Assessment Panel ("the Panel") established by The Barossa Council ("the Council") under section 83 of the *Planning, Development and Infrastructure Act 2016* ("the PDI Act") and having regard to the Terms of Reference for the Panel as adopted by the Council.
- 1.2 From 1 October 2017 to 30 June 2020, the Panel is a delegate of the Council in respect of the determination of certain development applications seeking Development Plan consent, as specified by the Council pursuant to Sections 34(23) and 34(24) of the *Development Act 1993* ("the Development Act").
- 1.3 The following principles should be applied with respect to the procedures to be observed at a Panel meeting:
  - (a) procedures should be fair and contribute to open, transparent and informed decision-making;
  - (b) procedures should encourage appropriate community participation as may be required under the PDI Act, the *Planning, Development and Infrastructure (General) Regulations 2017* ("the PDI Regulations"), the *Development Act or Development Regulations 2008* ("the Development Regulations");
  - (c) procedures should reflect levels of formality appropriate to the nature and scope of responsibilities exercised at the meeting;
  - (d) procedures should be sufficiently certain to give applicants, representors and the general community confidence in the deliberations at the meeting.
- 1.4 Interactions between Members of the Panel, the public, Council staff and elected Members of the Council are to be courteous and respectful at all times.

### 2. MEETING NOTICE, TIMES AND VENUE

- 2.1 Scheduled meetings of the Panel will be held on the first Tuesday of each month (excluding the first Tuesday meeting in January) at 5pm at the Council Offices, 43-51 Tanunda Road, Nuriootpa unless there are no matters to be considered.
- 2.2 Written notice of a meeting of the Panel must be given to each member of the Panel by the Assessment Manager at least three (3) business days before the date of the

meeting. The notice must set out the date, time and place of the meeting and contain or be accompanied by the agenda for the meeting. The notice may be given to a Member of the Panel:

- a) personally; or
- b) by delivering the notice (whether by post or otherwise) to the usual place of residence of the Member or to another place authorised in writing by the Member; or
- c) by leaving the notice for the Member at an appropriate place at the principal office of the Council, if authorised in writing by the Member to do so; or
- d) by a means authorised in writing by the Member as being an available means of giving notice (e.g. email or facsimile transmission).

2.3 A notice that is not given in accordance with clause 2.2 of these Operating and Meeting Procedures is taken to have been validly given if the Assessment Manager considers it impracticable to give the notice in accordance with that clause and takes action the Assessment Manager considers reasonably practicable in the circumstances to bring the notice to the attention of the Member.

2.4 Special meetings (being additional meetings or alternative meetings dates, times or venues) of the Panel may be required in special circumstances to expedite decisions on applications before the Panel, and will be called at the discretion of the Presiding Member in consultation with the Assessment Manager. Members of the Panel, applicants, representors and the public shall be given five (5) clear business days' notice of a special meeting of the Panel.

2.5 Public notice of a scheduled meeting will be provided at the Council office and on the Council's website.

2.6 A copy of the Agenda and reports from the Administration for every meeting of the Panel shall be available for viewing by the public at the Council office at least three (3) business days before the meeting.

2.7 A copy of the Agenda and reports from the Administration for every meeting of the Panel shall be available for viewing on the Council's website at least three (3) business days before the meeting.

2.8 A meeting of the Panel will commence as soon after the time specified in the notice of the meeting, as a quorum is present in accordance with clause 4.1 and 4.2 of these Operating and Meeting Procedures.

2.9 If a meeting is adjourned to another day, the Assessment Manager must:

- (a) give notice of the adjourned meeting to each Member setting out the date, time and place of the meeting; and
- (b) give notice of the adjourned meeting to the public by causing a notice setting out the date, time and place of the meeting to be placed on display at the principal office of the Council.

2.10 In the event the Presiding Member is not present, then the Panel shall appoint one of its members as the acting Presiding Member.

### **3. PUBLIC ACCESS TO MEETINGS**

3.1 Members of the public are entitled to attend a meeting of the panel other than as set out in sub-section 3.2 of these Operating and Meeting Procedures.

3.2 The Panel may exclude the public from attendance at a meeting—

- (a) during so much of the meeting as is necessary to receive, discuss or consider in confidence any of the following matters:
  - (i) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
  - (ii) information the disclosure of which—
    - (A) could unreasonably be expected to confer a commercial advantage on a person, or to prejudice the commercial position of a person; and
    - (B) would, on balance, be contrary to the public interest;
  - (iii) information the disclosure of which would reveal a trade secret;
  - (iv) commercial information of a confidential nature (not being a trade secret) the disclosure of which—
    - (A) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
    - (B) would, on balance, be contrary to the public interest;
  - (v) matters affecting the safety or security of any person or property;
  - (vi) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;
  - (vii) matters that should be considered in confidence in order to ensure that the Panel, or any other entity, does not breach any law, or any order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
  - (viii) legal advice;
  - (ix) information relating to actual litigation, or litigation that the Panel believes on reasonable grounds will take place;
  - (x) information the disclosure of which—
    - (A) would divulge information provided on a confidential basis by or to a Minister of the Crown, the State Planning Commission, or another public authority or official; and

(B) would, on balance, be contrary to the public interest;

(b) during so much of the meeting that consists of its discussion or determination of any application or other matter that falls to be determined by the Panel.

<b>4.</b>	<b>QUORUM</b>
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- 4.1 A quorum at a meeting of the Panel is a number obtained by dividing the total number of Members of the Panel for the time being in office by two (2), ignoring any fraction resulting from the division, and adding one (1).
- 4.2 The Panel comprises five (5) members and therefore a quorum at a meeting is three (3) members.
- 4.3 If the number of apologies received by the Presiding Member or the Council, indicate that a quorum will not be present at a meeting, the Presiding Member, may adjourn the meeting to a specified day and time.
- 4.4 Should a quorum not be reached within 30 minutes of the scheduled commencement time of the meeting and there is no apparent prospect of achieving a quorum within a reasonable time thereafter, the meeting will be cancelled and the business on the agenda will be considered at the next meeting of the Panel.
- 4.5 If a meeting is adjourned for want of a quorum, the Assessment Manager will record in the minutes the reason for the adjournment, the names of any Members present, and the date and time to which the meeting is adjourned.

#### Deputy Members

- 4.6 If a Member is unable or unwilling to attend a meeting or part of a meeting, he or she must use his or her best endeavours to notify the Presiding Member or Assessment Manager at his or her earliest opportunity.
- 4.7 If notification pursuant to sub-section 4.6 is given, the Assessment Manager may request a Deputy Member attend the meeting in place of the Member for the meeting or part of the meeting.
- 4.8 Unless the context otherwise requires, a reference to a Member in these Operating and Meeting Procedures includes a Deputy Member.

#### Deputy Members attending the Panel Meeting

- 4.9 If a Member provides sufficient notice, in advance of a meeting, that they are unavailable to attend a meeting, the relevant Deputy Member is to be notified by the Assessment Manager to attend and participate in that entire meeting.
- 4.10 If a Member has a conflict of interest in relation to an item on the meeting agenda and there is a risk that a quorum will not be achieved for that item, the Deputy Member is to be notified by the Assessment Manager to attend the meeting and participate for that item only.
- 4.11 The Assessment Manager will undertake all reasonable measures to ensure that Deputy Members are notified as required by clauses 4.9 and 4.10 above as soon as possible.

- 4.12 For clarity, if the Council Member appointed to the Panel is unavailable to attend a meeting, the Deputy Member who will be notified to attend the meeting will be the Deputy Member (Council Member). If an independent Member of the Panel is unavailable to attend a meeting, the Deputy Member who will be notified to attend the meeting will be the Deputy Member (Independent Member), who is not an elected member of the Council.

## **5. VOTING**

- 5.1 Each Member of the Panel present at a meeting of the Panel is entitled to one (1) vote on a matter arising for decision and, if the votes are equal, the member presiding at the meeting is entitled to a second or casting vote.
- 5.2 Clause 5.1 does not apply to a person who is appointed as an 'additional member' of the Panel under Section 85 of the PDI Act.
- 5.3 All Members (other than additional members) of the Panel will participate in the decision of the Panel by a vote.
- 5.4 All decisions of the Panel shall be made on the basis of a majority consensus decision of the Members present.
- 5.5 Minutes shall record the decision of the Panel on each development application and record a mover and seconder for items decided by vote.
- 5.6 A majority vote of the Panel shall be recorded in the minutes as the decision of the Panel and the vote or views of individual Members shall not be recorded in the minutes.
- 5.7 Members of the Panel cannot submit any notice of motion to revoke or amend previous decisions of the Panel.

## **6. CONDUCT**

- 6.1 Members of the Panel must act at all times in accordance Section 15(2) of the PDI Act and the Assessment Panel Member - Code of Conduct ("the Code of Conduct") adopted by the Minister under Schedule 3 of the PDI Act. .
- 6.2 The Presiding Member may adjourn a meeting in the event of a disruption or disturbance by a Member, an applicant, a representor or any person or persons present at the meeting of the Panel until such time as the disruption or disturbance ceases, or failing that, order a persons or persons to leave the meeting.
- 6.3 As specified in the Assessment Panel Members – Code of Conduct, Members of the Panel must not initiate individual discussions with applicants, representors or government agencies regarding a matter that is or is likely to be before the panel for determination, and, if placed in a situation where such discussion is unavoidable, should not express an opinion that could be constructed as having made a decision in relation to the proposal before the panel has collectively assessed and determined the development application.

<b>7.</b>	<b>CONFLICT OF INTEREST</b>
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- 7.1 If a Member of the Panel is of the view that they have a conflict of interest in relation to a matter before the Panel, the Member must:
- a) as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the Panel; and
  - b) in the Panel meeting when the relevant agenda item is reached, make a verbal disclosure to the Panel and remove themselves from the meeting in accordance with clause 7(b) of the Code of Conduct.
- 7.2 If an interest is declared by a Member at a Panel meeting the nature of the interest must be recorded in the minutes of that meeting.

<b>8.</b>	<b>HEARING OF REPRESENTATIONS</b>
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- 8.1 An applicant has the right to address the panel at a Hearing of Representations in accordance with Section 38(10) of the Development Act.
- 8.2 Except as provided in Section 38(10) of the Development Act or otherwise provided in these Operating and Meeting Procedures an applicant to a matter before the Panel may not address the Panel but the Presiding Member may allow members of the Panel to address questions to the applicant or their representatives. The applicant or their representatives must limit their response to the questions raised.
- 8.3 The Panel shall conduct a Hearing of Representations in accordance with Section 38(10) of the Development Act and Regulation 35 of the *Development Regulations 2008* for Category 2 and 3 developments. Where required the Hearing of Representations will take place at the commencement of the consideration of the relevant agenda item. To avoid doubt, all representors who satisfy the requirements of sub-section 8.6 of this document in respect of Category 2 developments will be given an opportunity to address the Panel.
- 8.4 The Hearing of Representations will hear representors in support of their representations first, and then hear the applicant's response to the representations. At a Hearing of Representations the persons making representations will be allocated five (5) minutes to address the Panel, unless otherwise determined by the Presiding Member. The applicant is allocated ten (10) minutes to respond to the representations made to the Panel, unless otherwise determined by the Presiding Member.
- 8.5 Representors and Applicants will not be allowed a further opportunity to address the Panel after the conclusion of the Hearing of Representations.
- 8.6 Where representors are addressing the Panel on a common issue or issues, the Presiding Member may request such representors to address the Panel in a group, rather than individually.
- 8.7 Only representors (or their nominated representative) who have lodged a valid representation pursuant to Section 38 of the Development Act and are entitled to be heard by the Panel in accordance with the PDI Act and these Operating and Meeting Procedures. Representors must be personally present (or represented) at the panel meeting scheduled to hear their verbal representation. If a representor (or their representative) is not present at the time the relevant application is heard, the opportunity to be heard in support of their submission is forfeited.

- 8.8 Where no representors appear at the Hearing of Representations an applicant may only be heard (at the discretion of the Presiding Member) where their written response to representations requires explanation or where the Panel will otherwise benefit from hearing from them.
- 8.9 When an application has been deferred and is brought before the Panel again for consideration the applicant and representor will not again be heard by the Panel unless the application has been re-advertised and a new Hearing of Representation is to be held. However, the Presiding Member may allow members of the Panel to address questions to the applicant or the representor who must limit their responses to the questions raised.
- 8.10 Members of the Panel may question and seek clarification from representors and the applicant at the conclusion of their address to the Panel.
- 8.11 Individual elected members of The Barossa Council do not have a right to be heard by the Panel unless they are a representor as a private citizen or have been appointed by a representor to speak on their behalf.

<b>9.</b>	<b>MINUTES AND OTHER DOCUMENTS</b>
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- 9.1 The Panel must ensure that accurate minutes are kept of its proceedings.
- 9.2 The minutes of the proceedings of a meeting will record:
- a) the names of the Members of the Panel present;
  - b) the name and time of Members of the Panel entering or leaving the meeting;
  - c) the name of a person who has made a verbal representation to the Panel at the meeting;
  - d) the decision of the Panel;
  - e) the decision of the panel to exclude public attendance including reasons.
  - f) a disclosure by a member of the Panel of a direct or indirect pecuniary interest in any aspect of a development or anybody associated with any aspect of a development required under the PDI Act.
- 9.3 Members of the public are entitled to reasonable access to:
- a) the agendas for meetings of the Panel; and
  - b) the minutes of meetings of the Panel.
- 9.4 However, the Panel may, before it releases a copy of any minutes under clause 9.3, exclude from the minutes information about any matter dealt with on a confidential basis by the Panel.
- 9.5 Minutes must be available under clause 9.3 within five (5) business days after their adoption by the Members of the Panel.

- 9.6 Minutes shall not be formal minutes until adopted by the Panel at the next meeting of the Panel. However, this does not preclude the issue of Decision Notification advising of the determination of the Panel immediately after a meeting at which the Panel made its determination.
- 9.7 Upon adoption of the minutes, the Presiding Member shall authorise the minutes by signature and date of adoption on the last page of the minutes.

## **10. SITE INSPECTIONS AND LOCALITY VISITS**

- 10.1 Formal site visits may be arranged on request from a Member of the Panel. A Member of the Panel may request attendance of a Council Officer to provide relevant information. The Panel will not hear deputations at a formal site visit.
- 10.2 Locality visits by one or more Members of the Panel must be undertaken in accordance with the Code of Conduct.

## **11. INFORMATION PROVIDED FOLLOWING PREPARATION OF THE MEETING AGENDA**

- 11.1 Representors and applicants must avoid raising new material that has not been raised in their written submissions when they appear before the Panel. Where it is necessary, any new additional information that is to be presented to the Panel should be forwarded to Council at least five (5) business days prior to the meeting so that staff can confirm its necessity and effect distribution to the applicant and to Members of the Panel for consideration.
- 11.2 Full disclosure of all relevant information prior to the Panel meeting is necessary for adequate assessment and appropriate decision making. In circumstances where new information is discovered as a result of the hearing of representation(s) the Panel may, in its discretion, agree to defer the application, conduct a further hearing, or undertake other investigations to determine the relevance of new information if it believes it will assist the Panel in reaching a decision.
- 11.3 After hearing an applicant and/or representors, the Panel may discuss an application and any new information to determine its relevance and may seek clarification from Council's planning staff in attendance at the meeting.
- 11.4 At the discretion of the Presiding Member, any new or additional material submitted to the Panel by a person who has made a development application or a valid representation, may be accepted and considered by the Panel.
- 11.5 At the discretion of the Presiding Member (in consultation with Members of the Panel), any new information presented by any person appearing before the Panel, may not be considered. The Presiding Member's determination in this regard is final.

## **12. VARIATION OF AN APPLICATION**

- 12.1 Where an applicant has requested a variation of an application it may be permitted, providing that the essential nature of the development does not change. The test for determining whether the essential nature of a development has changed is to consider whether the amended proposal is essentially the same as the original proposal.

NOTE: varying a development application is a privilege of the applicant. The Panel cannot compel an applicant to vary a development application.

### **13. DEBATE AND MOTIONS**

- 13.1 In order to ensure informed decision making and to facilitate comprehensive consideration of issues, debate and discussion by the Panel of matters before it shall be, as far as practicable, informal within the bounds of professional meeting procedures and the principles of natural justice and procedural fairness.
- 13.2 In the interests of informality, during hearings of representations the Presiding Member will be referred to as "Presiding Member", and Members of the Panel will be referred to by their first name (not by title or position). In subsequent discussion of items during the meeting Members (including the Presiding Member) may refer to each other by their first names and address Council staff by their first names.
- 13.3 At the conclusion of debate and discussion of matters, the Presiding Member will call for a motion enabling the Panel to determine the matter.
- 13.4 A motion will lapse if it is not seconded at the appropriate time.
- 13.5 The Presiding Member, in the absence of comment/discussion in relation to the business requiring determination, will either move a motion or will request a motion to be moved and seconded.
- 13.6 Voting in favour or against a motion, as requested by the Presiding Member, shall be by show of hand.
- 13.7 The Presiding Member will request each Member to vote on a motion and then declare the outcome.

### **14. DECISION MAKING**

- 14.1 The Panel must have regard to the relevant Development Plan of the Council (or Planning and Design Code, if relevant) as the basis for its decisions, and also have regard to any written and verbal representations made in accordance with the Development Act and the PDI Act.
- 14.2 In making a decision, the Panel:
  - a) must state whether the proposal is seriously at variance with the provisions of the relevant Development Plan of the Council /Planning and Design Code, in doing so must refuse to grant Planning Consent and provide reasons for the decision;
  - b) if the proposal is not seriously at variance with the provisions of the relevant Development Plan of the Council /Planning and Design Code, the Panel must determine whether Planning Consent is granted or refused.
    - (i) Where Planning Consent is granted subject to conditions, reasons why the conditions have been imposed must be provided.
    - (ii) Where Planning Consent is refused, the reason for refusal must be provided.

<b>15. PLANNING POLICY</b>
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- 15.1 The Panel may, from time to time, consider trends, issues and other matters relating to planning or development that have become apparent or arisen through the assessment of development applications, and report to Council accordingly. However, the PDI Act does not empower the Panel to act as a policy formulating body.
- 15.2 The Panel may upon request from the Council comment on draft planning policy.
- 15.3 The Council Member on the Panel is able to participate as an Elected Member in the ordinary business of Council planning policy formulation (i.e. they may sit on planning policy committees and undertake other activities associated with the formation of planning policy) providing they are not acting in their capacity as a member of the Panel.
- 15.4 Independent Members of the Panel may continue to exercise their rights as private citizens with respect to any activity related to the development of planning policy under the PDI Act, providing they are not acting in their capacity as a Member of the Panel or do not have a conflict of interest with any business before the Panel.

<b>16. PLANNING APPEALS</b>
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- 16.1 Should an appeal be lodged in relation to a decision of the Panel, the Panel will determine whether any "compromise proposal" is appropriate or the matter proceed to a hearing in the Environment, Resources and Development Court.

<b>17. VALIDITY OF PROCEEDINGS</b>
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- 17.1 A proceeding of the Panel (and any decision made by the Panel) is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

<b>18. COMPLAINTS</b>
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- 18.1 A person may make a complaint to the State Planning Commission ("the Commission") if the person believes that a Member of the Panel has acted in contravention of the Code of Conduct.
- 18.2 A complaint must:
  - a) be in writing; and
  - b) contain particulars of the allegation on which the complaint is based; and
  - c) be verified by statutory declaration.
- 18.3 Except with the approval of the Commission, a complaint must not be lodged with the Commission more than six (6) months after the day on which the complainant first had notice of the matters alleged in the complaint.

**19. MISCELLANEOUS MATTERS**

- 19.1 An applicant may not defer matters from the meeting agenda after the agenda has been sent to Members of the Panel, unless agreed at the meeting or by the Presiding Member prior to the meeting. The applicant must make this request in writing to the Assessment Manager, including reason(s) for their request to defer.
- 19.2 Should a Member of the Panel receive by direct post, fax, e-mail or other means, information in relation to a development application being assessed by Council development assessment officers which may be referred for decision by the Panel at a future time, then the Member of the Panel should immediately forward the information received to the Assessment Manager. The Member of the Panel should not acknowledge receipt of the information nor enter into discussion with the sender in relation to any matters contained within the information received. If a Member of the Panel receives such information, he or she must disclose this fact at the relevant Panel meeting, and confirm that the information will not be taken into account for the purposes of making a decision on the relevant application.
- 19.3 Should a request be made for public comment on the operations or decisions made by the Panel then the matter should be referred to the Presiding Member. Comment may be made at the discretion of the Presiding Member.
- 19.4 A Member of the Panel at a meeting may request independent expert advice on any relevant matter before the Panel. Such requests are to be referred to the Assessment Manager for approving of and authorising the engagement of any independent experts. If the Assessment Manager decides not to engage such advice the Panel must be advised of the decision and the reason as soon as reasonably possible.
- 19.5 The role of the Panel is not one of mediator or arbitrator for parties expressing divergent views but as a decision maker charged with the responsibility of assessing each development proposal against the relevant Development Plan for the Council/Planning and Design Code provisions. It is a role that is inquisitorial rather than adversarial. The Panel does not therefore have a role as a mediator or arbitrator at its meetings or otherwise between an applicant and representors.

**20. OTHER MATTERS**

- 20.1 Except insofar as a procedure is not prescribed by the PDI Act or regulations under the PDI Act, the procedures of the Panel in relation to the conduct of its business will be as determined by the Panel.
- 20.2 The Panel will review these Operating and Meeting Procedures on an annual basis.

Signed .....  
Presiding Member

Dated: .....