

BAROSSA ASSESSMENT PANEL

TERMS OF REFERENCE



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1. ESTABLISHMENT

- 1.1 Pursuant to Section 83 of the *Planning, Development and Infrastructure Act 2016* ("the PDI Act"), the Council has established a council assessment panel to be known as the Barossa Assessment Panel ("the Panel") for the purpose of acting as delegate of the Council in its role as a "relevant authority" pursuant to the *Development Act 1993* ("the Development Act") in respect of the following classes of development.
- a) to refuse development plan consent with respect to a merit application, other than where:
 - requested information has not been provided within legislative timeframes; or
 - no representations have been received as a result of category 2 or 3 public notification;
 - b) with respect to a non-complying application:
 - to refuse consent;
 - to seek concurrence from the State Commission Assessment Panel to grant consent other than which in the opinion of the Assessment Manager is of a minor nature; or
 - to grant consent other than which in the opinion of the Assessment Manager is of a minor nature;
 - c) to consider whether to grant concurrence to a decision of the State Commission Assessment Panel to approve a non-complying development proposal;
 - d) where representations opposing a proposal have been received as a result of category 2 or 3 public notification and the representor has indicated a desire to be heard in support of a representation;
 - e) where a referral agency has recommended refusal;
 - f) where a land division application involves more than 20 allotments;
 - g) where the application is related to an enforcement notice pursuant to Section 84 of the Development Act, an application to a court pursuant to Section 85 of the Development Act (by either Council or another party) or other form of legal action, other than which in the opinion of the Assessment Manager is of a minor nature;

- h) where the applicant has requested to pay a car parking contribution in lieu of providing the required car parking spaces;
- i) to consider whether to agree with an appeal conference settlement where:
 - the decision was made by the Panel or its predecessor; or
 - a settlement proposal involves a non-planning matter in which case the non-planning matter shall be referred to Council for determination; and
- j) where in the opinion of the Assessment Manager, it is appropriate to refer the application to the Panel.

2. APPOINTMENT OF ASSESSMENT MANAGER

- 2.1 Pursuant to Section 87 of the PDI Act, the Chief Executive Officer of the Council has appointed an Assessment Manager for the purpose of:
- a) **commencing from 1 July 2020**, acting as a "relevant authority" as provided under the PDI Act;
 - b) being responsible for managing the staff and operations of the Panel in relation to which the Assessment Manager has been appointed; and
 - c) providing advice to the Panel (as appropriate).

3. MEMBERSHIP

Appointment of Members

- 3.1 The Panel will consist of five (5) Members, comprising
- 3.1.1 one (1) Member of the Council (**Council Member**); and
 - 3.1.2 four (4) Independent Members (**Independent Members**), not being Members of the Council or State Parliament. taking into account the requirements set in clause 6 of these Terms of Reference.
- 3.2 The Council may determine that the Panel will be constituted by a different number of Members for different classes of development, in which case the relevant details will be specified by the Council.
- 3.3 The Council appoints all Members of the Panel including the Presiding Member. In accordance with section 83 of the PDI Act, the Panel and not the Council, may appoint an acting Presiding Member whenever required due to the absence of the Presiding Member.
- 3.4 At least one (1) Member of the Panel must be a woman and at least one (1) Member a man, and should, insofar as is reasonably practicable, ensure that the Panel consists of equal numbers of men and women.

- 3.5 The term of office for all Members of the Panel is a maximum of two (2) years or a lesser term determined by Council. Upon expiry of the term of office all retiring Members of the Panel are eligible for re-appointment.
- 3.6 Members of the Panel hold their positions as provided in clause 3.5 of these Terms of Reference or until removed from membership of the Panel by resolution of the Council under clause 5.1 of these Terms of Reference.

Appointment of Deputy Members

- 3.7 Pursuant to Section 83(1)(b)(v) of the PDI Act, Council may appoint Deputy Members of the Panel. In the absence of a Member, a Deputy Member may act as a Member of the Panel.
- 3.8 The Council shall appoint one person who is an elected member of the Council to act in the capacity of Deputy Member (Council Member). The Deputy Member (Council Member):
- 3.8.1 shall hold their position for a term determined by the Council; and
 - 3.8.2 will only be entitled to sit as a Member of the Panel when the member appointed under clause 3.1.1 of these Terms of Reference is not present at a meeting.
- 3.9 The Council may appoint independent person/s to act in the capacity of the Deputy Member (Independent Member). The Deputy Member (Independent Member):
- 3.9.1 shall hold their position for a term determined by the Council; and
 - 3.9.2 will only be entitled to sit as a Member of the Panel if one of the Members appointed under clause 3.1.2 of these Terms of Reference is not present at a meeting.
- 3.10 The provisions relating to the qualification of a Member in clause 6 of these Terms of Reference extend to a Deputy Member.

Appointment of Additional Members

- 3.11 **At a date yet to be determined.** The Panel appointed under the PDI Act may appoint 1 or 2 members to act as additional Members of the Panel for the purposes of dealing with a particular matter that it must assess as a relevant authority under the PDI Act. **(SUBJECT TO PROCLAMATION OF A PRACTICE DIRECTION BY THE MINISTER)**
- 3.12 A person appointed under clause 3.11 of these Terms of Reference:

- a) will be, subject to paragraph (b) below, taken to be a Member of the Panel in all respects; but
- b) will not be able to vote on any matter arising for determination by the Panel.

General

- 3.13 The Council will call for expressions of interest for appointment of Members of the Panel.
- 3.14 Members of the Panel (excluding the Council Member) will be remunerated for their services. Remuneration rates will be set and regularly reviewed by Council.
- 3.15 Different levels of remuneration may be fixed by the Council for Independent Members, the Presiding Member and Deputy Members.
- 3.16 Council must, within 14 days after appointing a person as a Member of the Panel, give notice of the appointment by publishing the prescribed particulars in a newspaper circulating in the area of the council.

4. ROLES AND RESPONSIBILITIES

General

- 4.1 Notwithstanding these Terms of Reference, all Members of the Panel will observe the relevant requirements under the:
 - a) PDI Act and Development Act;
 - b) all relevant Regulations;
 - c) [Assessment Panel Members - Code of Conduct](#) ("the Code of Conduct") adopted by the Minister under Schedule 3 of the PDI Act;
 - d) the Operating and Meeting Procedures; and
 - e) policies and processes which are relevant to the operations of the Panel.
- 4.2 Members of the Panel are required to register their interests and complete a disclosure of interests return pursuant to Schedule 1 – Disclosure of financial interests under the PDI Act.
- 4.3 Members of the Panel are expected to read, comply with and, where appropriate, to seek clarification with respect to policies and processes relevant to these Terms of Reference.

Presiding Member

4.4 The role and responsibilities of the Presiding Member are to:

- a) be responsible for the proper observance of these Terms of Reference, Operating and Meeting Procedures and Code of;
- b) oversee and facilitate the conduct of Panel meetings in accordance with the PDI Act and the Operating and Meeting Procedures;
- c) ensure all Members of the Panel have an opportunity to participate in discussions in an open, respectful and encouraging manner; and
- d) to call the meeting to order and ask for the debate to be finalised and the motion to be put.

5. REMOVAL OF A MEMBER

5.1 Subject to giving a Member of the Panel an opportunity to be heard or to make a written submission, the Council may resolve to remove a Member of the panel from office for:

- a) breach of, or failure to comply with, the Terms of Reference; or
- b) misconduct; or
- c) neglect of duty; or
- d) incapacity to carry out satisfactorily the duties of his or her office; or
- e) failure to carry out satisfactorily the duties of his or her office; or
- f) failure to comply with a requirement under Schedule 1- Disclosure of Financial Interests in the PDI Act or a breach of, or failure to comply with the Code of Conduct, or
- g) if directed to do so by the Minister acting on recommendation of the State Planning Commission under Section 86 of the PDI Act or otherwise as a result of a recommendation by the State Planning Commission following a Code of Conduct complaint.

5.2 For the purposes of clause 5.1 above, particulars of the grounds for removal shall be communicated to the Member at least one calendar month before the meeting of the Council at which the matter will be determined.

5.3 A determination of the Council made under clause 5.1 above shall be communicated to the Member, and in the event of an adverse determination, the Member shall cease to be a Member fourteen (14) days after the Council has communicated its determination to him/her.

Vacancy

- 5.4 The office of a Member of the Panel will become vacant if the Member-
- a) dies; or
 - b) completes a term of office and is not reappointed; or
 - c) resigns by written notice to the Council; or
 - d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - e) is convicted of an indictable offence punishable by imprisonment; or
 - f) is removed from office by the council under clause 5.1 of these Terms of Reference.
- 5.5 A Member of the Panel whose term of office expires may nevertheless continue to act as a Member, for a period of up to six (6) months, until he or she is reappointed or a successor is appointed (as the case may be).
- 5.6 In the event of a vacancy arising, the Council may appoint a person to be a Member for the balance of the original Member's term of office as soon as is reasonably practicable in the same manner as the original Member was appointed.
- 5.7 The Member appointed to fill a vacancy may be a Deputy Member in which case that person will automatically cease to be a Deputy Member.
- 5.8 In appointing a Member pursuant to clause 5.6 of these Terms of Reference, the Council may have regard to the matters in clause 6 of these Terms of Reference as the case requires.
- 5.9 A vacancy in the membership of the Panel will not invalidate any decisions of the Panel, provided a quorum is maintained during meetings.

6. ACCREDITED PROFESSIONALS

- 6.1 When appointing persons as Members of the Panel, Council will ensure that each Member is a fit and proper person; and seek to ensure that, as far as is practicable, the Members of the Panel collectively have qualifications, knowledge, expertise and experience in the following areas:
- a) economics, commerce or finance;

- b) planning, urban design or architecture;
 - c) development or building construction;
 - d) the provision of or management of infrastructure or transport systems;
 - e) social or environmental policy or science; and
 - f) local government, public administration or law.
- 6.2 The Presiding Member will be appointed by the Council taking into account the following requirements:
- a) the Presiding Member must not be a member or officer of the Council;
 - b) subject to clause 6.2 of these Terms of Reference, the Presiding Member must be a person who is determined by the Council to have a reasonable knowledge of the operation and requirements of the PDI Act, and of meeting procedures.

7.	POWERS AND FUNCTIONS
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- 7.1 The Panel is charged with responsibility for all matters arising under Part 4 of the Development Act and *Development Regulations 2008* ("the Development Regulations") which are of a development control nature including but not limited to:
- a) applications for development consent;
 - b) providing comment on projects declared to be major pursuant to Section 46 of the Development Act;
 - c) providing comment on applications pursuant to the Crown development provisions of Section 49 of the Development Act;
 - d) providing comment on development involving electricity infrastructure pursuant to Section 49A of the Development Act;
 - e) providing comment in relation to decisions by the State Planning Commission pursuant to Section 34 of the Development Act and Schedule 10 of the Development Regulations 2008;
 - f) *Community Title Act 1996* issues in relation to development matters; and
 - g) the objectives of the Character Preservation (Barossa Valley) Act 2012.

8.	NOTICE OF MEETINGS
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- 8.1 The Panel shall meet in accordance with the Operating and Meeting Procedures.

8.2 The Assessment Manager must maintain a record of all notices of meetings given under this clause to Members of the Panel.

9. PROCEDURAL REQUIREMENTS

9.1 All meetings of the Panel will be conducted in accordance with these Terms of Reference, Operating and Meeting Procedures, and Code of Conduct.

10. COMPLAINT PROCEDURE

10.1 A person may make a complaint if the person believes that a Member of the Panel has acted in contravention of the Code of Conduct.

10.2 The complaint is to be addressed to the State Planning Commission as outlined in the *Planning, Development and Infrastructure (General) Regulations 2017* and the Operating and Meeting Procedures.



Signed.....
Mayor Michael Lange

Dated:.....24/12/2019.....