

# BAROSSA ASSESSMENT PANEL OPERATING AND MEETING PROCEDURES



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## 1. APPLICATION

1.1 These Operating and Meeting Procedures apply to the Barossa Assessment Panel ("the Panel") established 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 The Panel is a relevant authority pursuant to section 93 of the PDI Act.

1.3 The following principles should be applied with respect to the procedures to be observed at a Panel meeting:

1.3.1 procedures should be fair and contribute to open, transparent and informed decision-making;

1.3.2 procedures should encourage appropriate community participation as may be required under the PDI Act and the *Planning, Development and Infrastructure (General) Regulations 2017* ("the PDI Regulations");

1.3.3 procedures should reflect levels of formality appropriate to the nature and scope of responsibilities exercised at the meeting;

1.3.4 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.

## 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, in person at the Council Offices, 43-51 Tanunda Road, Nuriootpa, or via online platform,

- electronic or other means as determined by the Panel in consultation with the Assessment Manager unless there are no matters to be considered.
- 2.2 For the sake of clarity, if an in person meeting is convened, then individual Panel members may, with the prior permission of the Presiding Member, attend the meeting via online platform, electronic or other means.
- 2.3 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.
- 2.4 The notice must set out the date, time and place of the meeting or, alternatively, long-in or other details for a meeting held via online platform, electronic or other means, and contain or be accompanied by the agenda for the meeting. The notice may be given to a Member of the Panel:
- 2.4.1 personally; or
  - 2.4.2 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
  - 2.4.3 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
  - 2.4.4 by a means authorised in writing by the Member as being an available means of giving notice (e.g. email or facsimile transmission).
- 2.5 A notice that is not given in accordance with clause 2.4 of this document 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.
- 2.6 Special meetings (being additional meetings or alternative meetings) 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.
- 2.7 Public notice of a scheduled meeting will be provided at the Council office and on the Council's website.
- 2.8 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.

- 2.9 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 web site at least three (3) business days before the meeting.
- 2.10 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.
- 2.11 If a meeting is adjourned to another day, the Assessment Manager must:
- 2.11.1 give notice of the adjourned meeting to each Member setting out the date, time and place of the meeting; and
- 2.11.2 give notice of the adjourned meeting to the public by causing a notice setting out the date, time and place/platform of the meeting together with access details (as relevant) to be placed on display at the principal office of the Council and/or the Council's website as determined by the Assessment Manager.
- 2.12 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. Where a meeting is to occur in person, attendance may occur by attending the place of the meeting and observing the meeting from the public gallery. Where a meeting is to occur via online platform, electronic or other means, the meeting will be livestreamed or otherwise made accessible in a manner deemed appropriate by the Assessment Manager such that members of the public can hear and see the meeting as they would if located in the public gallery of an in person meeting.
- 3.2 The Panel may exclude the public from attendance at a meeting—
- 3.2.1 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;

3.2.2 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.

3.3 For the sake of clarity, where a meeting is convened via online platform, electronic or other means, and the Panel resolves to exclude the public from the meeting as per clause 3.2 above, exclusion of the public will occur, as relevant, through the livestream being paused, audio and video feeds being disabled or other means as determined by the Assessment Manager, for the duration of the confidential item.

- 3.4 The Panel is committed to transparency in decision making. Accordingly, the Panel's powers to enter into confidence as detailed at clause 3.2 above must be used sparingly and in extenuating circumstances and only in consultation with or on the advice of the Assessment Manager.

### 4. **QUORUM**

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

### 5. **DEPUTY MEMBERS**

- 5.1 If a Member is, on reasonable grounds, unable 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.
- 5.2 If notification pursuant to sub-section 5.1 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.
- 5.3 Unless the context otherwise requires, a reference to a Member in these Operating and Meeting Procedures includes a Deputy Member.

### 6. **DEPUTY MEMBERS ATTENDING THE PANEL MEETING**

- 6.1 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.

- 6.2 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.
- 6.3 The Assessment Manager will undertake all reasonable measures to ensure that Deputy Members are notified as required by clauses 6.1 and 6.2 above as soon as possible.
- 6.4 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.

## 7. VOTING

- 7.1 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.
- 7.2 Clause 7.1 does not apply to a person who is appointed as an 'additional member' of the Panel under Section 85 of the PDI Act.
- 7.3 All Members (other than additional members) of the Panel will participate in the decision of the Panel by a vote.
- 7.4 All decisions of the Panel shall be made on the basis of a majority consensus decision of the Members present. Where a meeting is held in-person, voting may occur by show of hands. In meeting is convened via online platform, electronic or other means, the Presiding Member will determine how voting should occur.
- 7.5 Minutes shall record the decision of the Panel on each development application and record a mover and seconder for items decided by vote.
- 7.6 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.
- 7.7 Members of the Panel cannot submit any notice of motion to revoke or amend previous decisions of the Panel.

## 8. CONDUCT

- 8.1 Members of the Panel must act at all times in accordance Section 15(2) of the PDI Act and with the Assessment Panel Member - Code of Conduct ("the Code of Conduct") adopted by the Minister under Schedule 3 of the PDI Act.
- 8.2 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. Where a meeting is convened via online platform, electronic or other means, the Presiding Member may mute or disconnect a person from the meeting where they are causing disruption or disturbance.
- 8.3 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.
- 8.4 Members of the Panel must carefully consider all agenda reports and recommendations prior to and during meetings. If a Member of the Panel does not agree with a recommendation made, the Member must articulate their reasons. Where the Panel departs from a recommendation, it must provide sufficient reasons for its decisions to comply with the requirements of the Act and so that appropriate minutes can be recorded.
- 8.5 In circumstances where a Member of the Panel has a question arising from an agenda report, they should raise their question with the Assessment Manager no later than 24 hours prior to the meeting so that the Assessment Manager can thoroughly consider the question, communicate it to other Members of the Panel and prepare an appropriate response.

## 9. CONFLICT OF INTEREST

- 9.1 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:
- 9.1.1 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
- 9.1.2 make a disclosure clearly stating the nature of that interest in writing to the Presiding Member, and then in the Panel meeting when the relevant agenda item is reached, make a verbal disclosure to the

assessment Panel and remove themselves from the meeting in accordance with clause 7(b) of the Code of Conduct.

- 9.2 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.

## 10. HEARING OF REPRESENTATIONS

- 10.1 Pursuant to Regulation 50(5) of the PDI Regulations, where a person has:

10.1.1 made a written representation in accordance with Regulation 50(1) of the PDI Regulations; and

10.1.2 indicated an interest in appearing before the Panel,

the Panel may, if it considers that it would assist the Panel in making its decision on an application, allow a representor an opportunity to appear personally or by a representative before the Panel in support of their representation.

- 10.2 For the sake of clarity, appearance before the Panel includes appearance by online platform, electronic or other means where a meeting is not held in person.

- 10.3 Pursuant to Regulation 50(6) of the PDI Regulations, if the Panel determines to here representors in accordance with clause 10.1, it must:

10.3.1 give notice to the applicant of the place and time where the representor has been invited to appear; and

10.3.2 if the applicant appears, allow the applicant, either personally or by representative, a reasonable opportunity, on request, to respond to any relevant matter

- 10.4 Hearing of representations by the Panel will take place at the commencement of the consideration of the relevant agenda item.

- 10.5 Persons making representations will be allocated five (5) minutes to address the Panel, unless otherwise determined by the Presiding Member, acting reasonably.

- 10.6 The applicant is allocated ten (10) minutes to respond to the representations made to the Panel, unless otherwise determined by the Presiding Member, acting reasonably.

- 10.7 Representors and applicants will not be allowed a further opportunity to address the Panel after the conclusion of the hearing of representations.

- 10.8 Only representors (or their representative) who have made representation in accordance with Regulation 50 of the PDI Regulations, and with the consent of the Panel, will be entitled to be heard by the Panel.
- 10.9 Representors must be personally present (or represented) at the meeting scheduled to hear their verbal representation. If a representor (or their representative) is not present at the relevant time, the opportunity to be heard in support of their representation is forfeited.
- 10.10 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.
- 10.11 Members of the Panel may question and seek clarification from representors and the applicant at the conclusion of their address to the Panel.
- 10.12 Where a meeting is to be held via online platform, electronic or other means, the hearing of representations and the application will occur in a manner which allows the representors and applicant to interact with the Panel as per clauses 10.1 – 10.11 above.
- 10.13 Pursuant to regulation 50(6) of the PDI Regulations, a representor must indicate on their written representation whether they wish to appear personally or by representative to be heard on their representation. Elected members of the Council may, in their personal capacity and not in their capacity as elected members, make representations on development applications or act as the representative of a representor and be heard at a meeting of the Panel. Where this occurs, elected members of the Council can be treated no differently to other representors or representatives of representors and the Panel must have regard to sections 93, 98 and 99 of the PDI Act and the capacity of the Panel as an independent relevant authority and that it does not act at the direction of the Council.
- 10.14 Individual elected members of The Barossa Council do not have a right to be heard by the Panel otherwise than in accordance with clause 10.13 above

## 11. MINUTES AND OTHER DOCUMENTS

- 11.1 The Panel must ensure that accurate minutes are kept of its proceedings.
- 11.2 The minutes of the proceedings of a meeting will record:
- 11.2.1 how the meeting was convened and when it commenced;
  - 11.2.2 the names of the members of the Panel present;

- 11.2.3 the name and time of Members of the Panel entering or leaving the meeting;
  - 11.2.4 the name of a person who has made a verbal representation to the Panel at the meeting;
  - 11.2.5 the name of a person who appears in relation to an application for review of an Assessment Manager decision (including the Assessment Manager or delegate);
  - 11.2.6 the decision of the Panel;
  - 11.2.7 the decision of the panel to exclude public attendance including reasons.
  - 11.2.8 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.
- 11.3 Members of the public are entitled to reasonable access to:
- 11.3.1 the agendas for meetings of the Panel; and
  - 11.3.2 the minutes of meetings of the Panel.
- 11.4 The Panel may, before it releases a copy of any minutes under clause 11.3, exclude from the minutes information about any matter dealt with on a confidential basis by the Panel.
- 11.5 Minutes must be available under clause 11.3 within five (5) business days after their adoption by the Members of the Panel.
- 11.6 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 a Decision Notification advising of the determination of the Panel immediately after a meeting at which the Panel made its determination.
- 11.7 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.

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

- 12.1 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.
- 12.2 Locality visits by one or more Members of the Panel must be undertaken in accordance with the Code of Conduct.

### 13. INFORMATION PROVIDED FOLLOWING PREPARATION OF THE MEETING AGENDA

13.1 Representors and applicants must avoid raising new or additional material that has not been raised in their written representations and response when they appear before the Panel.

13.2 Where necessary, any new additional material that is to be presented to the Panel should be forwarded to the Assessment Manager at least five (5) business days prior to the meeting to confirm its necessity and effect distribution to the applicant and representors (where required) and Members of the Panel for consideration.

13.3 .

13.4 At the discretion of the Presiding Member (in consultation with Members of the Panel), any new or additional material submitted to the Panel by an applicant or representor, in accordance with clause 13.2 above may be:

13.4.1 accepted and considered; or

13.4.2 not accepted and not considered,

the Presiding Member's determination in this regard is final.

13.5 Where new or additional material is presented to the Panel contrary to clause 13.2, despite clause 13.4 above it **will not** be accepted and considered unless, in the opinion of the Assessment Manager, sufficient assessment time remains for the information to be properly considered by the applicant and representors (as relevant) and the Panel in accordance with the timeframes prescribed in regulation 53 of the PDI Regulations.

13.6 Whenever new or additional information or material provided by the applicant is accepted and considered by the Panel, representors will be provided with five additional minutes to their hearing time to address the Panel on the additional information. The applicant will be provided with five (5) additional minutes to respond to the representors' comments.

13.7 Whenever new or additional information or material provided by a representor is accepted and considered by the Panel, the representor who provided the information or material will be provided with five (5) additional minutes to their hearing time to address the Panel on the additional information. The applicant will be provided with five additional minutes to respond to the representor's comments

### 14. FORM OF DEBATE AND MOTIONS

14.1 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.

- 14.2 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 in the meeting of the Members (including the Presiding Member) may refer to each other by their first names and address Council staff by their first names.
- 14.3 At the conclusion of debate and discussion of matters, the Presiding Member will call for a motion enabling the Panel to determine the matter.
- 14.4 A motion will lapse if it is not seconded at the appropriate time.
- 14.5 The Presiding Member, in the absence of comment/discussion in relation to the matter requiring determination, will either move a motion or will request a motion to be moved and seconded.
- 14.6 Voting in favour or against a motion, as requested by the Presiding Member, shall be by show of hand.
- 14.7 The Presiding Member will request each Member to vote on a motion and then declare the outcome.

### 15. **DECISION MAKING**

- 15.1 The Panel must have regard to the Planning and Design Code as the basis for its decisions along with any written and verbal representations.
- 15.2 The Panel will make decisions in accordance with the timeframes set out in section 125 of the PDI Act.
- 15.3 To ensure that timeframes are met for making decisions the Panel will make a decision to either grant or refuse Planning Consent, and will not defer applications for the purpose of requesting further information or amendments.
- 15.4 In making a decision, the Panel:
  - 15.4.1 must state whether the proposal is seriously at variance with the Planning and Design Code, in doing so must refuse to grant Planning Consent and provide reasons for the decision;
  - 15.4.2 if the proposal is not seriously at variance with the Planning and Design Code, the Panel must determine whether Planning Consent is granted or refused.

- (a) Where Planning Consent is granted subject to conditions, reasons why the conditions have been imposed must be provided.
- (b) Where Planning Consent is refused, the reason for refusal must be provided.

15.5 All agenda reports will contain a recommendation which accords with the assessing officer's assessment of the development application. In circumstances where the assessment of a development application is considered by administration to be finely balanced, an alternative recommendation may be provided. Alternative recommendations may require further detail to be inserted by the Panel. Members of the Panel are expected to thoroughly consider recommendations before they are adopted. If the Panel determines a development application contrary to a recommendation, the Panel must ensure that the decision is thorough and contains adequate, clear and understandable reasons. Where a Member of the Panel wishes to move a recommendation which differs from that made by administration, the Member should contact the Assessment Manager for advice on their recommendation at least twenty four (24) hours prior to the meeting.

### 16. **ASSESSMENT PANEL REVIEW OF DECISIONS OF ASSESSMENT MANAGER**

16.1 This clause applies to reviews commenced by applicants pursuant to section 203 of the PDI Act ("Application for Review"). For clarity, this process applies to applications assessed and determined by the Assessment Manager as the relevant authority pursuant to section 96 of the PDI Act. No representations are permitted for the original applications or the review process.

16.2 Applications for Review:

16.2.1 may, pursuant to section 201 of the PDI Act, relate to:

- (a) any assessment, request, decision, direction or act of the Assessment Manager that is relevant to any aspect of the determination of the relevant application;
- (b) a decision to grant or refuse a development authorisation; or
- (c) the imposition of conditions in relation to a development authorisation; or
- (d) subject to any exclusion prescribed by the PDI Regulations, any other assessment, request, decision, direction or act of a relevant authority under this Act in

- 16.2.2 must be submitted using the [Application to Assessment Panel for Assessment Manager's Decision Review](#) ("the Form");
  - 16.2.3 lodged in a manner identified on the Form; and
  - 16.2.4 lodged within one month of the applicant receiving notice of the reviewed matter pursuant to clause 16.2.1 above, unless the Presiding Member in their discretion, grants an extension of time.
- 16.3 In determining whether to grant an extension of time, the Presiding Member may consider:
- 16.3.1 the reasons for the delay;
  - 16.3.2 the length of the delay;
  - 16.3.3 whether any rights or interests of other persons would be affected by allowing the review to be commenced out of time;
  - 16.3.4 the interests of justice;
  - 16.3.5 whether the applicant has, or is within time to, appeal the prescribed matter to the ERD Court;
  - 16.3.6 any other matters the Presiding Member considers relevant; and
  - 16.3.7 consultation with the Assessment Manager.
- 16.4 The Assessment Manager must ensure that the following documents are provided on the relevant Agenda for an Application for Review:
- 16.4.1 a report to the Panel containing all of the details of the relevant development application and the details of the reviewed decision;
  - 16.4.2 all materials which were before the Assessment Manager (or their delegate) at the time of the reviewed decision including (as relevant):
    - (a) application documents, reports, submissions, plans, specifications or other documents submitted by the applicant;
    - (b) internal and/or external referral responses; and
    - (c) any report from administration or an external planning consultant provided to the Assessment Manager (or their delegate);
  - 16.4.3 any assessment checklist used by the Assessment Manager (or their delegate) when making the reviewed decision;
  - 16.4.4 any other information requested by the Presiding Member.

- 16.5 The Assessment Manager must advise the applicant of the time and date of the Panel meeting at which the review application will be heard.
- 16.6 The applicant will be provided with five (5) minutes to address the Panel on their review and why they believe the Panel should reach a different decision to that made by the Assessment Manager or their delegate.
- 16.7 On review, the Panel will consider the reviewed decision afresh on the information provided to it and on the submissions of the applicant.
- 16.7.1 Information, materials, plans, details, specifications and other documents which were not before the Assessment Manager at the time of the decision on the Prescribed Matter will not be considered by the Panel.
- 16.7.2 In addition to clause 16.6 above, the Presiding Member may permit Panel members to ask questions or seek clarification from the applicant and/or the Assessment Manager, in his or her discretion.
- 16.8 The Assessment Manager must be present at the Panel meeting to respond to any questions or requests for clarification from the Panel.
- 16.9 Where the decision was made by a delegate of the Assessment Manager, the delegate may appear in place of the Assessment Manager.
- 16.10 The Presiding Member will invite all Panel Members to speak on any matter relevant to the review.
- 16.11 The Panel may resolve to defer its decision if it considers it requires additional time or information to make its decision.
- 16.12 The Panel may, on a review:
- 16.12.1 affirm the Assessment Manager's decision on the Prescribed Matter;
- 16.12.2 vary the Assessment Manager's decision on the Prescribed Matter;
- or
- 16.12.3 set aside the Assessment Manager's decision on the Prescribed Matter and substitute its own decision.
- 16.13 The Assessment Manager will advise the applicant, in writing, of the Panel's decision within five (5) business days of the meeting or otherwise prescribed by the PDI Regulations.

## 17. PLANNING APPEALS

- 17.1 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.

17.2 Should the Panel not make a decision in respect of an application within the time prescribed in the PDI Act and the Panel receives a deemed consent notice from the applicant in accordance with section 125(2) of the PDI Act, the Panel to decide whether to apply to the Court to have deemed consent notice quashed.

## 18. **VALIDITY OF PROCEEDINGS**

18.1 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.

## 19. **COMPLAINTS**

19.1 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.

19.2 A complaint must:

19.2.1 be in writing; and

19.2.2 contain particulars of the allegation on which the complaint is based; and

19.2.3 be verified by statutory declaration.

19.3 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.

## 20. **MISCELLANEOUS MATTERS**

20.1 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.

20.2 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.

20.3 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.

20.4 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.

20.5 The role of the Panel is not one of mediator or arbitrator for parties expressing divergent views but as is a decision maker charged with the responsibility of assessing each development application against the Planning and Design Code. 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.

**21. OTHER MATTERS**

21.1 Except insofar as a procedure is not prescribed by the PDI Act or PDI 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.

21.2 The Panel will review these Operating and Meeting Procedures on an annual basis.

Signed ..... Dated: .....  
**Presiding Member**