8.2 DEVELOPMENT AND ENVIRONMENTAL SERVICES - CONFIDENTIAL

8.2.1 BAROSSA ASSESSMENT PANEL – TERMS OF REFERENCE AND OPERATING AND MEETING PROCEDURES
B10670

The matter of the agenda item being a Report regarding the Barossa Assessment Panel – Terms of Reference and Operating and Meeting Procedures and pursuant to Section 90(3)(h) of the Local Government Act 1999 (“the Act”) being information that must be considered in confidence in order to ensure that Council maintains legal professional privilege.

There is strong public interest in enabling members of the public to observe Council’s transparent and informed decision-making. This helps to ensure accountability, maintain transparency of public expenditure, facilitate participation, assist public awareness and allow for the scrutiny of information. Attendance at a Council meeting is one means of satisfying this interest. The public will only be excluded from a Council meeting when the need for confidentiality pursuant to Section 90(2) of the Act outweighs the public interest of open decision making.

In this matter, the reasons that receipt, consideration or discussion of the information or matter in a meeting open to the public would be contrary to the public interest are that Council has been provided with legal advice in regard to the operations of the council assessment panel. The matter has been requested to be kept confidential until such dates as the Terms of Reference and Operating and Meeting Procedures have been formally adopted by both the Council and the Barossa Assessment Panel respectively.
On balance, the above reasons which support the need for confidentiality pursuant to Section 90(2) of the Act outweigh the factors in favour of the public interest of open decision making.

**RECOMMENDATION**

That Council:

(1) Under the provisions of Section 90(2) of the *Local Government Act 1999* an order be made that the public be excluded from the meeting with the exception of the Chief Executive Officer, Director Corporate and Community Services, Director Development and Environmental Services, Director Works and Engineering Services, Manager Development Services and the Minute Secretary, in order to consider in confidence a report relating to Section 90(3)(h) of the *Local Government Act 1999* being information that must be considered in confidence in order to ensure that Council maintains legal professional privilege; and

(2) Accordingly, on this basis, Council is satisfied that public interest in conducting meetings in a place open to the public has been outweighed by the need to keep the information and discussion confidential as Council has been provided with legal advice regarding the operations of the council assessment panel.
8.2 CONFIDENTIAL – DEVELOPMENT SERVICES

8.2.1 BAROSSA ASSESSMENT PANEL – TERMS OF REFERENCE AND OPERATING AND MEETING PROCEDURES

B10670

Authors: Manager, Development Services
    Director, Development and Environmental Services

PURPOSE

To seek Council resolution amending the existing Terms of Reference for the Barossa Assessment Panel pursuant to the Planning, Development and Infrastructure Act 2016 and Planning, Development and Infrastructure (General) Regulations 2017, and receive for information the draft Barossa Assessment Panel Operating and Meeting Procedures

RECOMMENDATION

That Council:

(1) Endorse the Barossa Assessment Panel Terms of Reference (Attachment 1) to operate prior to the operation of the Planning and Design Code (Phase 3) as gazetted by the Minister for Planning and Local Government.

(2) Endorse the proposed Barossa Assessment Panel Terms of Reference (Attachment 2) for the period commencing from the operation of the Planning and Design Code (Phase 3) as gazetted by the Minister for Planning and Local Government.

(3) Receive and note the draft Operating and Meeting Procedures (pre and post Phase 3 Code commencement) to be considered (and endorsed) by the Barossa Assessment Panel at their December meeting.

(4) Having considered this matter in confidence under Section 90(2) of the Local Government Act (the Act) pursuant to Section 90(3)(h) of the Act being legal advice, makes an order pursuant to Section 91(7) of the Local Government Act
1999, that the agenda and all documents in relation to Confidential Item 7.1.1 of the Council Meeting held 17 November 2020 and titled Barossa Assessment Panel – Terms of Reference and Operating and Meeting Procedures be kept confidential and not available for public inspection until such dates as the Terms of Reference and Operating and Meeting Procedures have been formally adopted by both the Council and the Barossa Assessment Panel respectively.

REPORTS

Background
Council appoints the members of the Barossa Assessment Panel in accordance with the provisions of the Planning, Development and Infrastructure Act 2016 (the PDI Act) and the Regulations thereunder.

In addition, the council is required to initiate the Terms of Reference (TOR) for its Panel.

At its meeting on 17 December 2019, Council resolved to adopt two sets of TORs, with the second set commencing from 1 July 2020, being the original commencement date set for the entire Planning and Design Code across the State.

<table>
<thead>
<tr>
<th>MOVED Cr Boothby that;</th>
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<tbody>
<tr>
<td>(1) Council endorse the current Barossa Assessment Panel Terms of Reference for the period up to 30 June 2020. Subject to minor typographical corrections.</td>
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<tr>
<td>(2) Council endorse the proposed Barossa Assessment Panel Terms of Reference for the period commencing from 1 July 2020.</td>
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<td>(3) Further report(s) affecting the Barossa Assessment Panel Terms of Reference be provided to council as necessary.</td>
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Introduction
Since the December 2019 meeting, the TOR have undergone a further review, hence are being brought back to Council in accordance with item 3 of the December resolution.

Discussion
Both the TOR and Operating and Meeting Procedures (OMP) have undergone further review to reflect understanding of the state legislative changes, and ascertain improvements that can enhance customer experience when dealing with the Assessment Panel.

Amendments to the TOR and OMP address the following matters.

- Elected members as advocates
- Provision of additional information by applicants and representors ability to respond
- Adequate acknowledgement by Panel of guiding information sent by officers both with the agenda and separately
Contact made by the Presiding Member (with Assessment Manager) for questions regarding agenda items or an intended departure from usual meeting procedures

Acknowledgment that alternate recommendations has been provided

Advice on 'in camera' meetings

The revised Draft TOR and OMP along with legal advice supporting the amendments was presented to the members of the Assessment Panel at their meeting on October for consideration. The legal advice (Attachment 5) supports the customer service focus that the Council is seeking and is reflected particularly in the OMP.

Since the Assessment Panel meeting, the OMP for post Phase 3 Code has been further amended to insert clause 16 Assessment Panel Review of Decisions of Assessment Manager. This clause applies to reviews commenced by applicants pursuant to section 203 of the PDI Act (Application for Review) where they wish to have the Panel review a decision made by the Assessment Manager as the relevant authority (or their delegate).

Following the Council decision regarding the TOR, the adopted TOR and draft OMP will be presented to the Assessment Panel at their December meeting. It is intended that the two versions of the OMP will be adopted at that meeting.

Summary and Conclusion

The TOR and OMP for the Barossa Assessment Panel have been reviewed as a result of changing legislation and desire to focus on the customer experience with the Assessment Panel.

The TOR (pre and post Phase 3 commencement) are presented to Council for endorsement. The pre and post Phase 3 commencement version of the OMP are provided for information, as the Assessment Panel is charged with determining its own operating procedures.

ATTACHMENTS OR OTHER SUPPORTING REFERENCES

Attachment 1: Terms of Reference to operate prior to the commencement of the Planning and Design Code (Phase 3).
Attachment 2: Terms of Reference to operate from the commencement of the Planning and Design Code (Phase 3).
Attachment 3: Operating and Meeting Procedures to operate prior to the commencement of the Planning and Design Code (Phase 3).
Attachment 4: Operating and Meeting Procedures to operate from the commencement of the Planning and Design Code (Phase 3).
Attachment 5: Legal advice

COMMUNITY PLAN / CORPORATE PLAN / LEGISLATIVE REQUIREMENTS

Community Plan

Natural Environment and Built Heritage

Corporate Plan
1.11 Provide transparent, efficient and effective development assessment processes and regulatory activities.

**Legislative Requirements**
Planning, Development and Infrastructure Act 2016
Planning, Development and Infrastructure (General) Regulations 2017
Development Act 1993
Development Regulations 2008

**FINANCIAL, RESOURCE AND RISK MANAGEMENT CONSIDERATIONS**
Nil

**COMMUNITY CONSULTATION**
Nil.
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 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 pursuant to Practice Direction 5 issued by the State Planning Commission under section 42 of the PDI Act.

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) observe the requirements of the PDI Act, and Development Act and all relevant Regulations and statutory instruments;

b) all relevant Regulations;

c) comply with the Assessment Panel Members - Code of Conduct (“the Code of Conduct”) adopted by the Minister under Schedule 3 of the PDI Act;

d) comply with the Operating and Meeting Procedures adopted by the Panel; and

e) endeavor to ensure that development applications are determined in a manner which appropriately balances the interests of applicants and representors and the community; and

f) observe all other 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 Conduct;

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) call the meeting to order and ask for the debate to be finalised and the motion to be put;

d) ensure that meetings occur in a manner which appropriately balances the interests of applicants, representors and the community.

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

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
8. NOTICE OF MEETINGS

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:.......................... Dated:...........................
Mayor Michael Lange
BAROSSA ASSESSMENT PANEL
TERMS OF REFERENCE

1. ESTABLISHMENT
   1.1 Pursuant to Section 83(1) of the Planning, Development and Infrastructure Act 2016 (the "PDI Act") The Barossa Council ("the Council") establishes the panel to be known as the Barossa Assessment Panel ("the Panel").
   1.2 The Panel is established to carry out its duties and functions as a relevant authority pursuant to section 93 of the PDI Act.
   1.3 The Panel will, at all times, act in accordance with the PDI Act, the Code of Conduct adopted by the Minister under Schedule 3 of the PDI Act and these Terms of Reference.
   1.4 The costs associated with establishment and activities of the Panel will be borne by the Council.

2. 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:
      2.1.1 acting as a "relevant authority" as provided under the PDI Act;
      2.1.2 being responsible for managing the staff and operations of the Panel in relation to which the Assessment Manager has been appointed; and
      2.1.3 providing advice to the Panel (as appropriate).

3. MEMBERSHIP
   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 current 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.

3.4 Pursuant to 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.

3.5 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.

3.6 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.

3.7 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 5.2 of these Terms of Reference.

Appointment of Deputy Members

3.8 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.

3.9 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):

3.9.1 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 when the member appointed under clause 3.1.1 of these Terms of Reference is not present at a meeting.

3.10 The Council may appoint independent person/s to act in the capacity of the Deputy Member (Independent Member). The Deputy Member (Independent Member):

3.10.1 shall hold their position for a term determined by the Council; and

3.10.2 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.

3.11 The provisions relating to the qualification of a Member in clause 6 of these Terms of Reference extend to a Deputy Member.
Barossa Assessment Panel Terms of Reference

3.12 The Council will call for expressions of interest for appointment of Members of the Panel.

3.13 Members of the Panel (excluding the Council Member and Depty Member (Council)) will be remunerated for their services. Remuneration rates will be set and regularly reviewed by Council.

3.14 Different levels of remuneration may be fixed by the Council for Independent Members, the Presiding Member and Deputy Members.

Appointment of Additional Members

3.15 Pursuant to section 85 of the PDI Act and to Practice Direction 5 issued by the State Planning Commission under section 42 of the PDI Act, the Panel 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. The Council acknowledges that it cannot appoint, oversee the appointment of, or otherwise be involved in the appointment of additional Members.

4. ROLES AND RESPONSIBILITIES

General

4.1 Notwithstanding these Terms of Reference, all Members of the Panel will observe the requirements under the:

4.1.1 observe the requirements of the PDI Act and all relevant Regulations and statutory instruments;

4.1.2 all relevant Regulations;

4.1.3 comply with the Assessment Panel Members - Code of Conduct (“the Code of Conduct”) adopted by the Minister under Schedule 3 of the PDI Act;

4.1.4 comply with the Operating and Meeting Procedures of the Panel;

4.1.5 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.
Barossa Assessment Panel Terms of Reference

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

4.4.1 be responsible for the proper observance of these Terms of Reference, Operating and Meeting Procedures and Code of Conduct;

4.4.2 oversee and facilitate the conduct of Panel meetings in accordance with the PDI Act and the Operating and Meeting Procedures;

4.4.3 ensure all Members of the Panel have an opportunity to participate in discussions in an open, respectful and encouraging manner; and

4.4.4 call the meeting to order and ask for the debate to be finalised and the motion to be put;

4.4.4.5 ensure that meetings occur in a manner which appropriately balances the interests of applicants, representors and the community.

5. CONDITIONS OF APPOINTMENT AND GROUNDS FOR REMOVAL OF MEMBERS

5.1 Members are appointed to the Panel subject to the following conditions:

5.1.1 all Independent Members must maintain the accreditation required by clause 6 of these Terms of Reference above for the term of their appointment;

5.1.2 the Council Member must remain as a member of the Council during the term of their appointment.

5.2 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:

5.2.1 breach of, or failure to comply with, the Terms of Reference; or

5.2.2 misconduct; or

5.2.3 neglect of duty; or

5.2.4 incapacity to carry out satisfactorily the duties of his or her office; or

5.2.5 failure to carry out satisfactorily the duties of his or her office; or

5.2.6 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

5.2.7 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.
5.3 For the purposes of clause 5.2 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.

5.4 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

5.5 The office of a Member of the Panel will become vacant if the Member-

5.5.1 dies; or

5.5.2 completes a term of office and is not reappointed; or

5.5.3 resigns by written notice to the Council; or

5.5.4 becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or

5.5.5 is convicted of an indictable offence punishable by imprisonment; or

5.5.6 is removed from office by the Council under clause 5.1 of these Terms of Reference.

5.6 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).

5.7 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.

5.8 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.

5.9 In appointing a Member pursuant to clause 5.6 of these Terms of Reference, the Council must have regard to the matters in clause 6 of these Terms of Reference as the circumstances require.

5.10 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 In accordance with section 83(1)(c) of the PDI Act, all Independent Members of the Panel must be accredited as accredited professional – planning level 1 pursuant to the Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019.
6.2 In accordance with section 83(2) of the PDI Act, the Council Member is not required to be an accredited professional. However, in appointing the Council Member, the Council must be satisfied that the Council Member is appropriately qualified to act as a Member of the Panel on account of the person’s experience in local government.

7. POWERS AND FUNCTIONS

7.1 The powers, functions and duties of the Panel are to be exercised in accordance with the PDI Act, the Planning, Development and Infrastructure (General) Regulations 2017 (“the PDI Regulations”) and these Terms of Reference.

7.2 The powers, functions and duties of the Panel are assigned by section 93 of the PDI Act and Part 5 of the PDI Regulations.

7.3 The Panel has the power to delegate its powers, functions and duties pursuant to section 100 of the PDI Act.

7.4 The Panel is charged with the responsibility to undertake reviews pursuant to Section 202(1)(b) and Section 203 of the PDI Act in relation to a decision made by the Assessment Manager acting as a relevant authority. NOTE: this power cannot be delegated.

8. NOTICE OF MEETING

8.1 The Panel shall meet in accordance with the PDI Regulations and the Operating and Meeting Procedures adopted by it.

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 against a Member of the Panel if the person believes that a Member of the Panel has acted in contravention of the Code of Conduct.

10.2 Complaints are to be made to the State Planning Commission in accordance with Regulation 11 of the PDI Regulation.

10.3 Complaints must be lodged with the State Planning Commission within six (6) months of the complainant first having notice of the matters alleged in the complaint.
Mayor – Michael Lange
BAROSSA ASSESSMENT PANEL
OPERATING AND MEETING PROCEDURES

COVID-19 PANDEMIC MEASURES

In order to adhere to recommended social distancing and other measures to protect the health and safety of members, Council staff and the community during the pandemic, all meetings of the Barossa Assessment Panel will be held via online platform or other electronic means. Public attendance at Panel meetings and attendances by representors and applicants will occur as per these Operating and Meeting Procedures.

Please note that the Barossa Assessment Panel will undertake all reasonable endeavours to ensure that attendance at meetings held by online platform or other electronic means are accessible through the provision of online links and/or log-in details as relevant. Please be advised that in person attendance at meetings is not possible during this time.

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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 a date to be determined by the Minister for Planning under the PDI Act, 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
2.2 procedures should reflect levels of formality appropriate to the nature and scope of responsibilities exercised 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, 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. The notice must set out the date, time and place of the meeting or, alternatively, log-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:

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).

2.4 A notice that is not given in accordance with clause 2.3 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.

2.5 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.

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

2.7 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.

2.98 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.

2.10 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/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.

2.101 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—

(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.

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 in extenuating circumstances and only in consultation 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.

Deputy Members

4.6 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.

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. 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.

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. 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.
6.3 As specified in the Assessment Panel Members – Code of Conduct, Members of the Panel must not initiate individual discussions with applicants, representatives 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 construed as having made a decision in relation to the proposal before the panel has collectively assessed and determined the development application.

6.4 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.

6.5 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.

7. **CONFLICT OF INTEREST**

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.

8. **HEARING OF REPRESENTATIONS**

8.1 An applicant has the right to address the panel at a Hearing of Representations in accordance with Section 38(1)(a) of the Development Act.

8.2 Except as provided in Section 38(1)(a) 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 representatives 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 representatives 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 acting reasonably.

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 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 8.1 – 8.10 above.

8.12 Pursuant to regulation 35 of the 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 section 38 of the Act and the capacity of the Panel as an independent decision-making body, and that it does not act at the direction of the Council.

8.13 Individual elected members of The Barossa Council do not have a right to be heard by the Panel otherwise than in accordance with clause 8.12 above.
9. MINUTES AND OTHER DOCUMENTS

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) how the meeting was convened and when it commenced;
   b) the names of the Members of the Panel present;
   c) the name and time of Members of the Panel entering or leaving the meeting;
   d) the name of a person who has made a verbal representation to the Panel at the meeting;
   e) the decision of the Panel;
   f) the decision of the panel to exclude public attendance including reasons.
   g) 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 Notice 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, the Assessment Manager, at least five (5) business days prior to the meeting so that the Assessment Manager can confirm its necessity and effect distribution to the applicant and to Members of the Panel for consideration. This requirement applies to additional information provided to fulfill a request from the Panel.

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.

11.6 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 additional minutes to respond to the representors’ comments.

11.7 Whenever new or additional information or material provided by a representative is accepted and considered by the Panel, the representative who provided the information or material 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 additional minutes to respond to the representative’s comments.

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.

14.3 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 24 hours prior to the meeting.
15. **PLANNING POLICY**

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) provided 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, provided 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.

16. **PLANNING APPEALS**

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.

17. **VALIDITY OF PROCEEDINGS**

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.

18. **COMPLAINTS**

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 representatives.

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 .................................................. Dated: ..............................................

Presiding Member
BAROSSA ASSESSMENT PANEL
OPERATING AND MEETING PROCEDURES

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COVID-19 PANDEMIC MEASURES

In order to adhere to recommended social distancing and other measures to protect the health and safety of members, Council staff and the community during the pandemic, all meetings of the Barossa Assessment Panel will be held via online platform or other electronic means. Public attendance at Panel meetings and attendances by representors and applicants will occur as per these Operating and Meeting Procedures.

Please note that the Barossa Assessment Panel will undertake all reasonable endeavours to ensure that attendance at meetings held by online platform or other electronic means are accessible through the provision of online links and/or log-in details as relevant. Please be advised that in person attendance at meetings is not possible during this time.

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 website 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.

2.3.4 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 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.

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.

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.

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 submissions, representations and response when they appear before the Panel.

13.2 Where necessary, any new additional information 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 After hearing an applicant and/or representor, the Panel may discuss an application and any new information to determine its relevance and may seek clarification from the Assessment Manager or Council staff in attendance at the meeting.

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 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; and
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.

16.17 PLANNING APPEALS
16.17 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.

16.18 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.

17. VALIDITY OF PROCEEDINGS

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.

18. COMPLAINTS

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:

   18.2.1 be in writing; and

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

   18.2.3 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 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.

20. RIGHTS OF REVIEW

20.1 An application to the Panel for review of a prescribed matter under Part 16, Division 1 of the PDI Act in a case where an Assessment Manager acted as a relevant authority must be made in the prescribed manner and form and must be made within one (1) month after the applicant receives notice of the decision constituting the prescribed matter unless the Panel, in its discretion, allows an extension of time.

20.2 The Assessment Manager must, on a request made by the Panel, furnish to the Panel any application, documents, written submissions, reports, plans, specifications, or other documents lodged with, or received by, the Assessment Manager in relation to the matter, and any other relevant material requested by the Panel.

20.3 The Assessment Manager must, on a request made by the Panel, furnish a report on any aspect of the subject-matter of the review.

20.4 The Panel may examine anything submitted under sub-section 20.2 and consider any report provided under sub-section 20.3 and draw any conclusions of fact it considers proper.

20.5 The Panel may, on a review under this section

20.5.1 affirm the decision being reviewed; or

20.5.2 vary the decision being reviewed; or

20.5.3 set aside the decision being reviewed and substitute its own decision, and any decision of the Panel will then have effect according to its terms.

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
2 November 2020

Louis Monteduro
Manager, Development Services
The Barossa Council
PO Box 867
NURIOOTPA SA 5355

VIA EMAIL: lmonteduro@barossa.sa.gov.au

Dear Louis

BAROSSA ASSESSMENT PANEL TERMS OF REFERENCE AND OPERATING AND MEETING PROCEDURES – ADVICE

I am instructed that the Council is reviewing the manner in which its development assessment functions are exercised so as to improve the experience that applicants and representors have when interacting with the Development Act 1993 (“Development Act”).

You have instructed me to provide further advice on amendments to the Barossa Assessment Panel (“BAP”) Terms of Reference (“TOR”) and Operating and Meeting Procedures (“OMP's”) which have been proposed to achieve the abovementioned objective.

I understand that the amendments to the TOR and OMP are intended to be “carried over” to the BAP TOR and OMP when the Planning, Development and Infrastructure Act 2016 (“PDI Act”) commences full operation in the Council’s area.

I provide my advice for the consideration of the Council and the BAP, below.

1. **Background**
   
   1.1 The Council wishes to establish an “educative, communicative, and interactive” approach to the manner in which development assessment functions occur.
   
   1.2 This approach involves:
       
       1.2.1 ensuring that its community better understands development assessment processes, assessment criteria and how decisions on development applications must be determined in accordance with legislative requirements;
       
       1.2.2 encouraging decision-makers for development applications to, within the confines of the law, assist applicants, representors and members of the community in
understanding their role in the decision-making process and being conscious to achieve balance between the interests of applicants and representors.

1.3 The Council has received feedback from applicants, representors and community members on its development assessments processes and how they can be improved, including that:

1.3.1 applicants are often unaware of planning assessment criteria for their property. It is not uncommon for applicants to assume that any form of development that has economic development potential should be approved on that basis alone;

1.3.2 applicants do not understand the level of detail required for plans and documents lodged with a development application and the numerous environmental, engineering and amenity considerations which must be applied in the assessment of a development application;

1.3.3 representors often have limited understanding of planning assessment criteria and the weight that may be given to the matters which they may raise in their representation. What is deeply important to a representor may not be a matter which is relevant to the assessment of a development application;

1.3.4 applicants and representors can find the process of addressing the BAP intimidating and difficult. Many people are not confident with speaking in a formal, public setting; others may have disabilities or other conditions which may affect their ability to speak confidently within short periods of time;

1.3.5 applicants and representors alike expect that they will be given what they consider to be sufficient opportunity to express their opinions and to respond to information presented to the BAP;

1.3.6 applicants, representors and community members expect BAP decisions to be made publicly and transparently wherever possible.

1.4 The Council’s objective is considered particularly important given the anticipated commencement of the operation of the Planning and Design Code and the full operation of the PDI Act in the Council’s area.

1.5 The PDI Act and associated regulations specify which forms of development applications are assessed and determined by the BAP. This is different from the Development Act where the Council can, through its delegations to the BAP, specify which classes of development application must be determined by the BAP.

1.6 The PDI Act and associated regulations provide that only development applications which require public notification are assessed and determined by the BAP. It is the Planning and Design Code which specifies which forms of development applications require public notification. It is anticipated that fewer classes of development applications will require public notification and that the majority of development applications will be determined without public notification occurring.

1.7 Further, representors for development applications assessed and determined by the BAP will not have the ability to appeal BAP decisions to the ERD Court.
1.8 The reduction in public notification and representor appeal rights for development applications is consistent with the intent of the PDI Act which is to focus public participation on the implementation of and amendments to the Planning and Design Code, rather than on individual development applications.

1.9 The Council is concerned that the anticipated reduction in publicly-notified development applications and the removal of representor appeal rights for development applications determined by the BAP and the Assessment Manager have the potential to alienate its community.

1.10 Of additional concern are sections 86 and 84(1)(d) of the PDI Act which allow the Minister for Planning to:

1.10.1 where the Minister has reason to believe that the BAP has “consistently failed” to comply with a “requirement” of the PDI Act, request the State Planning Commission to conduct an inquiry;

1.10.2 at the conclusion of an inquiry and on recommendation of the State Planning Commission, appoint a local assessment panel under section 84 of the PDI Act.

1.11 A local assessment panel replaces an assessment panel appointed by the Council. The Council is responsible for the costs of the local assessment panel but has no input into its establishment, appointment of members or the appointment of the Assessment Manager. These provisions of the PDI Act are punitive in nature and the appointment of a local assessment panel is best avoided.

1.12 The PDI Act contains a number of very broad requirements for persons and bodies exercising powers and functions under the Act such that an inquiry could be conducted where the Panel is deemed to have, on several occasions:

1.12.1 not acted “in a cooperative and constructive way”;

1.12.2 not been “open in interacting with other entities”;

1.12.3 not been “prepared to find reasonable solutions to issues that affect other interested parties or third parties”;

1.12.4 not been “responsible and accountable in its conduct”.

1.13 The Council’s customer focus objective is therefore also consistent with the requirements of the PDI Act as expressed at paragraph 1.12 above.

1.14 To achieve its objective:

1.14.1 Council administration will be offering pre-lodgement planning advice to members of the community;

1.14.2 the Council’s suite of information guides is being reviewed; and

1.14.3 the BAP TOR’s and OMP’s have been reviewed to, wherever appropriate, expressly encourage achievement of the customer focus objective.
1.15 This advice concerns the BAP TOR and OMP’s and the proposed customer focus and associated amendments to those documents.

2. **Adopting the BAP TOR and OMP’s**

2.1 Consistent with section 83(1)(a) of the PDI Act, the BAP TOR is a document adopted by the Council for the purposes of:

2.1.1 establishing the BAP and determining its membership;

2.1.2 determining the terms of office for members;

2.1.3 determining the conditions of appointment of members and the grounds on which, and the procedures by which, a member may be removed from office;

2.1.4 the appointment of deputy members;

2.1.5 who will act as the presiding member of the BAP and the process for appointing an acting presiding member.

2.2 The Council’s oversight of the BAP is limited to the matters described at paragraph 2.1 above as well as, whilst the Development Act remains operative, delegating development assessment powers and functions to the BAP in accordance with sections 34(23) and 34(24) of that Act.

2.3 According to section 83(1)(f) of the PDI Act and regulation 18 of the Planning, Development and Infrastructure (General) Regulations 2017 (“the Regulations”), to the extent that meeting procedures are not prescribed by the Regulations, the BAP must determine its own meeting procedures. The BAP’s meeting procedures cannot be determined or directed by the Council.

2.4 This advice examines amendments proposed to the BAP TOR for the consideration of the elected body of the Council and amendments to the OMP’s for the consideration of the BAP. This advice is provided as a single document for information purposes insofar as it covers matters which only the Council or the BAP can determine.

2.5 I confirm that two (2) versions of the BAP TOR and OMP’s have been provided – a version suitable for adoption now whilst the Development Act is still operative, and a version to be adopted when the PDI Act is fully operational.

2.6 I confirm that there is no legal impediment to both versions of each document being adopted now, provided that it is made clear which version operates from the date of adoption and which version commences operation on the date upon which the PDI Act commences full operation.

3. **BAP TOR**

I summarise the amendments made to the two (2) versions of the BAP TOR below.

**TOR prior to full PDI Act commencement**

3.1 Clause 2.1
3.1.1 This clause has been amended to delete the reference to the commencement of the PDI Act. As there are two TOR versions and (as yet) no date set for the full commencement of the PDI Act, former clause 2.1(a) has been deleted.

3.1.2 The remainder of the clause has been amended to clarify that the functions of the Assessment Manager are prescribed by section 87(e) of the PDI Act and to delete unnecessary wording.

3.1.3 The role of the Assessment Manager at present is to ensure that the BAP is able to operate effectively. The effect of section 87(e) is that the Assessment Manager is responsible for BAP meeting arrangements and to ensure that the BAP has all of the support and assistance needed for it to make thorough, appropriate and considered decisions in accordance with law. Once the PDI Act commences in full, the role of the Assessment Manager will expand to include being a “relevant authority” (i.e. decision-maker) for various forms of development described in the Planning and Design Code and Regulations. As these additional functions of the Assessment Manager have no relation to the appointment of the BAP, there is no need for the BAP TOR to alter in this regard after the commencement of the PDI Act.

3.2 Clause 4.1

3.2.1 Aside from minor grammatical and other changes, a new clause 4.1(d) has been inserted to reflect the Council’s customer objective. It must be noted that clause 4.1(d) is intended to encourage BAP members to keep an educative, informative and balanced approach to development assessment “front of mind”.

3.3 Clause 4.4

3.3.1 Similar to the amendments made to clause 4.1, there are a number of minor amendments to this clause as well as the insertion of a new clause 4.4(e).

3.3.2 This new clause reflects the importance of the role of the presiding member in setting the “tone” of a BAP meeting. This clause encourages an approach which considers the desire to educate and inform the Council’s community as well as being conscious to achieve “balance” in how applicants, representors and others are treated.

3.3.3 This clause is not intended to be a reflection on the BAP presiding member’s performance; rather it is intended to be a public statement reflecting the Council’s objective as stated at paragraph 1.1 above.

TOR post-full PDI Act commencement

3.4 The amendments made to clauses 4.1 and 4.4 of this version of the TOR are identical to those described at paragraphs 3.2 and 3.3 above.

4. BAP OMP’s

The amendments made to the BAP OMP’s do not indicate criticism of the BAP or any of its members. Rather, the amendments are intended to emphasise the objective expressed at
paragraph 1.1 above wherever possible and to ensure compliance with the requirements of the PDI Act.

**OMP's prior to full PDI Act commencement**

4.1 Clause 3.4

4.1.1 This clause has been amended to emphasise that the BAP will only enter into confidence whenever this is entirely necessary and with the input of the Assessment Manager.

4.1.2 This clause is intended to emphasise to applicants, representors and the community that the decision to enter into confidence is not taken lightly. The input of the Assessment Manager is a reflection of the current practice where agenda reports (which are the responsibility of the Assessment Manager to prepare) do identify and make appropriate recommendations where it is considered that portion of a BAP meeting should be held in confidence.

4.2 Clause 6.4

4.2.1 this clause reflects the legislative obligation imposed on relevant authorities to provide reasons for their decisions pursuant to section 40 and 42 of the Development Act and regulations 16(4) and 42(3) of the Development Regulations 2008;

4.2.2 reasons for a decision must be well-considered. Inadequate reasons can result in increased numbers of appeals to the ERD Court as well as allegations that the BAP is not complying with the requirements of the Development Act and PDI Act;

4.3 Clause 6.5

4.3.1 this clause is intended to set a clear timeframe for asking questions arising from the agenda report so that the Assessment Manager has sufficient time to ensure that a comprehensive answer may be prepared and, if necessary, distributed to the remaining members prior to the BAP meeting;

4.4 Clause 8.4

4.4.1 This clause has been amended to clarify that the presiding member of the BAP has the discretion to allow a representor or applicant to speak for longer than the timeframes allocated in the OMP’s.

4.4.2 As per paragraphs 1.3.4 and 1.3.5 above, individual circumstances may warrant longer periods of time being provided to applicants and/or representors to address the BAP. Where appropriate, longer timeframes should be considered to ensure that applicants and representors receive a fair hearing.

4.5 Clauses 8.11 and 9.2(a)

These amendments are intended to complement existing clauses allowing electronic attendances at BAP meetings. Electronic attendances are encouraged to ensure that applicants, representors and members of the community who have difficulty in attending
a physical meeting due to personal circumstances, illness or disability can attend through electronic means. Further, electronic attendances for BAP members is considered an important option to ensure that meetings are not inquorate where BAP members are not able to attend a meeting in-person.

4.6 Clauses 8.12 and 8.13.

These clauses are intended to clarify the existing legal position on elected members being heard by the BAP for elected members which is that they can only be heard in their personal capacity or as a representative and their role as an elected member has no influence on the decisions made by the BAP. I confirm that the position expressed in these clauses will remain the same under the PDI Act.

4.7 Clauses 11.1, 11.6 and 11.7

4.7.1 These clauses clarify what must occur when new information not included in the agenda report for a development application is accepted for consideration by the Panel.

4.7.2 Clauses 11.6 and 11.7 do not constitute a second “Hearing of Representations”. Rather, they are intended to ensure that where:

(a) a representor presents new information and this is accepted by the BAP, that the applicant is provided with additional time to address the BAP on the new information; and

(b) an applicant presents new information and this is accepted by the BAP, that representors are provided with additional time to address the BAP on the new information.

4.7.3 Applicant and representor opinions on new information are highly relevant to the consideration of a development application by the BAP. In circumstances where this information is provided after the agenda report is published, it is imperative in the interests of fair and transparent decision making that if it is to be accepted by the BAP, that the person(s) affected by the information are given an opportunity to be heard on it.

4.8 Clause 14.3

4.8.1 This clause is intended to ensure that if the BAP determines a finely-balanced development application contrary to an officer recommendation that a pre-drafted, alternative recommendation is available for consideration. This measure is intended to assist the BAP in meeting its legislative obligations to provide considered reasons for its decision whilst ensuring that BAP decisions are not delayed.

4.8.2 The intent of the alternative recommendation is not to provide equivocal and unhelpful guidance on the assessment of a development application to the BAP.

4.8.3 Rather, it is intended to assist the BAP in formulating reasons for a decision where the BAP decision is contrary to a recommendation. In the context of a BAP
meeting, it can be difficult for the BAP and the Assessment Manager to formulate adequate reasons for a decision that is contrary to a recommendation.

4.8.4 An alternative recommendation will provide assistance in such circumstances by providing the basic form and structure for a decision, allowing the BAP to focus on refining it to match its final decision, rather than having to draft its reasons from scratch.

4.8.5 This clause also encourages BAP members who wish to move alternative recommendations to contact the Assessment Manager for assistance on the form of an appropriate alternative recommendation prior to the meeting.

4.8.6 This clause should ensure that all decisions of the BAP are made consistently detailed and with reasons that assist in educating and informing applicants, representors and the community as to why a decision was reached as well as complying with legislative requirements.

**OMP’s post-full PDI Act commencement**

4.9 Clause 3.4 – see paragraph 4.1 above as these amendments are identical in nature.

4.10 Clause 8.3 – this clause has been added to reflect the requirements of the Code of Conduct and reflect clause 6.3 of the OMP’s for adoption prior to the full commencement of the PDI Act.

4.11 Clauses 8.4 and 8.5 - see paragraph 4.2 above as these amendments are similar in nature.

4.12 Clauses 10.5 and 10.6 – see paragraph 4.4 above as these amendments are similar in their terms.

4.13 Clauses 10.13 and 10.14 – see paragraph 4.6 above as these amendments are similar in their terms.

4.14 Clause 13 – see paragraph 4.7 above as these amendments are similar in their nature.

4.15 Clause 15.5 – see paragraph 4.8 above as these amendments are similar in their terms.

4.16 Clause 16

4.16.1 These amendments have been made to provide for more detailed meeting procedures to cover reviews of Assessment Manager Decisions.

4.16.2 It must be noted that sections 87(e) and section 203 of the PDI Act make it clear that the Assessment Manager is a relevant authority in their own right and that decisions made by them acting as a relevant authority cannot be influenced or directed by the BAP, the Council, or any other person or entity. Where an applicant is dissatisfied by an Assessment Manager decision, they may have this decision reviewed by the BAP and/or appeal it to the ERD Court.
4.16.3 It is therefore not recommended that the Assessment Manager delegate any of their functions or powers as a relevant authority to the BAP but rather that applicants be informed of their rights of review and appeal whenever appropriate.

Please call me with any questions.

Yours sincerely

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i This is anticipated as a result of reviewing Phase 2 of the Planning and Design Code (currently operative in Phase 2 council areas) and from numerous comments made by the State Planning Commission and the Department of Infrastructure and Transport regarding this issue.

ii Under section 38 of the Development Act 1993 there are three categories of development applications for public notification purposes. Category 1 development applications must be assessed and determined without any form of public notification occurring. Category 2 development applications undergo limited notification to adjacent land owners and occupiers who can make representations but cannot appeal decisions made on the development application. Category 3 development applications are notified to adjacent land owners and occupiers, to land owners who, in the opinion of the Council, will be directly affected to a significant degree by the development if it were to proceed and the public generally through a public notice published in a newspaper. Category 3 representors are able to appeal decisions on development applications to the ERD Court. All three forms of development applications are determined by the BAP. Under the PDI Act, no applications determined by the BAP will have representor appeal rights.

iii This intent was expressed in South Australia’s Expert Panel on Planning Reform “Our Ideas for Reform” and is reflected through the provisions of the PDI Act which govern the establishment of the Community Engagement Charter


v PDI Act section 15(1)(d)

vi Ibid, section 15(1)(e)

vii Ibid, section 15(1)(f)

viii Ibid, section 15(2)(c)