

COUNCIL ASSESSMENT PANEL

General Operating Procedures

November 2021

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These Meeting Procedures are to be read in conjunction with the meeting procedures contained within the Planning, Development and Infrastructure (General) Regulations 2017. (Refer Appendix A).

1 Purpose

- 1.1. The purpose of the Council Assessment Panel (CAP) is to determine development applications that are assigned to the CAP under the Planning Development and Infrastructure Act 2016 or, during the transition to the PDI Act, the Development Act 1993 that are delegated from Council. The Panel may also provide advice to Council on trends, issues and other matters relating to planning or development matters.
- 1.2. The Panel acknowledges that in performing its statutory function, it is bound by the:
 - 1.2.1 Code of conduct adopted by the Minister for Planning.
 - 1.2.2 Objects, Planning Principles and General Responsibilities under the Planning, Development and Infrastructure Act 2016.
 - 1.2.3 Operating Procedures established by the Panel.

2 Timing & Notice of Meetings

Meeting time and place

- 2.1. CAP meetings will be scheduled by the CAP on the fourth Tuesday of the month, commencing at 6.30pm or another date as determined by the Presiding Member, subject to there being business to consider.
- 2.2. The CAP will meet in the Council Civic Centre at 34 Church Street Salisbury or at such other place, including audio visual media, as the Presiding Member may determine.

Notice of meeting

- 2.3. The Assessment Manager pursuant to the Planning Development and Infrastructure Act 2016 must provide written notice detailing the date, time and place of a meeting to all CAP members at least three working days before the meeting. The notice shall include the Agenda for the meeting.
- 2.4. Where attendance at the meeting is able to occur by electronic means (in whole or in part), the notice of the meeting will include details of how to access and/or connect to the meeting.
- 2.5. Notice of CAP meetings may be given to CAP members by email, to an email address nominated by a CAP Member, or by personal delivery or post to the usual residence of a CAP Member, or via such other means as authorised by a CAP Member.

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

Viewing agenda

- 2.7. A copy of the Agenda for every ordinary meeting of the CAP shall be available for viewing by the public at the Council's offices and on the Council's web site at least three working days before the meeting of the CAP. The three working days notice shall not apply to a special meeting of the CAP under clause 2.8, or to an item included by the Assessment Manager under clause 2.10, in which cases the agenda will be made available for viewing by the public as soon as practicable.

Special meeting

- 2.8. A special meeting of the CAP may be convened by the Presiding Member, at any time, to consider urgent business by giving not less than two working days written notice to all CAP Members.
- 2.9. Notice of a special meeting of the CAP must be accompanied by an Agenda stating the item(s) of business for which the meeting has been convened. A special meeting must only deal with the business for which the meeting has been convened.

Late items

- 2.10. The Assessment Manager may, with leave or at the request of the Presiding Member, include in the agenda an item to be considered at the meeting to which the agenda relates after notice of the meeting has been given to CAP Members. In such instance, the Assessment Manager shall provide an updated agenda and any documents and/or reports relating to that item to be considered at the meeting to Members as soon as practicable. The Assessment Manager will also make an updated agenda available to the public in accordance with clause 2.7.

3 Commencement of Meetings & Quorum

- 3.1. CAP Meetings will be conducted in accordance with the requirements of the Planning, Development and Infrastructure Act 2016 ('the PDI Act'), Development Act 1993 ('the Act') and these Operating Procedures.
- 3.2. Meetings will commence on time, or as soon as a quorum is present. If a quorum is not present within thirty minutes of the time for commencement, the Presiding Member may adjourn the meeting to the next scheduled meeting

time and date, or to another time and date.

- 3.3. A quorum for a meeting of the CAP is three (3) CAP Members.
- 3.4. If the number of apologies received by the Assessment Manager in advance of a meeting indicate that a quorum will not be present at a meeting, the Presiding Member may, by notice from the Assessment Manager, provide to all CAP Members in advance of the meeting, a notice adjourning the meeting to a future time and date as specified in the notice (a copy of this notice will be displayed at the Council Offices and on the Council's website).
- 3.5. If a meeting is required to be adjourned by the Presiding Member, the reason for the adjournment, and the date and time to which the meeting is adjourned will be recorded in the Minutes.

Acting Presiding Member

- 3.6. That the CAP appoint an Acting Presiding Member for the remainder of the CAP term.
- 3.7. If both the Presiding Member and Acting Presiding Member are absent from a CAP meeting (or part thereof), a CAP Member will be appointed from those CAP Members present by means of resolution, and will preside over the meeting.

Meeting behaviour

- 3.8. Subject to the PDI Act and these Operating Procedures, the Presiding Member will facilitate the meeting in a manner which promotes relevant, orderly, constructive, respectful and expeditious discussion, but not repetitious discussion, with the intent of ensuring well-informed decisions and debate leading to a determination of any matters before the Panel.
- 3.9. The Presiding Member may adjourn a meeting in the event of a disruption or disturbance by a CAP Member, an applicant, a representor, or any other person present at the CAP meeting, until such time as the disruption or disturbance ceases.
- 3.10. The Presiding Member may ask a member of the public who is present at a meeting of a CAP to leave the meeting if this person is:
 - 3.10.1 behaving in a disorderly manner; or
 - 3.10.2 causing an interruption.

4 Deputy Members

- 4.1. If a CAP Member is unable or unwilling to attend a meeting or part of a meeting, he or she must use his or her best endeavours to notify the Presiding Member or Assessment Manager at his or her earliest opportunity.
- 4.2. If notification pursuant to clause 4.1 is given, the Assessment Manager may request a Deputy Member attend the meeting in place of the CAP Member for the meeting or part of the meeting.
- 4.3. Unless the context otherwise requires, a reference to a Member in these Meeting Procedures includes a Deputy Member.

5 Appointment of Additional Members

- 5.1. The CAP may appoint up to two Additional Members in accordance with Section 85 of the PDI Act and *Practice Direction 5 – Appointment of additional members to an Assessment Panel*.
- 5.2. Where the CAP has appointed Additional Member(s), the Presiding Member, in consultation with the Assessment Manager, may invite one or both Additional Members to attend any meeting (or part thereof) where he or she considers the Additional Member(s) will, by virtue of their qualifications, expertise or experience, assist the CAP in dealing with a matter that it must assess under the PDI Act (or, during the transition to the PDI Act, the Development Act 1993).
- 5.3. A request that an Additional Member attend a meeting must be made in writing and be accompanied by the notice for the meeting in accordance with clause 2.3, highlighting the item(s) the Additional Member is required to consider.
- 5.4. Unless the context otherwise requires, a reference to a Member in these Meeting Procedures includes an Additional Member, save that an Additional Member is not able to vote on any matter arising for determination by the CAP.

6 Decision Making

- 6.1. The CAP will conduct its meetings, and undertake all considerations, in accordance with the PDI Act (or, during the transition to the PDI Act, the Development Act).

Public meetings

- 6.2. Subject to circumstances where it excludes the public from attendance at a meeting or part thereof pursuant to Part 13 of the Development, Infrastructure (General) Regulations 2017 or the review of the Assessment Manager Decision, the Panel will generally discuss and determine applications in public.

Member participation

- 6.3. The Presiding Member will invite all Panel members to speak on any matter before the Panel prior to calling for a motion.
- 6.4. Subject to a CAP Member not having a direct or indirect personal or pecuniary interest in a matter before the CAP (other than an indirect interest that exists in common with a substantial class of persons), each CAP Member present at a meeting of the CAP must vote on a question arising for decision.

Decisions by consensus

- 6.5. Decisions of the Panel will be where possible by consensus determined through debate and discussion of the agenda item, and where a consensus is reached the Presiding Member shall then call for a mover and confirm the consensus by a show of hands.

Decisions by vote

- 6.6. Where it is evident through debate and discussion that a consensus will not be reached by the Panel, the Presiding Member shall call for a mover and put the matter to a formal vote to determine.
- 6.7. Each CAP Member present at a meeting is entitled to one vote on any matter arising for decision and, if the votes are equal, the Member Presiding at the meeting is entitled to a second or casting vote.
- 6.8. All decisions of the CAP shall be made on the basis of a majority decision of the Members present and the Minutes shall record that decision only (Votes for/against will not be recorded, and are not relevant once the majority is determined).

CAP considerations

- 6.9. The CAP must use the Development Plan or Planning and Design Code (as may be relevant to the particular application under consideration), referred to hereafter as the Planning Rules, as the basis for its decisions, having had regard to any relevant written and verbal representations made in accordance with the provisions of the Act, or any other relevant legislation.

Seriously at variance

- 6.10. The CAP will, for each and every application, determine whether the proposal is seriously at variance with the Planning Rules, and expressly record its determination on this matter in the Minutes. If the CAP determines that the proposal is seriously at variance with the Planning Rules, the CAP must provide reasons for its determination, and must expressly record those reasons in the Minutes.

- 6.11. A development application that is assessed by the CAP as being seriously at variance with the Planning Rules will be refused.

Reasons for decision

- 6.12. The CAP must, for each and every application, provide reasons for granting or refusing Planning Rules Consent, and for the imposition of any conditions, and express or record those reasons in the Minutes.

Representations

- 6.13. Subject to the relevant Act, a person who has lodged a valid representation in relation to a Category 2 or 3 development application under the *Development Act 1993* or an application for which notice must be given under the *Planning, Development and Infrastructure Act 2016*, and has indicated their desire to be heard on their representation, is entitled to appear before the CAP and be heard in support of their representation, in person or by an agent.

- 6.14. The Presiding Member may in his or her discretion exclude:

- 6.14.1 a representation or response to representation(s) which is received out of time; or
- 6.14.2 a representation or response to representation(s) which is otherwise invalid.

Speaking time

- 6.15. Applicants and Representors will be allowed five minutes to address the CAP, unless a longer time is allowed by the Presiding Member. Where a person is nominated in a representation or by notice of the representors as representing three or more representors (including themselves) the Presiding Member may allow a longer time to address the Panel. Where an applicant is responding to a significant number of representations or a significant number of issues raised in representations, the Presiding Member may allow a longer time to address the Panel.

Hearing applicants

- 6.16. Should there be no Representor wishing to be heard for a non-complying development application, Category 2 or Category 3 development application, and the recommendation is for a refusal, the Applicant will be entitled to appear before the CAP and be heard in support of the application. Applicants will be allowed five minutes to address the CAP, unless a longer time is allowed by the Presiding Member.

- 6.17. Should there be no Representor wishing to be heard for a non-complying

development application, Category 2 or Category 3 development application, and the recommendation is for approval, the Presiding Member may allow the Applicant to address the Panel to seek clarification and/or further information that may be required by the Panel in order to determine the application.

Additional material

- 6.18. At the discretion of the Presiding Member, any new or additional material to be submitted to the CAP by a person who has made a development application or a valid representation in relation to a matter may be accepted and considered by the CAP. A copy of any additional material accepted shall be provided to the applicant or representors by the party presenting the additional material.

Member's participation

- 6.19. A CAP Member may ask questions of any person appearing before the CAP. Subject to the Presiding Member's determination, all questions shall be relevant to the subject of the development application before the panel.

Appeals

- 6.20. The Assessment Manager is authorised to make decisions as to the conduct of appeals that do not change the nature of the decision of the Panel including preparing documentation required by the Court, engaging and instructing legal representation or expert witnesses, attending preliminary conferences, conciliation hearings or direction hearings, subject to consulting with the Presiding Member.
- 6.21. Where the Assessment Manager has acted on a matter under appeal, a report will be provided to the Panel at the next meeting.
- 6.22. Any compromise proposal arising from an appeal shall be presented to the Panel for decision.
- 6.23. In the event of an urgent matter, that the Presiding Member may convene a special meeting of the Panel in accordance with these General Operating Procedures.

7 Minutes and Reporting

- 7.1. The Assessment Manager is responsible for ensuring that accurate Minutes are kept of Panel meetings and that they are confirmed by the Panel and signed by the Presiding Member.
- 7.2. The Minutes of the proceedings of a CAP meeting will record:

- 7.2.1 the names of the CAP Members present;
 - 7.2.2 the names of all CAP Members from whom apologies have been received;
 - 7.2.3 the name and time that a CAP Member enters or leaves the meeting;
 - 7.2.4 the name of a person who has made a representation to the CAP at the meeting;
 - 7.2.5 the decision of the CAP, including the express opinion of the CAP on whether the proposed development is seriously at variance with the Planning Rules (including reasons as appropriate);
 - 7.2.6 reasons for granting or refusing Planning Rules Consent, and for the imposition of any conditions on a Planning Rules Consent;
 - 7.2.7 in the absence of a decision, the deferral of the application including the reasons for the deferral;
 - 7.2.8 any disclosure of a conflict of interest made by a Member pursuant to the Code of Conduct adopted by the Minister under Clause 1(1)(c) of Schedule 3 of the Act (Code of Conduct), and the nature of the Interest;
 - 7.2.9 a decision to exclude public attendance; and
 - 7.2.10 a notation, describing the confidential nature of the information and matter, in the event a matter has been excluded from the Minutes.
- 7.3. Minutes shall be read and adopted by the CAP at the end of the meeting.
- 7.4. On the adoption of the Minutes, the Assessment Manager will forward the Minutes to the Presiding Member who will confirm the Minutes by electronic communication.
- 7.5. The Minutes of a CAP meeting must be forwarded to the Council and must be publicly available within two business days after their confirmation by the CAP.

Annual Report

- 7.6. The Panel shall prepare and consider an Annual Report for presentation to the Council via the appropriate Standing Committee. The Annual Report may be presented by the Presiding Member and may contain (but not be limited to) statistical information in relation to the number of items considered, the outcomes of decisions on those items, and matters identified by the Panel in

the course of its assessment of development applications that warrant referral to Council for consideration of Planning Rules policy, legislative, or procedural change.

- 7.7. The Annual Report shall be prepared at the end of the financial year.

Reporting to the Panel

- 7.8. The Assessment Manager will prepare:

- 7.8.1 A quarterly report of the development applications with representations determined under delegated authority for the previous period.
- 7.8.2 A report at the next meeting of the Panel for any development application delegated by the Panel where a deemed consent notice has been received.

8 CAP Procedures & Support

Additional procedures

- 8.1. Insofar as the Act and these Operating Procedures do not prescribe the procedure to be followed at a CAP meeting, the CAP may determine the procedure at the time. Any such determination may be added to these Operating Procedures.

Staff Participation

- 8.2. The CAP will permit and encourage the active participation of Council staff in attendance at a meeting in providing advice to the CAP.

Assistance

- 8.3. The CAP may call for and consider such professional assistance from Council staff and other professional advisors as it deems necessary and appropriate.

Electronic Meetings

- 8.4. One or more Panel members may attend a meeting via electronic means.
- 8.5. A Member attending a meeting by electronic means is taken to be present at the meeting provided that the Member:
- 8.5.1 can hear and, where possible, see all other Members who are present at the meeting;
- 8.5.2 can hear and, where possible, see, all representors (or their representatives) and applicants (or their representatives) who speak at the meeting;

- 8.5.3 can be heard and, where possible, seen by all other Members present at the meeting; and
- 8.5.4 can be heard and, where possible, seen by the person recording the minutes of the meeting.
- 8.6. The notice of the meeting shall include details of how to access and/or connect to the meeting by audio visual media.
- 8.7. Should audio visual media devices be utilised for the conduct of a CAP meeting, all voting shall be conducted on the voices, with the Presiding Member verbally acknowledging each individual vote before declaring the outcome of the vote, and noted in the minutes of the meeting, consistent with *Part 6: Decision Making* of the Operating Procedures.
- 8.8. Where the meeting occurs by audio visual media, it shall (to the extent that the public is not able to physically attend the meeting) be live streamed.
- 8.9. Where a meeting is being live streamed, the live stream shall be disconnected only during those parts of the meeting during which the public has been excluded from attendance pursuant to clause 13(2) of the Regulations.
- 8.10. Where the public has been excluded from attendance pursuant to clause 13(2) of the Regulations, the Assessment Manager or a person nominated by the Assessment Manager shall ensure that all parties except for CAP members disconnect from or are disconnected from the meeting.

Appendix A – Assessment Panel General Regulation Procedures

South Australia

Planning, Development and Infrastructure (General) Regulations 2017

under the *Planning, Development and Infrastructure Act 2016*

Part 3—Assessment panels—procedures

12—Application

This Part applies to and in relation to the procedures of an assessment panel established under section 83 of the Act or clause 12 or 13 of Schedule 8 of the Act.

13—Public access to meetings

- (1) In connection with the conduct of the proceedings of an assessment panel, members of the public are entitled to attend a meeting of the panel other than as set out in subregulation (2).
- (2) An assessment 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 assessment 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 assessment 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 Commission, or another public authority or official; and
 - (B) would, on balance, be contrary to the public interest; and
- (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 assessment panel.

14—Minutes and other documents

- (1) An assessment panel must ensure that accurate minutes are kept of its proceedings.
- (2) A disclosure by a member of an assessment panel of a direct or indirect pecuniary interest in any aspect of a development or any body associated with any aspect of a development required under the Act must be recorded in the minutes of the assessment panel.
- (3) Members of the public are entitled to reasonable access to—
 - (a) the agendas for meetings of an assessment panel; and
 - (b) the minutes of meetings of an assessment panel.
- (4) However, an assessment panel may, before it releases a copy of any minutes under subregulation (3), exclude from the minutes information about any matter dealt with on a confidential basis by the assessment panel.
- (5) Minutes must be available under subregulation (3) within 5 business days after their adoption by the members of the assessment panel.

15—Quorum

A quorum at a meeting of an assessment panel is a number obtained by dividing the total number of members of the assessment panel for the time being in office by 2, ignoring any fraction resulting from the division, and adding 1.

16—Voting

- (1) Each member of an assessment panel present at a meeting of the assessment panel is entitled to 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.
- (2) Subregulation (1) does not apply to a person who is taken to be a member of an assessment panel under section 85 of the Act.

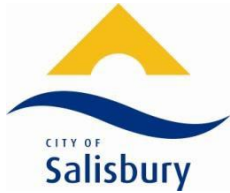
17—Validity of proceedings

A proceeding of an assessment panel (and any decision made by an assessment panel) is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

18—Other matters

Except insofar as a procedure is not prescribed by the Act or these regulations, the procedures of an assessment panel in relation to the conduct of its business will be as determined by the assessment panel (and an assessment panel is accordingly a specified body for the purposes of section 246(6)(d) of the Act).

Appendix B - Policy for the Assessment Panel Review of the Assessment Manager Decision



COUNCIL ASSESSMENT PANEL

Policy for the review of a decision of the Assessment Manager

28 April 2021

LEGISLATIVE FRAMEWORK

1. This Policy applies in addition to the statutory requirements for the review by the Council Assessment Panel/Regional Assessment Panel (Panel) of A decision of an Assessment Manager as set out in Part 16, Division 1 of the Planning, Development and Infrastructure Act 2016 (Act).

COMMENCING A REVIEW

2. An application for review must relate to a prescribed matter, as defined in Section 201 of the Act, for which an Assessment Manager was the relevant authority.
3. An application for review must be:
 - a. made using the Application to Assessment Panel for Assessment Manager's Decision Review (the Form);
 - b. lodged in a manner identified on the Form;
 - c. lodged within one month of the applicant receiving notice of the Prescribed Matter, unless the Presiding Member in his or her discretion grants an extension of time; and
 - d. an applicant may provide a written submission in support of his or her application for review.
4. In determining whether to grant an extension of time, the Presiding Member may consider:
 - a. the reason for the delay;
 - b. the length of the delay;
 - c. whether any rights or interests of other parties would be affected by allowing the review to be commenced out of time;
 - d. the interests of justice;
 - e. whether the applicant has, or is within time to, appeal the prescribed matter to the ERD Court; and
 - f. any other matters the Presiding Member considers relevant.

MATERIALS FOR REVIEW HEARING

5. The Assessment Manager shall collate for the Panel:
 - a. all materials which were before the Assessment Manager (or delegate) at the time of the decision on the Prescribed Matter, including but not limited to:
 - i. application documents, reports, submissions, plans, specifications or other documents submitted by the applicant;
 - ii. internal and/or external referral responses; and
 - b. any report from Council staff or an external planning consultant written for the Assessment Manager;
 - c. any assessment checklist used by the Assessment Manager or delegate when making the decision on the Prescribed Matter;
 - d. any other information requested by the Presiding Member.
6. The Assessment Manager (or delegate) must prepare a report to the Panel setting out the details of the relevant development application, the prescribed matter the subject of the review and the reasons for the Assessment Manager (or delegate's) decision on the Prescribed Matter.

REVIEW HEARING

7. The Assessment Manager must advise the applicant of the time and date of the Panel meeting at which the review application will be heard.
8. On review, the Panel will consider the Prescribed Matter afresh.
9. Information, materials and submissions which were not before the Assessment Manager at the time of the decision on the Prescribed Matter will not be considered by the Panel.
10. Except where provided in clause 3(d), the Panel will not receive submissions or addresses from any party.
11. 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.
12. The Assessment Manager must be present at the Panel meeting to respond to any questions or requests for clarification from the Panel.
13. Where the decision on the Prescribed Matter was made by a delegate of the Assessment Manager, the delegate may appear in place of the Assessment Manager.
14. The Presiding Member will invite all Panel Members to speak on any matter relevant to the review.
15. The Panel may resolve to defer its decision if it considers it requires additional time or information to make its decision.
16. Pursuant to regulation 13(2)(b) of the *Planning, Development and Infrastructure (General) Regulations 2017* the Panel will exclude the public and staff involved in the prescribed matter from attendance during the deliberation of the matter under this policy.

OUTCOME ON REVIEW HEARING

17. The Panel may, on a review:
 - a. affirm the Assessment Manager's decision on the Prescribed Matter;
 - b. vary the Assessment Manager's decision on the Prescribed Matter; or
 - c. set aside the Assessment Manager's decision on the Prescribed Matter and substitute its own decision.
18. An applicant should be advised in writing of the Panel's decision by the Assessment Manager.

Appendix C – Standing Referral of Building Rules Assessment to Council

- At its meeting held 24 November 2020, the Salisbury Council Assessment Panel resolved to act under Section 99(1)(b) of the Planning, Development and Infrastructure Act 2016 (the Act) in relation to all development applications received by it that involve the performance of building work; and
- Pursuant to Section 99(1)(c) of the Act, where the Panel has determined to act under Section 99(1)(b) of the Act, the Salisbury Council Assessment Panel refers the assessment of the development in respect of the Building Rules to the City of Salisbury.