

COORONG ASSESSMENT PANEL

Operating and Meeting Procedures

As adopted by the Panel 13th October 2020

1. Purpose

- (1) These Operating and Meeting Procedures have been determined by the Coorong Assessment Panel ("the Panel") pursuant to the 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 Coorong District Council ("the Council").
- (2) The procedures are intended to:
 - a) Outline the procedures by which the Panel will conduct its business at meetings; and
 - b) Facilitate the conduct of the Panel's business in a transparent, timely, efficient and appropriate manner to ensure compliance with the requirements of the Act.

Except insofar as a procedure for the Panel is not prescribed by the PDI Act or the Planning, Development and Infrastructure (General) Regulations 2017 ("the Regulations"), the procedures of the Panel in relation to the conduct of its business will be as determined by the Panel.

2. Meeting Notice, Times and Venue

- (1) Ordinary meetings of the Panel will be held as required on dates and at times and in a manner determined by the Assessment Manager. Physical meetings will be conducted at the Coorong Civic Centre, 95-101 Railway Terrace Tailem Bend. Meetings may also be convened by online platform, teleconference or other similar means as determined by the Assessment Manager.
- (2) Where a meeting is to be held via online platform or teleconference, the meeting will be livestreamed or made accessible in a manner deemed appropriate by the Assessment Manager, such that members of the public can hear and (if relevant) see the meeting as they would in the public gallery of a physical meeting.
- (3) The Presiding Member in consultation with the Assessment Manager has the discretion to nominate an alternative meeting venue and/or time prior to the issue of the agenda, should circumstances warrant.
- (4) If a physical meeting of the Panel is convened, individual Panel members who cannot attend the physical meeting may attend that meeting via online platform or teleconference, etc provided that at least one (1) clear business

days' notice is provided to the Assessment Manager. Panel Members will use best endeavours to attend meetings in person.

- (5) A minimum of five (5) clear business days' notice of a scheduled meeting shall be given to Panel Members by the Assessment Manager:
 - 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).
- (6) A notice that is not given in accordance with Clause 2(5) above 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.
- (7) Special meetings (being additional meetings or alternative meetings dates, times or venues) of the Panel may be required in special circumstances to expedite decisions on applications before the Panel, and will be called at the discretion of the Presiding Member in consultation with the Assessment Manager. Members of the Panel, applicants, representors and the public shall be given five (5) clear business days' notice of a special meeting of the Panel.
- (8) Public notice of a scheduled meeting will be provided at the Council offices and on the Council's website and advised on other related social media. If a meeting is to be held by means other than a physical meeting, the notice must contain the online link or teleconference, etc details by which public access to the meeting may occur.
- (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 (excluding the attachments to the reports from the Administration) at least three (3) business days before the meeting.
- (10) Meetings of the Panel shall be conducted in public except where the Panel may exclude the public pursuant to regulation 13 of the Regulations.

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- (11) If a meeting is adjourned to another day, the Assessment Manager must:
 - a) give notice of the adjourned meeting to each Panel Member setting out the date, time and place of the meeting; and
 - b) give notice of the adjourned meeting to the public by causing a notice setting out the date, time and place of the meeting to be placed on display at the principal office of the Council.

3. Deputy Members

If the Council has appointed Deputy Member(s) then:

(1) If a Member of the Panel 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.

(2) If notification pursuant to Clause 3(1) is given, the Assessment Manager may request a Deputy Member to attend the meeting in place of the Member for the meeting.

(3) 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 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 Council.

4. Public Access to Meetings

(1) In connection with the conduct of the proceedings of the Panel and in accordance with Regulation Part 3 (13), members of the public are entitled to attend a meeting of the Panel other than as set out in Clause 4 (2) below.

(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; and
- 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;
- (a) 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.

5. Applicants to Address the Panel

- (1) An applicant has the right to address the Panel at a Hearing of Representations in accordance with the provisions of section 107(3)(b) of the Act and corresponding Regulations
- (2) Except as provided in the Act, Regulations or otherwise provided in these Operating and Meeting Procedures an applicant for an application before the Panel may not address the Panel but the Presiding Member may allow Panel Members to address questions to the applicant or their representatives. The applicant or their representatives must limit their response to the questions raised. Where a Panel meeting is to be convened through means other than a physical meeting (i.e. through online platform or otherwise), the Assessment Manager will, in providing notice of the Panel meeting to them, ensure that the applicant will be provided with a reasonable opportunity to appear and be heard at the meeting by providing them with online or teleconference access details such that they can be heard by and interact with Panel members.
- (3) For the sake of clarity, appearing or being heard at a Panel meeting includes appearances by way of online participation in an online meeting format., where online meetings are held.
- (4) Where a physical meeting is convened, applicants or their nominated representative may request that they attend the meeting via online platform, teleconference etc. Requests must be made to the Assessment Manager no less than one (1) business day before the meeting. Whether or not a request is granted is at the discretion of the Assessment Manager.

6. Hearing of Representations

- (1) The Panel shall conduct a Hearing of Representations in accordance with section 107(3)(b) of the Act and Regulations for all valid representations received for all performance assessed developments which are publicly notified. Where required the Hearing of Representations will take place at the commencement of the consideration of the relevant agenda item.
- (2) The Hearing of Representations will hear representors in support of their representations first, and then hear the applicant's response to the representations. At a Hearing of Representations the persons making representations will be allocated five (5) minutes to address the Panel. The applicant is allocated ten (10) minutes to respond to the representations made to the Panel, unless otherwise determined by the Presiding Member.
- (3) Where a Panel meeting is to be convened through means other than a physical meeting (i.e. through online platform or otherwise), the Assessment Manager will, in providing notice of the Panel meeting to them, ensure that representors are provided with a reasonable opportunity to appear and be heard at the meeting by providing them with online or teleconference access details such that they can be heard by and interact with Panel members.
- (4) For the sake of clarity, appearing or being heard at a Panel meeting includes appearances by way of online participation in an online meeting format., where online meetings are held Where a physical meeting is convened, representors or their nominated spokesperson may request that they attend the meeting via online platform, teleconference etc. Requests must be made to the Assessment Manager no less than one (1) business day before the meeting. Whether or not a request is granted is at the discretion of the Assessment Manager.
- (5) Where two or more persons have nominated a spokesperson to support their representations at the Hearing of Representations the Presiding Member will determine the allocated time that the spokesperson will address the Panel.
- (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.
- (7) Only representors (or their nominated representative) who have lodged a valid representation pursuant to section 107(3)(b) of the Act and corresponding Regulations and are entitled to be heard by the Panel in accordance with the Act, the Regulations and the Panel's Operating and Meeting Procedures.
- (8) Panel Members may question and seek clarification from representors and the applicant at the conclusion of their address to the Panel.
- (9) Representors will not be allowed a further opportunity to address the Panel once applicants have concluded their response.

- (10) Representors or the applicant will not be allowed a further opportunity to address the Panel at any subsequent meeting of the Panel to consider the matter, except at the discretion of the Presiding Member.
- (11) 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 them.
- (12) The Panel may defer a decision on an application where:
- a) the assessment timeframe for the application prescribed by regulation 53 of the Regulations has not expired; and
 - b) the applicant has requested the deferral to allow variations to be made to the application; and
 - c) there is sufficient time available for the variations to be made and submitted to the Panel's delegate prior to the expiry of the relevant assessment timeframe for the application.
- (13) Where a decision on an application is deferred by the Panel pursuant to clause 6(12) above, the Panel must resolve to authorise the Assessment Manager to determine the application on any conditions specified by it, should the variations not be received prior to the expiration of the relevant assessment timeframe.
- (14) Where the Panel has permitted an applicant to vary its application:
- a) it must be noted that it is a privilege of the applicant to request that they be permitted to vary an application, and that the Panel is not empowered to request or compel an applicant to vary an application;
 - b) a variation of an application 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 ask whether the amended proposal is essentially the same as the original proposal.
- (15) When the application is next brought before the Panel for consideration the applicant and representor will not again be heard by the Panel unless the application has been readvertised and a new Hearing of Representation is to be held. The Presiding Member may however allow Panel Members to address questions to the applicant or the representor who must limit their responses to the questions raised.
- (16) Individual elected members of the Coorong District Council do not have a right to be heard by the Panel unless they have made a representation as a private citizen and are a representor pursuant to section 107(3)(b) of the Act and corresponding Regulations or have been appointed by a representor to speak on their behalf.

7. Site Inspections and Locality Visits

- (1) Formal site visits of the Panel Members may be arranged on request from any Member of the Panel. The Panel may request attendance of a Council

Officer to provide relevant information. The Panel will not hear deputations at a formal site visit. The Assessment Manager may also request that Panel members attend a site where deemed necessary.

- (2) Locality visits by one or more Panel Members will be undertaken in accordance with the Minister's Code of Conduct.

8. Information provided following preparation of the Meeting Agenda

- (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 must be presented should be forwarded to the Assessment Manager at least five (5) business days prior to the meeting so that the Assessment Manager can confirm necessity and effect distribution to the applicant and to members of the Panel for consideration.
- (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 Representations 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 reaching a decision.
- (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 the Assessment Manager or their delegate.
- (4) 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.

9. Form of Debate

- (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 whilst still adhering to the correct procedures for the assessment of development applications as set out in the Act, as well as applicable principles of procedural fairness.
- (2) In the interests of informality, during hearings of representations the Presiding Member will be referred to as 'Presiding Member', and Panel members will be referred to by their first name (not by title or position). In subsequent discussion of items in the meeting of the Panel Members (including the Presiding Member) may refer to each other by their first names and address Council staff by their first names.

10. Quorum and Voting

- (1) A quorum at a meeting of the Panel is a number ascertained 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). The Panel comprises five (5) members and therefore a quorum at a meeting is three (3) members.
- (2) If the number of apologies received by the Presiding Member or the Assessment Manager, indicate that a quorum will not be present at a meeting, the Presiding Member, may adjourn the meeting to a specified day and time.
- (3) Should a quorum not be reached within thirty (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) In the absence of the Presiding Member, the Panel will appoint an Acting Presiding Member to preside over the meeting. 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) Clause 10(1) (above) does not apply to a person who is appointed as an 'additional Member' of the Panel under section 85 of the Act.
- (6) All members (other than additional members) of the Panel will participate in the decision of the Panel by a vote.
- (7) All decisions of the Panel shall be made on the basis of a majority consensus decision of the members present.
- (8) Minutes shall record the decision of the Panel on each development application and record a mover and seconder for items decided by vote.
- (9) A majority vote of the Panel shall be recorded as the decision of the Panel and the vote or views of individual members shall not be recorded in the minutes.
- (10) Members of the Panel cannot submit any notice of motion to revoke or amend previous decisions of the Panel.

11. Minutes

- (1) The Panel must ensure that accurate minutes are kept of its proceedings. The decisions of the Panel will be recorded in the Minutes of the meeting.
- (2) The Minutes of the proceedings of a meeting will record:
 - a) the names of the Panel members present;
 - b) the name and time of a Panel Member entering or leaving the meeting;
 - c) the name of a person who has made a verbal representation to the Panel at the meeting;

- d) the decision of the Panel;
 - e) any disclosure of interest made by a Panel Member and the nature of the interest; and
 - f) the decision of the Panel to exclude public attendance including reasons.
- (3) The Panel may, before it releases a copy of any minutes to the public, exclude from the minutes information about any matter dealt with on a confidential basis by Members of the Panel.
- (4) Minutes shall not be formal Minutes until adopted by the Panel at the next meeting of the Panel. However, this does not preclude the issue of Decision Notification under the PDI Act advising of the determination of the Panel immediately after a meeting at which the Panel made its determination.
- (5) 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.
- (6) Copies of the draft Minutes will be available to the public at the Council office at least five (5) working days after the date of the meeting.

12. Decision-Making

- (1) The Panel must have regard to the Planning and Design Code as the basis for its decisions, and also have regard to any written and verbal representations made in accordance with the provisions of the Act.
- (2) In making a decision, the Panel:
 - a) must state whether the proposal is seriously at variance with the provisions of the relevant 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 Planning and Design Code, must state whether planning consent is granted or refused.
 - c) Alternatively, where planning consent is refused, the reasons for refusal must be provided.

13. Conflict of Interest

- (1) If a Panel Member is of the view that they have a conflict of interest in relation to a matter before the Panel they are required to make a disclosure clearly stating the nature of that interest to the Panel, in accordance with: Clause 7(a) of the Code of Conduct adopted by the Minister pursuant to Schedule 3 of the Act, and then in the meeting when the relevant agenda item is reached, must remove themselves from the meeting in accordance with clause 7(b) of the Code of Conduct.
- (2) If a Panel Member does declare a conflict of interest, then the attached form in Appendix 1 shall be completed and submitted to the Presiding Member, which will then be attached to the minutes.

14. Conduct

- (1) Members of the Panel must act at all times in accordance with Section 15(2) of the Act and the Minister's Code of Conduct and professional standards adopted pursuant to Schedule 3 of the Act.
- (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 person's presence 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.
- (3) The Panel whenever possible will conduct its meetings in public; however should the discussion determination of a development application be inhibited by the presence of the public at the meeting the Panel may exclude the public from attendance pursuant to regulation 13 of the Regulations.
- (4) Where a meeting is convened online, via teleconference or other means other than a physical meeting, the Presiding Member may mute or disconnect a person from the meeting link in the event that the person is, in the opinion of the Presiding Member, behaving in accordance with clauses 14(2) or 14(3) above.
- (5) Where a meeting is convened online, via teleconference or other means other than a physical meeting, and the Panel resolves to exclude the public from the meeting pursuant to the Regulations, members of the public will, as relevant, be excluded from the meeting via livestream being paused or otherwise audio and video feeds being disabled for the duration of the confidential item.
- (6) Panel members 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.

15. Compliance with Code of Conduct

- (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.
- (2) A complaint must:
 - a) be in writing; and
 - b) contain particulars of the allegation on the complaint is based: and
 - c) be verified by statutory declaration.
- (3) Except with the approval of the State Planning 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.

16. Planning Policy

- (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 Act does not empower the Panel to act as a policy formulating body.
- (2) The Panel may, upon request from the Council, comment on draft planning policy.
- (3) Elected Members on the Panel are able to participate as Elected Members in the ordinary business of Council planning policy formulation (i.e. They may sit on planning policy committees and undertake other activities associated with the formation of planning policy) providing they are not acting in their capacity as a Member of the Panel.
- (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 Act, providing they are not acting in their capacity as a Member of the Panel or do not have a conflict of interest with any business before the Panel.

17. Planning Appeals

- (1) Should an appeal be lodged with the Environment, Resources and Development Court in the relation to a decision of the Panel the Panel will determine whether any 'compromise proposal' is acceptable or the matter will proceed to a Hearing of the Environment, Resources and Development Court.

18. Other Matters

- (1) Should a Panel Member 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 Panel Member should immediately forward the information received to the Assessment Manager. The Panel Members 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 Panel Member receives such information, he or she must disclose this fact to the meeting, and confirm that the information will not be taken into account for the purposes of making a decision on the relevant application.
- (2) 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.

- (3) The Panel at a meeting may appoint an additional Member of the Panel for the purpose of providing independent expert advice on any relevant matter before the Panel. The person will be appointed under section 86 of the Act and will be a Member of the Panel in all respects but will not have a vote on any matter arising for determination by the Panel.
- (4) The Panel at a meeting may request independent expert advice on any relevant matter before the Panel. The request being referred to the Assessment Manager. If the Assessment Manager decides not to engage such advice, then the Panel must be advised of the decision and the reason as soon as reasonably possible.
- (5) The role of the Panel is not one of mediator or arbitrator for parties expressing divergent views but is a decision maker charged with the responsibility of assessing each proposal 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.
- (6) A proceeding of the Panel (i.e. any decision made by the Panel) is not invalid by reason of a vacancy in its membership or a defect in the appointment of a Member.
- (7) Except insofar as a procedure is not prescribed by the Act or the Regulations, the procedures of the Panel in relation to the conduct of its business will be determined by the Panel.

APPENDIX 1

Declarations of Interest Form – Direct or Indirect or Personal or Pecuniary Interest

This declaration shall be completed by a Coorong Assessment Panel (CAP) Member in accordance with the Assessment Panel Code of Conduct and *Planning, Development and Infrastructure (General Regulation) 2017*. A disclosure by a Member of an assessment panel of a direct or indirect personal or pecuniary interest in any aspect of a development or anybody associated with any aspect of a development required under the Act must be recorded in the minutes of the assessment panel. The information contained within this declaration will be included in the CAP meeting minutes.

A Member of an assessment panel will be taken to have an interest in a matter, if an associate of the Member (within the meaning of section 3 (7) of the Act) has an interest in the matter. (See reverse).

Coorong Assessment Panel Member Name:

Date of Meeting:_____

Agenda item number: _____

Tick the relevant box of relevant conflict of interest provision:

☐ Direct ☐ Indirect ☐ Personal ☐ Pecuniary

Nature and details of the Conflict of Interest:

Signature of Panel Member

Date of Declaration

This conflict of interest has been identified using Section 3 (7) of the Planning Development and Infrastructure Act.

For the purposes of this Act, a person is an associate of another person if—

- (a) the other person is a relative of the person or of the person's spouse or domestic partner; or (b) the other person—*
 - (i) is a body corporate; and*
 - (ii) the person or a relative of the person or of the person's spouse or domestic partner has, or 2 or more such persons together have, a relevant interest or relevant interests in shares of the body corporate the nominal value of which is not less than 10% of the nominal value of the issued share capital of the body corporate; or*
- (c) the other person is a trustee of a trust of which the person, a relative of the person or of the person's spouse or domestic partner or a body corporate referred to in paragraph (b) is a beneficiary; or*
- (d) the person is an associate of the other person within the meaning of the regulations.*

Staff Use Only	
Panel Member left the meeting at:	
Panel Member returned to the meeting at:	
Recording staff members name:	
Date:	