Council Assessment Panel

Operating and

Meeting Procedures

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

1. PURPOSE

1.1 These Operating and Meeting Procedures have been determined by the Coorong District Council, Development and Infrastructure Act 2016 ('the Act'), and having regard to the Terms of Reference for the Panel as adopted by the Coorong District Council (the Council).

1.2 The procedures are intended to:

1.2.1 Outline the procedures by which the Panel will conduct its business at meetings and elsewhere; and

1.2.2 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 is not prescribed by the Act or regulations under the Act, the procedures of the Panel in relation to the conduct of its business will be as determined by the Panel.

2. CAP MEETINGS

Meeting Notice, Times and Venue

2.1 Ordinary meetings of the Coorong District Council Assessment Panel (CAP) will be held at such times and conducted at the Coorong Civic Centre, 95-101 Railway Terrace Tailem Bend, unless stipulated by the Presiding Member.

2.2 A minimum of five (5) clear business days’ notice of a scheduled meeting shall be given to Panel Members. The notice may be given to a member of the Panel:

2.2.1 personally; or

2.2.2 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

2.2.3 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
2.2.4 by a means authorised in writing by the member as being an available means of giving notice (e.g. email or facsimile transmission).

2.3 A notice that is not given in accordance with sub-section 2.2 is taken to have been validly given if the Assessment Manager considers it impracticable to give the notice in accordance with that sub-section and takes action the Assessment Manager considers reasonably practicable in the circumstances to bring the notice to the attention of the member.

2.4 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.

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

2.6 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.

2.7 Meetings of the Panel shall be conducted in public except where the Panel may exclude the public pursuant Part 3 Clause 13 of the Planning, Development and Infrastructure Regulations 2017.

3. DEPUTY MEMBERS

3.1 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.

3.2 If notification pursuant to Clause 3.1 is given, the Presiding Member in consultation with 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.

3.3 Unless the context otherwise requires, a reference to a Member in these Meeting Procedures includes a Deputy Member.

4. PUBLIC ACCESS TO MEETINGS

Part 3 Clause 13 of the Planning, Development and Infrastructure Regulations 2017

4.1 In connection with the conduct of the proceedings of the Panel, members of the public are entitled to attend a meeting of the panel other than as set out in sub-section (2).

4.2 The Panel may exclude the public from attendance at a meeting:
4.2.1 during so much of the meeting as is necessary to receive, discuss or consider in confidence any of the following matters:

4.2.1.1 information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);

4.2.1.2 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;

4.2.1.3 information the disclosure of which would reveal a trade secret;

4.2.1.4 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;

4.2.1.5 matters affecting the safety or security of any person or property;

4.2.1.6 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;

4.2.1.7 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;

4.2.1.8 legal advice;

4.2.1.9 information relating to actual litigation, or litigation that the Panel believes on reasonable grounds will take place; and

4.2.1.10 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;
4.2.2 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.

5. **APPLICANTS TO ADDRESS THE PANEL**

5.1 An applicant has the right to address the Panel at a Hearing of Representations in accordance with the provisions of Section 38 (10) of the *Development Act 1993*.

5.2 Except as provided in Section 38 (10) of the *Development Act 1993* 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 Panel Members to address questions to the applicant or their representatives. The applicant or their representatives must limit their response to the questions raised.

6. **HEARING OF REPRESENTATION**

6.1 The Panel shall conduct a Hearing of Representations in accordance with Section 38 (10) of the *Development Act 1993* 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. For the avoidance of doubt, all representors who satisfy the requirements of Clause 6.4 below in respect of Category 2 developments will be given an opportunity to address the Panel.

6.2 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 5 minutes to address the Panel. The applicant is allocated 10 minutes to respond to the representations made to the Panel, unless otherwise determined by the Presiding Member.

6.3 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.

6.4 Only representors (or their nominated representative) who have lodged a valid representation pursuant to s38 of the *Development Act 1993* and are entitled to be heard by the Panel in accordance with the Act and the Panel’s Operating and Meeting Procedures.

6.5 Panel Members may question and seek clarification from representors and the applicant at the conclusion of their address to the Panel.

6.6 Representors will not be allowed a further opportunity to address the Panel once applicants have concluded their response.

6.7 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.
6.8 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 them.

6.9 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 readvertised and a new Hearing of Representations is to be held. However the Presiding Member may allow Panel Members to address questions to the applicant or the representor who must limit their responses to the questions raised.

6.10 Individual elected members of Council of the Coorong District 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.

7. SITE INSPECTIONS AND LOCALITY VISITS

7.1 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.

7.2 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

8.1 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 Council at least three (3) business days prior to the meeting so that staff can confirm necessity and effect distribution to the applicant and to members of the Panel for consideration.

8.2 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.

8.3 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.

8.4 At the discretion of the Presiding Member (in consultation with members of the Panel), any new information presented by any person appearing before the
council Panel, may not be considered. The Presiding Member's determination in this regard is final.

9. **VARIATION OF AN APPLICATION**

9.1 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 ask whether the amended proposal is essentially the same as the original proposal. It should be that it is a privilege of the applicant, and that the Panel is not empowered to request or compel an applicant to vary a Development Application.

10. **FORM OF DEBATE**

10.1 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.

10.2 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.

11. **QUORUM AND VOTING**

(Part 2 Clause 15 of the Planning, Development and Infrastructure Regulations 2017)

11.1 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 2, ignoring any fraction resulting from the division, and adding 1. The Panel comprises 5 members and therefore a quorum at a meeting is 3 members.

11.2 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.

11.3 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.

11.4 In the absence of the Presiding Member, the Acting Presiding Member shall preside. The Panel shall appoint one of its members as the Acting Presiding Member in the absence of the Presiding Member.
11.5 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.

11.6 Clause 11.5 (above) does not apply to a person who is appointed as an ‘additional member’ of the Panel under section 85 of the Act.

11.7 All members (other than additional members) of the Panel will participate in the decision of the Panel by a vote.

11.8 All decisions of the Panel shall be made on the basis of a majority consensus decision of the members present.

11.9 Minutes shall record the decision of the Panel on each development application and record a mover and seconder for items decided by vote.

11.10 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.

11.11 Members of the Panel cannot submit any notice of motion to revoke or amend previous decisions of the Panel.

12. MINUTES

12.1 An Assessment 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.

12.2 The Minutes of the proceedings of a meeting will record:

12.2.1 the names of the Panel members present;

12.2.2 the name and time of a Panel member entering or leaving the meeting;

12.2.3 the name of a person who has made a verbal representation to the Panel at the meeting;

12.2.4 the decision of the Panel;

12.2.5 any disclosure of interest made by a Panel member and the nature of the interest; and

12.2.6 the decision of the Panel to exclude public attendance including reasons.

12.3 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.

12.4 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 Development Act 1993 advising of the determination of the Panel immediately after a meeting at which the Panel made its determination.
12.5 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.

12.6 Copies of the draft Minutes will be available to the public at Council office at least five (5) working days after the date of the meeting.

13. DECISION-MAKING

13.1 The Panel must have regard to the relevant Development Plan of the Council (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 provisions of the Act.

13.2 In making a decision, the Panel:

13.2.1 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 Development Plan Consent and provide reasons for the decision.

13.2.2 If the proposal is not seriously at variance with the provisions of the relevant Development Plan of the Council /Planning and Design Code, must state whether Development Plan Consent is granted or refused.

13.2.3 Alternatively, where Development Plan Consent is refused, the reasons for refusal must be provided.

14. DEFERRAL PROVISIONS

14.1 The Panel may defer a decision on a Development Application where the Panel requires further information from the Applicant in order to make a decision and other matters pursuant to Section 37 and 39 of the Development Act 1993.

15. CONFLICT OF INTEREST

15.1 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 section 15 of the Minister’s Code of Conduct 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.

15.2 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.

16. CONDUCT

16.1 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.
16.2 The Presiding Member may adjourn a meeting in the event of a disruption or disturbance by a member, an applicant, a resprentor 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.

16.3 The Panel whenever possible will conduct its meetings in public, however should the discussion determination of a development application be inhibited by the presents of the public at the meeting the Panel may exclude the public from attendance pursuant to Clause 13 of the Planning, Development and Infrastructure Regulations 2017.

16.4 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.

17. COMPLIANCE WITH THE CODE OF CONDUCT

17.1 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.

17.2 A complaint must:

17.2.1 be in writing; and

17.2.2 Contain particulars of the allegation on the complaint is based: and

17.2.3 be verified by statutory declaration.

18. PLANNING POLICY

18.1 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.

18.2 The Panel may upon request from the Council comment on draft planning policy.

18.3 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.

18.4 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.

19. PLANNING APPEALS

19.1 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, unless the Panel has delegated this authority to the Assessment Manager.

20. OTHER MATTERS

20.1 An applicant may not defer matters from the meeting agenda after the agenda has been sent to Panel Members, 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, 48 hours prior to the Panel meeting.

20.2 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 Planning 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.

20.3 Should a request be made for public comment on the operations or decisions made by the Panel then the matter should be referred to the Presiding Member. Comment may be made at the discretion of the Presiding Member.

20.4 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.

20.5 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 relevant Development Plan 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 representors.

20.6 Except insofar as a procedure is not prescribed by the Act or the Regulations, the procedures of an assessment panel in relation to the conduct of its business will be determined by the Panel.
20.7 A proceeding of the Assessment Panel (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.
Appendix 1

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

This declaration shall be completed by a Council Assessment Panel (CAP) member in accordance with the Council 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).

Council 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:

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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.