

	MEETING PROCEDURES KANGAROO ISLAND COUNCIL ASSESSMENT PANEL
File Number	3.2.2
Date Issued:	7 December 2020
Version No :	1
Next Review date:	Upon Next Constitution of Panel

Interpretation

1. In this document:
 - 1.1 *Assessment Manager* means the person appointed to that role by the Chief Executive Officer of the Council pursuant to section 87(d)(ii) of the PDI Act, or their delegate
 - 1.2 *Council* means the Kangaroo Island Council
 - 1.3 *Development Act* means the Development Act 1993
 - 1.4 *Member* means a member of the Panel
 - 1.5 *Panel* means the Kangaroo Island Council Assessment Panel established by the Council pursuant to section 83 of the PDI Act;
 - 1.6 *PDI Act* means the Planning, Development and Infrastructure Act 2016
 - 1.7 *PDI (Gen) Regulations* means the Planning, Development and Infrastructure (General) Regulations 2017
 - 1.8 *Presiding Member* means the Presiding Member of the Panel appointed by the Council pursuant to section 83 of the PDI Act

Purpose

2. This document has been adopted by the Panel pursuant to Part 3 of the PDI (Gen) Regulations .
3. The procedures in this document are intended to:
 - 3.1 outline the procedures by which the Panel will conduct its business at meetings; and
 - 3.2 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.
4. In so far as meeting procedures for the Panel are not determined in this document, the Panel may determine its own procedures as required.



Meeting Notice, Times and Venue

5. Scheduled meetings of the Panel will be held 'as required' on the first available Monday of each month (excluding a meeting in January) at 12:30pm, as determined by the Assessment Manager:
 - 5.1 at the Council Chambers; or
 - 5.2 via teleconference, video conference, webinar, online platform or other electronic means.
6. Where a meeting is to be convened at the Council Chambers, Panel members may request that they attend the meeting via teleconference, video conference, webinar, online platform or other electronic means. Such requests must be made to the Assessment Manager, via email, at least one (1) clear business day before the meeting. The Assessment Manager will determine how attendance will be facilitated and will provide appropriate details to the Panel member.
7. A minimum of five (5) clear business days' notice of a scheduled meeting shall be given to applicants and representors as required by the PDI (Gen) Regulations
8. Notice of a Panel meeting and the accompanying agenda will be provided to Members three (3) clear business days before a scheduled meeting.
9. Notice of the meeting shall be given by email or fax. Notice via post will be given only if the relevant Member, applicant or representor has not provided an email or fax number or has otherwise indicated that they wish to receive notices by post only. The notice must specify whether the meeting will be convened as a physical meeting or via teleconference, video conference, webinar, online platform or other electronic means. If the latter, the notice must include appropriate log-in and other details.
10. Special meetings (being any meeting of the Panel which is not a scheduled meeting under 5 above) 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, applicants, representors and the public shall be given five (5) clear business days' notice of a special meeting of the Panel. The Assessment Manager will determine whether a special meeting will occur at a physical location or via teleconference, video conference, webinar, online platform or other electronic means. Where a special meeting is to occur at a physical location, the Assessment Manager will determine the location.
11. Meetings of the Panel shall be conducted in public except where the Panel may exclude the public pursuant to regulation 13 of the PDI (Gen) Regulations. Where a meeting is to be convened via teleconference, video conference, webinar, online platform or other electronic means, 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.
12. Public notice of a scheduled meeting will be provided at the Council's offices and on the Council's website. Where a scheduled meeting is to be convened via teleconference,



video conference, webinar, online platform or other electronic means, log-in and/or access link details will be provided in the notice.

13. A copy of the Agenda and reports provided to the Panel for every meeting of the Panel shall be available for viewing by the public at the Council's offices at least three (3) business days before the meeting.
14. A copy of the Agenda and reports from the Assessment Manager for every meeting of the Panel shall be available for viewing on each of the Council's websites (excluding the attachments to reports or any 'in confidence' details or documents) at least three (3) business days before the meeting.

Applicants to address the Panel

15. An applicant has the right to address the Panel in accordance with the provisions of regulation 50 of the PDI (Gen) Regulations.
16. Except as provided in regulation 50 of the PDI (Gen) Regulations or otherwise provided in these Meeting Procedures an applicant for a development 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.
17. Applicants and their representatives may request that they attend Panel meetings via teleconference, video conference, webinar, online platform or other electronic means. Such requests must be made to the Assessment Manager, via email, at least one (1) clear business day before the meeting. The Assessment Manager will determine how attendance will be facilitated and will provide appropriate details to the applicant or their representative.

Hearing of Representations

18. The Panel shall conduct a hearing of representations in accordance with regulation 50 of the PDI (Gen) Regulations for all performance assessed development applications that require public notification. For clarity, the Panel will hear all representors who lodge a valid representation and who indicate on their written representation that they wish to be heard on their representation by the Panel. The hearing of representations will take place at the commencement of the consideration of the relevant agenda item.
19. Representors will be heard in support of their representations before the applicant's response to the representations. Persons making representations will be allocated five (5) minutes to address the Panel. The applicant will be allocated ten (10) minutes to respond to the representations made to the Panel, unless otherwise determined by the Presiding Member.
20. Where two (2) or more persons have nominated a spokesperson to support their representations at the Hearing of Representations the Presiding Member will prior to the Panel meeting determine the allocated time that the spokesperson will address the Panel.
21. Where representors are addressing the Panel on a common issue or issues, the Panel may request such representors to address the Panel in a group, rather than individually.

22. Representors will not be allowed a further opportunity to address the Panel once applicants have concluded their response.
23. 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.
24. Where no representors appear at a Panel meeting 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 determines that it will otherwise benefit from hearing them.
25. Panel Members may question and seek clarification from a representor and the applicant at the conclusion of their address to the Panel.
26. Individual elected members of the 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 regulation 50 of the PDI (Gen) Regulations or have been appointed by a representor to speak on their behalf
27. Representors and their representatives (as relevant) may request that they attend Panel meetings via teleconference, video conference, webinar, online platform or other electronic means. Such requests must be made to the Assessment Manager, via email, at least one (1) clear business day before the meeting. The Assessment Manager will determine how attendance will be facilitated and will provide appropriate details to the representor or their representative.
28. Panel Member will be diligent in the event where there is no statutory public notification undertaken pursuant to regulation 50 of the PDI (Gen) Regulations to exclude any notional or actual influence of any other public opinion or sentiment expressed to members individually or collectively, in determining a matter before the Panel.

Site Inspections and Locality Visits

29. Formal site visits of the Panel may be arranged on request from any Member. The Panel may request attendance of the Assessment Manager or their delegate to provide relevant information. The Panel will not hear from representors or applicants at a formal site visit.
30. Formal site visits by the Panel or locality visits by one or more Members will be undertaken in accordance with the Ministers Code of Conduct for Assessment Panel members.

Information provided following preparation of the meeting agenda

31. Additional information submitted after distribution of the meeting agenda, either before or during a meeting of the Panel, should be submitted to the Assessment Manager so that they may advise the Panel. Additional information submitted at the Panel meeting will not normally be considered unless on the advice of the reporting officer or at the discretion of the Presiding Member. The Panel may defer consideration of the application to enable a full and proper assessment of any further information submitted.
32. 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.

33. 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.
34. 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.

Deferrals

35. The Panel may defer a decision on an application where:
 - 35.1 the assessment timeframe for the application prescribed by regulation 53 of the PDI (Gen) Regulations has not expired; and
 - 35.2 the applicant has requested the deferral to allow variations to be made to the application; and
 - 35.3 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.
36. Where a decision on an application is deferred by the Panel pursuant to clause 35 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.
37. Where the Panel has permitted an applicant to vary its application:
 - 37.1 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;
 - 37.2 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.

Quorum and Voting

38. A quorum at a meeting of the Panel is a number ascertained by dividing the total number of Members 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.
39. 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.

40. In the absence of the Presiding Member, an acting Presiding Member shall be appointed by the Panel for the relevant meeting or portion of a meeting.
41. 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.
42. Decisions will be made by a vote of all members present and the decision made on the basis of a majority vote. If the votes are equal, the Presiding Member is entitled to a second or casting vote.
43. Subject to the entitlement of the Presiding Member at clause 41 above, all Panel Members will participate in the decision of the Panel by making one (1) vote.
44. The minutes must record the decision of the Panel on each development application and record a mover and seconder for items decided by vote.
45. Members cannot call for a division, nor can they submit any notice of motion to revoke or amend a previous decision of the Panel.

Decision-making

46. The Panel must have regard to the Planning and Design Code or the Development Plan (as 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.
47. In making a decision, the Panel:
 - 47.1 must state whether the proposal is seriously at variance with the provisions of the Planning and Design Code or the Development Plan (as relevant) (and must refuse to grant planning consent if the proposal is seriously at variance with the provisions of the Planning and Design Code or the Development Plan (as relevant)); and
 - 47.2 if the proposal is not seriously at variance with the provisions of the Planning and Design Code or the Development Plan (as relevant), must state whether planning consent should be granted or refused; and
 - 47.3 must provide reasons why a proposal is seriously at variance with the provisions of the Planning and Design Code or the Development Plan (as relevant);
 - 47.4 if planning consent is granted subject to conditions, the conditions must indicate why the conditions have been imposed OR why planning consent is refused (as the case may be).

Minutes

48. The decisions of the Panel will be recorded in the Minutes of the meeting.
49. The Minutes of the proceedings of a meeting will record:
 - 49.1 the names of the Members present;
 - 49.2 the name and time of a Member entering or leaving;

- 49.3 the name of a person who has made a verbal representation to the Panel at the meeting;
 - 49.4 the decision of the Panel;
 - 49.5 any disclosure of interest made by a Member and the nature of the interest; and the decision of the Panel to exclude public attendance including reasons.
50. 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.

Planning Appeals

51. Should an appeal be lodged in the relation to a decision of the Panel the Panel will determine whether any “compromise proposal” is appropriate or the matter proceed to a Hearing of the Environment, Resources and Development Court.

Conflict of Interest

52. If a 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 Assessment Panels – Code of Conduct pursuant to Schedule 3 of the PDI 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.

Conduct

53. Members of the Panel must act at all times in accordance with section 15(2) of the Act and the Assessment Panels – Code of Conduct and professional standards adopted pursuant to Schedule 3 of the PDI Act.
54. 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.
55. The Panel whenever possible will conduct its meetings in public; however should the discussion or 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 the PDI (Gen) Regulations.
56. Where a meeting is convened via teleconference, video conference, webinar, online platform or other electronic means, 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 53 or 54 above.
57. Where a meeting is convened via teleconference, video conference, webinar, online platform or other electronic means, 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.

58. 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.

Other Matters

59. An applicant will not be permitted to defer matters from the meeting agenda after the agenda has been sent to 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 Panel Assessment Manager, including reason(s) for their request to defer.
60. Should a 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 who may be referred for decision by the Panel at a future time, then the Panel Member must immediately forward the information received to the Assessment Manager. The Panel Members should not acknowledge receipt of the information and must not 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.
61. Should a request be made for public comment on the operations or decisions made by the Panel the matter should be referred to the Presiding Member. Comment may be made at the discretion of the Presiding Member.
62. 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 PDI 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.
63. 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 provisions of 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.
64. The Panel, at a meeting may request independent expert advice on any relevant matter before the Panel. The request must be made to the Assessment Manager. If the Assessment Manager decides not to obtain such advice, then the Panel must be advised of the decision and the reason as soon as reasonably possible.
65. Except insofar as a procedure is not prescribed by the PDI Act or the PDI (Gen) Regulations, procedures will be determined by the Panel.
66. 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.

Public access to meetings

67. In accordance with regulation 13 of the PDI (Gen) Regulations:

67.1 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-regulation (2).

67.2 The Panel may exclude the public from attendance at a meeting:

67.2.1 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; 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;

67.2.2 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.

