

Attachment 11.1

**Confidential - Development Assessment Panel – Appointment of Independent
Members**

9 pages



Attachment 1

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City of Onkaparinga
Development Assessment Panel
Terms of Reference and Delegations

1. Purpose of the Panel

The Development Assessment Panel (“the Panel”) is the body established by resolution of the Council of the City of Onkaparinga to perform the following functions pursuant to Section 56A(2) of the Development Act 1993 (the Act):

- 1.1. To act as a delegate of the Council in respect to its powers and functions as a relevant authority with respect to determining whether or not to grant development plan consent under the Act; and
- 1.2. As it thinks fit and within any limitations or qualifications set out in these Terms of Reference, to provide advice and reports to Council on trends, issues and other matters relating to planning or development that have become apparent or arisen through its assessment of applications under the Act; and
- 1.3. To perform other functions (other than functions involving the formulation of policy) assigned to the Panel by the Council.

2. Term of the Panel

Establishment of the Panel is a statutory, mandatory requirement and shall remain in operation while such a statutory requirement applies.

3. Membership

- 3.1. The Panel shall be constituted of seven (7) members and shall include as its members {s56A(3)(a) to (d)}:
 - 3.1.1. An independent Presiding Member, not being an elected member or staff member of the City of Onkaparinga, appointed by the Council having regard to the membership criteria below
 - 3.1.2. Three (3) persons who shall be appointed by the Council from Elected Members of the Council (one of whom may be the Mayor) having regard to the membership criteria below
 - 3.1.3. Three (3) persons who are independent of Council (ie. are not members of Council or Council staff) to be appointed by the Council having regard to the membership criteria below
 - 3.1.4. At least one member of each gender
 - 3.1.5. As far as practicable, equal numbers of men and women.

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Term of Office

- 3.2. Subject to clauses 3.5 and 3.6 of these Terms of Reference:
- 3.2.1 The Presiding Member shall be appointed for a period of two years commencing on 1 November in the year of appointment and expiring on 31 October the second year thereafter {s56A(3)(e)}
 - 3.2.2 Each Council Elected Member of the Panel shall be appointed for a term of office of two years commencing from the first Council meeting in December, commencing from December 2006, and every two years thereafter {s56A(3)(e)}
 - 3.2.3 Each independent member of the Panel shall be appointed for a term of office of two years
 - 3.2.4 Council may reappoint all or any members of the Panel for a further term of office at their term's expiry {s56A(3)(e)}
 - 3.2.5 The members of the Panel will appoint a deputy presiding member of the Panel {s56A(4b)} to act in the absence of the presiding member. This is to include any period that the Council has not appointed a presiding member. In the absence of both the presiding member and the deputy presiding member, the Panel shall appoint from its membership an acting presiding member for that meeting
 - 3.2.6 A member of the panel who's term of office expires may nevertheless continue to act as a member, for a period of up to 6 months, until he or she is re-appointed or a successor is appointed by the Council {s56A(4a)}
 - 3.2.7 The Council may remove a member of the panel from office as set out in s56A(3)(g) of the Act.

Membership Criteria

- 3.3. The Presiding Member of the Panel shall be appointed having regard to the following criteria:
- 3.3.1 The provisions of section 56A(3)(b) of the Act, which set out as follows:
 - a. The presiding member must not be a member or officer of the council
 - b. The presiding member must be a fit and proper person to be a member of a development assessment panel

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- c. Subject to any provision made by the regulations, the presiding member must be a person who is determined by the council to have a reasonable knowledge of the operation and requirements of the Act, and appropriate qualifications or experience in a field that is relevant to the activities of the panel.
- 3.3.2 Any prescribed qualifications or experience, training, examination, registration, or accreditation that may be prescribed by the Development Regulations.
- 3.3.3 For the purposes of clause (c) above, the member must have demonstrated qualifications or experience in one or more of the following areas relevant to the development assessment process:
- urban or regional planning
 - urban or regional development
 - landscape design
 - heritage conservation
 - environmental conservation or management
 - natural resource management
 - planning for or the provision, operation and management of community facilities
 - commerce
 - industry
 - building construction
 - legal services
- 3.3.4 Skills and experience in the effective and inclusive chairing of meetings.
- 3.3.5 Minimal potential as a result of employment, business, financial or personal interests for issues of conflict of interest to arise in the role of Presiding Member.
- 3.4. The independent members of the Panel shall be appointed having regard to the following criteria:

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- 3.4.1 The provisions of section 56A(3)(c)(ii) of the Act, which set out as follows:
- (A) Each must be a fit and proper person to be a member of a council development assessment panel
 - (B) Subject to any provision made by the regulations, each must be a person who is determined by the council to have a reasonable knowledge of the operation and requirements of the Act, and appropriate qualifications or experience in a field that is relevant to the activities of the panel; and
 - (C) The qualifications and experience of these members, when considered in conjunction with the qualifications and experience of the presiding member, must provide a reasonable balance across the fields that are relevant to the activities of the panel.
- 3.4.2 Any prescribed qualifications or experience, training, examination, registration, or accreditation that may be prescribed by the Development Regulations.
- 3.4.3 For the purposes of clause (C) above, the provisions of clause 3.3.3 above apply.
- 3.5. The Elected Members appointed to the panel must:
- 3.5.1 Have demonstrated experience and knowledge in the development assessment process or be persons who have undertaken specific training in the responsibilities as a member of a development assessment panel.
 - 3.5.2 Hold any prescribed qualifications or experience, training, examination, registration, or accreditation that may be prescribed by the Development Regulations.
- 3.6. Each member of the Development Assessment Panel will be offered remuneration fixed by resolution of Council as recompense for the reasonable time and costs incurred by the member, and recognising the role, skills, knowledge and experience required of the member.
- 3.7. A vacancy on the Panel occurs when a member {s56A3(h)}:
- dies; or
 - completes a term of office on the Panel and is not reappointed; or
 - resigns from the Panel by written notice to Council ; or
 - becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors: or

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- is convicted of an indictable offence punishable by imprisonment; or
 - is removed from the office of council under clause 3.2.7 above; or
 - was an Elected Member of the council at the time of appointment to the panel, but is no longer an Elected Member of the council.
- 3.8. In the event of a vacancy during (rather than at the end of) a Panel Member's term of office Council may appoint a replacement member for the balance of that member's term on the Panel.
- 3.9. A member of the panel who is not a member of the council must disclose his or her financial interests in accordance with Schedule 2 of the Act {s56A(6)}.

4. Presiding Member

- 4.1. The role of the Presiding Member will include, but not be limited to:
- The conduct of the business of the Panel at meetings and ensuring appropriate meeting procedures are followed.
 - Ensuring the Panel properly considers matters in terms of the Development Act 1993 in an efficient and timely manner.
 - Ensuring that Members are aware of their role and responsibilities as a Panel member under the Development Act 1993 and that Elected Members do not confuse that role with their role under the Local Government Act 1999.

5. Public Officer

- 5.1. The Panel must have a Public Officer (who is not a member of the Panel) appointed to it by the Council {s56A(22)}.
- 5.2. The functions of the Public Officer include ensuring the proper investigation of complaints about the conduct of a member of the Panel {s56A(24)}.

6. Reporting

- 6.1. The Panel shall prepare a written report to the Council in August of each year in a form determined by the Council, and the Presiding Member will attend and present the report to Council at a suitable Council meeting.
- 6.2. A report providing a summary of Panel decisions shall be provided in Council's



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“Weekly News” as soon as practicable after each meeting of the Panel.

- 6.3. A statistical report on decisions of the Panel shall be provided to Council and be incorporated into the report of development approvals appearing in each issue of “The Quarter”

7. Delegations

The powers and functions of Council with respect to determining whether or not to grant Development Plan Consent under the Development Act 1993 are delegated to Council’s Development Assessment Panel and officers of Council in accordance with Sections 34(23) and (27) of the Act, based on the following principles:

- 7.1. In order to determine applications in a timely and efficient manner, and to meet the statutory timelines for assessing applications under the Act, the following kinds of applications should be determined by appropriately qualified Council staff:
- Complying and Category 1 development
 - Category 2 and 3 applications that are not subject to representors who wish to be heard
 - Minor applications (eg, carports and garages) that are subject to Category 2 notification to adjoining neighbours only. These applications can be adequately resolved at staff level where the issues only involve adjoining neighbours and negotiation between the affected parties can be facilitated by staff
 - Non-complying development of a minor nature.
- 7.2. Applications that are complex or controversial or subject to a high level of public interest should be determined by the Panel. These include
- Applications that are subject to public representations (ie. Category 2 and 3 applications) and where representations have been received and the representors wish to be heard in support of their representations (these are usually more complex applications and ones where conflicting issues arise between applicants and a broader cross-section of the community)
 - Major non-complying development applications (these are applications where exceptional merit should be displayed in order to be approved, and where applicants do not have any right of appeal should the application be refused)
- 7.3. Applications that are of significant social, economic or environmental interest, but which would otherwise be dealt with under delegation to Council officers



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(eg. Category 1 development, or Category 2 and 3 development not subject to representation) may, at the discretion of the General Manager City Compliance, be referred to the Panel for decision. These would normally include applications that are of a major scale or have a major impact, but which are consistent with the primary objective of the zone and hence exempt from public notification.

8. Meeting Procedures

- 8.1. That in so far as procedures for the Panel are not prescribed in the Development Act 1993 and any regulations under the Act and these *Terms of Reference*, the Panel may determine its own procedures {s56A(19)}.
- 8.2. Meetings of the Panel shall be conducted in public except where the Panel may exclude the public pursuant to s56A(12) of the Act.
- 8.3. An act of the Panel is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member {s56A(18)};

Quorum and Voting

- 8.4. A quorum for meetings of the Panel shall be half plus one of the total number of members of Panel for the time being in office (ignoring any fraction resulting from the division) {s56A(18a)}.
- 8.5. Each member of the Panel present at a meeting of the Panel 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 {s56A(18b)}.

Minutes

- 8.6. Accurate minutes of the meetings of the Panel shall be kept {s56A(13)}.
- 8.7. A disclosure under s56A(7) to (10) (conflict of interest) must be recorded in the minutes {s56A(14)}.
- 8.8. The minutes shall record the names of representors and applicants appearing before the Panel and the decision of the Panel.
- 8.9. Upon adoption of the minutes, the Presiding Member shall authorise the minutes by signature and date of adoption and by initialling each page of the minutes.
- 8.10. Copies of draft minutes of meetings will be available at the same locations five (5) working days after the date of the meeting. Minutes shall not be formal minutes of a meeting until adopted by the Panel at the next normal 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 of



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development applications immediately after a meeting at which the Panel determined the particular application. The minutes of meetings must be available to the public for inspection within 5 days after their adoption by the members of the panel {s56A(17)}.

- 8.11. The panel may exclude from the public version of the minutes information about any matter dealt with on a confidential basis by the Panel. {s56A(16)}.

Professional Advice

- 8.12. A report prepared by a suitably qualified person setting out the details of an application and its planning merits shall be submitted to the Panel.
- 8.13. The reporting officer and a senior Council officer with responsibilities in development assessment shall attend each meeting of the Panel in an advisory capacity, and shall be encouraged to provide that advice at any time during consideration of the item. Council officers and advisors are not members of the Panel and do not have a role in the final decision of the Panel (whether it be by consensus or by a formal vote) on an item before it.

Public Hearings

- 8.14. In the case of Category 2 and Category 3 development the Panel will conduct a Public Hearing to allow a person who made a representation to appear personally or by representative before it to be heard in support of the representation {s38(10)}, with the following exception:

The Panel will not hear representations in respect to Category 2 applications that arise from clause 16B of Schedule 9 of the Development Regulations (ie. minor development ancillary to a dwelling that comprises the construction of (or of any combination of) a carport, garage, shed, pergola, verandah, swimming pool, spa pool or outbuilding) other than where an application may be referred to the Panel by the General Manager City Compliance in accordance with clause 7.3 herein.

- 8.15. Where a person appears before the Panel under clause 8.14, the Panel will allow the applicant a reasonable opportunity, on request, to appear personally or by representative before it in order to respond to any matter {s38(11)}.

9. Conflict of interest

- 9.1 Members of the Panel must conduct themselves at all times in accordance with the Code of Conduct prepared by the Minister for Planning and Urban Development pursuant Section 21A of the Act.
- 9.2 A member of the Panel who has a direct or indirect personal or pecuniary interest in a matter before the Panel must disclose such interest and must not take part in

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or be present at any hearing or meeting of the Panel in relation to that matter as set out under s56A (7) to (10) of the Act.

10. Notice of meetings

- 10.1. A minimum of three (3) clear days notice of scheduled meetings of the Panel shall be given to Panel members.
- 10.2. A copy of the agenda shall be available for viewing by the public at the Noarlunga, Willunga and Aberfoyle Hub area offices and on the Council's public web site three (3) clear days before the meeting of the Panel.

11. Public access to meetings

- 11.1 Members of the public shall be able to attend meetings of the Panel unless resolved by the Panel to be confidential pursuant to s56A(12) of the Act .

12. Public access to documents

- 12.1 Members of the public will be afforded access to appropriate documents relating to matters before the Panel. Searches for documents or copies of documents may be charged a fee, in accordance with Council's *Schedule of Fees and Charges*
- 12.2 Copies of the agenda and minutes of the Panel will be available for public viewing from the Council offices and on the Council web site. Agendas will be available 3 clear days before the meeting and minutes will be available within 5 days following the meeting.