



RIVERLAND REGIONAL ASSESSMENT PANEL
Meeting Procedures 2020
As adopted by the Panel, 16 April 2020

1. Purpose

- 1.1 These Meeting Procedures have been determined by the Riverland Regional Assessment Panel ("the Panel") pursuant to the Regional Assessment Panel Meeting Procedures determined by the Minister pursuant to section 84(1)(e)(ii) 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 Berri Barmera Council, the District Council of Loxton Waikerie and the Renmark Paringa Council ("the Councils").
- 1.2 The procedures are intended to:
 - 1.2.1 outline the procedures by which the Panel will conduct its business at meetings; 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.
- 1.3 In so far as procedures for the Panel are not prescribed in the Regional Assessment Panel Meeting Procedures determined by the Minister, or these Procedures, the Panel may determine its own procedures as required.

2. Meeting Notice, Times and Venue

- 2.1 Scheduled meetings of the Panel will be held on the third Thursday of each month (excluding a meeting in January) at 1.30pm at the Renmark Paringa Council Chambers for the year 2020, and such other Council Chambers as determined by the Panel, unless there are no matters to be considered (in which case no meeting will be held). The Presiding Member has the discretion to nominate an alternative meeting venue and/or time prior to the issue of the agenda should circumstances warrant.
- 2.2 The Presiding Member has the discretion to nominate an alternative meeting venue and/or meeting via teleconference, video conference or webinar or similar and/or time prior to the issue of the agenda, should circumstances warrant.
- 2.3 The location of meetings will change annually in accordance with the Memorandum of Understanding between the Councils.
- 2.4 A minimum of five (5) clear business day's notice of a scheduled meeting shall be given to Panel Members, applicants and representors.
- 2.5 Notice of the meeting shall be given by email or fax. Notice via post will be given only if the relevant Panel 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.

- 2.6 The notice of meeting given to the Panel shall contain or be accompanied by the agenda for the meeting.
- 2.7 Special meetings (being any meeting of the Panel which is not a scheduled meeting under 2.1 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 Panel's 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.
- 2.8 Meetings of the Panel shall be conducted in public except where the Panel may exclude the public pursuant to clause 1(2) of the Regional Assessment Panel Meeting Procedures determined by the Minister.
- 2.9 Public notice of a scheduled meeting will be provided at the Councils' offices and on the Councils' websites.
- 2.10 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 Councils' offices at least five (5) working days before the meeting.
- 2.11 A copy of the Agenda and reports from the Administration for every meeting of the Panel shall be available for viewing on each of the Councils' websites (excluding the attachments to reports) at least five (5) working days before the meeting.
- 2.12 Meetings of the Panel shall be conducted in public except where the Panel may exclude the public pursuant to Part 3 Clause 13 of the Planning and Infrastructure Regulations 2017.

3. Applicants to address the Panel

- 3.1 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* ("the Development Act").
- 3.2 Except as provided in section 38 (10) of the Development Act or otherwise provided in these Meeting Procedures an applicant for 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.

4. Hearing of Representations

- 4.1 The Panel shall conduct a Hearing of Representations in accordance with section 38 (10) of the Development Act 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 4.6 below in respect of Category 2 developments will be given an opportunity to address the Panel.
- 4.2 The Hearing of Representations will hear representors in support of their representations before hearing the applicant's response to the representations. At a Hearing the persons making representations will be allocated 5 minutes to address the Panel. The applicant will be allocated 10 minutes to respond to the representations made to the Panel, unless otherwise determined by the Presiding Member.
- 4.3 Where two 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 the time that the spokesperson will address the Panel.

- 4.4 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.
- 4.5 Representors will not be allowed a further opportunity to address the Panel once applicants have concluded their response.
- 4.6 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.
- 4.7 Only representors (or their nominated representative) who have lodged a valid representation pursuant to section 38 of the Development Act are entitled to be heard by the Panel in accordance with the Development Act and these Procedures.
- 4.8 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.
- 4.9 At the conclusion of a formal Hearing of Representation with the representor and applicant having addressed the Panel, the Panel may defer a decision on the application in accordance with clause 7 below.
- 4.10 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 re-advertised 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.
- 4.11 Panel Members may question and seek clarification from a representor and the applicant at the conclusion of their address to the Panel.
- 4.12 Individual elected members of the Berri Barmera Council, the District Council of Loxton Waikerie and the Renmark Paringa 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 38 of the Development Act or have been appointed by a representor to speak on their behalf.

5. Site Inspections and Locality Visits

- 5.1 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.
- 5.2 Formal site visits by the Panel or locality visits by one or more Panel Members will be undertaken in accordance with the Ministers Code of Conduct.

6. Information provided following preparation of the meeting agenda

- 6.1 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.
- 6.2 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 5

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.

- 6.3 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.
- 6.4 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.
- 6.5 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.

7. Deferrals

The Panel may defer a decision on a Development Application in the following circumstances:

7.1 Referral to a Prescribed Body.

Where an application has to be referred to a prescribed body (for example the Development Assessment Commission for concurrence or comment) pursuant to section 37 of the Development Act, and the requisite comments or concurrence have not been received from the prescribed body.

7.2 Further Information.

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 pursuant to section 39(2)(a) of the Development Act.

7.3 Other Requests.

In order to make other requests specified in section 39(2) of the Development Act, and set out below:

- 7.3.1 to remedy any defect or deficiency in any application or accompanying document or information required by or under the Development Act;
- 7.3.2 to consult with the authority or body prescribed by the *Development Regulations 2008* ("the Development Regulations");
- 7.3.3 if the Development Regulations so provide, to prepare a statement of effect in accordance with the Development Regulations in relation to a development of a kind that is expressed to be a non-complying development under the relevant Development Plan; or
- 7.3.4 to comply with any other requirement prescribed by the Development Regulations.

7.4 Variation of Application

Where the Panel has permitted an applicant to vary its application:

- 7.4.1 it must be noted 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;
- 7.4.2 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.

8. Form of Debate

- 8.1 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 Development Act, as well as applicable principles of procedural fairness.
- 8.2 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 may refer to each other by their first names and address Council staff by their first names.

9. Quorum and Voting

- 9.1 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.
- 9.2 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.
- 9.3 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.
- 9.4 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.
- 9.5 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.
- 9.6 Subject to the entitlement of the Presiding Member at clause 9.4 above, all Panel Members will participate in the decision of the Panel by making one vote.
- 9.7 The minutes shall record the decision of the Panel on each development application and record a mover and seconder for items decided by vote.
- 9.8 Members of the Panel cannot call for a division, nor can they submit any notice of motion to revoke or amend a previous decision of the Panel.

10. Decision-making

- 10.1 The Panel must have regard to the relevant Development Plan of each of the Relevant Councils (as the case may be) as the basis for its decisions, and also have regard to any

written and verbal representations made in accordance with the provisions of the Development Act.

10.2 In making a decision, the Panel:

10.2.1 must state whether the proposal is seriously at variance with the provisions of the relevant Development Plan (and must refuse to grant Development Plan consent if the proposal is seriously at variance with the provisions of the relevant Development Plan); and

10.2.2 if the proposal is not seriously at variance with the provisions of the relevant Development Plan, must state whether Development Plan consent should be granted or refused; and

10.2.3 must provide reasons why a proposal is seriously at variance with the provisions of the relevant Development Plan, if Development Plan consent is granted subject to conditions, why the conditions have been imposed and why Development Plan consent is refused (as the case may be).

10.3 If Development Plan consent is granted, the Panel may impose conditions on the grant of Development Plan consent and if conditions are imposed, the Panel must provide reasons for the imposition of the conditions.

11. Minutes

11.1 The decisions of the Panel will be recorded in the Minutes of the meeting.

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

11.2.1 the names of the Panel members present;

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

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

11.2.4 the decision of the Panel;

11.2.5 any disclosure of interest made by a Panel member and the nature of the interest; and the decision of the Panel to exclude public attendance including reasons.

11.3 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.

11.4 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 advising of the determination of the Panel immediately after a meeting at which the Panel made its determination.

11.5 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.

11.6 Copies of the draft Minutes will be available to the public at Councils offices at least three (3) working days after the date of the meeting.

11.7 Adopted Minutes will be available to the public at the Councils offices within five (5) working days after the date of their adoption.

12. **Planning Appeals**

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.

13. **Conflict of Interest**

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 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 of Conduct.

14. **Conduct**

14.1 Members of the Panel must act at all times in accordance with ~~the Code of Conduct~~ Section 15 (2) of the Act and the Minister’s Code of Conduct and professional standards adopted pursuant to Schedule 3 of the Act.

14.2 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 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.

14.3 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 clause 1(2) of the Regional Assessment Panel Meeting Procedures.

14.4 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.

15. **Planning Policy**

15.1 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 applicants, and report to Council accordingly. However the Development Act does not empower the Panel to act as a policy formulating body.

15.2 The Panel may upon request from a Council comment on draft planning policy.

15.3 The Elected Member on the Panel is able to participate as an Elected Member in the ordinary business of their 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.

15.4 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.

16. Other Matters

- 16.1 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 Panel Assessment Manager, including reason(s) for their request to defer.
- 16.2 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 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 Panel 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.
- 16.3 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.
- 16.4 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.
- 16.5 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.
- 16.6 The role of the Panel in performing the function of a “relevant authority” under the provisions of the Development Act is to test each development proposal against the objectives and principles of development control whether general or particular as expressed in the Council’s Development Plan which are relevant to each development proposal.
- 16.7 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.
- 16.8 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.
- 16.9 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.

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

- 17.1 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).
- 17.2 The Panel may exclude the public from attendance at a meeting:
- 17.2.1 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;
- 17.2.2 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.