

### 13.3 COUNCIL ASSESSMENT PANEL ANNUAL PERFORMANCE REPORT

**REPORT AUTHOR:** Manager, Development Assessment  
**APPROVED BY:** General Manager, Urban Planning & Environment  
**ATTACHMENTS:** Nil

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#### PURPOSE OF THE REPORT

The purpose of this report is to provide general commentary on the Council Assessment Panel's activities and performance for the period 1 July 2024 to 30 June 2025.

#### BACKGROUND

On 1 August 2017, the provisions of the *Planning, Development and Infrastructure Act (PDI Act) 2016* relating to Council Assessment Panels commenced operation. As a result, all Councils were required to replace Development Assessment Panels with Council Assessment Panels comprising up to five Members, one (1) of whom may be an Elected Member.

The current membership of the Council Assessment Panel comprises:

- Mr Stephen Smith (Presiding Member)
- Mr Mark Adcock (Independent Member)
- Mr Ross Bateup (Independent Member)
- Mr Julian Rutt (Independent Member)
- Cr Christel Mex (Council Member)
- Mr Paul Mickan (Deputy Independent Member)
- Cr Kester Moorhouse (Deputy Council Member)

The current Members were appointed to the Council Assessment Panel by the Council at its meeting held on 2 April 2024, with their membership term expiring on 1 May 2026.

The Council has endorsed Terms of Reference for the operation of the Council Assessment Panel, which are available via the following web link:

[https://www.npsp.sa.gov.au/files/12330\\_council\\_assessment\\_panel\\_terms\\_of\\_reference.pdf?v=226](https://www.npsp.sa.gov.au/files/12330_council_assessment_panel_terms_of_reference.pdf?v=226)

In addition, the Council Assessment Panel has established its own Meeting Procedures, which are available via the following web link:

[https://www.npsp.sa.gov.au/files/17660\\_final\\_version\\_cap\\_meeting\\_procedures\\_adopted\\_19\\_june\\_2023.pdf?v=312](https://www.npsp.sa.gov.au/files/17660_final_version_cap_meeting_procedures_adopted_19_june_2023.pdf?v=312)

#### STRATEGIC DIRECTIONS

##### *CityPlan 2030* Alignment

##### **Outcome 2: Cultural Vitality**

*A culturally rich and diverse City, with a strong identity, history and sense of place.*

*Objective 2.4: Pleasant, well designed, and sustainable neighbourhoods.*

*Strategy 2.4.2: Facilitate a mix of land uses in appropriate locations in balance with amenity and character.*

#### FINANCIAL AND BUDGET IMPLICATIONS

Specialist External Members of the Panel receive a sitting fee of \$450 per scheduled Panel meeting and the Presiding Member receives a sitting fee of \$550 per meeting. The Council has also resolved that Elected Members who are appointed to the Panel will receive a sitting fee of \$450.

In this context, the cost of providing sitting fees to Panel Members is currently \$2,350 per meeting.

## **RISK MANAGEMENT**

A *Code of Conduct for Assessment Panel Members* commenced operation on 1 October 2017. The Code of Conduct imposes Conflict of Interest provisions which are similar to those which existed previously under the *Development Act 1993*. To this end, in summary the new Code of Conduct prohibits Panel Members from:

1. engaging in consultation outside of the panel process with any party on a proposed Development Application that is likely to be heard by the Panel;
2. giving advice to an Applicant or other third party on a Development Application after it has been lodged outside of a panel meeting;
3. speaking at a public meeting for or against a proposal where the purpose of the meeting is to discuss either a proposed development or a Development Application unless required by the *Act*;
4. expressing an opinion on a Development Application or a proposed development outside of a panel meeting; and
5. engaging in any other act or omission which may give rise to a reasonable presumption that they have prejudged a development proposal or Application.

All Code of Conduct complaints concerning CAP Members are required to be made to and addressed by the State Planning Commission. Unlike the previous requirement under the *Development Act 1993*, Councils are not required to have a Public Officer for a Council Assessment Panel.

In addition to the *Code of Conduct*, several other measures are in place to effectively manage and where possible, mitigate risks associated with membership of, and the activities undertaken by, Council Assessment Panel members, including:

- Accredited Professionals Scheme – All Specialist Independent Members are required to be accredited at Level 2. The accreditation requirements impose ongoing professional development obligations. A *Code of Conduct* is also applicable to Accredited Professionals;
- Training – Training is regularly scheduled and available for Panel Members. Independent training providers offer relevant training courses, and generally, during each two (2) year Membership term, the Council will provide a tailored training session to Council Assessment Panel Members through Council's solicitors;
- Terms of Reference and Meeting Procedures – Both the Terms of Reference and Meeting Procedures for the Council Assessment Panel were reviewed and updated in the 2023 calendar year, providing an updated and detailed framework for Panel conduct and decision making.

## **CONSULTATION**

### **Elected Members**

Not Applicable.

### **Community**

Not Applicable.

### **Staff**

General Manager, Urban Planning & Environment.

### **Other Agencies**

Not Applicable.

## DISCUSSION

### The Panel's Activities and Performance

The Panel met on eleven (11) occasions between 1 July 2024 and 30 June 2025. One (1) scheduled Ordinary Meeting (April 2025), was cancelled due to there being no items for determination.

During the twelve (12) month reporting period, eight hundred and eleven (811) Development Applications were lodged for development within the City of Norwood Payneham & St Peters.

The Panel considered thirty-one (31) items during the reporting period (twenty-six (26) of which were "new" Development Applications), which equates to approximately 3.8% of all Development Applications that were lodged. All other Development Applications were determined by the Assessment Manager as the relevant authority (and staff under delegation) or by the Assessment Manager (and staff under delegation) acting under the delegation of the Council Assessment Panel. A small number of applications were also determined by the State Commission Assessment Panel or private accredited professionals. It is also important to note that five (5) of the items considered by the Panel related to Environment Resources & Development Court Appeals and Reviews of Decisions made by the Assessment Manager.

The Panel considered eleven (11) Development Applications for commercial developments and fifteen (15) Development Applications for residential developments.

Some of the larger scale and/or more complex Development Applications which were considered by the Panel during the reporting period included:

- a mixed use, four (4) storey development at 263-277 Payneham Rd, Royston Park;
- the division of land and future use affecting a Local Heritage Place at 81 Osmond Tce, Norwood;
- demolition of an existing dwelling in a Historic Area at 48 Sixth Ave, St Peters; and
- demolition of a Local Heritage Place at 69 High St, Kensington.

Of the twenty-six (26) Development Applications that were considered by the Panel during the reporting period, three (3) Applications were refused by the Panel. Of the three (3) Applications which were refused, all were recommended for Planning Consent to be granted by the Assessing Planner.

Of the twenty-three (23) Applications that were approved by the Panel, all were determined in accordance with the recommendations made by the Assessing Planner. Overall, 12.9% of decisions made by the Panel, were contrary to staff recommendations. Accordingly, the vast majority of decisions made by the Panel are consistent with staff recommendations, which demonstrates a close alignment between the way in which staff and the Panel are interpreting and applying the provisions of the *Planning & Design Code*. This has remained consistent for several years.

Three (3) of the decisions that were made by the Panel during the reporting period, were appealed to the Environment Resources & Development (ERD) Court. Two (2) of those appeals have been resolved via a compromise, without proceeding to a Full Hearing. The remaining one (1) appeal has not yet been finalised, but the applicant is progressing a compromise proposal which will be considered by the Panel in due course.

Over the reporting period, the Panel considered two (2) reviews of the decisions made by the Assessment Manager. In both cases, the Panel determined to affirm the decision of the Assessment Manager. The process of reviewing the decisions of an Assessment Manager (where requested by an Applicant and allowed for under the *Planning, Development & Infrastructure Act 2016*) is considered to be functioning well, with applicants receiving a fair hearing and decisions being set aside where that is considered appropriate by the Council Assessment Panel.

In October 2024, the Panel resolved to adopt an updated Policy to guide the process for reviews of a decision of the Assessment Manager. Accordingly, the Panel no longer deliberates these matters in confidence and both the Applicant (and / or their representative) and the Assessment Manager are afforded the opportunity to be heard. These process improvements have been beneficial and enhances the transparency of the Panel's decision-making process.

## **Review of Delegations**

The most recent review of delegations was undertaken by the Panel at its meeting held on 21 July 2025. While this is outside of the reporting period, it is still worth noting. The delegations from the Panel to the Assessment Manager had not been reviewed since initial implementation of the delegations in February 2021 and accordingly, a review was considered necessary and timely.

The Panel is the relevant authority for Development Applications that require public notification. However, the Panel is able to delegate authority to determine applications that require public notification to the Assessment Manager, in such circumstances as the Panel sees fit.

Prior to the most recent review, the Panel delegated decisions on all Applications for which it was the relevant authority, to the Assessment Manager, other than where valid representations were received which were in opposition to the proposal.

Following the review, the Panel determined to delegate authority to the Assessment Manager, to determine applications for which it is the relevant authority, in circumstances where:

1. no valid representations are received;
2. all valid representations are withdrawn (prior to the publication of the agenda);
3. no representor who has lodged a valid representation wishes to be heard (prior to the publication of the agenda);
4. a deemed consent notice has been served on the Panel under Section 125(2) of the Act;
5. the applicant has not agreed to extend the statutory timeframe within which the Panel must determine the development application pursuant to Regulation 53 of the Regulations and that timeframe will expire before the next meeting of the Panel is scheduled to occur.

In addition, and for the avoidance of doubt, the Panel further noted that the Assessment Manager may not exercise the power pursuant to Section 102(1)(a) of this Act (i.e. to grant Planning Consent) where the following apply:

- the application is proposed by the City of Norwood Payneham & St Peters unless it is contextually minor in nature such as street tree removals, reserve works, building alterations / additions, street and park furniture, signage, public toilets or other associated infrastructure works;
- the application is proposed by an Elected Member or Staff Member of the City of Norwood Payneham & St Peters and is, in the opinion of the Assessment Manager, for a significant form development (such as dwelling additions, a new dwelling or other more major forms of development);
- where the Assessment Manager determines that the nature of the application is best determined by the Panel, having regard to the type of application, the public interest, and the extent to which the proposed application meets the provisions of the Planning & Design Code.

It is considered that the above-mentioned delegations will maintain an effective decision-making framework. The delegations will continue to be reviewed periodically to ensure they are fit for purpose.

## **Procedural Issues and Meeting Efficiency**

The Meeting Procedures for the Panel were reviewed in late 2024 / early 2025. An amended version of the Meeting Procedures was endorsed by the Panel at its meeting held on 17 February 2025.

The updated Meeting Procedures provided for minor changes only.

There were no significant procedural issues identified during the reporting period.

## Planning Policy Issues / Trends

The Council Assessment Panel, as a relevant authority under the *Planning, Development & Infrastructure Act 2016*, is charged with undertaking assessments and making decisions in respect to Development Applications presented to it. Accordingly, the Panel is in an ideal position to take into account trends or issues with planning policy which may need to be presented to the Council for its consideration in respect to the relevant planning policy.

The Panel did encounter several anomalies in the planning policy applicable to its assessment activities, but none of such significance that would warrant immediate attention. However, there were several general observations about the relevant planning policy and the planning system that are worthy of consideration. Some of these are consistent with the observations and reporting of previous years, and others are more recent observations:

1. **Loss of Tailored Policy** – The shift from Development Plans (which contained bespoke policy that had been developed by Council over a number of years) to one over-arching policy framework applicable across the State has resulted in the loss of localised and specific policy, which had been tailored to particular localities and contexts.

As a result, the applicable planning policy is often very generalised, with numerical measures which may not suit particular localities and qualitative provisions which are too general in nature to provide for a useful guide. This has made assessment and decision making more problematic and more open to interpretation and challenge.

2. **Planning for Context** – As a result of a more generalised policy framework, the concept of “planning for context” has arisen during some of the Panel’s deliberations. That is, the importance of considering the Performance Outcomes in the Planning & Design Code in the context of the particular site and locality within which the development is proposed has informed the Panel’s decisions.

For example, a Performance Outcome may suggest “development should be compatible with the surrounding built form”. Whether that Performance Outcome will be achieved could be different depending on where the development is proposed and potentially different outcomes could result between two separate sites even if both are within the same zone.

To a certain extent, “planning for context” has always been required as part of development assessment, but the nature of the generalised policy framework now makes that more critical. The level of uncertainty this can create has done little to provide for a “simplified system” as per one of the goals of the original Expert Panel on Planning Reform in 2013.

3. **Loss of Third Party Appeal Rights** – The implementation of the new planning system has resulted in third party’s no longer having a right of appeal to the Environment Resources & Development Court should they disagree with a decision made by the Panel. As knowledge of the lack of appeal rights has spread, Council Assessment Panels are beginning to see a trend of more detailed and assertive representations.

It is also resulting in increased interest in procedural challenges through the judicial review process (where the decision-making process is challenged as opposed to the merits of the proposal).

4. **Deferrals** – As part of the planning system applicable under the *Development Act 1993*, it was not uncommon for the Panel to defer items for further information, or to enable reconsideration or negotiation of particular elements of the proposal, before the proposal was put back before a future meeting of the Panel.

This was often done to address a problematic element in a proposal, and in many cases, resulted in an enhanced development outcome. The Panel was unable to “re-design” a proposal, but the deferral process could be used effectively to address problematic issues.

The introduction of Deemed Consents in the new planning system established under the *Planning, Development & Infrastructure Act 2016* has unfortunately now meant that the Panel is generally unable to defer a matter – as doing so will often result in the exceedance of the legislated timeframe and result in the potential for a deemed consent to be issued.

Accordingly, where applicants previously may have been afforded an opportunity through a deferral to provide additional information / amendments, that opportunity now rarely exists and applications are instead being refused.

5. Demolition and Heritage – During the reporting period, the Panel was tasked with making decisions on several Development Applications which proposed the demolition of dwellings / buildings within the Historic Area Overlay.

There are numerous Performance Outcomes (PO) in the Planning & Design Code which such proposals are assessed against, but PO 7.1 is particularly relevant:

*PO 7.1 – Buildings and structures, or features thereof, that demonstrate the historic characteristics as expressed in the Historic Area Statement are not demolished, unless:*

- (b) The front elevation of the building has been substantially altered and cannot be reasonably restored in a manner consistent with the building's original style or*
- (b) The structural integrity or safe condition of the original building is beyond reasonable repair.*

The words “*beyond reasonable repair*” (and in the context of the Local Heritage Place Overlay – *irredeemably beyond repair*) have been the subject of considerable debate. Applicants and Council staff often source structural engineering reports to assist the Panel in their deliberations. The Panel has refused several Development Applications proposing demolition in the Historic Area Overlay and there is currently one (1) case on-going in the Environment Resources & Development Court regarding such decisions.

6. Multi-Storey Mixed-Use Development – The Council Assessment Panel has recently considered two (2) Development Applications for multi-storey mixed-use developments (one {1} of which was considered outside of the reporting period).

The State Planning Commission is the relevant authority for making decisions on buildings exceeding four (4) storeys in height where the Design Overlay applies – however that overlay does not apply in the Suburban Business Zone for example, where such development proposals are becoming more frequent.

The assessment of these proposals by the Panel has been comprehensive, with sensitive elements such as building height being carefully considered. It is likely the Panel will see additional proposals for such developments into the future

7. Historic and Character Area Statements – The Panel was tasked with numerous assessments of developments against the Historic and Character Area Overlay where Historic and Character Area Statements were applicable. Those statements apply to a specific portion of the Overlays and are intended to describe the attributes that create and contribute to the unique heritage or character value of an area.

The statements themselves are supported as a useful tool in the Code, but they often lack detail making their applicability in development assessment more complex.

The Panel noted that a greater level of detail and clarity in the statements would be ideal and would likely enhance the quality of future development outcomes, as well as providing clearer guidance to the development industry.

## OPTIONS

This report is provided for information purposes only.

## **CONCLUSION**

The Council Assessment Panel has discharged its responsibilities well, with meetings running efficiently and with a high degree of professionalism.

The Panel determined a vast majority of Development Applications in accordance with the staff recommendation, reflecting a continued high degree of consistency between staff and Panel assessment approaches, recommendations and final decisions.

Overall, the Council can be justifiably satisfied with the results which have been achieved and the Panel's operation during the reporting period.

## **RECOMMENDATION**

*That the report on the activities and performance of the Council Assessment Panel for the period 1 July 2024 to 30 June 2025, be received and noted.*

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*Cr Piggott moved:*

*That the report on the activities and performance of the Council Assessment Panel for the period 1 July 2024 to 30 June 2025, be received and noted.*

*Seconded by Cr Duke and carried unanimously.*