



COUNCIL ASSESSMENT PANEL

Agenda and Reports

for the meeting
Monday, 29 January 2024
at 5.30 pm
in the Colonel Light Room, Adelaide Town Hall



Council Assessment Panel

Meeting Agenda

Monday, 29 January 2024, at 5.30 pm, Colonel Light Room, Adelaide Town Hall

Panel Members

Presiding Member – Nathan Cunningham

Panel Members – Mark Adcock, Colleen Dunn, Robert Gagetti and Deputy Lord Mayor Keiran Snape

Deputy Panel Member – Prof Mads Gaardboe and Councillor Carmel Noon

Opening and Acknowledgment of Country

At the opening of the Panel Meeting, the Presiding Member will state:

‘The City of Adelaide Council Assessment Panel acknowledges that we are meeting on traditional Country of the Kaurna people of the Adelaide Plains and pays respect to Elders past and present. We recognise and respect their cultural heritage, beliefs and relationship with the land. We acknowledge that they are of continuing importance to the Kaurna people living today.

And we also extend that respect to other Aboriginal Language Groups and other First Nations who are present today.’

Meeting Agenda

1. Confirmation of Minutes

That the Minutes of the meeting of the City of Adelaide Council Assessment Panel held on 11 December 2023, be taken as read and be confirmed as an accurate record of proceedings.

View public 11 December 2023 Minutes [here](#).

2. Declaration of Conflict of interest

3. Applications assessed under PDI Act 2016 (SA) with Representations

Nil

4. Applications assessed under PDI Act 2016 (SA) without Representations

Nil

5. Appeal to CAP for Assessment Manager's Decision Review

Nil

6. Other Business

6.1 Delegations, Meeting Procedures and Meeting Schedule for 2024/25 [Pages 4 - 46]

6.2 CAP Annual Report 2023 [Pages 47 - 55]

6.3 Planning Policy Updates including Suggestions from Panel

6.4 Other Business raised at Panel Meeting

6.5 Next Meeting - 26 February 2024

7. Closure

Council is committed to openness and transparency in its decision making processes, however some documents contained within attachments to Development Assessment Panel agenda items are subject to copyright laws. This information is marked with a copyright notice. If these documents are reproduced in any way, including saving and printing, it is an infringement of copyright. By downloading this information, you acknowledge and agree that you will be bound by provisions of the *Copyright Act 1968 (Cth)* and will not reproduce these documents without the express written permission of the copyright owner.

Council Assessment Panel – Delegations, Meeting Procedures and Meeting Schedule for 2024/2025

Council Assessment Panel
Monday, 29 January 2024

From:

Seb Grose, Manager, City
Development (Assessment
Manager)

PURPOSE

As part of ongoing improvements and refinements to the planning system, new delegations are required to be considered and endorsed by the City of Adelaide Council Assessment Panel (CAP). Meeting Procedures and the Meeting Schedule for the 2024/25 Panel term are also required to be considered and endorsed.

RECOMMENDATION

That the CAP:

1. Delegates powers of an Assessment Panel as Relevant Authority under the *Planning, Development and Infrastructure Act 2016* (SA) as follows:
 - 1.1 In exercise of the power contained in Section 100 of the *Planning, Development and Infrastructure Act 2016* (SA) the powers and functions under the *Planning, Development and Infrastructure Act 2016* (SA) and statutory instruments made thereunder contained in the proposed Instrument of Delegation (Attachment A to this report dated 29 January 2024 and entitled 'Instrument C' – Instrument of Delegation under the Planning, Development and Infrastructure Act 2016, Regulations, Planning and Design Code and Practice Directions of Powers of an Assessment Panel) are hereby delegated from 29 January 2024 to the City of Adelaide Assessment Manager, subject to the conditions and/or limitations, if any, specified herein or in the Schedule of Conditions in the proposed Instrument of Delegation.
 - 1.2 Such powers and functions may be further delegated by the City of Adelaide Assessment Manager in accordance with Section 100(2)(c) of the *Planning Development and Infrastructure Act 2016* (SA) as the City of Adelaide Assessment Manager sees fit, unless otherwise indicated herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation.
2. Endorses and adopts the Meeting Procedures set out in Attachment B to Item 6.1 on the Agenda for the meeting of CAP held on 29 January 2024.
3. Endorses the 2024/2025 Meeting Schedule set out in Attachment C to Item 6.1 on the Agenda for the meeting of CAP held on 29 January 2024.

BACKGROUND

1. The City of Adelaide CAP has been established in accordance with Section 83 of the *Planning, Development and Infrastructure Act 2016* (SA) ('PDI Act'). The new term of the CAP commences 1 January 2024 and will end on 31 December 2025.
2. Section 100 of the PDI Act allows a Relevant Authority (other than an Accredited Professional) to delegate its powers and functions under this Act. The Minister, the State Planning Commission, Council, the CAP, an appointed Assessment Manager and an Accredited Professional are all Relevant Authorities under the PDI Act. The CAP, Council and the Assessment Manager can all sub-delegate their powers and functions.
3. The most recent delegations from the CAP to the Assessment Manager were adopted by the previous CAP on 23 October 2023. As part of ongoing improvements and refinements to the planning system, there are amendments to delegations that necessitate preparation and endorsement of new delegations. The new delegations have been prepared for the consideration of the CAP and are included as Attachment A to this report.
4. The CAP Meeting Procedures were previously adopted by CAP on 28 August 2023. The new CAP is required to endorse and adopt the CAP Meeting Procedures included in Attachment B. There have been no further updates to the Meeting Procedures since 28 August 2023.
5. A Meeting Schedule for the 2024/2025 term also requires endorsement by the CAP and is included in Attachment C.

DISCUSSION

CAP as a Relevant Authority

6. The Act provides the CAP is a Relevant Authority for planning and building consents in relation to development undertaken within the area of a Council unless another authority is prescribed by Section 93 of the Act, or the Regulations.
7. The Panel is responsible for all administrative actions associated with the assessment of a development application requiring public notification including verification, determining the classification and relevant fees, any requests for additional information, undertaking public notification (including potentially the placement of a notice on the subject land), referral of the application to agencies and a range of other administrative matters.
8. The intent of delegations is to allow administrative matters to be managed on a day-to-day basis by the Assessment Manager, so the Panel's role in relation to these remains the hearing of representations, deliberation and determination of development applications.

New Delegations

9. As part of ongoing improvements and refinements to the planning system, there are amendments to delegations required which are highlighted in Attachment A. The head delegate for all the powers, unless explicitly listed, is the Assessment Manager. New delegations relate to:
 - Removal of land division requirements as through the evolution of the PDI legislation, it has been confirmed the Assessment Manager is the Relevant Authority for land division consent. This was not clear under the original legislation.
 - Allow an extension of time to make an application to the Panel for a review of a prescribed matter where the Assessment Manager has acted as a Relevant Authority. This ensures all elements of Section 203(1) of the PDI Act are clearly covered, specifically the ability to exercise discretion to grant an extension to seek a review of an Assessment Manager decision by the CAP.
 - The power, in accordance with the Planning and Design Code to form the opinion the development is minor in nature and would not warrant a referral when considering the purpose of the referral. This is in response to changes to Overlays in the Code regarding referrals.

10. Instrument C proposes the CAP delegate (where appropriate) powers to the City of Adelaide Assessment Manager in the first instance, as the person being appointed by the Chief Executive Officer responsible for the management of Council's planning assessment operations and the CAP.

Sub-Delegations

11. If the CAP allows, a delegate may sub-delegate its powers. This is consistent with powers under Section 100 of the Act. Specific sub-delegations have been prepared with Council's Corporate Governance and Risk Team. Further instruments of sub-delegation with suggested subdelegates will be formalised once CAP resolves to delegate its powers for the additional delegations to the head delegate (the Assessment Manager). The only proposed change to sub-delegations relates to forming the opinion a development in minor in nature and does not warrant referral when considering the purpose of the referral.

Implementation

12. The amended delegations proposed, should CAP resolve to adopt them, will come into effect as an updated Instrument C – Instrument of Delegation and the previous delegations will be revoked.

Meeting Procedures

13. The CAP Meeting Procedures require adoption by the new CAP. These are proposed to remain the same as the procedures adopted by the CAP on 28 August 2023.

Meeting Schedule

14. The Meeting Schedule for the 2024/2025 term has been drafted to generally provide a meeting every fourth Monday of the month. There are variations where there are public holidays or to allow for Christmas closure periods.

SUMMARY

15. Instrument C – Instrument of Delegation has been drafted to be consistent with practices under the existing system. The proposed new Instrument C appropriately balances the discharging of the CAP's role and responsibilities against ensuring efficient and effective ongoing operations. It is important to note delegations can be reviewed at any time and there may be a need to make further changes in the future.
16. The CAP Meeting Procedures require adoption by the new CAP.
17. The Meeting Schedule will ensure timely assessment of applications can continue to occur.

ATTACHMENTS

Attachment A – Instrument C – Council Assessment Panel Delegations under the *Planning, Development and Infrastructure Act 2016* (SA) with proposed changes highlighted

Attachment B – CAP Meeting Procedures

Attachment C – CAP Meeting Schedule 2024/2025

- END OF REPORT -

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016, REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL

NOTES

1. Conditions or Limitations: conditions or limitations may apply to the delegations contained in this Instrument. Refer to the Schedule of Conditions at the back of this document.
2. Refer to the relevant Assessment Panel decision to identify when these delegations were made, reviewed and or amended.

POWERS AND FUNCTIONS DELEGATED IN THIS INSTRUMENT

1.	Environment and Food Production Areas – Greater Adelaide
1.1	The power pursuant to Section 7(5)(a) of the Planning, Development and Infrastructure Act 2016 (the PDI Act), in relation to a proposed development in an environment and food production area that involves a division of land that would create 1 or more additional allotments to seek the concurrence of the Commission in the granting of the development authorisation to the development.
1.2	The power pursuant to Section 7(5)(d) of the PDI Act in relation to a proposed development in an environment and food production area that involves a division of land that would create one or more additional allotments, to, if the proposed development will create additional allotments to be used for residential development, refuse to grant development authorisation in relation to the proposed development.
2.	Appointment of Additional Members
2.1	The power pursuant to Section 85(1) of the PDI Act to appoint 1 or 2 members to act as additional members of the assessment panel for the purposes of dealing with a matter that the assessment panel must assess as a relevant authority under the PDI Act.
3.	Relevant Authority – Commission
3.1	The power pursuant to Section 94(3)(a) of the PDI Act, if the Minister acts under Section 94(1)(h) of the PDI Act to, at the request of the Commission, provide the Commission with a report relating to any application for development authorisation that has been under consideration by the relevant authority.
4.	Relevant Provisions

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

4.1	The power pursuant to Section 99(1) of the PDI Act, if a proposed development involves the performance of building work to determine to act under Section 99(1) of the PDI Act to:
4.1.1	refer the assessment of the development in respect of the Building Rules to the council for the area in which the proposed development is to be undertaken; or
4.1.2	require that the assessment of the development in respect of the Building Rules be undertaken by a building certifier.
5.	Matters Against Which Development Must Be Assessed
5.1	The power pursuant to Section 102(1) of the PDI Act to assess a development against, and grant or refuse a consent in respect of, each of the following matters (insofar as they are relevant to the particular development):
5.1.1	-
5.1.1.1	the relevant provisions of the Planning Rules; and
5.1.1.2	to the extent provided by Part 7 Division 2 of the PDI Act – the impacts of the development, (planning consent);
5.1.2	the relevant provisions of the Building Rules (building consent);
5.1.3	in relation to a proposed division of land (otherwise than under the Community Titles Act 1996 or the Strata Titles Act 1988) – the requirement that the following conditions be satisfied (or will be satisfied by the imposition of conditions under the PDI Act):
5.1.3.1	requirements set out in the Planning and Design Code made for the purposes of this provision are satisfied;
5.1.3.2	any relevant requirements set out in a design standard has been satisfied;
5.1.3.3	the requirements of a water industry entity under the Water Industry Act 2012 identified under the regulations relating to the provision of water supply and sewerage services are satisfied;
5.1.3.4	where land is to be vested in a council or other authority – the council or authority consents to the vesting;
5.1.3.5	requirements set out in regulations made for the purposes of Section 102(1)(c) of the PDI Act are satisfied;

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL

5.1.4	in relation to a division of land under the Community Titles Act 1996 or the Strata Titles Act 1988 – the requirement that the following conditions be satisfied (or will be satisfied by the imposition of conditions under the PDI Act):
5.1.4.1	requirements set out in the Planning and Design Code made for the purposes of this provision are satisfied;
5.1.4.2	any relevant requirements set out in a design standard has been satisfied;
5.1.4.3	any encroachment of a lot or unit over other land is acceptable having regard to any provision made by the Planning and Design Code or a design standard;
5.1.4.4	where land is to be vested in a council or other authority – the council or authority consents to the vesting;
5.1.4.5	a building or item intended to establish a boundary (or part of a boundary) of a lot or lots or a unit or units is appropriate for that purpose;
5.1.4.6	the division of land under the Community Titles Act 1996 or the Strata Titles Act 1988 is appropriate having regard to the nature and extent of the common property that would be established by the relevant scheme;
5.1.4.7	the requirements of a water industry entity under the Water Industry Act 2012 identified under the regulations relating to the provision of water supply and sewerage services are satisfied;
5.1.4.8	any building situated on the land complies with the Building Rules;
5.1.4.9	requirements set out in the regulations made for the purposes of Section 102(d) of the PDI Act are satisfied;
5.1.5	any encroachment of a building over, under, across or on a public place (and not otherwise dealt with above) is acceptable having regard to any provision made by the Planning and Design Code or a design standard;
5.1.6	if relevant – requirements applying under Part 15 Division 2 of the PDI Act are satisfied;
5.1.7	such other matters as may be prescribed.

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

5.2	The power pursuant to Section 102(3) of the PDI Act to, in relation to granting a planning consent, on the delegate's own initiative or on application, reserve the delegate's decision on a specified matter or reserve the delegate's decision to grant a planning consent:
5.2.1	until further assessment of the relevant development under the PDI Act; or
5.2.2	until further assessment or consideration of the proposed development under another Act; or
5.2.3	until a licence, permission, consent, approval, authorisation, certificate or other authority is granted, or not granted (by the decision of another authority), under another Act.
5.3	The power pursuant to Section 102(4) of the PDI Act to allow any matter specified by the Planning and Design Code for the purposes of Section 102(4) of the PDI Act to be reserved on the application of the applicant.
6.	Performance Assessed Development
6.1	The power pursuant to Section 107(2)(c) of the PDI Act to form the opinion that the development is seriously at variance with the Planning and Design Code (disregarding minor variations).
6.2	The power pursuant to Section 107(3) of the PDI Act, if a proposed development is to be assessed under Section 107 of the PDI Act to make a decision in accordance with a practice direction.
6.3	The power pursuant to Section 107(4) of the PDI Act to limit the matters that the delegate will take into account to what should be the decision of the relevant authority as to planning consent in relation to the performance based elements of the development as assessed on its merits.
7.	Building Consent
7.1	The power pursuant to Section 118(1) of the PDI Act, if the Regulations provide that a form of building work complies with the Building Rules, to grant any such building work a building consent (subject to such conditions or exceptions as may be prescribed by the regulations).
7.2	The power pursuant to Section 118(2)(a) of the PDI Act to seek the concurrence of the Commission to grant a building consent in respect of a development that is at variance with the performance requirements of the Building Code or a Ministerial building standard.

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

7.3	The power pursuant to Section 118(2) of the PDI Act, subject to Section 118(6) of the PDI Act, to grant a building consent to a development that is at variance with the Building Rules if:
7.3.1	the variance is with a part of the Building Rules other than the Building Code or a Ministerial building standard and the delegate determines that it is appropriate to grant the consent despite the variance on the basis that the delegate is satisfied:
7.3.1.1	that:
	(a) the provisions of the Building Rules are inappropriate to the particular building or building work, or the proposed building work fails to conform with the Building Rules only in minor respects; and
	(b) the variance is justifiable having regard to the objects of the Planning and Design Code or the performance requirements of the Building Code or a Ministerial building standard (as the case may be) and would achieve the objects of this Act as effectively, or more effectively, than if the variance were not to be allowed; or
7.3.1.2	in a case where the consent is being sought after the development has occurred - that the variance is justifiable in the circumstances of the particular case.
7.4	The power pursuant to Section 118(4) of the PDI Act, to at the request or with the agreement of the applicant, refer proposed building work to the Commission for an opinion on whether or not it complies with the performance requirements of the Building Code or a Ministerial building standard.
7.5	The power pursuant to Section 118(6) of the PDI Act if an inconsistency exists between the Building Rules and the Planning Rules in relation to a State heritage place or a local heritage place, to, in determining an application for building consent, ensure, so far as is reasonably practicable, that standards of building soundness, occupant safety and amenity are achieved in respect of the development that are as good as can reasonably be achieved in the circumstances.
7.6	The power pursuant to Section 118(7) of the PDI Act to seek and consider the advice of the Commission before imposing or agreeing to a requirement under Section 18(6) of the PDI Act that would be at variance with the performance requirements of the Building Code or a Ministerial building standard.
7.7	The power pursuant to Section 118(8) of the PDI Act, to, subject to the PDI Act, accept that proposed building work complies with the Building Rules to the extent that:

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

7.7.1	such compliance is certified by the provision of technical details, particulars, plans, drawings or specifications prepared and certified in accordance with the regulations; or
7.7.2	such compliance is certified by a building certifier.
7.8	The power pursuant to Section 118(10) of the PDI Act to refuse to grant a consent in relation to any development if, as a result of that development, the type or standard of construction of a building of a particular classification would cease to conform with the requirements of the Building Rules for a building of that classification
7.9	The power pursuant to Section 118(11) of the PDI Act, if a relevant authority decides to grant building consent in relation to a development that is at variance with the Building Rules, to, subject to the regulations, in giving notice of the relevant authority's decision on the application for that consent, specify (in the notice or in an accompanying document):
7.9.1	the variance; and
7.9.2	the grounds on which the decision is being made.
8.	Application and Provision of Information
8.1	The power pursuant to Section 119(1)(b) of the PDI Act to require an application to the relevant authority for the purposes of Part 7 of the PDI Act, to include any information as the delegate may reasonably require.
8.2	The power pursuant to Section 119(3) of the PDI Act to request an applicant:
8.2.1	to provide such additional documents, assessments or information (including calculations and technical details) as the delegate may reasonably require to assess the application;
8.2.2	to remedy any defect or deficiency in any application or accompanying document or information required by or under the PDI Act;
8.2.3	to consult with an authority or body prescribed by the regulations;
8.2.4	to comply with any other requirement prescribed by the regulations.
8.3	The power pursuant to Section 119(6) of the PDI Act if a request is made under Section 119(3) of the PDI Act, and the request is not complied with within the time specified by the regulations, to
8.3.1	subject to Section 119(6)(b)(ii) of the PDI Act, refuse the application; and

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

8.3.2	refuse the application in prescribed circumstances (including, if the regulations so provide, in a case involving development that is deemed-to-satisfy development).
8.4	The power pursuant to Section 119(7) of the PDI Act to, in dealing with an application that relates to a regulated tree, consider that special circumstances apply.
8.5	The power pursuant to Section 119(9) of the PDI Act to:
8.5.1	permit an applicant:
8.5.1.1	to vary an application;
8.5.1.2	to vary any plans, drawings, specifications or other documents that accompanied an application,
	(provided that the essential nature of the proposed development is not changed);
8.5.2	permit an applicant to lodge an application without the provision of any information or document required by the regulations;
8.5.3	to the extent that the fee is payable to the relevant authority waive payment of whole or part of the application fee, or refund an application fee (in whole or in part);
8.5.4	if there is an inconsistency between any documents lodged with the relevant authority for the purposes of Part 7 of the PDI Act (whether by an applicant or any other person), or between any such document and a development authorisation that has already been given that is relevant in the circumstances, return or forward any document to the applicant or to any other person and determine not to finalise the matter until any specified matter is resolved, rectified or addressed.
8.6	The power pursuant to Section 119(10) of the PDI Act to grant a permission under Section 119(9) of the PDI Act unconditionally or subject to such conditions as the delegate thinks fit.
8.7	The power pursuant to Section 119(12) of the PDI Act to, in a consent, provide for, or envisage, the undertaking of development in stages, with separate consents or approvals for the various stages.

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

8.8	The power pursuant to Section 119(14) of the PDI Act to if an applicant withdraws an application to determine to refund the application fee.
9.	Outline Consent
9.1	The power pursuant to Section 120(1) of the PDI Act and subject to Section 120 of the PDI Act, to on application, grant a consent in the nature of an outline consent.
9.2	The power pursuant to Section 120(3) of the PDI Act if an outline consent is granted and a subsequent application is made with respect to the same development (subject to any variations allowed by a practice direction) to:
9.2.1	grant any consent contemplated by the outline consent; and
9.2.2	not impose a requirement that is inconsistent with the outline consent.
10.	Design Review
10.1	The power pursuant to Section 121(7) of the PDI Act, to in acting under the PDI Act, take into account any advice provided by a design panel (insofar as may be relevant to the assessment of proposed development by the delegate).
11.	Referrals to Other Authorities or Agencies
11.1	The power pursuant to Section 122(1) of the PDI Act, where an application for consent to, or approval of, a proposed development of a prescribed class is to be assessed by a relevant authority, to:
11.1.1	refer the application, together with a copy of any relevant information provided by the applicant, to a body prescribed by the regulations (including, if so prescribed, the Commission); and
11.1.2	not make a decision until the relevant authority has received a response from that prescribed body in relation to the matter or matters for which the referral was made
	where the regulations so provide, subject to Section 122 of the PDI Act.
11.2	The power pursuant to Section 122(5)(b) of the PDI Act, acting by direction of a prescribed body:
11.2.1	to refuse the application; or

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

11.2.2	consent to or approve the development and impose such conditions as the prescribed body thinks fit, (subject to any specific limitation under another Act as to the conditions that may be imposed by the prescribed body)
	where the regulations so provide.
11.3	The power pursuant to Section 122(7) of the PDI Act, if the relevant authority is directed by a prescribed body to refuse an application and the refusal is the subject of an appeal under the PDI Act, to apply for the relevant authority to be joined as a party to the proceedings.
11.4	The power pursuant to Section 122(10) of the PDI Act to, if requested by an applicant, defer a referral under Section 122 of the PDI Act to a particular stage in the process of assessment.
12. Preliminary Advice and Agreement	
12.1	The power pursuant to Section 123(2) of the PDI Act, if:
12.1.1	a proposed development is referred to a prescribed body under Section 123(1) of the PDI Act; and
12.1.2	the prescribed body agrees to consider the matter under Section 123 of the PDI Act after taking into account any matter prescribed by the regulations; and
12.1.3	the prescribed body agrees, in the manner prescribed by the regulations, that the development meets the requirements (if any) of the prescribed body (including on the basis of the imposition of conditions),
	to, subject to Section 123(4) of the PDI Act if an application for planning consent with respect to the development is lodged with the relevant authority within the prescribed period after the prescribed body has indicated its agreement under Section 123(2)(c) of the PDI Act, form the opinion and be satisfied that the application accords with the agreement indicated by the prescribed body (taking into account the terms or elements of that agreement and any relevant plans and other documentation).
12.2	The power pursuant to Section 123(4) of the PDI Act to determine an agreement under Section 123 of the PDI Act is no longer appropriate due to the operation of Section 132 of the PDI Act.
13. Proposed Development Involving Creation of Fortifications	
13.1	The power pursuant to Section 124(1) of the PDI Act, if the delegate has reason to believe that a proposed development may involve the creation of fortifications, to refer the application for consent to, or approval of, the proposed development to the Commissioner of Police (the Commissioner).

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

13.2	The power pursuant to Section 124(5) of the PDI Act, if the Commissioner determines that the proposed development involves the creation of fortification, to:
13.2.1	if the proposed development consists only of the creation fortifications - refuse the application; or
13.2.2	in any other case - impose conditions in respect of any consent to or approval of the proposed development prohibiting the creation of the fortifications
13.3	The power pursuant to Section 124(6) of the PDI Act, if the relevant authority acting on the basis of a determination of the Commissioner under Section 124(2) of the PDI Act refuses an application or imposes conditions in respect of a development authorisation, to notify the applicant that the application was refused, or the conditions imposed, on the basis of a determination of the Commissioner under Section 124 of the PDI Act.
13.4	The power pursuant to Section 124(7) of the PDI Act, if a refusal or condition referred to in Section 124(5) of the PDI Act is the subject of an appeal under the PDI Act to apply to the Court to be joined as a party to the appeal.
14. Time Within Which Decision Must be Made	
14.1	The power pursuant to Section 125(6) of the PDI Act to form the opinion and consider that the relevant application for planning consent should have been refused and apply to the Court for an order quashing the consent.
14.2	The power pursuant to Section 125(7) of the Act to apply to the Court for an extension of time to make an application under Section 125(6) of the Act.
15. Determination of Application	
15.1	The power pursuant to Section 126(1) of the PDI Act to, on making a decision on an application under Part 7 of the PDI Act, give notice of the decision in accordance with the regulations (and, in the case of a refusal, to include in the notice the reasons for the refusal and any appeal rights that exist under the PDI Act).
15.2	The power pursuant to Section 126(3) of the PDI Act to, on the delegate's own initiative or on the application of a person who has the benefit of any relevant development authorisation, extend a period prescribed under Section 126(2) of the PDI Act.
16. Conditions	
16.1	The power pursuant to Section 127(1) of the PDI Act to make a decision subject to such conditions (if any) as the delegate thinks fit to impose in relation to the development.
16.2	The power pursuant to Section 127(2)(c) of the PDI Act to vary or revoke a condition in accordance with an application under Part 7 of the PDI Act.

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

16.3	The power pursuant to Section 127(4) of the PDI Act, subject to Sections 127(6) and (8) of the PDI Act, if a development authorisation provides for the killing, destruction or removal of a regulated tree or a significant tree, to apply the principle that the development authorisation be subject to a condition that the prescribed number of trees (of a kind determined by the delegate) must be planted and maintained to replace the tree (with the cost of planting to be the responsibility of the applicant or any person who acquires the benefit of the consent and the cost of maintenance to be the responsibility of the owner of the land).
16.4	The power pursuant to Section 127(6) of the PDI Act to, on the application of the applicant, determine that a payment of an amount calculated in accordance with the regulations be made into the relevant fund in lieu of planting 1 or more replacement trees under Section 127(4) of the PDI Act.
16.5	The power pursuant to Section 127(8)(b) of the PDI Act to:
16.5.1	determine that it is appropriate to grant an exemption under Section 127(8)(b) of the PDI Act in a particular case after taking into account any criteria prescribed by the regulations and provided the Minister concurs in the granting of the exemption;
16.5.2	to seek the Minister's concurrence to grant an exemption under Section 127(8)(b) of the PDI Act.
17.	Variation of Authorisation
17.1	The power pursuant to Sections 128(1) and (2) of the PDI Act to determine an application seeking the variations of a development authorisation previously given under the PDI Act (including an application seeking the variation of a condition imposed with respect to the development authorisation).
17.2	The power pursuant to Section 128(2)(d) of the PDI Act to approve an application for a variation to a development authorisation previously given under the PDI Act, which seeks to extend the period for which the relevant authorisation remains operative.
18.	Requirement to Up-grade
18.1	The power pursuant to Section 134(1) of the PDI Act to form the opinion that the building is unsafe, structurally unsound or in an unhealthy condition.
18.2	The power pursuant to Section 134(1) of the PDI Act, if:
18.2.1	an application for a building consent relates to:

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

	18.2.1.1 building work in the nature of an alteration to a building constructed before the date prescribed by regulation for the purposes of Section 134(1) of the PDI Act; or
	18.2.1.2 a change of classification of a building; and
18.2.2	the building is, in the opinion of the delegate, unsafe, structurally unsound or in an unhealthy condition,
	to require that building work that conforms with the requirements of the Building Rules be carried out to the extent reasonably necessary to ensure that the building is safe and conforms to proper structural and health standards.
18.3	The power pursuant to Section 134(2) of the PDI Act, when imposing a requirement under Section 134(1) of the PDI Act, to specify (in reasonable detail) the matters under Section 134(1)(b) of the PDI Act that must, in the opinion of the delegate, be addressed.
18.4	The power pursuant to Section 134(3) of the PDI Act to impose a requirement under Section 134(1) of the PDI Act:
18.4.1	subject to Section 134(3)(b) of the PDI Act - on the basis that the relevant matters must be addressed as part of the application before the relevant authority will grant building consent; and
18.4.2	in cases prescribed by the regulations - as a condition of the building consent that must be complied with within a prescribed period after the building work to which the application for consent relates is completed
18.5	The power pursuant to Section 134(4) of the PDI Act if:
18.5.1	an application is made for building consent for building work in the nature of an alteration of a class prescribed by the regulations; and
18.5.2	the delegate is of the opinion that the affected part of the building does not comply with the performance requirements of the Building Code or a Ministerial building standard in relation to access to buildings, and facilities and services within buildings, for people with disabilities,
	to require that building work or other measures be carried out to the extent necessary to ensure that the affected part of the building will comply with those performance requirements of the Building Code or the Ministerial building standard (as the case may be).
18.6	The power pursuant to Section 134(5) of the PDI Act to impose a requirement under Section 134(4) of the PDI Act:

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

18.6.1	subject to Section 134(5)(b) of the PDI Act - on the basis that the building work or other measures to achieve compliance with the relevant performance requirements must be addressed before the relevant authority will grant building consent; and
18.6.2	in cases prescribed by the regulations - as a condition of the building consent that must be complied with within a prescribed period after the building work to which the application for consent relates is completed.
19. Urgent Building Work	
19.1	The power pursuant to Section 135(2)(d) of the PDI Act to issue any direction.
20. Cancellation of Development Authorisation	
20.1	The power pursuant to Section 143(1) of the PDI Act to, on the application of a person who has the benefit of the authorisation, cancel a development authorisation previously given by the relevant authority.
20.2	The power pursuant to Section 143(2) of the PDI Act to make a cancellation under Section 143(1) of the PDI Act subject to such conditions (if any) as the delegate thinks fit to impose.
21. Application to Assessment Panel	
21.1	The power pursuant to Section 203(1) of the PDI Act to allow an extension of time to make an application to the assessment panel for a review of a prescribed matter under Division 1 in a case where an assessment manager acted as a relevant authority.
22. Professional Advice to be Obtained in Relation to Certain Matters	
22.1	The power pursuant to Section 235(1) of the PDI Act, to, in the exercise of a prescribed function, rely on a certificate of a person with prescribed qualifications.
22.2	The power pursuant to Section 235(2) of the PDI Act to seek and consider the advice of a person with prescribed qualifications, or a person approved by the Minister for that purpose, in relation to a matter arising under the PDI Act that is declared by regulation to be a matter on which such advice should be sought.
23. General Transitional Schemes for Panels	
23.1	The power pursuant to Clause 12(7) of Schedule 8 of the PDI Act, to
23.1.1	adopt any findings or determinations of a council development assessment panel under the repealed Act that may be relevant to an application made before the relevant day under the repealed Act; and

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

23.1.2	adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to an application made before the relevant day under the repealed Act; and
23.1.3	deal with any matter that is subject to a reserved decision under the repealed Act before the relevant day; and
23.1.4	deal with any requirement or grant any variation imposed or proposed in connection with an application made before the relevant day under the repealed Act; and
23.1.5	deal with any requirement or grant any variation imposed or proposed in connection with an application made before the relevant day under the repealed Act.
<u>(Only applicable to assessment panels appointed by a council or a joint planning board)</u>	
24.	Regional Assessment Panels
24.1	The power pursuant to Clause 13(5) of Schedule 8 of the PDI Act to:
24.1.1	adopt any findings or determinations of a council development assessment panel or a regional development assessment panel under the repealed Act that may be relevant to an application made before the relevant day under the repealed Act; and
24.1.2	adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to an application made before the relevant day under the repealed Act; and
24.1.3	deal with any matter that is subject to a reserved decision under the repealed Act before the relevant day; and
24.1.4	deal with any requirement or grant any variation imposed or proposed in connection with an application made before the relevant day under the repealed Act; and
24.1.5	deal with any requirement or grant any variation imposed or proposed in connection with an application made before the relevant day under the repealed Act.
<u>(Relevant to regional assessment panels only)</u>	

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

25. Continuation of Processes
25.1 The power pursuant to Clause 18(2) of Schedule 8 of the PDI Act, to:
25.1.1 adopt any findings or determinations of a relevant authority under the repealed Act that may be relevant to an application to which Clause 18(1) of Schedule 8 of the PDI Act applies; and
25.1.2 adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to an application to which Clause 18(1) of Schedule 8 of the PDI Act applies; and
25.1.3 deal with any matter that is subject to a reserved decision under the repealed Act before the designated day; and
25.1.4 deal with any requirement or grant any variation imposed or proposed in connection with an application to which Clause 18(1) of Schedule 8 of the PDI Act applies; and
25.1.5 take any other step or make any other determination authorised by the regulations, or that is reasonably necessary to promote or ensure a smooth transition on account of the transfer of functions, powers or duties under Clause 18 of Schedule 8 of the PDI Act.

INSTRUMENT C
INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL

PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL)
REGULATIONS 2017

26.	Interpretation
26.1	The power pursuant to Regulation 3(6)(b) of the Planning, Development and Infrastructure (General) Regulations 2017 (the General Regulations) to require that a statement of site suitability provided to a relevant authority in connection with an application for development authorisation be issued by a site contamination auditor if the Environment Protection Authority directs the relevant authority to do so in relation to a particular application.
27.	Accredited Professionals
27.1	The power pursuant to Regulation 25(7)(c) of the General Regulations to form the opinion and be satisfied, on the basis of advice received from the accreditation authority under the Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019, a relevant professional association, or other relevant registration or accreditation authority, that a person has engineering or other qualifications that qualify the person to act as a technical expert under Regulation 25 of the General Regulations.
28.	Verification of Application
28.1	The power pursuant to Regulation 31(1) of the General Regulations, on the receipt of an application under Section 119 of the PDI Act, and in addition to any other requirement under the General Regulations, to, in order to ensure that an application has been correctly lodged and can be assessed in accordance with the PDI Act:
28.1.1	determine the nature of the development; and
28.1.2	if the application is for planning consent - determine:
28.1.2.1	whether the development involves 2 or more elements and, if so, identify each of those elements for the purposes of assessment against the provisions of the Planning and Design Code; and
28.1.2.2	the category or categories of development that apply for the purposes of development assessment; and
28.1.3	determine whether the relevant authority is the correct entity to assess the application under the PDI Act; and
28.1.4	if the relevant authority is the correct entity to assess the application (or any part of the application):

INSTRUMENT C
INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL

28.1.4.1	check that the appropriate documents and information have been lodged with the application; and
28.1.4.2	confirm the prescribed fees required to be paid at that point; and
28.1.4.3	provide an appropriate notice via the SA planning portal; and
28.1.5	if the relevant authority is not the correct entity to assess the application (or any part of the application):
28.1.5.1	provide the application (or any relevant part of the application), and any relevant plans, drawings, specifications and other documents and information in its possession, to the entity that the delegate considers to be the correct relevant authority in accordance with any practice direction; and
28.1.5.2	provide an appropriate notice via the SA planning portal.
29. Site Contamination – Detailed Site Investigation Report	
29.1	The power pursuant to Regulation 32A(1) of the General Regulations to, for the purposes of Section 119(3)(d) of the PDI Act in relation to an application to which Schedule 8 clause 2A applies, request the applicant to provide a detailed site investigation report if:
29.1.1	the preliminary site investigation report indicates that site contamination is present, or is likely to be present, at the site of the proposed development; and
29.1.2	the delegate considers that there is insufficient information to determine that the site is suitable for its intended use, having regard to:
29.1.2.1	site contamination; and
29.1.2.2	if remediation is required, the extent of that remediation; and
29.1.3	the application is not required to be referred to the Environment Protection Authority under Item 9A or 9AB of the table in Schedule 9 clause 3.
29.2	The power pursuant to Regulation 32A(2) of the General Regulations to require that a detailed site investigation report be prepared by a site contamination auditor if the Environment Protection Authority directs the relevant authority to do so in relation to a particular application.

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

30.	Site Contamination – Statement of Suitability
30.1	The power pursuant to Regulation 32B of the General Regulations to, for the purposes of Section 119(3)(d) of the PDI Act, in relation to an application to which Schedule 8 clause 2A applies, require the applicant to provide a statement of site suitability that confirms that the site is suitable for its intended use before the relevant authority issues a planning consent in relation to the application.
31.	Application and Further Information
31.1	The power pursuant to Regulation 33(4) of the General Regulations to seek clarification about any document or information that has been provided by the applicant.
32.	Amended Applications
32.1	The power pursuant to Regulation 35(3) of the General Regulations if an application is varied following referral under Division 2 or giving of notice under Division 3, to, if the variations are not substantial, consider the application without the need to repeat an action otherwise required under Division 2 or Division 3.
32.2	The power pursuant to Regulation 35(4) of the General Regulations if a variation would change the essential nature of a proposed development (as referred to in Section 119(9)(a) of the PDI Act), to agree with the applicant to proceed with the variation on the basis that the application (as so varied) will be treated as a new application under the General Regulations.
33.	Withdrawing/Lapsing Applications
33.1	The power pursuant to Regulation 38(1) of the General Regulations if an application is withdrawn by the applicant under Section 119(14) of the PDI Act, to notify:
33.1.1	any agency to which the application has been referred under Division 2 of the General Regulations; and
33.1.2	any person who has made a representation in relation to the application under Division 3 of the General Regulations,
	of the withdrawal.
33.2	The power pursuant to Regulation 38(2) of the General Regulations to lapse an application for a development authorisation under Part 7 of the PDI Act if at least one year has passed since the date on which the application was lodged with the relevant authority.
33.3	The power pursuant to Regulation 38(3) of the General Regulations before taking action to lapse an application under Regulation 38(2) of the General Regulations, to:

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

33.3.1	take reasonable steps to notify the applicant of the action under consideration; and
33.3.2	allow the applicant a reasonable opportunity to make submissions to the delegate (in a manner and form determined by the delegate) about the proposed course of action.
34. Court Proceedings	
34.1	The power pursuant to Regulation 40 of the General Regulations to, subject to Section 214(14) of the PDI Act, by notice in writing to the applicant, decline to deal with the application until any proceedings under the PDI Act have been concluded.
35. Additional Information or Amended Plans	
35.1	The power pursuant to Regulation 42(1) of the General Regulations if a delegate has referred an application to a prescribed body under Division 1 of the General Regulations and the relevant authority subsequently receives additional information, or an amended plan, drawing or specification, which is materially relevant to the referral, or to any report obtained as part of the referral process, to repeat the referral process.
36. Building Matters	
36.1	The power pursuant to Regulation 45(1) of the General Regulations to, if in assessing an application for building consent, the delegate considers that:
36.1.1	a proposed performance solution within the meaning of the Building Code requires assessment against a performance requirement of the Building Code which provides for the intervention of a fire authority; or
36.1.2	the proposed development is at variance with a performance requirement of the Building Code which provides for the intervention of a fire authority; or
36.1.3	special problems for fire fighting could arise due to hazardous conditions of a kind described in Section E of the Building Code,
	refer the application to the relevant fire authority for comment and report unless the fire authority indicates to the delegate that a referral is not required.
36.2	The power pursuant to Regulation 45(2) of the General Regulations, if a report is not received from the fire authority on a referral under Regulation 45(1) of the General Regulations within 20 business days, to presume that the fire authority does not desire to make a report.
36.3	The power pursuant to Regulation 45(3) of the General Regulations to have regard to any report received from a fire authority under Regulation 45 of the General Regulations.

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

36.4	The power pursuant to Regulation 45(4) of the General Regulations, if, in respect of an application referred to a fire authority under Regulation 45 of the General Regulations, the fire authority:
36.4.1	recommends against the granting of building consent; or
36.4.2	concurs in the granting of consent on conditions specified in its report,
	but the delegate:
36.4.3	proposes to grant building consent despite a recommendation referred to in Regulation 45(4)(a) of the General Regulations; or
36.4.4	does not propose to impose the conditions referred to in Regulation 45(b) of the General Regulations, or proposes to impose the conditions in varied form, on the grant of consent,
	to:
36.4.5	refer the application to the Commission; and
36.4.6	not grant consent unless the Commission concurs in the granting of the consent.
36.5	The power pursuant to Regulation 45(5) of the General Regulations to provide to the Commission a copy of any report received from a fire authority under Regulation 45(1) of the General Regulations that relates to an application that is referred to the Commission under the PDI Act.
37. Preliminary Advice and Agreement (Section 123)	
37.1	The power pursuant to Regulation 46(6) of the General Regulations, if:
37.1.1	the delegate permits an applicant to vary an application under Section 119(9) of the PDI Act; and
37.1.2	the delegate determines that the application no longer accords with the agreement indicated by the prescribed body,
	to refer the application (unless withdrawn) to the prescribed body:
37.1.3	to obtain a variation to the agreement under Section 123 of the PDI Act; or
37.1.4	to obtain a response from the prescribed body for the purposes of Section 122 of the PDI Act.
37.2	The power pursuant to Regulation 46(7) of the General Regulations if:

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016, REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL

37.2.1	an application is withdrawn by the applicant; and
37.2.2	the applicant sought to rely on an agreement under Section 123 of the PDI Act in connection with the application,
	to notify relevant prescribed body of the withdrawal.
37.3	The power pursuant to Regulation 46(8) of the General Regulations, if:
37.3.1	an application is lapsed by a relevant authority under Regulation 38 of the General Regulations; and
37.3.2	the applicant sought to rely on an agreement under Section 123 of the PDI Act in connection with the application,
	to notify the relevant prescribed body of the lapsing.
37.4	The power pursuant to Regulation 46(9) of the General Regulations, if:
37.4.1	an applicant seeks to rely on an agreement under Section 123 of the PDI Act in connection with the application; and
37.4.2	a notice of a decision on the application is issued by the delegate under Regulation 57 of the General Regulations,
	to provide a copy of the notice to the prescribed body within 5 business days after the notice is given to the applicant under Regulation 57 of the General Regulations.
38.	Notification of Application of Tree-damaging Activity to Owner of Land
38.1	The power pursuant to Regulation 48 of the General Regulations, if an owner of land to which an application for a tree-damaging activity in relation to a regulated tree relates is not a party to the application, to:
38.1.1	give the owner notice of the application within 5 business days after the application is made; and
38.1.2	give due consideration in the delegate's assessment of the application to any submission made by the owner within 10 business days after the giving of notice under Regulation 48 of the General Regulations.
39.	Public Inspection of Applications
39.1	The power pursuant to Regulation 49(3) of the General Regulations to request a person verify information in such manner as the delegate thinks fit.

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

40. Representations
40.1 The power pursuant to Regulation 50(5) of the General Regulations to, if the delegate considers that it would assist the delegate in making a decision on the application, allow a person:
40.1.1 who has made a representation under Regulation 50(1) of the General Regulations in relation to development being assessed under Section 107 of the PDI Act; and
40.1.2 who has indicated an interest in appearing before the delegate,
an opportunity (at a time determined by the delegate) to appear personally or by representative before the delegate to be heard in support of the representation that has been made under Regulation 50(1) of the General Regulations.
41. Response by Applicant
41.1 The power pursuant to Regulation 51(1) of the General Regulations to allow a response to a representation by the applicant to be made within such longer period as the delegate may allow.
42. Notice of Decision (Section 126(1))
42.1 The power pursuant to Regulation 57(4)(a) of the General Regulations to endorse a set of any approved plans and other relevant documentation with an appropriate form of authentication.
43. Consideration of Other Development Authorisations
43.1 The power pursuant to Regulation 60 of the General Regulations, to, in deciding whether to grant a development authorisation, take into account any prior development authorisation that relates to the same proposed development under the PDI Act, and any conditions that apply in relation to that prior development authorisation.

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

44. Certificate of Independent Technical Expert in Certain Cases
44.1 The power pursuant to Regulation 61(4)(c) of the General Regulations to form the opinion and be satisfied on the basis of advice received from the accreditation authority under the Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019 , a relevant professional association, or another relevant registration or accreditation authority, that a person has engineering or other qualifications, qualify the person to act as a technical expert under this regulation.
45. Urgent Work
45.1 The power pursuant to Regulation 63(1) of the General Regulations to,
45.1.1 determine a telephone number determined for the purposes of Regulation 63(1)(a) of the General Regulations; and
45.1.2 determine the email address for the purposes of Regulation 63(1)(b) of the General Regulations.
45.2 The power pursuant to Regulation 63(2) of the General Regulations to, for the purposes of Section 135(2)(c) of the PDI Act, allow a longer period.
45.3 The power pursuant to Regulation 63(3) of the General Regulations to, for the purposes of Section 135(2)(c) of the PDI Act, allow a longer period.
46. Variation of Authorisation (Section 128)
46.1 The power pursuant to Regulation 65(1)(a) of the General Regulations to, for the purposes of Section 128(2)(b) of the PDI Act, if a person requests the variation of a development authorisation previously given under the Act (including by seeking the variation of a condition imposed with respect to the development authorisation) to form the opinion and be satisfied that the variation is minor in nature, and approve the variation.
47. Advice from Commission
47.1 The power pursuant to Regulation 76(2) of the General Regulations, if a report is not received from the Commission within 20 business days from the day on which the application is lodged under Regulation 29 of the General Regulations or within such longer period as the Commission may require by notice to the relevant authority, to presume that the Commission does not desire to make a report.

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

48. Underground Mains Area
48.1 The power pursuant to Regulation 78(3) of the General Regulations, if an application relates to a proposed development that involves the division of land within, or partly within, an underground mains area (even if the area is declared as such after the application is lodged with the relevant authority), to require, as a condition on its decision on the application, that any electricity mains be placed underground.
49. Construction Industry Training Fund
49.1 The power pursuant to Regulation 99(4) of the General Regulations, if after assessing a proposed development against the building rules the delegate is yet to be satisfied that the appropriate levy has been paid under the <i>Construction Industry Training Fund Act 1993</i> or is not payable, to notify the applicant that the delegate cannot issue a building consent until the delegate is satisfied that the levy has been paid or is not payable.
49.2 The power pursuant to Regulation 99(5) of the General Regulations, if a notification is given under Regulation 99(4) of the General Regulations, if satisfactory evidence is not provided to the delegate within 20 business days after the date of the notification, to, if the delegate thinks fit, determine that the application has lapsed.
50. New Dwellings
50.1 The power pursuant to clause 2(1)(b) of Schedule 6B of the General Regulations to form the belief that the allotment is, or may have been, subject to site contamination as a result of a previous use of the land or a previous activity on the land or in the vicinity of the land, other than a previous use or activity that was for residential purposes.
51. Plans for Building Work
51.1 The power pursuant to Clause 4(3) of Schedule 8 of the General Regulations, in relation to an application for building consent for development consisting of or involving an alteration to a building, if:
51.1.1 the applicant is applying for a change in the classification of the building to a classification other than Class 10 under the Building Code; or
51.1.2 the building was erected before 1 January 1974 and the applicant is applying for a classification other than Class 10 under the Building Code to be assigned to the building,

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

to require the application to be accompanied by such details, particulars, plans, drawings, specifications and other documents (in addition to the other documents required to accompany the application) as the delegate reasonably requires to show that the entire building will, on completion of the building work, comply with the requirements of the PDI Act and the General Regulations for a building of the classification applied for or with so many of those requirements as will ensure that the building is safe and conforms to a proper structural standard.

**PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS)
REGULATIONS 2019**

52. Calculation or Assessment of Fees

52.1 The power pursuant to Regulation 5(1) of the PDI (Fees, Charges and Contributions) Regulations 2019 (**the Fees Regulations**) in relation to an application which is duly lodged with the council under a related set of regulations (including via the SA planning portal):

52.1.1 to require the applicant to provide such information as the delegate may reasonably require to calculate a prescribed fee; and

52.1.2 to make any other determination for the purposes of the Fees Regulations or a related set of regulations or a fee notice (even if the assessment panel is not a relevant authority).

52.2 The power pursuant to Regulation 5(2) of the Fees Regulations, if the delegate is acting under Regulation 5(1) of the Fees Regulations, or as the delegate of a relevant authority, believes that any information provided by an applicant is incomplete or inaccurate, to calculate a prescribed fee on the basis of estimates made by the delegate.

52.3 The power pursuant to Regulation 5(3) of the Fees Regulations to, at any time, and despite an earlier calculation or acceptance of an amount in respect of the fee, reassess a fee payable under the Fees Regulations or a related set of regulations.

PLANNING AND DESIGN CODE

53. Procedural Matter

53.1 The power pursuant to and in accordance with the Planning and Design Code (**the PD Code**) to form the opinion development is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development and therefore is excluded from the operation of Sections 107(3) and (4) of the PDI Act.

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

53.2	The power pursuant to and in accordance with the PD Code to determine that the variation to one or more corresponding exclusions prescribed in Column B is minor in nature and does not require notification.
54. Procedural Referrals	
54.1	The power pursuant to and in accordance with the PD Code to form the opinion development is minor in nature and would not warrant a referral when considering the purpose of the referral.
54.2	The power pursuant to and in accordance with the PD Code to form the opinion and deem:
54.2.1	alteration to an existing access or public road junction;
54.2.2	development that changes the nature of vehicular movements or increases the number or frequency of movements through an existing access,
	to be minor.
54.3	The power pursuant to and in accordance with the PD Code to form the opinion an alteration or extension of an existing dwelling is minor.
54.4	The power pursuant to and in accordance with the PD Code to form the opinion development is minor in nature or like for like maintenance and would not warrant a referral when considering the purpose of the referral.
54.5	The power pursuant to and in accordance with the PD Code to form the opinion development is minor in nature or like for like maintenance and would not warrant a referral when considering the purpose of the referral.
54.6	The power pursuant to and in accordance with the PD Code to form the opinion alterations to an existing access or public road junction are minor.
54.7	The power pursuant to and in accordance with the PD Code to form the opinion development that changes the nature of vehicular movements or increase the number or frequency of movements through an existing access is minor.
54.8	The power pursuant to and in accordance with the PD Code to form the opinion the variation to an application is minor in nature or would not warrant a referral when considering the purpose of the referral.
54.9	The power pursuant to and in accordance with the PD Code to form the opinion development materially affects the context within which the State Heritage Place is situated.

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

54.10 The power pursuant to and in accordance with the PD Code to form the opinion the development is minor in nature and would not warrant a referral when considering the purpose of the referral.
55. Administrative Terms and Definition
55.1 The power pursuant to and in accordance with Part 8 of the PD Code to for the purposes of Table 5 – Procedural Matters (PM) – Notification and the definition of ‘Excluded Building’, form the opinion that:
55.1.1 the building, structure or landscape feature (or part thereof) does not contribute to the building or features of identified heritage value within the State Heritage Area;
55.1.2 the building (or part thereof) does not demonstrate the historic characteristics as expressed in the Historic Area Statement.
56. Referral Body: Minister Responsible for the Administration of the Aquaculture Act 2001
56.1 The power pursuant to and in accordance with Part 9.4 of the PD Code to form the opinion that aquaculture development which involves an alteration to an existing or approved development is minor in nature.

STATE PLANNING COMMISSION PRACTICE DIRECTION 3 (NOTIFICATION OF PERFORMANCE ASSESSED DEVELOPMENT APPLICATIONS) 2019

57. Responsibility to Undertake Notification
57.1 The power pursuant to clause 6(4) of the State Planning Commission Practice Direction 3 (Notification of Performance Assessed Development Applications) 2019 (PD3), should the applicant request the relevant authority to place the notice on the land and pay the relevant fee, to (either personally or by engagement of a contractor) give notice of the application to members of the public by notice placed on the relevant land in accordance with Section 107(3)(a)(ii) of the PDI Act.
58. Preparing for Notification
58.1 The power pursuant to clause 8 of PD3, if the applicant has confirmed they accept responsibility to place a notice on the land as per clause 6(3)(a) of PD3, to, at least 4 business days prior to the commencement of the notification period:
58.1.1 give notice of the anticipated commencement date and of the notification period to the applicant; and

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

58.1.2	provide the applicant with a copy of the content of the notice to be placed on the relevant land; and
58.1.3	advise the applicant of the position and number of notice(s) to be erected on the land in accordance with clause 10 of PD3.
59. Notice on Land	
59.1	The power pursuant to clause 10(2) of PD3, in relation to clause 10(1)(a) of PD3, to determine the most appropriate position for the notice on the land in order to provide for maximum visibility from a public road, and in cases where the relevant land has more than 1 frontage to a public road, to determine that more than 1 notice must be erected on each of the public road frontages to ensure that notice of the development is reasonably apparent to members of the public.

STATE PLANNING COMMISSION PRACTICE DIRECTION (APPOINTMENT OF ADDITIONAL MEMBERS TO ASSESSMENT PANEL) 2019

60. Qualifications and Experience of Additional members	
60.1	The power pursuant to clause 4(6) of the State Planning Commission Practice Direction (Appointment of Additional Members to Assessment Panel) 2019 (PD5) where the delegate forms the view that additional expert advice is required for an application which requires assessment of a matter listed in Column 1 of PD5, to engage an additional assessment panel member provided that person maintains both the minimum experience detailed in Column 2 of PD5, as well as the minimum qualification listed in Column 3 of PD5.
60.2	The power pursuant to clause 4(7) of PD5 to be satisfied of the minimum experience and qualifications of an additional assessment panel member.

STATE PLANNING COMMISSION PRACTICE DIRECTION (SCHEME TO AVOID CONFLICTING REGIMENS) 2019

61. Scheme Provisions	
61.1	The power pursuant to clause 5(1) of the State Planning Commission Practice Direction (Scheme to Avoid Conflicting Regimens) 2019 (PD6), to in undertaking a planning assessment or imposing controls, including through the imposition of conditions of planning consent, ensure that such assessment or controls do not conflict or duplicate matters dealt with or addressed under licencing or regulatory regimens under another Act.
61.2	The power pursuant to clause 5(3) of PD6 to, where the delegate is uncertain whether a matter conflicts with, or duplicates a matter dealt with under a licencing or regulatory regime under another Act, to seek the advice of that authority or agency.

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL

**SITE PLANNING COMMISSION PRACTICE DIRECTION 14 SITE CONTAMINATION ASSESSMENT
2021**

62. Change of Use Where Remediation is Required After the Issue of Planning Consent – Section 127(1)(b) of Act
62.1 The power pursuant to clause 12 of the State Planning Commission Practice Direction (Site Contamination Assessment) 2021 (PD14) to be satisfied that a site is suitable for its intended use subject to remediation being undertaken and to issue a planning consent without the remediation work having been carried out, subject to Condition A, B or C in PD14 as relevant.
63. Land Division Where Remediation is Required After the Issue of Planning Consent – Section 127(1)(b) of Act
63.1 The power pursuant to clause 13 of PD14 to be satisfied in relation to proposed land division that a site is suitable for its intended use subject to remediation being undertaken and to issue a planning consent without the remediation work having been carried out subject to the consent being subject to the following condition: <i>A land division certificate under Section 138 of the Planning, Development and Infrastructure Act 2016 must not be issued until a statement of site suitability is issued certifying that the required remediation has been undertaken and the land is suitable for the proposed use.</i>

SITE PLANNING COMMISSION PRACTICE DIRECTION 16 URBAN TREE CANOPY OFF-SET SCHEME

64. Reserved Matter
64.1 The power pursuant to clause 6(2) of State Planning Commission Practice Direction 16 Urban Tree Canopy Off-set Scheme (PD16) to where an applicant has elected to reserve consideration of the DTS/DPF Policy in the Overlay, as provided for in the Code and under Section 102(4) of the PDI Act, to require the applicant to provide documents which are considered by the delegate as sufficient to confirm whether the relevant development site includes a Designated Soil Type.
65. Process for Payments to the Fund
65.1 The power pursuant to clause 7 of PD16 where an applicant has elected to make a payment into the Fund, in lieu of planting a tree (or trees) as provided in the DTS/DPF Policy in the Overlay, to verify the payment as being correct in accordance with the Scheme, prior to the granting of development authorisation under the PDI Act.

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

66. Development within Council Fund Designated Areas
66.1 The power pursuant to clause 8(3) of PD16, where a development application relates to a site which is located both within a Council Fund Designated Area and within the Overlay to impose a condition requiring payment into a Council Fund, irrespective of an election by the applicant to plant a tree or make a payment into the Fund as provided under the Scheme.

URBAN TREE CANOPY OFF-SET SCHEME

67. Payment into Fund
67.1 The power pursuant to clause 6(4) of the Urban Tree Canopy Off-set Scheme (UTCOS) where an applicant has elected to make a contribution to the fund under this scheme to impose a condition on the relevant development authorisation for planning consent requiring that payment of the amount specified in clause 6(1) of the UTCOS be made into the fund before the issue of development approval for the subject development application.
68. Use of Money from Fund
68.1 The power pursuant to clause 9 of the UTCOS to use money distributed from the fund for any of the following purposes (and for no other purpose):
68.1.1 to provide for the planting, establishment and maintenance of trees within reserves or public land anywhere within a designated local government area; or
68.1.2 the purchase of land within a designated local government area to ensure:
68.1.2.1 the preservation of trees; or
68.1.2.2 that trees can be established in an area with a low urban tree canopy level or a demonstrated urban tree canopy loss.

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016,
REGULATIONS, PLANNING AND DESIGN CODE AND PRACTICE DIRECTIONS OF POWERS OF AN ASSESSMENT PANEL**

SCHEDULE OF CONDITIONS

**CONDITIONS OR LIMITATIONS
APPLICABLE TO DELEGATIONS
CONTAINED IN THIS INSTRUMENT**

Paragraph(s) in instrument to which conditions/limitations apply	Conditions / Limitations
Nil	<p style="text-align: center;">Limitation:</p> <p>This delegation is limited to applications in relation to which:</p> <ul style="list-style-type: none"> • No valid representations are received; or • All valid representations are withdrawn; or • No representor wishes to be heard in relation to their representation. <p style="text-align: center;">Exclusion to Limitation:</p> <p>Except in cases where a deemed consent notice has been served on the Council Assessment Panel, in which case the limitation does not apply, and the Assessment Manager is delegated the power pursuant to Section 102(1)(a)(i) of the PDI Act to grant consent in respect of the relevant provisions of the Planning Rules without limitation</p>
67	<p style="text-align: center;">Limitation:</p> <p>This delegation is limited to the Chief Executive Officer</p>

These Meeting Procedures are to be read in conjunction with the meeting procedures contained within the *Planning, Development and Infrastructure (General) Regulations 2017 (Regulations)* and Council's adopted CAP Terms of Reference.

1. CAP Meetings

Ordinary Meetings

- 1.1 Subject to clause 1.2, ordinary meetings of the Council Assessment Panel (CAP) will be held at such times and places as determined by the CAP.
- 1.2 The time and place of the first meeting of the CAP following its establishment will be determined by the Assessment Manager. The Assessment Manager must give notice of the first CAP meeting to the CAP and the public in accordance with clauses 1.4 and 1.6.
- 1.3 Notice of an ordinary meeting will be given to all CAP Members by the Assessment Manager not less than 3 clear days prior to the holding of the meeting in accordance with clause 1.4.
- 1.4 Notice of a meeting of the CAP must:
 - 1.4.1 be in writing;
 - 1.4.2 set out the date, time and place of the meeting;
 - 1.4.3 contain or be accompanied by the agenda and any documents and/or reports that are to be considered at the meeting (in so far as practicable); and
 - 1.4.4 be given to a CAP Member:
 - 1.4.4.1 via email to an email address authorised in writing by the CAP Member; or
 - 1.4.4.2 by other means authorised by the CAP Member as being an available means of giving notice;
 - 1.4.5 pursuant to clause 8, where attendance at the meeting is to occur by electronic means (in whole or in part), include details of how to connect to the meeting; and
 - 1.4.6 where the meeting is live streamed for viewing by members of the public pursuant to clause 8, include details of how to access and/or connect to the live stream.
- 1.5 A notice that is not given in accordance with clause 1.4 is taken to have been validly given if the Assessment Manager considers it impracticable to give the notice in accordance with that clause and takes action the Assessment Manager considers reasonably practicable in the circumstances to bring the notice to the attention of the CAP Member.
- 1.6 Subject to clause 1.7, the agenda, CAP report and associated attachments for all meetings of the CAP will be available for viewing by the public on the Council's website and at the Council's offices as soon as practicable after the time that notice of the meeting has been given to CAP Members.
- 1.7 If the CAP is receiving information and/or legal advice that in the opinion of the Assessment Manager relates to a matter under regulation 13(2)(a)(i) – (x) (inclusive) of the Regulations, then that information and/or legal advice will not be made publicly available pursuant to clause 1.6 until the CAP has considered the agenda item to which it relates. However, if in considering that agenda item, the CAP decides to retain the information and/or legal advice in confidence, then it will not be made publicly available until such time, event, or circumstance as is stipulated by the CAP in its absolute discretion.

- 1.8 The Assessment Manager may, with leave or at the request of the Presiding Member, include in the agenda an item to be considered at the meeting to which the agenda relates after notice of the meeting has been given to CAP Members. In such instance, the Assessment Manager shall provide an updated agenda and any documents and/or reports relating to that item to be considered at the meeting to CAP Members as soon as practicable. The Assessment Manager will also make an updated agenda available to the public.
- 1.9 The Presiding Member may adjourn a CAP Meeting to a future date and time, unless the CAP resolves to continue the meeting.
- 1.10 A meeting may break for a period of time as determined by the Presiding Member.

Special Meetings

- 1.11 The Assessment Manager may by delivering a written request to the Presiding Member, or two or more CAP Members, require a special meeting of the CAP to be held. The written request must be accompanied by the agenda for the special meeting.
- 1.12 On receipt of a request pursuant to clause 1.11, the Assessment Manager must determine the date, time and place of the special meeting and give notice to all CAP Members at least 4 hours before the commencement of the special meeting.

2. Deputy Members

- 2.1 If a CAP Member is unable to attend a meeting or part of a meeting, he or she must use his or her best endeavours to notify the Assessment Manager at his or her earliest opportunity.
- 2.2 If notification pursuant to clause 2.1 is given, the Assessment Manager may request a Deputy Member (subject to relevant clauses in relation to Deputy Members within the CAP Terms of Reference) attend the meeting in place of a CAP Member for the meeting or part of the meeting.
- 2.3 Unless the context otherwise requires, a reference to a CAP Member in these Meeting Procedures includes a Deputy Member.

3. Commencement of Meetings

- 3.1 Subject to a quorum (minimum of three (3) CAP Members) being present, a meeting of the CAP will commence as soon as possible after the time specified in the notice of a meeting.
- 3.2 If the number of apologies received by the Assessment Manager indicates that a quorum will not be present at a meeting, the Assessment Manager may adjourn the meeting to a specified day and time.
- 3.3 If at the expiration of thirty minutes from the commencement time specified in the notice of the meeting a quorum is not present, the Presiding Member may adjourn the meeting to a specified date and time.
- 3.4 In the instance when the Presiding Member is absent from a meeting, the Assessment Manager, or such other person as nominated by the Assessment Manager, will preside at the meeting until such time as the meeting appoints an Acting Presiding Member.

4. Representations

- 4.1 The Assessment Manager and/or Presiding Member may in his or her discretion exclude a representation or response to representation(s) which is received out of time;

- 4.2 The Presiding Member may in his or her discretion accept and allow to be considered by the CAP any new or additional material submitted by a representor or applicant. The CAP may defer consideration of the application to enable full and proper assessment of the further information.
- 4.3 Any material to be considered by the CAP pursuant to clause 4.2 must be provided to the applicant and/or representor(s) (as the case may be) and those parties be provided with an opportunity to respond, either in writing or verbally, at the discretion of the Presiding Member.
- 4.4 In relation to each application to be considered and determined by the CAP:
 - 4.4.1 a person who has lodged a representation which has not been excluded pursuant to clause 4.1 and who has indicated that they wish to be heard on their representation is entitled to appear before the CAP and be heard in support of their representation, in person or by an agent;
 - 4.4.2 where one or more representors are heard by the CAP, the applicant is entitled to appear before the CAP to respond to any matters raised by a representor, in person or by an agent;
 - 4.4.3 representors and applicants will be allowed five minutes each to address the CAP. The Presiding Member may allow a party additional time at his or her discretion;
 - 4.4.4 CAP Members may question and seek clarification from a representor or applicant who has addressed the CAP at the conclusion of their address; and
 - 4.4.5 following addresses from representors and the applicant, the Presiding Member will invite all CAP Members to speak on any matter relevant to the application.

5. Review of an Assessment Manager Decision

Commencing a Review

- 5.1 An application for review must relate to a prescribed matter, as defined in section 201 of the Act (**Prescribed Matter**), for which an Assessment Manager was the relevant authority.
- 5.2 An application for review must be:
 - 5.2.1 made using the "Application to Assessment Panel for Assessment Manager's Decision Review" published on the SA Planning Portal (**Form**);
 - 5.2.2 lodged in a manner identified on the Form; and
 - 5.2.3 lodged within one (1) month of the applicant receiving notice of the Prescribed Matter unless the Presiding Member in his or her discretion grants an extension of time.
- 5.3 In determining whether to grant an extension of time, the Presiding Member may consider:
 - 5.3.1 the reason for the delay;
 - 5.3.2 the length of the delay;
 - 5.3.3 whether any rights or interests of other parties would be affected by allowing the review to be commenced out of time;
 - 5.3.4 the interests of justice;
 - 5.3.5 whether the applicant has, or is within time to, appeal the Prescribed Matter to the Environment, Resources and Development Court; and
 - 5.3.6 any other matters the Presiding Member considers relevant.

Materials for Review Process

- 5.4 The Assessment Manager shall present to the CAP all materials which were before the Assessment Manager (or delegate) at the time of the decision on the Prescribed Matter including:
 - 5.4.1 application documents, reports, submission, plans specifications or other documents submitted by the applicant; and
 - 5.4.2 internal and/or external referral responses and any checklist and/or report from Council staff or an external planning consultant written for the Assessment Manager.
- 5.5 The Assessment Manager (or delegate) must:
 - 5.5.1 prepare a report to the CAP setting out details of the relevant development application, the Prescribed Matter the subject of the review, any additional written submissions (including additional information or materials) prepared by the applicant pursuant to paragraph 5.6.3, and the reasons for the Assessment Manager's (or delegate's) decision and response to such additional written submission of the applicant so provided; and
 - 5.5.2 not introduce new material (except to address any written submission of the applicant under paragraph 5.6.3.3 or referral response under paragraph 5.6.4) or review the decision previously made.

Review Process

- 5.6 The review hearing shall be undertaken in accordance with the following:
 - 5.6.1 The Assessment Manager must advise the applicant in writing of the time and date of the CAP meeting at which the review application will be heard not less than five (5) business days before the CAP meeting.
 - 5.6.2 On review, the CAP will consider the decision afresh.
 - 5.6.3 An applicant for an application to the CAP for a review of a Prescribed Matter must be notified in writing by the Assessment Manager within five (5) business days of receipt of the application of the opportunity to:
 - 5.6.3.1 provide the CAP with their written submissions (which may include additional information and materials) in relation to the review; and
 - 5.6.3.2 appear and make submissions at the hearing in person, and the applicant must provide to the Assessment Manager:
 - 5.6.3.3 any such written submissions within ten (10) clear business days of the date of that notification (or such longer period as requested by the applicant and granted by the Presiding Member's discretion); and
 - 5.6.3.4 written confirmation of whether the applicant will appear and make submissions at the hearing at least five (5) business days prior to the hearing.
 - 5.6.4 Within five (5) business days of the receipt of any written submissions under paragraph 5.6.3.3, the Presiding Member should determine in their discretion whether any referral agency who previously provided a response on the application should be given an opportunity to review and respond to the additional information and/or materials in a manner and timeframe determined by the Presiding Member. Any response received from such a referral agency should be provided to the applicant by the Assessment Manager within two (2) business days of receipt.

- 5.6.5 The Presiding Member may defer the date for a hearing of the review application for a reasonable period, if it considers that the written submissions received under paragraph 5.6.3.3 are substantial, in order to enable reasonable time for any response on the written submissions of a referral agency under paragraph 5.6.4 and/or response by the Assessment Manager. Written notice advising of any such deferral by the Presiding Member must be provided to the applicant by the Assessment Manager as soon as reasonably practicable and no less than 24 hours before the hearing at the CAP meeting.
- 5.6.6 The Presiding Member may however, ask or permit CAP Members to ask questions or seek clarification from the applicant and/or the Assessment Manager (or delegate), in his or her discretion.
- 5.6.7 The Assessment Manager must be present at the CAP meeting to respond to any questions or requests for clarification from the CAP.
- 5.6.8 Where the decision on the Prescribed Matter was made by a delegate of the Assessment Manager, the delegate may appear in place of the Assessment Manager.
- 5.6.9 The Presiding Member will invite all CAP Members to speak on any matter relevant to the review.
- 5.6.10 The CAP may resolve to defer its decision if it considers it requires additional time or information to make its decision.

Outcome of Review

- 5.7 The CAP may, on a review:
 - 5.7.1 affirm the Assessment Manager's decision;
 - 5.7.2 vary the Assessment Manager's decision; or
 - 5.7.3 set aside the Assessment Manager's decision and substitute its own decision.
- 5.8 An applicant should be advised in writing of the CAP's decision by the Assessment Manager within a reasonable time.

6. Decision Making

- 6.1 Subject to complying with these procedures, during debate and decision making, the CAP will act with a minimum of formality and without regard to formal procedures or protocols.
- 6.2 At all times, discussion will be managed by the Presiding Member in the Presiding Member's absolute discretion. The Presiding Member will ensure that each CAP Member has an opportunity for discussion, comments and questions about the matter for decision.
- 6.3 At the conclusion of discussion and debate on a matter, the Presiding Member will call for a motion to vote in relation to the recommendation as printed in the agenda report or for a motion on alternative terms to that recommendation (including, but not limited to, the addition, deletion or amendment of a condition or note proposed in that recommendation).
- 6.4 Each CAP Member present at a meeting of the CAP, (including a Deputy Member who has been requested to attend the meeting or part of the meeting in place of a CAP Member who is unable to attend the meeting) is entitled to one vote on any matter arising for decision. Additional experts/advisors appointed by the CAP to provide expert advice and assistance are not entitled to vote.

- 6.5 Matters arising for decision at a meeting of the CAP will be decided by a majority of the votes cast by CAP Members present at the meeting and entitled to vote. If the votes are equal, the Presiding Member is entitled to a second or casting vote.
- 6.6 In relation to each application it considers, the CAP must:
 - 6.6.1 determine whether the proposal is seriously at variance with the Development Plan or Planning Rules (as relevant); and
 - 6.6.2 provide reasons for refusing Development Plan consent or planning consent (as relevant) (including reasons for any determination that the proposal is seriously at variance).
- 6.7 The Presiding Member may adjourn a meeting in the event of a disruption or disturbance by any person (including a CAP Member, applicant, representor or other member of the public) to a specified date and time.
- 6.8 The Presiding Member may ask a member of the public (including an applicant, representor or other member of the public) to leave or be disconnected from a meeting where he or she is, in the opinion of the Presiding Member:
 - 6.8.1 behaving in a disorderly manner; or
 - 6.8.2 causing an interruption or disruption to the meeting.

7. Minutes and Reporting

- 7.1 The CAP must ensure that accurate minutes are kept of all meetings.
- 7.2 The Assessment Manager, or a person nominated by the Assessment Manager, will take minutes of all meetings.
- 7.3 The minutes will record:
 - 7.3.1 the names of all CAP Members present;
 - 7.3.2 the names of all CAP Members from whom apologies have been received;
 - 7.3.3 the name and time that a CAP Member enters or leaves the meeting;
 - 7.3.4 the name of every person (and their representative) who makes or responds to a representation;
 - 7.3.5 the methods of attendance by all CAP Members present and by every person who makes or responds to a representation (and their representative);
 - 7.3.6 in relation to each application determined by the CAP:
 - 7.3.6.1 the determination of the CAP as to whether the proposal is seriously at variance with the Development Plan or Planning Rules (as relevant);
 - 7.3.6.2 the reasons for refusing Development Plan consent or planning consent (as relevant) (including reasons for any determination that the proposal is seriously at variance); and
 - 7.3.7 if an application is not determined by the CAP, the deferral of the application and the reasons for the deferral;
 - 7.3.8 a decision to exclude the public from attendance and retain the minutes of the item in confidence pursuant to the *Regulations*;
 - 7.3.9 in relation to each application for review of an Assessment Manager decision:
 - 7.3.9.1 the determination of the CAP as to whether the proposal is seriously at variance with the Planning Rules; and
 - 7.3.9.2 the reasons for the CAP's decision under section 203(4) of the PDI Act;

- 7.3.10 any disclosure of a direct or indirect pecuniary interest in any aspect of a development or anybody associated with any aspect of a development made by a CAP Member in accordance with Section 83(1)(g) of the PDI Act, and the nature of the interest;
 - 7.3.11 any disclosure of a conflict of interest made by a CAP Member pursuant to the Code of Conduct adopted by the Minister under Clause 1(1)(c) of Schedule 3 of the PDI Act (Code of Conduct), and the nature of the interest; and
 - 7.3.12 if a meeting is adjourned by the Presiding Member, the reason for the adjournment and the date and time to which the meeting is adjourned.
- 7.4 All minutes must be confirmed by the CAP as being accurate, at the commencement of the following CAP meeting.

8. Electronic Meetings

- 8.1 Definitions:
- 8.1.1 **connect** means able to hear and/or see the meeting by electronic means, including via live stream;
 - 8.1.2 **disconnect** means to remove the connection so as to be unable to hear and see the meeting;
 - 8.1.3 **electronic** means includes using 1 or both (including a combination) of the following means of communication:
 - 8.1.3.1 audio visual;
 - 8.1.3.2 audio,and includes a telephone, computer or other device used for communication;
 - 8.1.4 **live stream** means the transmission of audio and/or video from a meeting at the time the meeting is occurring.
- 8.2 Pursuant to section 39 of the *Legislation Interpretation Act 2021*, at the discretion of the Assessment Manager and/or Presiding Member:
- 8.2.1 a CAP meeting may take place entirely by electronic means; and/or
 - 8.2.2 a CAP meeting may be livestreamed; and/or
 - 8.2.3 one or more CAP Members may attend a CAP meeting via electronic means; and/or
 - 8.2.4 a representor and/or applicant under clause 4 may attend a CAP meeting via electronic means; and/or
 - 8.2.5 an applicant for a review of a decision of an Assessment Manager under clause 5 may attend a CAP meeting via electronic means.
- 8.3 The discretion of the Assessment Manager and/or Presiding Member under clause 8.2 may be exercised to require attendance at the CAP meeting by electronic means regardless of whether a request for attendance by electronic means has been received or not by the Assessment Manager and/or Presiding Member.
- 8.4 A CAP Member who is attending a meeting by electronic means is taken to be present at the meeting provided that the Presiding Member can see and hear each CAP Member and a CAP Member:
- 8.4.1 can hear and, where possible, see all CAP Members who are present at the meeting;
 - 8.4.2 can hear and, where possible, see all representors (or their representatives) and applicants (or their representatives) who speak at the meeting;
 - 8.4.3 can be heard and, where possible, be seen by CAP Members present at the meeting; and

- 8.4.4 can be heard and, where possible, be seen by the person recording the minutes of the meeting.
- 8.5 Where a meeting occurs solely via electronic means, it shall (to the extent that the public is not able to physically attend the meeting) be live streamed.
- 8.6 Where a meeting is being live streamed, the live stream shall be disconnected only during those parts of the meeting during which the public has been excluded from attendance pursuant to regulation 13(2) of the Regulations.
- 8.7 Where the public has been excluded from attendance pursuant to regulation 13(2) of the Regulations, the Assessment Manager or a person nominated by the Assessment Manager shall ensure that all parties except for CAP Members (and the Assessment Manager, Council Administration, the meeting minute taker and any other person identified by the CAP (such as professional advisors to the CAP)) disconnect from or are disconnected from the meeting.

9. Additional Procedures and Support

- 9.1 Insofar as any procedure to be followed by the CAP is not prescribed by the PDI Act and Regulations, the CAP's Terms of Reference, the Code of Conduct or these Meeting Procedures - the CAP may by resolution determine the procedure for itself. Any such determination may be added to these Meeting Procedures.
- 9.2 The CAP may call for and consider such professional assistance from the Assessment Manager and, in consultation with the Assessment Manager, other professional advisors as it deems necessary and appropriate from time to time.
- 9.3 The CAP will permit and encourage active participation of Council staff in attendance at a meeting in providing advice to the CAP.
- 9.4 If a CAP Member requires additional information or clarification on a matter contained within an Agenda, an email shall be directed to the Assessment Manager as soon as practicable. The response will be provided to all CAP Members.
- 9.5 If a CAP Member has a conflict of interest on a matter contained with the Agenda, that CAP Member must advise the Assessment Manager in writing as soon as practicable after distribution of the Agenda.

City of Adelaide Council Assessment Panel
Meeting Schedule 2024/2025

Unless otherwise advised, meetings will commence in the Colonel Light Room in the Adelaide Town Hall at 5.30pm on the dates specified below:

CAP MEETINGS 2024
29 January
26 February
25 March
29 April +
27 May
24 June
22 July
26 August
23 September
21 October *
18 November *
9 December *
CAP MEETINGS 2025
29 January (Wednesday due to Australia Day)
24 February
24 March
28 April
26 May
23 June
28 July
25 August
22 September
20 October *
17 November *
8 December *

+ meeting not on the fourth Monday due to public holiday

* meeting not on the fourth Monday allowing for lead-in to Christmas closure

CITY OF ADELAIDE
COUNCIL ASSESSMENT PANEL

Annual Report 2023

January 2024

ACKNOWLEDGEMENT OF COUNTRY

The City of Adelaide acknowledges that we are located on the traditional Country of the Kaurna people of the Adelaide Plains and pays respect to Elders past, present and emerging.

We recognise and respect their cultural heritage, beliefs and relationship with the land. We also extend that respect to visitors of other Aboriginal Language Groups and other First Nations.

DOCUMENT PROPERTIES

Contact for enquiries and proposed changes

If you have any questions regarding this document or if you have a suggestion for improvements, please contact:

Contact Officer: Seb Grose
Title: Manager, City Development
Program: Regulatory Services
Phone: (08) 8203 7195
Email: s.grose@cityofadelaide.com.au

Record Details

HPRM Reference: ACC2024/6908
HPRM Container: 2024/00038

Version History

Version	Revision Date	Revised By	Revision Description
Draft	6 November 2023	Seb Grose	Initial draft
Draft	11 January 2024	Seb Grose	Final draft
Draft	16 January 2024	Steve Zaluski	Review
Final	18 January 2024	Seb Grose	Final version

TABLE OF CONTENTS

Acknowledgement of Country.....	1
Document Properties	1
Table of Contents	2
1. Purpose.....	3
2. Planning Decisions	4
3. Public Notification.....	4
4. Appeals Initiated.....	5
5. Key Case Law Updates	5
6. Analysis and Advice	6

1. PURPOSE

The City of Adelaide Council Assessment Panel (CAP) has been established pursuant to section 82 and 83 of the *Planning, Development and Infrastructure Act 2016*.

The CAP is the relevant authority for granting of planning consent for performance assessed development applications that are publicly notified, subject to delegations.

This report provides an overview of the performance of CAP during 2023 in terms of attendance at meetings, the number and development value of applications determined, details relating to public notification, the number of appeals and key case law updates.

It should be noted some figures in this report rely on the PlanSA reporting system which is subject to ongoing improvements.

Attendance of Panel Members

At the end of 2023, nine meetings of the Panel had been held with three cancellations. The attendance record between 1 January 2023 and 31 December 2023 is provided as follows:

Panel Member	Meetings Held	Attended	Apology
Nathan Cunningham (Presiding Member)	9	9	-
Colleen Dunn	9	9	-
Emily Nankivell	9	5*	4
Mark Adcock	9	8	1
Professor Mads Gaardboe (Deputy Member)	6	6**	-
Councillor Martin (Council Member to 27 March 2023 meeting)	2	2***	-
Councillor Snape (Council Member from 29 May 2023 meeting)	6	6***	-
Councillor Noon (Deputy Council Member)	1	1**	-

* Emily Nankivell had reduced attendance due to personal leave for a portion of the year

** Professor Mads Gaardboe and Councillor Noon as Deputy Members had reduced attendance

*** Councillors Martin and Snape had reduced attendance due to a change in the Council Member in early 2023

2. PLANNING DECISIONS

Tables 2.1 and 2.2 refer to the number of development applications in 2023 compared with 2022 and 2021. The figures do not include development applications for which the State Planning Commission is the Relevant Authority (Schedule 6 and Section 131 applications).

At its meeting on 31 January 2022, the CAP determined to continue to assess development applications that were publicly notified with speaking representations. This is based on the model of delegations provided by the Local Government Association. If there are no speaking representations, the application is delegated to the Assessment Manager for a decision.

TABLE 2.1 – CITY OF ADELAIDE TOTAL DEVELOPMENT APPLICATIONS			
YEAR	DAs SUBMITTED	ASSESSMENT MANAGER DELEGATION	DEVELOPMENT COST
2021	992	454	\$178.76 million
2022	936	568	\$260.9 million
2023	969	650	\$231.4 million

- *Assessment Manager Delegation figures do not include development applications where either CAP or other Accredited Professionals were the Relevant Authority*

TABLE 2.2 – APPLICATIONS DETERMINED BY CAP				
YEAR	DAs ASSESSED	SUPPORT ADMINISTRATION RECOMMENDATION	AGAINST ADMINISTRATION RECOMMENDATION	DEVELOPMENT COST
2021	27	23 (all granted)	4 (2 granted & 2 refused)	\$45.63 million
2022	13	12 (11 granted & 1 refused)	1 (refused)	\$24.05 million
2023	18	15 (14 granted & 1 refused)	3 (1 granted & 2 refused)	\$29.75 million

3. PUBLIC NOTIFICATION

Table 3.1 refers to the level of public notification activity in 2023, compared with 2022 and 2021. The figures do not include development applications for which the State Planning Commission is the Relevant Authority (Schedule 6 and Section 131 applications).

TABLE 3.1 – PUBLIC NOTIFICATIONS				
YEAR	APPLICATIONS PUBLICLY NOTIFIED	REPRESENTATIONS RECEIVED FOR CAP APPLICATIONS	SPEAKING REPRESENTATIONS	DAs DETERMINED BY CAP
2021	41 (4.1% of all DAs submitted)	75	45	27
2022	33 (3.5% of all DAs submitted)	106	39	13
2023	32 (3.3% of all DAs submitted)	197	67	18

4. APPEALS INITIATED

Three development applications were refused by the Panel in 2023 and two of these applications were appealed by applicants as follows:

- 31 Mann Terrace, North Adelaide (DA 22034409)
Demolish rear portion of existing single storey dwelling and garage and construct two story rear addition and new garage
 - Compromise proposal accepted by CAP at 23 October 2023 meeting and granted planning consent on 6 November 2023.
- 76 South Terrace, Adelaide (DA 22034970)
Construct twelve level mixed use building including rooftop terrace and plant
 - Compromise proposal accepted by CAP at 23 October 2023 meeting and granted planning consent on 21 December 2023.

5. KEY CASE LAW UPDATES

There were two judicial review findings in 2023 which are relevant for CAP and Council summarised below.

5.1 100 East Terrace, Adelaide – Judicial Review

On 30 May 2022 Council's Assessment Panel (CAP) granted planning consent for development application 21039762 at 100 East Terrace, Adelaide for a part change of use to function facility with associated construction of an outbuilding, carport and alterations and additions to the State Heritage Place.

On 28 November 2022 Rymill Park Apartments Pty Ltd instituted judicial review proceedings in the Supreme Court of South Australia seeking a review of the CAP decision and that the Court quash the planning consent. Rymill Park Apartments owns land approximately 53 metres north of Rymill House (100 East Terrace) and made a submission against the proposal when it was publicly notified and at the CAP meeting.

Rymill Park Apartments contended the Panel misdirected itself at law and/or proceeded in a way that was legally unreasonable or made a decision that was legally unreasonable.

The CAP was named as an Interested Party (as opposed to the Council). While it was not required to do so, the CAP engaged Counsel and filed a response to the contentions of Rymill Park Apartments in defence of the allegations.

The hearing was undertaken on 2 June 2023 and additional written submissions were filed in response to those made by the Rymill Park Apartments after the hearing in late June 2023.

On 21 July 2023, the judgment found the application for review should be dismissed and upheld the decision of the CAP. The judgment also referred to how the hierarchy introduced in the Code does not convert a planning authority's task into a mechanical exercise. Instead, it must interpret the Code, bring experience to bear on the likely effect of a development in a variety of respects and must undertake a weighing and balancing exercise guided by the Code.

5.2 Barossa Assessment Panel – Judicial Review

In October 2023 the *Geber Super Pty Ltd v The Barossa Assessment Panel* [2023] SASC 154 judgment provided important observations regarding application of the Planning and Design Code. The Supreme Court quashed the Panel's decision approving a proposed tourist accommodation development finding the proposal was seriously at variance with the Code and that the Panel had failed to genuinely consider this issue. This judgment made several observations regarding the interpretation of the Code as follows:

- Desired Outcomes assist in the interpretation of Performance Outcomes. They are not policies in their own right. Rather, they set a general policy agenda which informs Performance Outcomes
- Designated Performance Features assist in the interpretation of the Performance Outcomes, however they too are not policies in their own right
- If a Designated Performance Feature is met, this does not mean the corresponding Performance Outcome is necessarily met
- Conversely, if a Designated Performance Feature is not met, it does not mean the corresponding Performance Outcome is not met
- Assessment of a development proposal is not limited to the provisions of the Code provided by the PlanSA Portal.

In response to this judgment, changes have been made to Administration reports provided to CAP. Further guidance regarding this matter is expected to be provided in 2024 and updates will be implemented as required.

6. ANALYSIS AND ADVICE

The Panel is fulfilling its requirements set out in its Terms of Reference. The figures demonstrate the Panel undertook its obligations in an effective and efficient manner.

6.1 Analysis

There was a high level of participation from Panel members in 2023 with minimal apologies. An overall 45 attendances were required for Panel Members and there were five apologies.

The number of planning applications considered by the Panel increased between 2022 and 2023 from 13 to 18. This could be attributed to there being a higher number of commercial uses (particularly bars and restaurants) proposed at the interface between the Capital City Zone and neighbourhood-type zones (i.e. the City Living Zone) in 2023. This appears to be reflective of the continued and sustained re-generation of such activity following the easing of COVID-19 restrictions.

CITY OF ADELAIDE

COUNCIL ASSESSMENT PANEL

The number of development applications publicly notified reduced slightly from 33 in 2022 to 32 in 2023. Interestingly, the number of representations received was significantly higher in 2023 compared with 2022, increasing from 106 to 197. This reflects the broader approach to public notification since implementation of planning reforms in 2021, which allows any member of the public to provide feedback. The volume of representations in 2023 also relates to an increase in commercial use proposals adjacent the interface to neighbourhood-type zones, which often generate a higher level of interest and feedback from nearby stakeholders.

The consistency of the CAP supporting Administration recommendations was relatively high, at 83.3% in 2023.

The number of Appeals against CAP decisions is considered low, at only two in 2023.

6.2 CAP Advice to Council

To be confirmed at 29 January 2024 CAP meeting.