

**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:

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## 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 <i>(all granted)</i>	4 <i>(2 granted &amp; 2 refused)</i>	\$45.63 million
2022	13	12 <i>(11 granted &amp; 1 refused)</i>	1 <i>(refused)</i>	\$24.05 million
2023	18	15 <i>(14 granted &amp; 1 refused)</i>	3 <i>(1 granted &amp; 2 refused)</i>	\$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 ten 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**

At the 29 January 2024 CAP meeting the Panel advised the following:

- The Panel encourages Council to have the Schedule 6 development application threshold of \$10 million reconsidered and discussed.
- It is noted there have been several changes since the threshold was introduced, particularly regarding the composition of Panels.
- This should be discussed further with the State Government.