

**Northern Limestone Coast
Regional Assessment Panel
MINUTES FOR THE MEETING HELD ON
21 October 2020**

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Northern Limestone Coast Regional Assessment Panel MINUTES FOR THE MEETING HELD ON 21 October 2020

MINUTES

COMMENCED:

Meeting commenced at 4.02pm in the Naracoorte Council Chamber

PRESENT:

Mr Bill Hender (Presiding Member), Mrs Elizabeth Travers, Mr Mark Teakle, Cr Jeff Pope

APOLOGIES:

ON LEAVE:

OFFICERS:

| | |
|----------------|--|
| Rocky Callisto | Assessment Manager |
| Milan Hodak | KDC -Senior Development Compliance Officer |
| Paul McRostie | NLC - Manager Planning and Compliance |
| Sarah duRand | NLC - Planning Officer |
| Sally Klose | Manager Governance and Community Development |

MEDIA

REPRESENTATIVES:

1. Member's Declaration of Interest

2. Confirmation of Minutes

3. Hearing of representations

Northern Limestone Coast Regional Assessment Panel MINUTES FOR THE MEETING HELD ON 21 October 2020

4. Reports

4.1. Regional Assessment Panel Meeting Procedures

| | |
|-----------------|--|
| Officer: | Sally Klose – Manager Governance and Community Development |
| Council: | Naracoorte Lucindale Council |

Report

The Northern Limestone Coast Regional Assessment Panel (RAP) has been established under the Planning Development and Infrastructure Act 2016 (the Act) to operate in relation to the areas of the Naracoorte Lucindale Council, Tatiara District Council and the Kingston District Council.

There is a Memorandum of Understanding between the three Council's which governs the sharing of costs, information sharing, resourcing and other matters relevant to the administration of the Panel. In the MOU the Councils agreed that the role of 'Host Council' will be rotated on an annual basis, with this to be based on a financial year rotation, or part thereof in the first year. The Naracoorte Lucindale Council is the host council for 2020-2021.

The assessment panel was constituted by the Minister by notice published in the Gazette on 20 August 2020. A copy of the Gazette notice is attached.

The Minister has made the following provisions with respect to the procedures of the RAP:

- The panel will consist of up to five members
- A person who is a member of the Parliament of the State is not eligible for appointment as a member of the panel
- only 1 member of the panel may be a member of a council
- a person appointed as a member of the panel must be an accredited professional – planning level 2 (unless the person is a member of a council and the relevant councils are satisfied that the person is appropriately qualified to act as member of the panel on account of the persons experience in local government)
- The term of office of a member of the panel will be up to 2 years.
- A person may continue to act as a member of the panel after the expiration of a term of office for the purpose of completing any matter before the panel at the time of the expiration of the term.
- A member of a panel is eligible for reappointment at the expiration of a term of office
- A member of the panel must continue to be an accredited professional while holding office
- The Minister may, on the recommendation of the relevant councils, remove a member of the panel from office:
 - for breach of, or non-compliance with, a condition of appointment; or

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- for misconduct or neglect of duty; or
- for failure or incapacity to carry out official duties satisfactorily; or
- for failing to comply with section 84(1)(f) or (g) of the Act; or on the recommendation of the Commission under regulation 11 of the Planning, Development and Infrastructure (General) Regulations 2017; or
- for failure to comply with a condition of appointment set out in a notice of appointment under regulation 11A of the Planning, Development and Infrastructure (General) Regulations 2017.
- The office of a member of the panel becomes vacant if the member—
 - dies; or
 - completes a term of office and is not reappointed
 - resigns by written notice to the relevant councils; or
 - is convicted of an indictable offence or is sentenced to imprisonment for an offence; or
 - becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - is removed from office by the Minister
- A quorum at a meeting of the panel consists of a number ascertained by dividing the total number of members by half, ignoring any fraction resulting from the division, and adding 1 (and no business may be transacted at a meeting of the panel unless a quorum is present).
- A decision carried by a majority of the votes cast by members at a meeting is a decision of the panel.
- Each member present at a meeting of the panel is entitled to 1 vote on any matter arising for decision and, if votes are equal, the member presiding at the meeting has a second or casting vote.
- A meeting between members constituting a quorum by telephone or audio-visual means is a valid meeting

To the extent that the Minister has not made provision with respect to the procedures of a RAP, the RAP may choose to adopt its own procedures.

A RAP must ensure that it does not adopt any model procedures (or other procedures) which are inconsistent with any procedures prescribed by the Minister in the notice constituting the RAP.

The Local Government Association of SA (LGA) has provided template Meeting Procedures prepared by Norman Waterhouse lawyers. The template document has been used to draft Meeting Procedures for the Panel which are attached.

Refer to Attachments 4.1

[Northern Limestone Coast Regional Assessment Panel Notice 2020
Draft Meeting Procedures](#)

Northern Limestone Coast Regional Assessment Panel MINUTES FOR THE MEETING HELD ON 21 October 2020

**MOVED MRS ELIZABETH TRAVERS
SECONDED MR MARK TEAKLE**

That the Northern Limestone Coast Regional Assessment Panel receives and notes the Northern Limestone Coast Regional Assessment Panel Notice 2020.

CARRIED

**MOVED CR JEFF POPE
SECONDED MRS ELIZABETH TRAVERS**

That the Northern Limestone Coast Regional Assessment Panel meeting procedures, version 1, are adopted.

CARRIED

4.2. Appointment to the Northern LC RAP

| | |
|-----------------|--|
| Officer: | Sally Klose – Manager Governance and Community Development |
| Council: | Naracoorte Lucindale Council |

From 31 July 2020, a member of a Regional Assessment Panel (RAP) must be formally appointed which includes completing a Notice of Appointment under section 84, LGAMLS registration form and disclosure of interest. Members must also comply with the Code of Conduct.

Notice of Appointment

Members must accept the terms set out in the Notice of Appointment under section 84 of the PDI Act and Regulations 11A(3) and (4) under the PDI (General) Regulations 2017. The completed form must be returned to the “designated authority” which is the nominated “host” Council for the RAP – the Naracoorte Lucindale Council.

Rights to Indemnity

In accord with the provisions of regulation 11B as set out in the PDI (General) Regulations 2017, the RAP must apply a registration process in order to ensure the relevant Member is informed of the terms of reference attaching to the appointment including indemnity cover.

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11B (1) sets out that a 'designated authority'

"..must have arrangements in place to indemnify the members of any such panel in respect of a claim against a member of the panel arising out of the performance, exercise or discharge in good faith of their functions, power, duties under the Act in their role as a member of the panel."

To assist Councils with this process, the LGAMLS has created a registration form and covering letter that complements the Notice of Appointment. The process requires the executed registration form to be submitted to the LGAMLS in order to complete the nomination process. If the appointment process has not been registered by the Council (with the LGAMLS) it may jeopardise the application of indemnity for the appointed member in the event of a claim.

Disclosure of Interests

Under section 84 of the PDI Act a member of an assessment panel must disclose his or her financial interests on appointment and on an annual basis. A register of interests is maintained and members of the public are entitled to inspect the register.

Members have been provided with the Notice of Appointment, registration and Disclosure of Interests forms.

Code of Conduct

Under Schedule 3 of the *Planning, Development and Infrastructure Act 2016* (PDI Act) the Minister has adopted a code of conduct to be observed by members of an assessment panel established under the PDI Act. This code of conduct sets out standards of conduct and professionalism that are to be observed by all members of assessment panels under the PDI Act. A copy of the Code of Conduct is attached.

Refer to Attachments 4.2

Assessment Panel Members – Code of Conduct

**MOVED MR MARK TEAKLE
SECONDED CR JEFF POPE**

That the Northern Limestone Coast Regional Assessment Panel receives and notes the 'Assessment Panel Members – Code of Conduct' as attached.

CARRIED

Northern Limestone Coast Regional Assessment Panel MINUTES FOR THE MEETING HELD ON 21 October 2020

4.3. Review of Decision of Assessment Manager Policy

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|-----------------|--|
| Officer: | Sally Klose – Manager Governance and Community Development |
| Council: | Naracoorte Lucindale Council |

Report

Under the Planning, Development and Infrastructure Act 2016 (the Act), there is now a mechanism for an applicant who is dissatisfied with a development authorisation decision (of a 'prescribed matter' under the Act) made by an Assessment Manager (or a person acting under delegated authority) to apply to the Regional Assessment Panel (RAP) for a review of that decision.

The new draft policy has been developed to ensure that the RAP meets its legislative obligations under Section 202 of the Act and to make sure there is a fair, consistent and structured review process in place. The draft policy is based on the LGASA 'simplified' template for such a policy.

The implementation of this policy does not derogate the ability for an applicant to lodge an appeal in the Environment, Resources and Development (ERD) Court instead of applying to the RAP for a review of a decision by an Assessment Manager. However, an applicant cannot do both, it must be one or the other.

If an applicant applied to the Panel for a review of a decision and the original decision of the Assessment Manager was upheld, the applicant is still able to appeal the decision in the ERD Court. Such an appeal would be against the decision of the RAP in reviewing the development authorisation, not against the original decision of the Assessment Manager.

For reference, the fee to apply to the RAP for a review of Assessment Manager decision is currently set as \$511 in accordance with the Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019.

Refer to Attachments 4.3

Review of Decision Policy

**MOVED MRS ELIZABETH TRAVERS
SECONDED MR MARK TEAKLE**

That the Northern Limestone Coast Regional Assessment Panel adopts the 'Review of Assessment Manager Policy' as attached.

CARRIED

Northern Limestone Coast Regional Assessment Panel MINUTES FOR THE MEETING HELD ON 21 October 2020

4.4. Standing Referral for Building Work

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|-----------------|--|
| Officer: | Sally Klose – Manager Governance and Community Development |
| Council: | Naracoorte Lucindale Council |

Report

Unlike the current scheme under the Development Act 1993, Councils will not be relevant authorities for building consent under the PDI Act and (General) Regulations. The relevant authorities are:

- Assessment Panels; and
- Building Certifiers

However, a Panel can choose to refer applications for building consent that are made to it to either the Council, or a building certifier. If this occurs, the Council or certifier will become the relevant authority (Section 99 of the PDI Act).

To ensure that each of the Northern LC RAP member Councils can carry out the necessary functions and powers under the PDI Act efficiently and effectively, it is recommended that the Panel refer the assessment of development in respect to building rules to the relevant council for the area in which the proposed development is to be undertaken.

**MOVED MRS ELIZABETH TRAVERS
SECONDED MR MARK TEAKLE**

That the Northern Limestone Coast Regional Assessment Panel determines to act under Section 99(1)(b) of the *Planning, Development and Infrastructure Act 2016* (the Act) in relation to all development applications received by it that involve the performance of building work.

Pursuant to Section 99(1)(c) of the Act, where the Panel has determined to act under Section 99(1)(b) of the Act, the Panel refers 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.

CARRIED

Northern Limestone Coast Regional Assessment Panel MINUTES FOR THE MEETING HELD ON 21 October 2020

4.5. Delegation of Powers and Duties

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|-----------------|--|
| Officer: | Sally Klose – Manager Governance and Community Development |
| Council: | Naracoorte Lucindale Council |

Report

Consistent with other relevant authorities under the Act, it is necessary for the Panel to delegate relevant powers and duties to ensure the efficient and effective conduct of its activities. The Local Government Association of SA (LGA) has provided template delegation instruments prepared by Norman Waterhouse lawyers to assist relevant authorities in the delegation process.

Instrument C of the LGA templates has been used to develop an Instrument of Delegation from the Panel.

It is recommended that the Panel delegate the majority of its powers and duties to the Assessment Manager (AM), including the capacity to sub-delegate (to appropriate persons engaged or employed by the constituent councils) to enable development assessment activities to be undertaken in relation to matters within the Panel's scope.

The matters not recommended for delegation and the limitations included are intended to enable the Panel to retain relevant powers and duties appropriate to its purpose.

Notwithstanding the delegation of powers and duties, the Panel can act in any matter when required; the AM can also refer delegated matters to the Panel when deemed necessary or appropriate.

Each Council is also required to make certain delegations of its powers and functions in its capacity as Council, Designated Authority, Designated Entity and Relevant Authority.

The draft Instrument of Delegation of powers and duties by the Panel is attached.

Refer to Attachment 4.5

[Draft Delegation of Powers and Duties](#)

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**MOVED MR MARK TEAKLE
SECONDED CR JEFF POPE**

That the Northern Limestone Coast Regional Assessment Panel:

- 1. In exercise of the power contained in Section 100 of the Planning, Development and Infrastructure Act 2016, the powers and functions under the Planning, Development and Infrastructure Act 2016 and statutory instruments made thereunder contained in the Instrument of Delegation attached to the Agenda dated 21 October 2020 are hereby delegated on 21 October 2020 to the Regional Assessment Manager for the Northern Limestone Coast Regional Assessment Panel (including any person acting in the position of Assessment Manager) subject to the conditions and/or limitations, if any, specified in the Instrument of Delegation.**
- 2. Such powers and functions may be further delegated by the Regional Assessment Manager in accordance with Section 100(2)(c) of the Planning, Development and Infrastructure Act 2016 as the Regional Assessment Manager sees fit, unless otherwise indicated in the Instrument of Delegation.**

CARRIED

4.6. Management of ERD Court Appeals Against Decisions of the Northern LC RAP

| | |
|-----------------|--|
| Officer: | Sally Klose – Manager Governance and Community Development |
| Council: | Naracoorte Lucindale Council |

Report

Section 202 of the PDI Act sets out rights of appeal in various circumstances. It will be impractical for the Panel in its constituted form to manage appeal matters in a timely and efficient manner, and appropriate arrangements need to be made to provide for the management of appeal and related matters for the Panel.

The Memorandum of Understanding between the three councils states that

“Each Council shall be individually responsible for the cost and conduct of any claim, expense or Court proceedings arising from a decision of the Panel made in respect of a development application in that Council’s area.”

It is recommended that the Regional Assessment Manager manages appeal matters on behalf of the Panel, on the following basis:

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- consult the Panel - either at a meeting or by out-of-session communication - and have regard to response/s received before agreeing to a compromise settlement;
- consult with the CEO and responsible officers of the relevant council and have regard to any response/s received, in relation to matters likely to have an impact, other than minor, on the conduct, cost or outcome of the appeal; and
- inform the Panel at scheduled meetings, or otherwise as appropriate, of the status of any appeal matters at any point in time.

**MOVED CR JEFF POPE
SECONDED MR MARK TEAKLE**

That the Northern Limestone Coast Regional Assessment Panel resolves to request the Assessment Manager to manage the conduct of appeals to the Environment Resources and Development Court against decisions of the Panel or its delegate/s, subject to the Regional Assessment Manager undertaking the following actions in each case:

- **consult the Panel - either at a meeting or by out-of-session communication - and have regard to response/s received before agreeing to a compromise settlement;**
- **consult with the CEO and responsible officers of the relevant council and have regard to any response/s received, in relation to matters likely to have an impact, other than minor, on the conduct, cost or outcome of the appeal; and**
- **inform the Panel at scheduled meetings, or otherwise as appropriate, of the status of any appeal matters at any point in time.**

CARRIED

5. Meeting closed

Meeting closed at 4.40pm.