

Assessment Panel Members – Code of Conduct

Introduction

Under Schedule 3 of the *Planning, Development and Infrastructure Act 2016* (PDI Act) the Minister may adopt 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. This code of conduct must be read in conjunction with the Act.

For the purposes of the PDI Act, a key requirement is that all members of assessment panels must carry out, and be seen to carry out, their functions with the highest ethical standards so as to maintain public confidence in the integrity of development assessment under the PDI Act.

The code is the key tool to ensure that all members of assessment panels act honestly and ethically with a high degree of accountability. If a member of an assessment panel has any doubt in regard to any function they may perform under the PDI Act, they should seek the advice of the panel's assessment manager or some other appropriate person.

While some members of an assessment panel may also be bound by other codes of conduct or professional standards issued by their respective professional associations, they have no legal status under the PDI Act. If there is a conflict between a requirement in this code of conduct and any other professional code or standard, this code prevails for the purposes of the PDI Act.

Legislative framework

Under section 15 of the PDI Act, all members of assessment panels are subject to a statutory duty as described in the section as follows:

- (1) *It is expected that a person or body that—*
 - (a) *seeks to obtain an authorisation under this Act; or*
 - (b) *performs, exercises or discharges a function, power or duty under this Act; or*
 - (c) *takes the benefit of this Act or is otherwise involved in a process provided by this Act, will—*
 - (d) *act in a cooperative and constructive way; and*
 - (e) *be honest and open in interacting with other entities under this Act; and*
 - (f) *be prepared to find reasonable solutions to issues that affect other interested parties or third parties.*

- (2) *Without limiting subsection (1), a person or body performing, exercising or discharging a function, power or duty under this Act must-*
- (a) *exercise professional care and diligence; and*
 - (b) *act honestly and in an impartial manner; and*
 - (c) *be responsible and accountable in its conduct; and*
 - (d) *comply with any code of conduct, service benchmark or other requirement that applies in relation to the person or body.*
- (3) *The Minister may, after taking into account the advice of the Commission, establish and maintain service benchmarks for the purposes of this section.*
- (4) *The principles and benchmarks under this section— (a) do not give rise to substantive rights or liabilities; but (b) may lead to action being taken on account of a breach of a code of conduct or professional standard that applies in relation to a relevant person or body.*

Code of conduct requirements

In acting as a member of an assessment panel, a member must comply with the following requirements.

General duties

1. A member of an assessment panel must in performing, exercising or discharging a function, power or duty under the PDI Act, act in accordance with the general duties as set out in section 15 of the PDI Act.

Act in the public interest

2. A member of an assessment panel must act in a manner that promotes or protects the public interest.

Procedures

3. A member of an assessment panel must ensure that the procedures specified in the PDI Act or prescribed in the *Planning Development and Infrastructure (General) Regulations 2017* are complied with.
4. A member of an assessment panel must comply with the panel procedures in relation to public comments and communication with the media.

Regard for honesty

5. A member of an assessment panel must act with integrity, good faith and equity and must not discriminate toward any person in performing their duties.
6. A member of an assessment panel must advise the assessment manager and the Commission immediately if the member:

- a. is the subject of a formal investigation into, or have been found to have, breached any other code of conduct, ethical standards or similar, either in another State or through a professional body of which they are a member; or
- b. has been found guilty of a breach of any Act related to planning, building or a development related matter.

Conflict of interest

7. A member of an assessment panel who has a direct or indirect personal or pecuniary interest in a matter before the council development assessment panel (other than an indirect interest that exists in common with a substantial class of persons)—
 - a. must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the panel; and
 - b. must not take part in any hearings conducted by the panel, or in any deliberations or decision of the panel, on the matter and must be absent from the meeting when any deliberations are taking place or decision is being made.
8. A member of an assessment panel will be taken to have an interest in a matter for the purposes of item 7 if an associate of the member (within the meaning of section 3(7) of the PDI Act) has an interest in the matter.
9. If an interest has been declared by a member of an assessment panel, the nature of the interest must be recorded in the minutes of the meeting.

Making decisions and taking action

10. A member of an assessment panel must take all reasonable steps to obtain all relevant facts and information when making a decision on a matter before the panel.
11. A member of an assessment panel must ensure that the member's decisions and actions are reasonable, fair and appropriate to the circumstances, based on consideration of all relevant facts obtained, and supported by adequate documentation.
12. A member of an assessment panel must not approach or discuss with an applicant or representor any application which is either before the panel or will come before the panel at some future time expect during the course of a panel meeting where the application forms part of the agenda and the applicant or representor has a right to be heard by the panel.
13. Except where required as part of the assessment of a particular decision such as a formal panel viewing of a site of a proposed development, you should not enter the site even if invited by the land owner or a neighbouring property owner or any other person.
14. A member of an assessment panel must not:
 - a. engage in consultation outside of the panel process with any party on a proposed development application that is likely to be heard by the panel;
 - b. give advice to an applicant or other third party on a development application after it has been lodged outside of a panel meeting;

- c. speak at a public meeting for or against a proposal where the purpose of the meeting is to discuss either a proposed development or a development application unless required by the Act;
- d. express an opinion on a development application or a proposed development outside of a panel meeting; and
- e. engage in any other act or omission which may give rise to a reasonable presumption that you have prejudged a development proposal or application.

Public comment

- 15. Only the presiding member or another person determined by the panel is permitted to speak publicly to the media and address the public on behalf of the panel. No other panel member may make comment to the media or the public in relation to any matter before the panel or any decision of the panel.

Protection and use of information

- 16. A member of an assessment panel must maintain the integrity and security of confidential information in their possession and must not use confidential information gained by virtue of the member's official position for the purpose of securing a private benefit for the member or any other person.
- 17. A member of an assessment panel must not disclose information acquired in the course of their professional work other than if consent of the relevant person has been granted or where there is a legal or professional duty to disclose such information.

Proper exercise of power

- 18. A member of an assessment panel must not take advantage of the member's position, power or duties for the purpose of obtaining, either directly or indirectly, any preferential treatment or other improper advantage for the member or any other person.

Gifts and benefits

- 19. A member of an assessment panel must not seek or accept a gift or benefit that is intended to, is likely to or could be perceived as likely to, cause them to act in an unfair or biased manner in the course of the member's duties.
- 20. A member of an assessment panel must take all reasonable steps to ensure that a person related to the member does not receive gifts or benefits that could appear to be an attempt to influence or secure or have the effect of influencing or securing a favour from the member of an assessment panel. A person is related to a member of an assessment panel for the purpose of this provision if the person is a spouse, de facto partner, sibling, parent or child of the member of the assessment panel.

Bias

- 21. A member of an assessment panel should always have regard to any affiliation, disposition or any material, pecuniary or other interest that would lead to a reasonable apprehension that they may be biased in carrying out any aspect of their role under the Act.

Elected Members on Assessment Panels

What does membership on an Assessment Panel mean for a local elected member?

Purpose

This Fact Sheet aims to provide guidance to Council Assessment Panel (CAP) members and Regional Assessment Panel (RAP) members who are also local government elected members, regarding their obligations under Codes of Conduct applying to them. This includes how to best manage interactions with the public, making public statements and media comments as well as undertaking site visits where development is proposed. Elected members should be aware of their dual roles, and how to manage both sets of responsibilities. Importantly, when undertaking duties as a member of an Assessment Panel, an elected member is not acting in their role as an elected member of a council.

Background

- Assessment Panels can include one elected member from the relevant council (or councils).
- Assessment Panel members have a number of obligations under the Minister's Code of Conduct established under the Planning, Development and Infrastructure Act 2016 (PDI Act) (the Assessment Panel Member Code of Conduct - extracts shown in Appendix A).
- Elected Members also have additional obligations under the separate Minister's Code of Conduct established under the Local Government Act 1993 (the LG Act) (the LG Code of Conduct - extracts shown in Appendix B).

Interactions with the Public

The Assessment Panel Member Code of Conduct restricts members from engaging in consultation outside of the Assessment Panel process, or giving advice or discussing a development application outside of Assessment Panel meetings.

On the other hand, the LG Act Code of Conduct also outlines principles requiring elected members to consider all relevant information and opinions, giving each due weight, in line with the council's community consultation obligations.

For obligations to co-exist under both Codes of Conduct, an elected member may need to avoid or forgo discussions or consultation with members of the public, media engagements or public statements (which they would ordinarily participate in). This is particularly so where those discussions or statements relate to a development application or proposal which is or is likely to come before the Assessment Panel.

Example

The Council is landowner of community playing fields, leased to a community sporting club. The sporting club lodges a development application to upgrade their clubroom facilities where the development application is to be assessed by the Assessment Panel:

- if approached by a representative from the sporting club, the member should:
 - advise that they are unable to discuss the matter, as a result of their position on the Assessment Panel
 - disclose any conversations or interactions with the sporting club at any meeting of the Assessment Panel and the Council involving the development. Depending on the nature and context of the interactions, the member may also need to excuse themselves from any deliberations at the Assessment Panel and Council meetings
- if the Assessment Panel member is also a member of the sporting club, they should not be present for determination of the development application by the Assessment Panel. They may also need to excuse themselves for consideration of lease arrangements by the Council (as landlord).

Media and Public Statements

Under the Assessment Panel Member Code of Conduct, a member must not:

- speak at a public meeting for or against a proposal where the purpose of the meeting is to discuss either a proposed development or a development application
- express an opinion on a proposed development outside of an Assessment Panel meeting
- engage in any other act or omission which may give rise to a reasonable presumption that the Assessment Panel member has prejudged a development proposal.

Under the LG Code of Conduct, an elected member may make public statements provided that in doing so, they clearly indicate that the views expressed are their own, and not the views of the relevant Council.

An Assessment Panel member should not make public statements on a development proposal, even if they stipulate that the views being expressed are their personal views (and not the views of the Assessment Panel). This means that an Assessment Panel member forfeits their ability to make public statements regarding certain development proposals, which they would otherwise be able to do if they did not hold a position on an Assessment Panel.

Example

An elected member has a strong view on a certain type of development which they consider to be of concern to their local community (for example, telecommunication towers). The member makes public statements against such developments in their campaign for election as a member of the Council, and also makes broad statements on social media against those types of development.

In this scenario, the member:

- should not make any public comments regarding a specific development application before the Assessment Panel, or which is likely to come before the Assessment Panel as this would put them in breach of the Assessment Panel Code of Conduct
- if public comments are made regarding a specific development application, should declare a perceived conflict and should excuse themselves from the relevant Assessment Panel meeting where that development application is considered
- may also be required to excuse themselves from any future Assessment Panel meetings regarding that type of development more broadly, if the previous public statements are sufficient to give rise to a reasonable presumption that the Assessment Panel member has prejudged those types of development.

Site Visits

Under the Assessment Panel Code of Conduct, an Assessment Panel member should not enter the site of a proposed development, even if invited by the land owner or a neighbouring property owner or any other person (except where required as part of the assessment of a particular decision such as a formal panel viewing of a site of a proposed development, or in the company of an authorised officer appointed by the Council).

In comparison, under the LG Code of Conduct, elected members are required to discharge their duties conscientiously, to the best of their ability, and to also consider all relevant information and opinions in assessing a matter.

An elected member who is also a member of an Assessment Panel may be restricted in the places they can visit in their local area, where particular sites are subject of a proposed development which may be considered by the Assessment Panel. If it is required as part of the assessment of a development application, Assessment Panel Members may view sites from the public realm, or may enter sites where they do so in the company of an authorised officer appointed by the Council. However, where possible, Assessment Panel members should only undertake site visits as part of a formal viewing by the Assessment Panel.

Example

An elected member may be invited to a constituent's home to view the area of a proposed development on the neighbouring property, and discuss the impact the development may have on the constituent and their property. In this scenario, where the elected member is also a member of the Assessment Panel the elected member:

- should not visit the site of the proposed development (or neighbouring properties) to discuss the proposed development
- may also need to declare a conflict of interest and excuse themselves from the Assessment Panel meeting if they have had discussions or provided their views or advice to a constituent regarding the proposed development.

Appendix A – Minister’s Code of Conduct – *Planning, Development and Infrastructure Act 2016* (Extracts Only)

7. A member of an assessment panel who has a direct or indirect personal or pecuniary interest in a matter before the council development assessment panel (other than an indirect interest that exists in common with a substantial class of persons)—
- (a) must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the panel; and
 - (b) must not take part in any hearings conducted by the panel, or in any deliberations or decision of the panel, on the matter and must be absent from the meeting when any deliberations are taking place or decision is being made.

.....

12. A member of an assessment panel must not approach or discuss with an applicant or representor any application which is either before the panel or will come before the panel at some future time expect during the course of a panel meeting where the application forms part of the agenda and the applicant or representor has a right to be heard by the panel.

13. Except where required as part of the assessment of a particular decision such as a formal panel viewing of a site of a proposed development, you should not enter the site even if invited by the land owner or a neighbouring property owner or any other person.

14. A member of an assessment panel must not:
- (a) engage in consultation outside of the panel process with any party on a proposed development application that is likely to be heard by the panel;
 - (b) give advice to an applicant or other third party on a development application after it has been lodged outside of a panel meeting;
 - (c) speak at a public meeting for or against a proposal where the purpose of the meeting is to discuss either a proposed development or a development application unless required by the Act;
 - (d) express an opinion on a development application or a proposed development outside of a panel meeting; and
 - (e) engage in any other act or omission which may give rise to a reasonable presumption that you have prejudged a development proposal or application.
15. Only the presiding member or another person determined by the panel is permitted to speak publicly to the media and address the public on behalf of the panel. No other panel member may make comment to the media or the public in relation to any matter before the panel or any decision of the panel.

.....

21. A member of an assessment panel should always have regard to any affiliation, disposition or any material, pecuniary or other interest that would lead to a reasonable apprehension that they may be biased in carrying out any aspect of their role under the Act.

Appendix B – Minister’s Code of Conduct – *Local Government Act 1993* (Extracts Only)

PART 1—PRINCIPLES

Higher principles—Overarching Statement

Council members in South Australia have a commitment to serve the best interests of the people within the community they represent and to discharge their duties conscientiously, to the best of their ability, and for public, not private, benefit at all times.

As representatives of open, responsive and accountable government, Council members are committed to considering all relevant information and opinions, giving each due weight, in line with the Council’s community consultation obligations.

In the performance of their role, Council members will take account of the diverse current and future needs of the local community in decision-making, provide leadership and promote the interests of the Council.

.....

PART 2—BEHAVIOURAL CODE

Behavioural Code

Council members must:

- 2.5 Ensure that personal comments to the media or other public comments, on Council decisions and other matters, clearly indicate that it is a private view, and not that of the Council.
-

PART 3—MISCONDUCT

Member duties

Council members must:

- 3.6 Ensure that relationships with external parties cannot amount to interference by improper influence, affecting judgement, decisions and/or actions.
- 3.13 Council members must be committed to making decisions without bias and in the best interests of the whole community and comply with the relevant conflict of interest provisions of the *Local Government Act 1999*.