

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, what to consider when their council is an applicant or making a representation, 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.

When council is an applicant or making a representation

There may be times when an elected members' council lodges a development application with their Assessment Panel or makes a representation regarding a development application being heard by the Assessment Panel.

Under the Assessment Panel Code of Conduct, 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.

In comparison, under the LG Code of Conduct, elected members are required to 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.

An elected member who is also a member of an Assessment Panel should be conscious of the heightened risk of a perception of bias in circumstances where they are considering a development application where the council is the applicant or a representor.

It is vital that such decisions are made with the highest levels of integrity, to ensure public confidence in the planning assessment process and the proper functioning of the CAP.

Example

A local council has funded a project in their annual budget to deliver a design for stage 1 construction of a sports and recreation precinct. The draft community consultation package is being presented for approval at an upcoming council meeting, followed by a council briefing session for elected members' design input and consultation. The council's development application will be heard by the CAP in the future.

In this scenario, where the elected member is also a member of the Assessment Panel, the elected member:

- should closely consider the risk of perception of bias and establish as early as possible whether they intend to act in an elected member or Assessment Panel Member capacity.

- may be required to seek appropriate advice regarding the potential for bias. Given the council's involvement as applicant for the project, this advice should be sought either through council's Assessment Manager or the Presiding Member of the CAP.
- may need to declare a conflict of interest and excuse themselves from council meetings and not participate in the council briefing and design consultation session.
- may need to declare a conflict of interest and excuse themselves from the Assessment Panel meeting if they have had attended the information session, participated in council meeting discussions or provided their views or advice to the council (as the applicant) regarding the proposed 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.

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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.

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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.

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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.

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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*.