

**ADELAIDE HILLS COUNCIL
ORDINARY COUNCIL MEETING
Tuesday 28 July 2020
CONFIDENTIAL AGENDA BUSINESS ITEM**

Item: 19.1

Responsible Officer: Marc Salver, Director Development & Regulatory Services

Subject: Appointment of Independent Member to the Council's Assessment Panel (CAP)

For: Decision

1. Appointment of Independent Member to the Council's Assessment Panel (CAP) – Exclusion of the Public

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except:

- CEO, Andrew Aitken
- Director Infrastructure & Operations, Peter Bice
- Director Development & Regulatory Services, Marc Salver
- Director Corporate Services, Terry Crackett
- Director Community Capacity, David Waters
- Executive Manager Governance & Performance, Lachlan Miller
- Governance & Risk Coordinator, Steven Watson
- Minute Secretary, Pam Williams

be excluded from attendance at the meeting for Agenda Item 19.1: (Appointment of Independent Member to the Council's Assessment Panel (CAP)) in confidence.

The Council is satisfied that it is necessary that the public, with the exception of Council staff in attendance as specified above, be excluded to enable Council to consider the report at the meeting on the following grounds:

Section 90(3)(a) of the *Local Government Act 1999*, the information to be received, discussed or considered in relation to this Agenda Item is information relating to the appointment of Independent Members to the Council's Assessment Panel (CAP), the disclosure of which –

- (a) Information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);

Accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information and discussion confidential.

2. Appointment of Independent Member to the Council Assessment Panel (CAP) – Confidential Item

SUMMARY

Effective 1 April 2019, all Independent CAP Members will have to be Accredited Professionals in accordance with the *Planning, Development and Infrastructure (Accredited Professionals) Regulations, 2019* from the designated date for Phase 3 of the Planning & Design Code. This date is yet to be declared by the Minister for Planning and is anticipated to occur sometime in September 2020.

At its meeting of 23 April 2019 (Confidential Item 19.2.1 – 87/19) Council considered a report regarding the Appointment of Independent Council Assessment Panel Members and appointed the current members on the Panel for a two year term ending on 31 May 2021. The aforementioned report included a recommendation to enable the recruitment process to occur in the event that any Independent Member(s) of the Council’s Assessment Panel were unable to obtain accreditation by the designated date. The Council at that time also appointed the Mayor and Councillors Kirsty Parkin and John Kemp to a selection panel, assisted by the CEO and Director Development & Regulatory Services, to undertake the short-listing and interviews of the candidates.

In accordance with the requirements of the Accredited Professionals Scheme, three of the four current Independent Members have lodged applications with the Accreditation Authority (being the Chief Executive of the Department of Planning, Transport and Infrastructure (DPTI)), and the Presiding Member has since been accredited.

The remaining Independent Member, Piers Brissenden, advised the Administration in April 2020 that he would not be pursuing accreditation and as such will cease to be a member from the designated date. With this in mind, the Administration placed advertisements in the *Advertiser, Weekender Herald* and *Mt Barker Courier* on 18 April and 22 April 2020 respectively, as well as on Council’s website in order to backfill this vacancy.

Five (5) Expressions of Interest were received in response and, of these, three were short-listed for interview by the Selection Panel. The Selection Panel recommends that Paul Mickan be appointed for a 9 month period commencing on 1 September 2020 and ending on 31 May 2021 when the current term of Council’s Assessment Panel expires.

RECOMMENDATION

Council resolves:

- 1. That the report be received and noted**
 - 2. That Council appoints Paul Mickan as an Independent Member to the Council’s Assessment Panel for a 9 month period commencing on 1 September 2020 and expiring on 31 May 2021.**
-

1. GOVERNANCE

➤ Strategic Management Plan/Functional Strategy/Council Policy Alignment

Strategic Plan 2020-24 – A brighter future

Goal 1	A functional Built Environment
Objective B2	Preserve and enhance the unique character of the Hills for current and future generations
Priority B2.3	Proactively work with developers to ensure that built form complements or enhances existing local character whilst preserving the character and amenity of our towns, historic buildings and scenic environment
Goal 4	A valued Natural Environment
Objective N1	Conserve and enhance the regional natural landscape character and amenity values of our region
Goal 5	A Progressive Organisation
Objective 05	We are accountable, informed, and make decisions in the best interests of the whole community
Priority 05.1	Enhance governance structures and systems to prudently adapt to changing circumstances and meet our legislative obligations

Having suitably qualified and experienced independent CAP members ensures there is rigour in the development assessment process, and provides for a higher level of independent scrutiny of applications considered by the Panel. This will ultimately assist in achieving good quality planning outcomes and maintain the character and amenity for which the Adelaide Hills Council is renowned.

➤ Legal Implications

It is a statutory requirement pursuant to Sections 82 and 83 of the *Planning, Development and Infrastructure (PDI) Act 2016*, for Council to have an Assessment Panel comprised of five members, of which at least four must be independent members (including an independent Presiding Member) and no more than one Council Member. It is noted that Council can have a CAP comprised of five rather than four independent members. The Administration considers that having the one permissible Council Member on the Panel adds value to the decision making process. In this regard, it is noted that at its meeting of 26 May 2020 (Item 12.5 – 96/20), Council resolved to appoint Cr John Kemp as the Elected Member on the Council Assessment Panel and Cr Leith Mudge as Deputy for a 24 month term commencing on 1 June 2020 and concluding on 31 May 2022 (inclusive).

It is also noted that in accordance with the PDI Act, there is a requirement for CAP Independent Members to hold Accredited Professional Planning Level 2 accreditation from designated date of implementation of the Planning & Design Code. The Minister for Planning is yet to designate this date. Note that the Council Member on CAP does not require accreditation.

➤ **Risk Management Implications**

The appointment of appropriately qualified and experienced independent members to the Council’s Assessment Panel (CAP) will assist in mitigating the risks of:

Poor governance practices occur which lead to a loss of stakeholder (i.e. customer and regulator) confidence and/or legislative breaches.

Inherent Risk	Residual Risk	Target Risk
Extreme (5C)	Medium (3D)	Medium (3D)

Inability to attract and recruit suitably qualified and experienced candidates for the CAP potentially leading to poor decision making and development outcomes

Inherent Risk	Residual Risk	Target Risk
High (4C)	Low (1D)	Low (1D)

Appointment of suitably qualified and experienced independent CAP members ensures compliance with the legislation in this instance, adds rigour to the assessment process, and provides for a higher level of independent scrutiny of applications considered by the Panel. This will reduce the risks in relation to decision making on complex applications and ensures Council complies with the legislation in this regard.

Note that there are other controls that assist in mitigating this risk.

➤ **Financial and Resource Implications**

The independent CAP members are paid a per meeting sitting fee of \$500 ex GST (Independent Presiding Member) and \$380 ex GST (Independent Ordinary Member). The Council Member on the Panel is currently paid a per meeting sitting fee of \$190. These sitting fees are budgeted for in the 2020-21 Budget. Note that these sitting fees will be reviewed ahead of the appointment of the new Independent CAP members in June 2021.

➤ **Customer Service and Community/Cultural Implications**

All applications which have been publicly notified and representors have indicated that they wish to be heard by the Panel, are reported to the Panel for consideration. This ensures that such members of the community have an opportunity to present their views about a specific development. These independent experts ensure rigour in the assessment process and provides for a higher level of independent scrutiny of applications placed before the Panel, at times resulting in improved development outcomes.

➤ **Sustainability Implications**

It is considered that having a Panel comprising independent members with the required skills set (including urban and regional planning, architecture and design, landscape architecture and environmental management) provides for more rigour in the assessment process and in general ensures that any environmental implications are mitigated where possible and necessary.

➤ **Engagement/Consultation conducted in the development of the report**

No public consultation is required in this regard. However, the following were consulted in the preparation of this report:

Consultation on the development of this report was as follows:

<i>Council Committees:</i>	Not Applicable
<i>Council Workshops:</i>	Not Applicable
<i>Advisory Groups:</i>	Not Applicable
<i>Administration:</i>	Chief Executive Officer Executive Manager Governance and Performance Assessment Manager
<i>External Agencies:</i>	Not Applicable
<i>Community:</i>	Not Applicable

2. BACKGROUND

At the Council meeting held on 23 April 2019 (Confidential Item 19.2.1) Council considered a report regarding the Appointment of the current Independent Council Assessment Panel Members, and resolved as follows:

ITEM 19.2 RELEASED 16 MAY 2019

19.2.1 Appointment of Independent Council Assessment Panel Members – Confidential item

Moved Cr Nathan Daniell
S/- Cr John Kemp

87/19

Council resolves:

1. That the report be received and noted
2. That Council appoints the following Independent Members to the Council’s Assessment Panel for a two year period commencing on 1 June 2019 and expiring on 31 May 2021:
 - i. Geoff Parsons (as Independent Presiding Member)
 - ii. David Brown
 - iii. Ross Bateup
 - iv. Piers Brissenden
3. That Council appoints Karla Billington as an Additional Member pursuant to section 85 of the PDI Act with expertise in water quality, watershed protection and environmental management matters for a two year period commencing on 1 June 2019 and expiring on 31 May 2021.
4. That in the event any independent member(s) of the Council Assessment Panel are unable to obtain accreditation as referred to in the report by the designated date, then the Mayor and Councillors Kirsty Parkin and John Kemp be appointed to a selection panel, assisted by the CEO and Director Development & Regulatory Services, to undertake the short-listing and interviews of the candidate(s).
5. That in the event the process referred to in the above recommendation occurs, then the selection panel shall report their recommendations to Council at the next available meeting following the completion of the recruitment and interview process.

Carried Unanimously

With regard to the appointment of the Council Member on CAP, at the Council meeting held on 26 May 2020 (Item 12.5 – 96/20) Council resolved to appoint Cr John Kemp as the Elected Member on the Council Assessment Panel Cr Leith Mudge as Deputy for a 24 month term commencing on 1 June 2020 and concluding on 31 May 2022 (inclusive).

It is noted that all Independent Council Assessment Panel (CAP) members are required by the PDI Act Accredited Professionals Scheme to be accredited as a Level 2 Planner by the date the new Planning and Design Code comes into operation in our Council area which is anticipated to occur in September 2020 (or such other date as determined by the Minister for Planning). In preparation for this, the Administration recently asked all CAP members to confirm whether or not they have submitted their applications to DPTI and or have already achieved accreditation. The CAP Presiding Member has achieved the required accreditation and the two other members are in the process of doing so. However, Mr Piers Brissenden advised the Administration in April that he would not be pursuing accreditation and will therefore step down as a member of CAP when these requirements come into operation. In order to backfill this ‘vacancy’ before September, the Administration sought Expressions of Interest from suitably qualified members of the community to submit applications to Council in this regard.

In accordance with resolution 4 of Council on 23 April 2019 decision above, Council appointed the Mayor and Councillors Kirsty Parkin and John Kemp to a selection panel, assisted by the CEO and Director Development & Regulatory Services, to undertake the short-listing and interviews of the candidates.

3. ANALYSIS

In accordance with the above resolution of Council on 23 April 2019, advertisements were placed in the Advertiser, Weekender Herald and Mt Barker Courier on 18 April and 22 April 2020 respectively, as well as on Council’s website. Five (5) Expressions of Interest were received in response and, of these, three were short-listed for interview by the Selection Panel for the vacant independent member position on the CAP.

A comprehensive selection and interview process was conducted with the Selection Panel short listing and interviewing three candidates and recommending that Paul Mickan be appointed as an Independent Member on the Council’s Assessment Panel. A summary of Paul’s qualifications and experience is provided below:

Paul Mickan is a qualified Urban & Regional Planner with 38 years of Local Government experience. Paul has extensive knowledge and skills in urban and regional planning, as well as planning policy, having worked for three councils in metropolitan Adelaide, including the Adelaide Hills Council, and councils in Tasmania and Victoria. He has extensive knowledge and experience in development assessment having processed development applications over many years, and has an intimate knowledge of the Adelaide Hills Council and broad experience with the types of development within the Council area, e.g., township and residential development, hobby and lifestyle farming, horticultural and agricultural investment and heritage. This experience includes both development assessment and policy formulation perspectives, and he has an extensive working knowledge of South Australian development legislation. Paul also has extensive experience with CAP meeting procedures and codes of conduct, and currently holds positions on the Council Assessment Panels for Clare & Gilbert Valleys Council, Adelaide Plains Council and City of Playford Council. Further Paul is currently accredited in accordance the new Accredited Professionals Scheme in order to be a CAP member.

The term of appointment of the current Independent CAP members expires on 31 May 2021. In order to align the appointment of Mr Mickan with that of the other Independent CAP Members, Administration are recommending that he be appointed from 1 September 2020 to 31 May 2021 (i.e. a period of 9 months). All Independent CAP Members will be invited to seek reappointment in January 2021 when Expressions of Interest will be sought to fill the four Independent Member roles on the Panel before the 31 May 2021 expiry date.

4. OPTIONS

Council has the following options:

- I. To accept the recommendations contained in this report regarding the appointment of the Independent Member (Recommended), or
- II. To appoint another Independent Member as considered appropriate who was interviewed for the role (Not Recommended), or
- III. To not appoint one or more of the recommended Members and seek further Expressions of Interest from the public (Not Recommended).

5. APPENDICES

Nil

3. Appointment of Independent Member to the Council's Assessment Panel (CAP) – Period of Confidentiality

Subject to the CEO, or his delegate, disclosing information or any document (in whole or in part) for the purpose of implementing Council's decision(s) in this matter in the performance of the duties and responsibilities of office, Council, having considered Agenda Item 19.1 in confidence under sections 90(2) and 90(3)(a) of the *Local Government Act 1999* and the provisions of the *Local Government (Access to Meeting and Documents) Amendment Act 2002*, resolves that an order be made under the provisions of sections 91(7) and (9) of the *Local Government Act 1999* that the report, related attachments and the minutes of Council and the discussion and considerations of the subject matter be retained in confidence until the Community Representatives referred to in the item are appointed, but not longer than 30 August 2020.

Pursuant to section 91(9)(c) of the *Local Government Act 1999*, that Council delegates the power to revoke the confidentiality order either partially or in full to the Chief Executive Officer.