

## COUNCIL ASSESSMENT PANEL MEETING

13 January 2021

### AGENDA – 9.1

<b>Applicant:</b> Rivergum Homes Pty Ltd	<b>Landowner:</b> D L Nottle & J L Nottle
<b>Agent:</b>	<b>Originating Officer:</b> Sarah Davenport
<b>Development Application:</b>	20/725/473
<b>Application Description:</b> Two storey detached dwelling, deck (maximum height 2.4m), retaining walls (maximum height 1m) & associated earthworks	
<b>Subject Land:</b> Lot:214 Sec: P85 FP:8131 CT:5117/63	<b>General Location:</b> 8 Itawara Place Bridgewater  <b>Attachment – Locality Plan</b>
<b>Development Plan Consolidated :</b> 8 August 2019  <b>Map</b> AdHi/75	<b>Zone/Policy Area:</b> Country Living Zone - Country Living (Bridgewater) Policy Area
<b>Form of Development:</b> Merit	<b>Site Area:</b> 916m <sup>2</sup>
<b>Public Notice Category:</b> Category 2 Merit	<b>Representations Received:</b> 1  <b>Representations to be Heard:</b> 1

#### 1. EXECUTIVE SUMMARY

The purpose of this application is to replace the recently demolished Tudor style single storey dwelling with a new two storey weatherboard style dwelling.

The subject land is located within the Country Living Zone - Country Living (Bridgewater) Policy Area - and the proposal is a merit form of development. One representation was received in opposition from the neighbouring property to the South East. Initially the representation stated they did not wish to be heard, however, they have since changed their mind and now wish to address the panel with their concerns.

The new dwelling will comprise 3 bedrooms, 3 bathrooms (including ensuite), open plan combined kitchen and living area, 2 additional separate living areas, study and a balcony addressing the street. The dwelling will require retaining walls of up to 1m to retain cut, particularly in the North Western corner of the dwelling site. The land is serviced by mains sewer and potable water supply.

The dwelling is to be constructed using grey Duraplank and grey Colorbond.

As per the Council Assessment Panel (CAP) delegations, the CAP is the relevant authority for Category 2 applications where representors wish to be heard.

The main issues relating to the proposal are bulk and scale, siting and overshadowing.

In consideration of all the information presented, and following an assessment against the relevant zone and Council Wide provisions within the Development Plan, staff are recommending that the proposal be **GRANTED** Development Plan Consent, subject to conditions.

## 2. DESCRIPTION OF THE PROPOSAL

The proposal is for the following:

- Double storey detached dwelling comprising 3 bedrooms, 3 bathrooms, 2 living areas and study
- Deck – maximum height 2.4m from natural ground level
- Retaining walls – maximum height 1m

The proposed plans are included as **Attachment – Proposal Plans** with other information included as **Attachment – Application Information** and **Attachment – Applicant’s Professional Reports**.

## 3. BACKGROUND AND HISTORY

APPROVAL DATE	APPLICATION NUMBER	DESCRIPTION OF PROPOSAL
7 July 2020	20/665/473	Demolition of Existing Dwelling
11 May 1979	12521/129	Garage

## 4. REFERRAL RESPONSES

- **AHC Engineering**  
Council’s engineer has review the proposed stormwater disposal method and has deemed that stormwater must be managed on site. A civil plan was submitted to Council on 21 December 2020 and incorporates a soakage trench to manage overflow from the development. Engineering are satisfied with the civil plan for the proposal but require all surface water to also discharge to the on-site soakage system.

The above responses are included as **Attachment – Referral Responses**.

## 5. CONSULTATION

The application was categorised as a Category 2 form of development in accordance with the procedural matters in the Country Living Zone requiring formal public notification. One representation was received in opposition to the proposed development and was submitted by an adjacent land owner. Initially the representor stated he did not wish to be heard, but he has since changed his position and now wishes to be heard. The hearing of the representation is at the discretion of the CAP.

The following representor wishes to be heard:

Name of Representor	Representor’s Property Address	Nominated Speaker
Mr Michael McGuire	31 First Avenue, Bridgewater	Himself

The applicants (or their representative – URPS) may be in attendance.

The issues contained in the representation can be briefly summarised as follows:

- Height of proposed dwelling
- Proximity of development in relation to property boundaries
- Perceived decline in property value

These issues are discussed in detail in the following sections of the report.

A copy of the submission is included as **Attachment – Representations** and the response is provided in **Attachment – Applicant’s Response to Representations**.

## 6. PLANNING & TECHNICAL CONSIDERATIONS

This application has been evaluated in accordance with the following matters:

### i. The Site’s Physical Characteristics

The subject land is a 916m<sup>2</sup> rectangular allotment and has direct frontage to Itawara Place, a no-through council maintained road. The land is serviced by SA Water mains sewer and water supply. The allotment has a cross fall from North down to the South which is approximately 4m at the steepest point. The land falls a maximum of 1.5m in the building envelope. The proposal is mainly on a filled site with a section of cut at front of the dwelling to allow for the slope. There is existing vegetation on site but none which warrants removal as a result of the development.

### ii. The Surrounding Area

Allotments within the streetscape and the Bridgewater Policy Area generally are of a similar configuration and size to the subject land measuring on average 1,000m<sup>2</sup> or less and have slopes of varying degrees. The streetscape is defined by reasonably vegetated rectangular allotments which follow a grid like street pattern. Dwellings within the locality generally originate from the 1970’s and 1980’s and are predominantly brick with tiled roofs. Dwellings in the locality are a mixture of single storey and double storey with some examples of more contemporary designs being introduced in recent times.

### iii. Development Plan Policy considerations

#### a) *Policy Area/Zone Provisions*

The subject land lies within the Country Living Zone - Country Living (Bridgewater) Policy Area and these provisions seek:

- A residential zone primarily comprising of detached dwellings at very low densities, including affordable housing.
- Residential development sensitive to the particular topography of the area and which has minimal visual and environmental impacts.

The following are considered to be the relevant Policy Area provisions:

*Objectives:* 1

*PDCs:* 1, 2

The following are considered to be the relevant Zone provisions:

*Objectives:* 1, 2, 3

*PDCs:* 1, 6, 7, 11

Accordance with Zone

The Country Living Zone envisages primarily residential development at low densities and encourages the introduction of a variety of dwelling designs. New dwellings should be sympathetic to the topography of the land and the use of more contemporary building materials is supported. Two storey and split-level dwellings are envisaged, dependent on capacity to achieve setbacks and establish appropriate accesses. The proposal is to construct a new two storey detached dwelling, replacing a single storey detached dwelling and pursuant to Objective 1 and PDC 1 the development will not increase the density of development on the land. The proposed dwelling will utilise existing access from Itawara Place and the balance of cut and fill aligns with the zone's desired character statement and Objective 2 of the zone.

Whilst the design of the building is relatively simple, the use of Duraplank is considered appropriate for the peri urban setting. In accordance with PDC 7 the building setbacks from all property boundaries are in accordance with the numerical parameters for the Policy Area. Although the dwelling is two storey in nature, the design is relatively modest and has incorporated structural elements such as a verandah and deck to improve the articulation of the dwelling. In keeping with PDC 7, vegetated screening is to remain to maintain privacy and the location of the subject land on a dead end road and will not be readily visible from any arterial roads.

The proposal is considered to be consistent with the desired character statement and therefore accords with PDC 6 and Objective 3.

PDC 11 calls for two storey dwellings to inset the upper level to reduce visual bulk. The dwelling has not satisfied the policy as the dwelling walls are uniform the entire way around. As the dwelling has observed the setbacks for the policy area, in setting the upper level was not deemed essential to the development.

Appropriateness of Proposal in Locality

The Bridgewater Policy Area provisions are relatively brief, however the Desired Character Statement is quite clear on the intent for the area. Objective 1 and PDC 1 can be satisfied on the basis that the development accords with the Desired Character Statement.

The Bridgewater Policy Area specifically calls for a mixture of building designs, but envisages that designs maintain a modest scale. The Policy Area Desired Character Statement considers brick veneer dwellings to be typical in the locality with pre-coated steel pitched roofs, but this does not preclude other construction materials. The dwelling is considered to be a modest two storey detached dwelling. Whilst the dwelling is not proposed to be of brick veneer construction, it does include a front verandah and pre-colour coated metal pitched roof, in alignment with the

provisions of the Policy Area. The Duraplank cladding is considered acceptable due to the subject land's location at the end of a no-through road. It is not anticipated that the dwelling will detrimentally affect the amenity of the locality.

PDC 2 for the policy area designates the minimum setback requirements for new dwellings within the locality. The proposed development has satisfied the numerical parameters for the policy area.

*b) Council Wide provisions*

The following are considered to be the relevant Council Wide provisions:

*Design and Appearance*

*Objectives:* 1,

*PDCs:* 1, 2, 3, 5, 7, 9, 17, 18, 22

The proposed dwelling incorporates a hipped roof, Duraplank cladding and Colorbond roofing and has incorporated a mixture of window dimensions to improve articulation and break up the bulk of the building, pursuant to PDC 22. The proposed colours and materials schedule indicates the proposed dwelling will be finished in light grey coloured tones, in accordance with PDC 3. The proposed design is deemed to address Objective 1 and PDC 1 with regard to design and appropriateness of colour selection. The proposed dwelling is quite similar to a number of dwellings on adjacent First Street both in terms of size, design and materials. The proposed height of the dwelling is considered to be in keeping with the prevailing character in the neighbouring street and in alignment with PDC 1(a).

PDCs 7 and 17 call for development which will not encroach on neighbouring properties' access to sunlight. The proposed dwelling has been set back from front and side boundaries in accordance with the provisions for the Policy Area. Shadow diagrams were submitted as part of a response to the representation. As the drawings show, the dwelling will not overshadow the representor's private open space at any time on 21 June, however overshadowing of the building will occur between 12pm and 3pm on 21 June. Thus, in the extreme winter solstice there will be some overshadowing of the adjoining dwelling but as a minimum two hours of solar access will still be available it is considered the proposal will not create unreasonable overshadowing. As the response from URPS correctly acknowledges, the neighbouring dwelling does not have solar panels that would be affected by any overshadowing. The majority of the overshadowing will take place within the bounds of the subject land.

As previously addressed in the report, and in alignment with PDC 9, the development will not warrant substantial earthworks or retaining. An effort has been made to ensure the development is cut into the land to reduce the visual impact of the dwelling, and mirrors the footprint of the existing dwelling.

PDC 18 calls for new buildings to avoid overlooking via generous building setbacks, siting of balconies and landscape screening. The proposal has incorporated obscure glazing on the South Eastern side of the dwelling to the upper level wet areas to avoid any intrusion on privacy, and high level windows will be installed on the North Western side to prevent any overlooking. Furthermore, fixed screening has been incorporated with the balcony component in accordance with PDC 5. The front balcony will assist with passive surveillance of the streetscape. Whilst privacy concerns were not raised in the initial representation, the design addresses the policy intent as outlined in PDC 18.

### Hazards

*Objectives:* 2, 4, 5

*PDCs:* 1, 2, 6, 7, 8, 9

The subject land is located in the medium bushfire risk area and proposed development is required to comply with the Minister's Code: Undertaking Development in Bushfire Protection Areas, in accordance with Objective 2, PDCs 1, 2, 6 and 7. PDCs 8 and 9 call for development which is located away from unacceptable fire risk and which has adequate access and water supply for fire-fighting purposes. The Minister's Code requires a minimum of 2,000L to be retained for fire-fighting purposes and the proposal includes a tank on the South Eastern side of the dwelling. The land has a slight incline and is not overly vegetated. The proposed dwelling is sited less than 30m from the road at the furthest point of the dwelling, and negates the need to have a CFS truck manouvering area on site.

It is considered that the proposal has satisfied the Minister's Code requirements.

### Residential Development

*Objectives:* 1, 2, 4

*PDCs:* 1, 2, 3, 5, 7, 8, 9, 10

In accordance with Residential Development Objectives 1, 2 and 4 and PDCs 1 and 2, the proposed dwelling will be located on a SA Water serviced site and will utilize a contemporary design, including a variety of materials. The proposal incorporates fenestration of varying dimensions and a balcony providing interest in the presentation to the street. The Northern aspect of the proposal provides for appropriate access to solar light and the plans have also indicated that solar panels are to be roof mounted on the most north facing side of the dwelling. The development is considered to adequately address PDCs 8, 9 and 10.

In alignment with PDCs 5 and 7, the subject land is connected to SA Water infrastructure. Whilst there is Council stormwater infrastructure within the road reserve, the topography of the land and distance between the closest pipe to the subject land will prevent the development from being able to discharge to the system. Subsequently, Council's engineers have requested that stormwater be managed on site. Accordingly, the new dwelling will capture stormwater in a rainwater tank and direct any overflow to a soakage trench which is to be sited in the south-western corner of the allotment. A condition is recommended requiring the

stormwater management system to be constructed and connected to the approved soakage trench (refer to recommended Condition 7).

## 7. SUMMARY & CONCLUSION

The purpose of this application is to replace the previously existing single storey dwelling with a two storey weatherboard style dwelling.

The subject land is located within the Country Living Zone - Country Living (Bridgewater) Policy Area and the proposal is a merit form of development. One representation was received in opposition from the neighbouring dwelling to the South East.

The dwelling will require retaining walls of up to 1m to retain cut and will not warrant substantial earthworks.

The dwelling is to be constructed using grey Duraplank and grey Colorbond, similar to existing dwellings on First Avenue. Whilst the new dwelling is two storey, the proposal has addressed the zone and general policy provisions relating to double storey dwellings, building setbacks, and overlooking impacts. Stormwater will be managed on-site via a soakage trench system.

The proposal is sufficiently consistent with the relevant provisions of the Development Plan, and it is considered the proposal is not seriously at variance with the Development Plan. In the view of staff, the proposal has sufficient merit to warrant consent. Staff therefore recommend that Development Plan Consent be **GRANTED**, subject to conditions.

## 8. RECOMMENDATION

**That the Council Assessment Panel considers that the proposal is not seriously at variance with the relevant provisions of the Adelaide Hills Council Development Plan, and GRANTS Development Plan Consent to Development Application 20/725/473 by Rivergum Homes Pty Ltd for two storey detached dwelling, deck (maximum height 2.4m), retaining walls (maximum height 1m) & associated earthworks at 8 Itawara Place Bridgewater subject to the following conditions:**

### (1) Development In Accordance With The Plans

The development herein approved shall be undertaken in accordance with the following plans, details and written submissions accompanying the application, unless varied by a separate condition:

- Site Plan, prepared by Rivergum Homes, issue 3, sheet 2 of 9 received by Council 17 July 2020
- Siteworks Civil Plan, prepared by RCI Consulting, Issue B, sheet 1 of 1, dated 31 August 2020, and On-site Retention of Stormwater Details received by Council 21 December 2020
- Lower Floor Plan, prepared by Rivergum Homes, issue 3, sheet 3 of 9 received by Council 17 July 2020
- Upper Floor Plan, prepared by Rivergum Homes, issue 3, sheet 4 of 9 received by Council 17 July 2020
- Elevations, prepared by Rivergum Homes, issue 3, sheet 5 of 9 received by Council 17 July 2020

- **Colours and Materials Schedule prepared by Rivergum Homes, received by Council 17 July 2020**

**REASON:** To ensure the proposed development is undertaken in accordance with the approved plans.

**(2) External Finishes**

The external finishes to the building herein approved shall be as follows:

**WALLS:** Greyology 2 or similar  
**ROOF:** Gull Grey or similar

**REASON:** The external materials of buildings should have surfaces which are of a low light-reflective nature and blend with the natural rural landscape and minimise visual intrusion

**(3) Residential Lighting**

All external lighting shall be directed away from residential development and, shielded if necessary to prevent light spill causing nuisance to the occupiers of those residential properties.

**REASON:** Lighting shall not detrimentally affect the residential amenity of the locality.

**(4) Decking/Balcony Screening**

The front balcony of the dwelling shall be fitted with fixed screening prior to occupation as shown on Elevation Plan 2 and 4, prepared by Rivergum Homes, received by Council 17 July 2020 to a minimum height of 1.5 metres above balcony floor level. The screening shall be maintained in good condition at all times.

**REASON:** Buildings should be designed to not cause potential for overlooking of adjoining properties.

**(5) Obscure Glazing To Windows**

The south eastern upper level windows of the dwelling shall be glazed with fixed obscure glass to a minimum height of 1.5 metres above finished floor level. The glazing in these windows shall be maintained in good condition at all times.

**REASON:** Buildings should be designed to not cause potential for overlooking of adjoining properties.

**(6) Fire-fighting Water Supply - Mains Water Supply Available**

A supply of water independent of reticulated mains supply shall be available at all times for fire-fighting purposes:

- a minimum supply of 2,000 (two thousand) litres of water shall be available for fighting purposes at all times; and
- the water supply shall be located such that it provides the required water; and
- the water supply shall be fitted with domestic fittings (standard household taps that enable an occupier to access a supply of water with domestic hoses or buckets for extinguishing minor fires); and



- the water supply outlet shall be located at least 400mm above ground level for a distance of 200mm either side of the outlet; and
- a water storage facility connected to mains water shall have an automatic float switch to maintain full capacity; and
- where the water storage facility is an above-ground water tank, the tank (including any support structure) shall be constructed of non-combustible material.

**REASON:** To minimise the threat and impact of fire on life and property as your property is located in a MEDIUM Bushfire Prone Area

**(7) Stormwater Management**

- (i) All roof runoff and surface run-off generated by the development hereby approved shall be managed on-site in accordance with the civil design to prevent trespass onto adjoining properties and to the satisfaction of Council.
- (ii) The stormwater management system show be constructed and connected to the approved soakage trench (including overflow from rainwater tanks) within one month of occupation of the dwelling.

**REASON:** To minimise erosion, protect the environment and to ensure no ponding of stormwater resulting from development occurs on adjacent sites.

**(8) Soil Erosion Control**

Prior to construction of the approved development straw bales (or other soil erosion control methods as approved by Council) shall be placed and secured below areas of excavation and fill to prevent soil moving off the site during periods of rainfall.

**REASON:** Development should prevent erosion and stormwater pollution before, during and after construction.

**NOTES**

**(1) Development Plan Consent Expiry**

This Development Plan Consent (DPC) is valid for a period of 2 years commencing from the date of the decision (or if an appeal has been commenced the date on which it is determined, whichever is later). Building Rules Consent must be applied for prior to the expiry of the DPC, or a fresh development application will be required. The 2 time period may be further extended by Council agreement following written request and payment of the relevant fee.

**(2) Erosion Control During Construction**

Management of the property during construction shall be undertaken in such a manner as to prevent denudation, erosion or pollution of the environment.

**(3) EPA Environmental Duty**

The applicant is reminded of his/her general environmental duty, as required by Section 25 of the Environment Protection Act 1993, to take all reasonable and practical measures to ensure that the activities on the whole site, including during construction, do not pollute the environment in a way which causes, or may cause, environmental harm.

**(4) Sewer Connection**

The dwelling shall be connected to SA Water mains sewer supply. All work shall be to the satisfaction of SA Water.

**(5) Works On Boundary**

The development herein approved involves work on the boundary. The onus of ensuring development is in the approved position on the correct allotment is the responsibility of the land owner/applicant. This may necessitate a survey being carried out by a licensed land surveyor prior to the work commencing.

**9. ATTACHMENTS**

Locality Plan  
Proposal Plans  
Application Information  
Applicant's Professional Reports  
Referral Responses  
Representation  
Applicant's response to representations

Respectfully submitted

Concurrence

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**Sarah Davenport**  
**Statutory Planner**

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**Deryn Atkinson**  
**Assessment Manager**

# COUNCIL ASSESSMENT PANEL MEETING

13 January 2021

## AGENDA

### BUSINESS ITEM – 10.1

**Originating Officer:** Deryn Atkinson, Assessment Manager

**Subject:** New Provisions for Delegation of Powers & Functions of Council Assessment Panel (CAP) as a Relevant Authority under the Planning, Development and Infrastructure Act 2016 & Regulations – additional delegations to Instrument C

**For:** Decision

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#### EXECUTIVE SUMMARY

The Council Assessment Panel (CAP) was established by the Council on 26 September 2017 under Section 83 of the *Planning, Development and Infrastructure Act 2016*.

Section 100 of the *Planning, Development and Infrastructure Act 2016 (PDI Act)* allows a relevant authority, other than an accredited professional, to delegate its powers and functions under this Act. The relevant authorities under the **PDI Act** are the Minister, the State Planning Commission, an assessment panel appointed by a joint planning board, an assessment panel appointed by a council, an assessment panel constituted by the Minister, an assessment manager, an accredited professional and a council. Thus the CAP, the Council and the Assessment Manager can all sub-delegate their powers and functions.

Delegations from the Council Assessment Panel to staff were adopted by CAP on 10 June 2020 in readiness for the full implementation of the **PDI Act** on the designated date. The delegations were based upon model delegations provided by the Local Government Association (LGA) at the time. The delegations included sub-delegation of powers and functions as a relevant authority to the Assessment Manager and sub-delegation of powers and functions in relation to building rules matters to the Council. Note, the building rules matters are assigned automatically by the **PDI Act and Regulations** to CAP. The Assessment Manager and Council in turn are able to delegate these functions to staff.

Since adoption of Instrument of Delegation under the *Planning, Development and Infrastructure Act 2016* and Regulations - Powers of an Assessment Panel (Instrument C) by CAP, the State Planning Commission has issued a number of Practice Directions which specify procedural requirements for the purposes of the **PDI Act**. These Practice Directions have necessitated the preparation of further new delegations in preparation for business readiness for the launch of the **PDI Act**, anticipated to occur in March 2021.

These new delegations for **the** Instrument of Delegation under the *Planning, Development and Infrastructure Act 2016* and Regulations - Powers of an Assessment Panel (Instrument C) are also based upon model delegations provided by the LGA. The new delegations have been drafted by staff for the consideration of CAP and are included as **Attachment 1** of this report. Other additional delegations related to Instruments A and B will be considered by Council at its 27 January 2021 meeting.

Note that all the **PDI Act** delegations will run concurrently with the delegations under the *Development Act 1993 and Development Regulations 2008*.

Staff recommend that the additional delegations specified for Instrument of Delegation (Instrument C), as contained in **Attachment 1** of this report, be adopted by the CAP.

## RECOMMENDATION

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 Regulations made thereunder contained in the proposed New Provisions of the Instrument of Delegation under the Planning, Development and Infrastructure Act 2016 and Regulations - Powers of an Assessment Panel (Instrument C) (Attachment 1 of the Report dated 13 January 2021) and entitled New Provisions are hereby delegated by the Council Assessment Panel on this 13<sup>th</sup> day of January 2021 to the Assessment Manager subject to the conditions and/or limitations specified herein in the proposed Instrument of Delegation; and
  2. Such powers and functions may be further delegated by the Assessment Manager in accordance with Section 100(2) (c) of the Planning, Development and Infrastructure Act 2016 as the Assessment Manager sees fit, unless otherwise indicated herein in the proposed Instrument of Delegation.
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### 1. GOVERNANCE

#### ➤ Legal Implications

The Council is required to have an Assessment Panel in place which is currently comprised of independent members and up to one Council Elected Member.

The *Planning, Development and Infrastructure Act 2016 (PDI Act)* was assented to by the Governor on 21 April 2016 after the passage through Parliament. It is being implemented over 5 years in stages. On 1 October 2017 the operation of Council Assessment Panel (CAP) pursuant to Sections 82 and 83 of the **PDI Act** commenced and the *Planning, Development and Infrastructure (General) Regulations 2017* [the **PDI (General) Regulations**] came into operation.

The full implementation of the **PDI Act** commenced for phase 2 councils on 31 July 2020. The designated date for phase 3 councils is likely to be in the first quarter of 2021. Just as a council is required to delegate its powers and functions under the *Development Act 1993* and the *Development Regulations 2008* to CAP and staff, there is a requirement under the **PDI Act and Regulations** for delegations. Existing delegations will need to run concurrently with the new ones until all the developments lodged under the Development Act and Regulations have been determined and approvals enacted or, until a designated date, should one be declared.

Pursuant to Section 100(2) (c) of the **PDI Act** the further planning functions and powers related to draft delegations in **Attachment 1** are recommended to be delegated to the Assessment Manager in anticipation of the operational date.

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

All applications which have been publicly notified and have representors who wish to be heard are reported to the CAP for consideration. This ensures that such members of the community have an opportunity to present their views about a specific development and its potential impacts to the CAP. Other types of development which do not require public notification, such as developments considered to be minor, are assessed by the staff of a Council.

➤ **Engagement/Consultation**

Community consultation on the Planning Reforms has been undertaken by the State Planning Commission and Council.

No community engagement or consultation is required for new legislation or the delegation of powers and functions, as this is the administrative part of the Planning Reforms.

## 2. THE NEED FOR DELEGATIONS

Under the **PDI Act**, there are more relevant authorities than exist currently (i.e. Council, private certifiers and the State Planning Commission). The relevant authorities under the PDI Act are the Minister, the State Planning Commission, an assessment panel appointed by a joint planning board, an assessment panel appointed by a council, an assessment panel constituted by the Minister, an assessment manager, an accredited professional and a council. The significant difference for the planning assessment function is that CAP and the Assessment Manager are the relevant authorities rather than the Council. Additionally the CAP is also the relevant authority for the building assessment functions.

The functions of an Assessment Manager as prescribed in Section 87 (e) of the **PDI Act** extend beyond acting as a relevant authority under the Act. They also include being responsible for managing the staff and operations of the CAP and providing advice to the CAP. Out of administrative necessity this requires that there are delegations to the Assessment Manager from CAP.

The CAP typically considers approximately 5% of the development applications lodged with Council and thus it is necessary for the CAP to delegate its planning functions and powers to Council staff for the assessment of the remaining 95% of development applications. As mentioned above under the **PDI Act** the building functions and powers are now bestowed on the CAP. Section 99(1) of the **PDI Act** permits a CAP to refer the building rules assessment function onto the Council, and only then can Council become the relevant authority. Out of administrative necessity, CAP will need to authorise the Assessment Manager to be delegated to undertake these additional planning functions.

A consequence of the new arrangements under the **PDI Act** is that CAP and Assessment Managers as relevant authorities in their own right, will both be respondents to planning appeals in their own right rather than the Council. However the Council will be directly responsible for the costs associated with both appeals and the activities of its CAP and its Assessment Manager pursuant to Section 83 (1) (h) (ii) and 87(f) of the **PDI Act**. It should be noted that the Assessment Manager and the CAP will not directly receive application fees.

Out of administrative necessity, CAP will need to authorise the Assessment Manager to make decisions on procedural matters (in the same way Council does now).

Draft delegations from the CAP to staff have been prepared to encapsulate the matters specifically mentioned in the Practice Directions issued by the State Planning Commission and other necessary administrative matters related to the processing of planning applications of a minor nature. These further draft delegations are based upon model delegations provided by the Local Government Association. The model delegations consist of the following four instruments:

- Instrument A - Delegations for the Powers of a Council as a Designated Authority
- Instrument B - Delegations for the Powers of a Council as a Relevant Authority
- Instrument C - Delegations for the Powers of a Council Assessment Panel
- Instrument D - Delegations for the Powers of an Assessment Manager

Amendments to Instruments A and B will be considered at the 27 January 2021 Council meeting and Instrument D by the CEO/Assessment Manager.

Further explanation on the CAP powers recommended to be delegated is provided in the following sections of the report.

### **3. DELEGATIONS FOR DEVELOPMENT OF A MINOR NATURE**

As is currently the situation pursuant to Part 1 of Schedule 9 of the Development Regulations 2008, there is the power pursuant to and in accordance with, the Planning and Design Code (the PD Code) for a CAP to form the opinion that a development is of a minor nature only and will not unreasonably impact on the owners or occupiers of land in the locality of the site of the development and therefore to exclude the development from the requiring public notification. As a procedural matter, and out of necessity this power to form the opinion is delegated to staff under the Development Regulations.

Similarly there is a current power delegated to staff in relation to Schedule 8 of the Development Regulations 2008 to form an opinion that a development is minor in nature and does not warrant a referral to a State agency. Likewise there is a power pursuant to and in accordance with the Planning and Design Code for a CAP to form the opinion development is minor in nature and would not warrant a referral to a State agency when considering the purpose of the referral.

As a procedural matter, and out of necessity this power to form the opinion is delegated to staff under the Development Regulations. It is recommended that the same delegations are provided to the Assessment Manager under the **PDI Act**. It is also recommended that as a condition of delegation that the opinion of the delegate be documented in a Delegate report and be countersigned by another statutory planner.

**4. STATE PLANNING COMMISSION PRACTICE DIRECTION 3 PERFORMANCE ASSESSED DEVELOPMENT– PUBLICLY NOTIFICATION OF DEVELOPMENT**

Performance Assessed developments that are required to be publicly notified will be determined by the CAP under the **PDI Act** except where delegations are provided to the Assessment Manager.

Practice Direction 3 prepared by the State Planning Commission outlines the requirements for undertaking Notification of Performance Assessed Development Applications and preparing notifications (refer **Attachment 2**). Out of necessity these procedural matters need to be managed by Council staff, and **Attachment 1** contains three (3) additional delegations to the Assessment Manager for these tasks.

**5. STATE PLANNING COMMISSION PRACTICE DIRECTION 5 – APPOINTMENT OF ADDITIONAL MEMBERS TO ASSESSMENT PANEL**

Practice Direction 5 prepared by the State Planning Commission outlines the requirements in circumstances where a delegate forms the view that additional expert advice is required for consideration of a development of by the CAP (refer **Attachment 3**).

Section 85 of the Act stipulates that an assessment panel appointed or constituted under the Act may appoint one or two members to act as additional members of that panel for the purposes of dealing with a matter that it must assess as a relevant authority and expertise is required that is not possessed by the existing assessment panel members. The additional members do not have voting rights.

However, a person is not eligible to be appointed as an “additional member” unless the person holds a qualification, or has expertise or experience, recognised by the Practice Direction.

Two (2) additional delegations to the Assessment Manager related to engaging additional members with the appropriate qualifications and experience are included in draft additional delegations in **Attachment 1**. It is suggested that engagement of any additional CAP member is undertaken with the concurrence of the Presiding Member.

**6. STATE PLANNING COMMISSION PRACTICE DIRECTION 6 – SCHEME TO AVOID CONFLICTING REGIMENS**

Practice Direction 6 prepared by the State Planning Commission outlines the regard that needs to be had in undertaking a planning assessment or imposing conditions for matters that are addressed under other Acts of legislation and to ensure that they are not duplicated by Planning Consents (refer **Attachment 4**). Two (2) additional delegations to the Assessment Manager related to avoiding conflicting regimens are included in the draft additional delegations in **Attachment 1**.

## 7. SUMMARY

The additional draft delegations from the CAP to staff have been prepared to encapsulate the matters specifically mentioned in readiness for the full implementation of the **PDI Act** on the designated date, anticipated to be sometime in March 2021. These draft delegations are based upon model delegations provided by the Local Government Association. Other additional delegations will be considered in further instruments of delegation (Instruments A and B) by the Council and the CEO (Instrument D) in due course.

It is recommended that the additional draft delegations as detailed in **Attachment 1** of this report be adopted by the CAP and included in the previously adopted Instrument of Delegation under the *Planning, Development and Infrastructure Act 2016* and Regulations - Powers of an Assessment Panel (Instrument C).

## 8. ATTACHMENTS

- (1) New Provisions of Delegation under the Planning, Development and Infrastructure Act 2016 and Regulations - Powers of an Assessment Panel (Instrument C)
- (2) State Planning Commission Practice Direction 3 – Notification of Performance Assessed Development Applications
- (3) State Planning Commission Practice Direction 5 – Appointment of Additional Members to an Assessment Panel
- (4) State Planning Commission Practice Direction 6 – Scheme to Avoid Conflicting Regimens



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***Attachment 1  
New Provisions of Delegation under the Planning, Development and  
Infrastructure Act 2016 and Regulations - Powers of an  
Assessment Panel (Instrument C)***

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***Attachment 2***  
***State Planning Commission Practice Direction 3 – Notification of Performance***  
***Assessed Development Applications***

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***Attachment 3***  
***State Planning Commission Practice Direction 5 – Appointment of Additional***  
***Members to an Assessment Panel***

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***Attachment 4***  
***State Planning Commission Practice Direction 6 – Scheme to Avoid Conflicting***  
***Regimens***

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