

**ADELAIDE HILLS COUNCIL
MINUTES OF SPECIAL COUNCIL ASSESSMENT PANEL MEETING
WEDNESDAY 19 JUNE 2024
ALDGATE VILLAGE WELL, 54 STRATHALBYN ROAD, ALDGATE
AND
LIVE STREAMING**

In Attendance

Presiding Member

Geoff Parsons

Members

Ross Bateup
Paul Mickan
Myles Somers
Leith Mudge

In Attendance

Jess Charlton	Acting Director Community & Development
Deryn Atkinson	Assessment Manager
James Booker	Team Leader Statutory Planning
Doug Samardzija	Senior Statutory Planner
Sebastien Paraskevopoulos	Statutory Planner
Tom Portas	Systems Analyst – IT Support
Sarah Kimber	Team Leader Development Services
Karen Savage	Minute Secretary

1. Commencement

The meeting commenced at 6.30pm

2. Opening Statement

“Council acknowledges that we meet on the traditional lands and waters of the Peramangk and Kurna people. We pay our respects to Elders past, present and emerging as the Custodians of this ancient and beautiful land. Together we will care for this country for the generations to come”.

3. Apologies/Leave of Absence

3.1 Apologies
Nil

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3.2 Leave of Absence
Nil

4. Previous Minutes

4.1 Meeting held 12 June 2024

The minutes were adopted by consensus of all members (23)

That the minutes of the meeting held on 12 June 2024 be confirmed as an accurate record of the proceedings of that meeting.

5. Presiding Member's Report
Nil

6. Declaration of Interest by Members of Panel

The following Conflict of Interest Statement was provided by Cr Leith Mudge:

"I wish to address the matter of a perception that some may hold that I have a conflict of interest in relation to Item 11.1 for consideration of a compromise proposal on the development application for 160 Longwood Road, Heathfield.

I am the Elected Member representative on this Council Assessment Panel and a local councillor for the Ranges Ward in which this proposed development would be located. I represent on Council both the owner of the subject land and the surrounding residents and ratepayers.

It could be perceived that I have a conflict of interest between my role of representing the interests of these communities and that of an impartial decision maker on this development application. However, there are measures that I have taken to mitigate this.

From the time that this development application was first foreshadowed until now I have been bound by the Code of Conduct for Council Assessment Panel members as a Member of the Panel and previously as a Deputy Member. The Code is provided for under the *Planning, Development and Infrastructure Act 2016* (the PDI Act) and specifically prohibited me from engaging or speaking publicly on this matter outside of the Panel meeting on 26 July 2023 where this matter was originally considered.

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I have taken this responsibility very seriously and thank members of the public and Councillors for their understanding in not approaching me or attempting to engage with me on this matter, and for those that inadvertently attempted to engage for their understanding of my polite refusal to discuss.

Given these measures and the fact that the Code of Conduct requires me to put aside any biases and be an impartial decision maker, I believe that I have been able to maintain my independence on this matter and based on my belief that I have no actual conflict, I will participate in the meeting and discussion of this item”.

7. Matters Lying on the Table/Matters Deferred

7.1 Matters Lying on the Table
Nil

7.2 Matters Deferred
Nil

8. Development Assessment Applications – Planning, Development and Infrastructure Act
Nil

9. Development Assessment Applications – Development Act
Nil

10. Development Assessment Applications – Review of Decisions of Assessment Manager
Nil

Before the Presiding Member asked the staff to take the Panel and audience through an introduction for Item 11.1, he briefly explained how the process tonight would work, and why, as detailed below:

“As most attendees will be aware the Council Assessment Panel previously considered this development and refused to grant Planning Consent.

The Act and Regulations allow an Applicant to appeal a refusal to the Environment Resources and Development Court, and the Applicant has chosen to do so in this case. The Court process allows an Applicant to submit a compromise proposal (or several compromise proposals) in an attempt to address the reasons for refusal that the Panel stipulated.

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The Panel can either accept the compromise proposal in which case the matter is referred back to the Court to issue the Consent and impose the conditions it sees fit, or alternatively the Panel can choose not to agree to the compromise proposal in which case the matter is referred back to the Court for further negotiations or a hearing.

For the compromise proposal there is a difference in meeting process from that of the original proposal, as the amendment is submitted as part of an appeal in the ERD Court. Under the Planning, Development and Infrastructure Act, no third-party appeal rights apply for performance assessed development. As the compromise proposal is not lodged as a new application, there is no opportunity for third-party comment on the amended proposal. Only the CAP as a party to the appeal, and the original decision authority, has an opportunity to express a view on the compromise submitted.

Tonight the Applicant is afforded an opportunity to introduce the compromise proposal to the Panel, and the Panel can ask any questions of the Applicant. After that, the Panel will move into confidence to discuss the compromise proposal. We do that because the matter relates to on-going litigation and so it is not appropriate to conduct those deliberations in public, and the Development Act and Regulations allows the Panel to go into confidence. The decision of the Panel will be known to staff and they can communicate it to various parties after the Applicant has been informed of the CAP decision.

The Court process and consideration of any compromise proposal does not allow a further opportunity for representors to be heard, but all representors and members of the public are welcome to observe the first part of the meeting tonight, prior to the Panel moving into confidence.

If you have any questions on the process or the outcome the staff will be happy to assist you tomorrow”.

11. ERD Court Appeals

11.1 Development Application 21031284 by PC Infrastructure Pty Ltd for 24 hour retail fuel outlet with associated canopy, car cleaning & dog wash facilities, 70,000L underground fuel storage tank, pylon advertising sign (maximum height 7m), combined fence & retaining walls, retaining walls, car parking & landscaping (Amended Proposal) at 160 Longwood Road, Heathfield

11.1.1 Representations

Representations heard previously at Special CAP meeting held on 26 July 2023.

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The applicant's representatives, Jeremy Hill (MinterEllison) and Tim Beazley (Peregrine Corporation), were invited to address the Panel and answer questions from the Panel.

12. Order for Exclusion of the Public from the Meeting to debate Confidential Matters

The following was adopted by consensus of all members (24)

That pursuant to Regulation 13(2)(a) of the *Planning, Development and Infrastructure (General) Regulations 2017*, the Council Assessment Panel orders that all members of the public, except:

- Presiding Member, Geoff Parsons
- Independent Member, Ross Bateup
- Independent Member, Paul Mickan
- Independent Member, Myles Somers
- Council Member, Leith Mudge
- Acting Director Community and Development, Jess Charlton
- Assessment Manager, Deryn Atkinson
- Team Leader Statutory Planning, James Booker
- Senior Statutory Planner, Doug Samardzija
- Statutory Planner, Sebastien Paraskevopoulos
- Systems Analyst – IT Support, Tom Portas
- Team Leader Development Services, Sarah Kimber
- Minute Secretary, Karen Savage
- Lawyer, Peter Psaltis

be excluded from attendance at the meeting for Agenda Item 11.1 (Compromise Proposal – Development Application 21031284) to be debated in confidence.

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

- vii. Matters that should be considered in confidence in order to ensure that the assessment panel, or any other entity, does not breach any law, or any order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty; and
- ix. Information relating to actual litigation, or litigation that the assessment panel believes on reasonable grounds will take place

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

7:30pm The Panel went into 'closed' session in order to allow for discussion and determination of the matter in confidence

12.1 Decision of Panel

The following was adopted by consensus of all members (25)

The Council Assessment Panel resolved:

- 1) That the Compromise Proposal for Development Application Number 21031284 by PC Infrastructure Pty Ltd for 24 hour retail fuel outlet with associated canopy, car cleaning & dog wash facilities, 70,000L underground fuel storage tank, pylon advertising sign (maximum height 7m), combined fence & retaining walls, retaining walls, car parking & landscaping (Amended Proposal) at 160 Longwood Road, Heathfield is NOT Supported.
- 2) To delegate to the Assessment Manager the function of defending the ERD Court Appeal as the Assessment Manager thinks fit.
- 3) That the Minutes shall remain confidential until the appellant is advised of the outcome.

The following was adopted by consensus of all members (26)

That the meeting be resumed in 'open' session.

8:16pm The Panel resumed 'open' session

13. Confidential Item
No further item.

14. Policy Issues for Advice to Council
Nil

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- 15. Other Business**
Nil
- 16. Next Meeting**
The next ordinary Council Assessment Panel meeting will be held on Wednesday 10 July 2024.
- 17. Close meeting**
The meeting closed at 8.17pm.