

# CONFIDENTIAL



REPORT FOR:	<b>Council</b>		
MEETING DATE:	19 January 2021		
REPORT FROM:	Director Infrastructure		
REPORT TITLE:	<b>Upper Spencer Gulf Regional Assessment Panel and Assessment Manager Endorsement</b>		
FILE NAME:	F20/559	RECORD NO:	AR21/1201

## STRATEGIC DIRECTIONS

### **5 Governance and Financial Sustainability**

5.5 We meet or exceed legislative and accreditation requirements for all relevant programs.

## **SUMMARY/ABSTRACT**

This report is to formally establish a Regional Assessment Panel under Section 84(1)(c)(ii)(a) and (e) of the Planning, Development and Infrastructure Act 2016 and appoint an Assessment Manager to oversee the operations of the Panel.

## **RECOMMENDATION**

### **Council:**

1. Further to the resolutions of the Cities of Port Augusta, Port Pirie, and Whyalla to establish an Upper Spencer Gulf Regional Assessment Panel under Section 84 of the Planning, Development and Infrastructure Act 2016, endorses the appointment of the following people to the Upper Spencer Gulf Regional Assessment Panel:  
  
5 Panel members – Level 2 accreditation:
  - o Independent Presiding Member – Stewart Payne
  - o Independent Member – Angela Stokes
  - o Independent Member – Fiona Barr
  - o Independent Member – Nick Stassinopoulos
  - o Independent Member – Robert Donaldson
2. Endorses David Altmann to be the Upper Spencer Gulf Assessment Manager on behalf of the three Upper Spencer Gulf member Councils.

## **BACKGROUND**

The Cities of Port Augusta, Port Pirie, and Whyalla have each previously formally resolved to approach the Minister for Planning to establish a Regional Assessment Panel for the Cities of Port Augusta, Port Pirie, and Whyalla under Section 84(1)(c)(ii)(a) and (e) of the Planning, Development and Infrastructure Act, 2016 at their respective 2019 Ordinary Meetings (refer **Attachment A**).

The three Cities then formally endorsed the Terms of Reference, Council Service Agreements and delegations at their March 2020 Ordinary Meetings.

Council staff have since undertaken an EOI process for the positions of five (5) Regional Assessment Panel members and for the position of Assessment Manager to perform the functions as set out under the Act.

The three USG Council CEO's have respectively signed a Memorandum (attached) in support of the proposed appointments, appointment terms, and the sitting fees.

## **DISCUSSION**

Council's resolutions were predicated by prior collaboration of the Councils over 18 months or so towards creating a Regional Assessment Panel - the reason for the above resolutions was based on a desire to:

- Form and operate a Regional Assessment Panel across the region to ensure that the most cost effective and productive service is delivered to respective communities.
- Avoid the need for each Council to separately attract and pay accredited Panel Members under the new State Government Professional Accreditation Scheme – saving costs and triplication.
- Collaborate on regional planning affairs, as it relates to planning assessment matters, given the common issues and opportunities facing the region geographically and economically.
- Establish economies of scale in the administration of a Regional Assessment Panel.
- Reduce costs associated with accreditation, sitting fees and on-costs.

The support for a Regional Assessment Panel was also thought to be the first step towards a possible Joint Planning Board, based on the preliminary business case previously presented to all three Councils. However the future possibility of a Joint Planning Board is a separate matter and the establishment of a Regional Assessment Panel does not hinge or rely on the formation of a Joint Planning Board.

Following on from the above the three USG Councils each resolved in March this year to proceed with establishing a RAP and for staff to conduct an EOI process for Regional Assessment Panel members and a joint USG Assessment Manager (refer **Attachment B**). The process has been undertaken and the recommended appointments have been endorsed by the three-member Council CEO's. However the creation of the Panel requires Council endorsement.

More detail can be seen in the attached Memorandum (refer **Attachment C**) but in summation the proposed terms of appointment are:

- 5 Independent Panel members, including a Presiding Member
  - Presiding Member to receive \$550/meeting attended
  - 4 Independent Members to receive \$400/meeting attended
  - Appointment term of 2 years as per Terms of Reference
- 1 Assessment Manager
  - Retainer of \$32,500 per annum per council
  - Appointment of 1 year

It is important to note that the Assessment Manager will be appointed and by the Chief Executive of the Department of Industry and Transport as the Minister's delegate and as such council staff will receive their delegations from the Assessment Manager, not Council. As such the accountability and liability for decisions made fall with the Assessment Manager and this is reflected in the retainer.

The open intent is for the external Assessment Manager position to only be required for the proposed single year term and that once all councils' have integrated the new planning system into 'Business As Usual' and all procedures and processes are working

effectively, that between the three USG councils an internal Planning Officer of one of the councils can undertake the Assessment Manager role on behalf of all.

## **CONFIDENTIALITY PROVISIONS**

As this report relates to the payment of fees associated with the attendance of persons at Regional Assessment Panel meetings and the retention of professional advice Section 90(3)(a) of the Local Government Act 1991 applies in that the report contains information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

As the appointment of persons to the Panel is for two years it is proposed to retain this information in confidence for a period up to and including 19 January 2023 as the principle of the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of the concerning the personal affairs of any person (living or dead).

## **RISK MANAGEMENT**

### **1: Financial/Budget/Asset Management**

The creation of a Regional Assessment Panel is expected to increase current operational expenditure by \$90,000 per annum considering Panel Member, Assessment Manager fees and other ancillary costs.

While these are slightly offset by existing fees paid to external contractors to provide expert development advice, this offset is minimal taking into consideration the need for this advice is not expected to diminish significantly to enable Council to meet the required timeframes for submissions to the Panels and assessment of 'complying' applications lodged directly to Council.

An adjustment will be made in the Quarterly Budget Review process.

### **2: Legal/Policy**

Local Government Act 1993

Planning, Development and Infrastructure Act, 2016

### **3: Environment/Planning**

N/A

### **4: Community**

N/A

**Stan Robb**

**08/01/2021**



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30 January 2020

Stephan Knoll MP  
Minister for Planning  
C/- Sally Smith  
Executive Director  
Department of Planning, Transport and Infrastructure  
GPO Box 1815  
Adelaide SA 5001

[sally.smith@sa.gov.au](mailto:sally.smith@sa.gov.au)

Dear Sally

**Establishment of a Regional Assessment Panel – Cities of Port Augusta, Port Pirie, and Whyalla**

The City of Port Augusta, the City of Port Pirie, and the City of Whyalla have each formally resolved to approach the Minister to establish a Regional Assessment Panel (RAP) under Section 84(1)(c)(ii)(A) and (e) of the Planning, Development and Infrastructure Act.

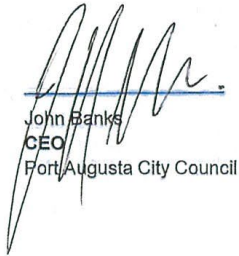
We wish to commence a process with you as soon as possible (as a matter of some urgency) with regard to the tasks/actions that are required for the establishment of the RAP, including matters such as terms of reference, reporting and governance requirements, appointment process for Members and an Assessment Manager, delegations, and ensuring such an entity is covered by insurance.

The reason for urgency is that the 3 Councils wish to establish the RAP prior to the 1 July 2020 *go live* date, and are conscious of the lead time required to establish a RAP. The urgency is also in order to avert the inefficiencies of establishing 3 separate CAPs and having to duplicate, time, resources, funds, attracting accredited members and 3 accredited Assessment Managers for 3 panels.

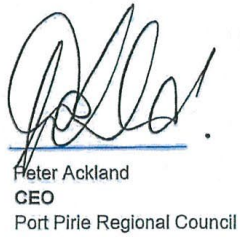
We wish to establish an initial meeting with you and our Project Group to get the process started with your assistance and guidance, without delay please.

Port Pirie Regional Council 115 Ellen Street Port Pirie PO Box 45 SA 5540  
• T (08) 86339777 • E [council@pirie.sa.gov.au](mailto:council@pirie.sa.gov.au) • [www.pirie.sa.gov.au](http://www.pirie.sa.gov.au) •

We look forward to working with you on establishing the RAP – we look forward to your response.



John Banks  
CEO  
Port Augusta City Council



Peter Ackland  
CEO  
Port Pirie Regional Council



Kristen Clark  
Acting CEO  
Whyalla City Council

## UPPER SPENCER GULF REGIONAL ASSESSMENT PANEL

### TERMS OF REFERENCE

#### Name

1. The name of the Panel shall be the Upper Spencer Gulf Regional Assessment Panel ("the Panel").

#### Establishment

2. The Panel is established by the Minister for Planning ("the Minister") pursuant to Section 84(1) of the *Planning, Development and Infrastructure Act 2016* (the "PDI Act").
3. The Panel is, pursuant to section 84(1)(c) of the PDI Act, constituted for the areas of the following councils:
  - 3.1 City of Whyalla
  - 3.2 Port Augusta City Council
  - 3.3 Port Pirie Regional Council
 (together referred to as "the Councils")
4. The Panel will, at all times, act in accordance with the PDI Act, the Minister's notice constituting the Panel, the Code of Conduct adopted by the Minister under Schedule 3 of the PDI Act and these Terms of Reference.

#### Number of Panel members

5. Pursuant to section 84(1)(e)(i)(A) of the PDI Act, the Panel is constituted of five (5) members, none of which may be a member of a council.

#### Appointment of members

6. Pursuant to section 84(1)(e) of the PDI Act, the Minister makes provision for the appointment of members of the Panel as follows:
  - 6.1 all members of the Panel, must be accredited as an accredited professional – planning level 2 under the *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019*;
  - 6.2 prior to the appointment of the initial Panel and, thereafter (as relevant):
    - 6.2.1 within one (1) month after the resignation of, or termination of appointment of a Panel member; or
    - 6.2.2 within two (2) months prior to the expiry of each term of the Panel,
 the Councils will determine a list of five (5) persons nominated for appointment as members of the Panel and a nomination for appointment as the Presiding Member of the Panel.

- 6.3 At the expiration of a term of appointment, a Panel member is eligible for reappointment.

**Term of office**

7. Members of the Panel will be appointed for two (2)-year terms.

**Conditions of appointment and grounds for removal from office**

8. Panel members are appointed to the Panel subject to the condition that all Panel members must maintain the accreditation required by clause 6.1 above for the term of their appointment.
9. Appointment to the Panel will expire if the Panel member:
- 9.1 fails to comply with clause 8 above;
  - 9.2 dies;
  - 9.3 resigns by giving written notice of his/her resignation to the Minister;
  - 9.4 becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors;
  - 9.5 is convicted of an offence;
  - 9.6 is removed from office under clause 10 below.
10. The Minister may remove a Panel member from the Panel on the following grounds:
- 10.1 maladministration;
  - 10.2 misconduct;
  - 10.3 neglect of duty;
  - 10.4 incapacity to carry out satisfactorily the duties of his/her office;
  - 10.5 failure to carry out satisfactorily the duties of his/her office;
  - 10.6 failure to disclose his/her financial interests in accordance with Schedule 1 of the PDI Act;
  - 10.7 upon receipt of a recommendation or direction from the State Planning Commission that the Panel member be removed from office pursuant to regulation 11 of the PDI Regulations.
11. If a vacancy in the membership of the Panel occurs, subject to clause 6.2.1 above, the Councils will fill that vacancy at the earliest opportunity.
12. An act of the Panel is not invalid by reason only of a vacancy in its membership.
13. The remuneration of Panel members will be determined by the Councils. The Councils are responsible for the payment of remuneration to Panel members.

14. The costs of and associated with the Panel will be borne by the Councils.

#### **Purpose**

15. The Panel is the relevant authority for development applications within the areas of the Councils as specified by section 93 the PDI Act.

#### **Powers and Functions**

16. The powers, functions and duties of the Panel are to be exercised in accordance with the PDI Act, the *Planning, Development and Infrastructure (General) Regulations 2017* ("the PDI Regulations") and these Terms of Reference.
17. The powers, functions and duties of the Panel are assigned by section 93 of the PDI Act and Part 5 of the PDI Regulations.
18. The Panel has the power to delegate its powers, functions and duties pursuant to section 100 of the PDI Act.

#### **Register of Financial Interests**

19. The Minister will maintain a register containing the disclosures of financial interests made by the members of the Panel pursuant to their obligation under Schedule 1 of the PDI Act.

#### **Assessment Manager**

20. The Panel must have an Assessment Manager in accordance with Section 87 of the PDI Act.
21. The Assessment Manager be appointed by the Chief Executive of the Department of Planning, Transport and Infrastructure having regard to a nomination provided by the Councils.
22. The costs associated with the Assessment Manager will be borne by the Councils.

#### **Meetings of the Panel**

23. Meetings of the Panel must take place as determined by the Panel from time to time.
24. Meetings may be held by telephone, audio-visual or other instantaneous means (telecommunications meeting).
25. The meeting procedures of the Panel are those prescribed by Part 3 of the PDI Regulations, unless otherwise resolved by the Panel.
26. Notice of a Panel meeting (whether ordinary or special) and the accompanying agenda will be given by the Assessment Manager to each Panel member and provided to each of the Councils not less than three clear working days prior to the meeting.

**Reporting**

27. The Assessment Manager shall present an annual report detailing the Panel's activities to each of the Councils before 30 September in each year.

**Circumstances not provided for**

28. If a circumstance arises in respect of which these Terms of Reference are silent or are incapable of being implemented, the Panel is authorised to determine by way of a unanimous decision of the Panel how to proceed and to carry out any action that the Panel deems must be taken.
29. In the event that an issue remains unresolved the Panel shall refer the matter to the Assessment Manager for direction.

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**BETWEEN**

AND

AND

(together, "the Councils")

- 1.1 The Panel will be constituted by way of a notice published in the *Gazette* by the Minister pursuant to Section 84(1)(c) of the PDI Act and the Terms of Reference adopted by the Minister.
- 1.2 The Terms of Reference referred to at clause 1.1 above forms ***Annexure 1*** to this Agreement.
- 1.3 The Panel will be constituted for the areas of the Councils and, pursuant to section 93 of the PDI Act, is a relevant authority for planning applications lodged within this area.
- 1.4 Pursuant to sections 87(a) and 87(d) of the PDI Act and the Terms of Reference, the CE of DPTI must appoint one (1) Assessment Manager for the Panel.
- 1.5 Pursuant to section 87(e) of the PDI Act, the Assessment Manager is:
  - 1.5.1 a relevant authority for certain planning and other applications in the area of the Councils per section 96 of the PDI Act and regulations 22 and 24 of the PDI Regulations;
  - 1.5.2 responsible for managing the operations of the Panel and for providing advice to the Panel, as appropriate.
- 1.6 This Agreement governs the management and operation of the Panel upon its establishment and the appointment and management of the Assessment Manager on the terms and conditions that follow.

## 2. PANEL OPERATIONS

- 2.1 The Councils agree that the XXXXXX is to act as the "Host Council" for a one (1) year period commencing on XXXXXX. Within three (3) months prior to of this period, the Councils will determine whether the XXXXXX is to continue as the Host Council or whether another Council will be the Host Council for another one (1) year. The selection of Host Councils will continue in this method at one (1) year intervals unless otherwise agreed in writing by the Councils.
- 2.2 The Host Council:
  - 2.2.1 must nominate an Assessment Manager for appointment by the CE of DPTI under the PDI Act;
  - 2.2.2 must ensure that delegations from the Panel and the Assessment Manager to the Councils are appropriately arranged and facilitated;
  - 2.2.3 must ensure that an adequate meeting space is provided for Panel meetings.
- 2.3 The nomination of Panel members will occur as follows:
  - 2.3.1 the Host Council will convene an evaluation panel comprising the Chief Executive Officer of the Host Council and the Chief Executive Officers of the two (2) remaining Councils;
  - 2.3.2 the Host Council will arrange for expressions of interest for Panel appointment to be sought in an appropriate fashion and will provide the responses received to the evaluation panel for consideration;
  - 2.3.3 the evaluation panel will then review the responses received and will make recommendations for appointments to the Panel, including the Presiding Member;
  - 2.3.4 the recommendations of the evaluation panel will then be reported to the Chief Executive Officer of the Host Council, who will provide the report to the Councils for consideration and endorsement;
  - 2.3.5 the nominations for Panel members endorsed by the Council will be put to the Minister for consideration in accordance with the Terms of Reference.
- 2.4 Panel meetings will occur at a location chosen by the Host Council. In the event that the Panel is required to determine a development application for a development proposed in a council area other than that of the Host Council's, the relevant council may make a request to the Host Council that the meeting and/or associated site inspection be held in their council area. The Host Council must agree to the request unless extenuating circumstances apply.
- 2.5 Panel members are to be remunerated as follows:
  - 2.5.1 each Panel member with the exception of the Presiding Member will be paid a quarterly stipend fee;

- 2.5.2 the Presiding Member will be paid a quarterly stipend fee which may be higher than the stipend fee paid to other Panel members;
  - 2.5.3 the stipend will be paid as above regardless of how many meetings occur within a quarter;
  - 2.5.4 the amount of the stipend will be reviewed ahead of the end of each Panel term. To this end, the Host Council will review the stipend amount against other Panel fees throughout South Australia and other relevant information. The Host Council will then provide a report to the Councils for consideration and endorsement. The stipend must be set prior to the calling of expressions of interest for Panel members.
- 2.6 The costs and expenses of the Panel are to be paid as follows:
- 2.6.1 the costs of associated with clause 2.3 above will be shared in equal proportions between the Councils. The Host Council will invoice the other Councils for payment of their share, as appropriate;
  - 2.6.2 the Councils will pay an equal share of the stipend fees paid in accordance with clause 2.5 above. The Host Council will be responsible for paying the stipends each quarter and will invoice each of the remaining Councils for their share;
  - 2.6.3 the Host Council will pay for the travel, accommodation and related costs associated with attending Panel meetings for Panel members as well as all other costs including but not limited to electricity and other services, facility costs, administration costs and stationery. The Councils will reimburse the Host Council for these expenses on a user-pays basis as follows:
    - (a) amounts owed to the Host Council will be calculated in accordance with the location of development applications determined by the Panel;
    - (b) where a development application proposes development in a particular Council area, that Council is responsible for paying a proportionate share of expenses;
    - (c) proportions are calculated on the basis of the number of development applications in each Council area per meeting. For instance, if three (3) development applications are considered in a meeting, but two (2) of those applications are within the area of Council X and one (1) is within Council Y, Council X must pay two-thirds (2/3) of the expenses and Council Y must pay one-third (1/3) of the expenses;
  - 2.6.4 public notification costs, including costs associated with clause 2.8 below, are to be paid directly by the Council in whose area the relevant development application which requires public notification is lodged;
  - 2.6.5 training for Panel members is to be paid at the first instance by the Host Council. The Host Council will issue invoices to the remaining Councils for a proportionate share of expenses incurred. The Councils agree that, for the

purposes of this clause, Panel members will be expected to maintain Continuing Professional Development requirements under the Accreditation Scheme at their own expense. Training under this clause means training sessions of regional interest where the Councils agree that it should be arranged specifically for the Panel;

- 2.6.6 if a Panel member resigns, the Councils will each pay a proportionate contribution to the administrative and other costs of replacing that member;
- 2.6.7 where legal or other advice is required for a development application for which the Panel is the relevant authority under the PDI Act, the costs of that advice will be paid by the Council in whose area the development is proposed to occur within. Where the development application proposes development in more than one council area, the costs of the advice will be shared in equal proportions between the relevant Councils;
- 2.6.8 where a decision of the Panel on a development application is appealed pursuant to section 202 of the PDI Act, the costs of and incidental to the appeal will be paid by the Council in whose area the development is proposed to occur within. Where the development application proposes development in more than one council area, the costs of and incidental to the appeal will be shared in equal proportions between the relevant Councils.
- 2.7 Development application fees are to be retained by the Council in whose area the relevant development application is located.
- 2.8 Where, pursuant to regulation 47(4) of the PDI Regulations, an applicant requires the Panel to place a notice on land for the purposes of public notification under section 107(3)(a)(ii) of the PDI Act and regulation 47(2) of the PDI Regulations, the Council in whose area the relevant development application relates to will ensure that the notice is placed on the subject land in strict accordance with the requirements of the PDI Act, PDI Regulations and the relevant State Planning Commission Practice Direction.

### 3. THE ASSESSMENT MANAGER

- 3.1 Subject to appointment by the CE of DPTI, the Assessment Manager will be an employee or contractor of the Host Council. The Host Council is responsible for paying the wages or fees, as relevant, of the Assessment Manager.
- 3.2 The Councils agree that the Assessment Manager will be able to delegate their functions and powers to officers of the Councils, as appropriate. To this end:
  - 3.2.1 the Councils acknowledge that powers and functions of the Assessment Manager can be exercised by other persons acting under delegated authority;
  - 3.2.2 the expectation of the Councils is that development applications proposing development in their area will be assessed by delegates employed by or contracted to the relevant Council;

- 3.2.3 delegates who have undertaken assessment work on a development application under delegated authority which is to be determined by the Panel, or which is subject to a review to the Panel, must attend all relevant Panel meetings;
- 3.2.4 where the Assessment Manager, at the request of a Council expends time on development applications lodged in areas outside of the Host Council area, the Host Council will calculate the value of this time and will invoice the relevant council accordingly on a month-to-month basis.
- 3.3 If the CE of DPTI appoints an Assessment Manager who is not the person nominated by the Host Council, the costs of the Assessment Manager will be equally shared between the Councils.
- 3.4 The Assessment Manager is responsible for:
  - 3.4.1 issuing delegations to appropriate persons;
  - 3.4.2 preparing and issuing the agenda to each Council (in electronic and hardcopy format) and to Panel members;
  - 3.4.3 providing notice of Panel meetings;
  - 3.4.4 where necessary, liaising with representors and/or Officers of the Councils;
  - 3.4.5 recording the minutes of Panel meetings, noting any disclosures of interest made by a Panel member; and
  - 3.4.6 distributing the minutes of Panel meetings to each Council (in electronic and hardcopy format).
- 3.5 The Assessment Manager must make the agenda of a Panel meeting available to the public and the Councils within three (3) clear working days before the meeting.
- 3.6 The Assessment Manager must make the minutes of a Panel meeting available to the Councils and the public within five (5) working days of the meeting.
- 3.7 Where legal or other advice is required for a development application for which the Assessment Manager is the relevant authority under the PDI Act, the costs of that advice will be paid by the Council in whose area the development is proposed to occur within.
- 3.8 Where a decision of the Assessment Manager on a development application is appealed pursuant to section 202 of the PDI Act, the costs of and incidental to the appeal will be paid by the Council in whose area the development is proposed to occur within.

#### 4. ACKNOWLEDGEMENTS

- 4.1 The Councils acknowledge that there is no express ability to "withdraw" from the Panel under the PDI Act.

4.2 The Councils acknowledge that decisions to:

4.2.1 appoint the Panel; and

4.2.2 determine the area in which the Panel operates; and

4.2.3 appoint the Assessment Manager; and

4.2.4 determine the types of development applications in the areas of the Councils that must be determined by the Panel and/or the Assessment Manager,

are not decisions made by any of the Councils, the panel or the Assessment Manager.

## 5. COMMUNICATIONS

5.1 Communication by the Councils under this Agreement is to occur through each Council's Chief Executive Officer or nominated delegate and must occur in writing via email or post.

## 6. RELATIONSHIP OF THE COUNCILS

The relationship between the Councils is limited to the purposes of this Agreement and is not to be construed as a partnership, joint venture, principal and agent, trust, fiduciary or any other special relationship.

## 7. TERM

This Agreement is effective from the date of its execution by the Councils and will terminate in circumstances where the termination of the Agreement is agreed to by the Councils in writing or where an agreement is executed by the Councils that, in effect, renders the Agreement obsolete.

## 8. TERMINATION AND WITHDRAWAL

8.1 This Agreement may only be terminated if the Minister dissolves the Panel.

8.2 No Council may withdraw from the Agreement unless the Minister amends the area of the Panel to wholly exclude that Council.

## 9. CONFIDENTIALITY

9.1 Subject to the provisions of the *Freedom of Information Act 1991*, a Council must not, without the prior written consent of the other Councils, use or disclose confidential information regarding any other Council.

9.2 A Council will not use any confidential information provided to it pursuant to this Agreement other than to discharge its obligations in accordance with the Agreement.

## 10. INDEMNITIES AND GUARANTEES

Each Council will indemnify the remaining Councils from and against any losses, actions, damages, costs and expenses that arise from or are the result of the failure of that Council to perform any of its obligations under this Agreement, except to the extent that those other Councils contributed to such loss.

## 11. DISPUTE RESOLUTION

11.1 It is the intention of the Councils to amicably and in good faith settle any dispute that arises out of the performance of this Agreement, by way of discussion and negotiations between the relevant Chief Executive Officers of the Councils.

11.2 Where a dispute has arisen, it must be referred to the Chief Executive Officers of the Councils who, if they cannot reach agreement, will refer the matter to their respective Council for determination.

## 12. INTERPRETATION

12.1 In this Agreement:

12.1.1 **Councils** means the parties to this Agreement

12.1.2 **CE of DPTI** means the Chief Executive of the Department of Planning, Transport and Infrastructure and, where relevant, the Chief Executive of any Department responsible for the administration of the PDI Act

12.1.3 **Host Council** is defined in clause 2.1

12.1.4 **Minister** means the Minister for Planning

12.1.5 **Panel** means the Upper Spencer Gulf Regional Assessment Panel established by the Minister

12.1.6 **PDI Act** means the *Planning, Development and Infrastructure Act 2016* (SA)

12.1.7 **PDI Regulations** means the *Planning, Development and Infrastructure (General) Regulations 2017* (SA) and any successor regulations

12.1.8 **Terms of Reference** means the Terms of Reference for the Panel adopted by the Minister for Planning and which forms **Annexure 2** to this Agreement.

12.2 Where this Agreement requires that costs be borne by the Council with responsibility for the council area containing the land which is the subject of a development application and such land is in more than one council area, the costs will be shared in equal proportions between the relevant Councils.

12.3 Where:

12.3.1 this Agreement stipulates that fees or income will be retained by the Council with responsibility for the council area containing the land which is the subject of a development application; and

12.3.2 such land is in more than one council areas;

12.3.3 such income will be distributed as follows:

- (a) where the processing and assessment of the relevant development application is undertaken by a delegate of one of the Councils – 100% of the income is to be paid to that council;
- (b) where the processing and assessment of the relevant development application is undertaken by delegates of more than one of the Councils - in proportions between the relevant Councils determined by the number of hours of work undertaken by each delegate.

12.4 In this Agreement unless the context otherwise requires:

12.4.1 a term which is defined in the Background or in Clause 11.1 has the meaning there defined;

12.4.2 headings do not affect interpretation;

12.4.3 the term "person" includes a corporate body, partnership, association, government body or other entity;

12.4.4 a reference to a party includes its executors, administrators, successors and permitted assigns;

12.4.5 singular includes plural and plural includes singular;

12.4.6 where two or more persons are bound by this Agreement to observe or perform any obligation or agreement whether express or implied then they shall be bound jointly and also severally; and

12.4.7 a reference to any statute or subordinate legislation includes all statutes and subordinate legislation amending, consolidating or replacing the statute or subordinate legislation referred to.

## 13. GENERAL

### 13.1 Amendment

This Agreement can only be amended, modified, varied, released or discharged by the written agreement of the Councils.

### 13.2 Governing Law

The laws of South Australia apply to the performance of this Agreement and the parties submit to the exclusive jurisdiction of the courts of South Australia and the Adelaide Registries of Australian courts in relation to any litigation arising from this Agreement.

### 13.3 Entire Agreement

Subject to the Regulations and the Regional Assessment Panel Meeting Procedures this Agreement constitutes the full extent of terms that have been agreed to by the Councils in relation to the establishment and ongoing operation of the Panel and Assessment Manager. It is intended to supersede any previous arrangements, agreements, correspondence, tenders, representations, proposals, understandings and communications that were entered into and/or made by the Councils (whether orally or in writing) in regards to the establishment and ongoing operation of the Panel and Assessment Manager.

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#### EXECUTED AS AN AGREEMENT

The common seal of the **CITY OF** )  
**WHYALLA** was hereto affixed in the )  
 presence of: )  
 )

.....  
 Mayor Clare McLaughlin

.....  
 Kristen Clark, Acting Chief Executive Officer

The common seal of **PORT AUGUSTA CITY** )  
**COUNCIL** was hereto affixed in the presence )  
 of: )  
 )

.....  
 Mayor Brett Benbow

.....  
 John Banks, Chief Executive Officer

The common seal of **PORT PIRIE** )  
**REGIONAL COUNCIL** was hereto affixed in )  
 the presence of: )  
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 Mayor Leon Stephens

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 Peter Ackland, Chief Executive Officer

## MEMO

To: USG Council CEOs, John Banks, Peter Ackland, Kristen Clark  
 From:- Grant McKenzie, Jodie Perone, Daniele Hockey  
 Regarding: USG Regional Assessment Panel (RAP) – appointment of Assessment Manager and Panel Members  
 Date: 27 November 2020

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### Propose

As outlined in more detail below, we seek your endorsement of our recommendation on the appointment of Assessment Manager and Panel Members to the USG Regional Assessment Panel (RAP).

### Background

As you are aware, in late 2019, each of the USG Councils made joint resolutions to approach the Minister for Planning to establish a RAP for the Cities of Port Augusta, Port Pirie, and Whyalla.

To enact the above resolution the three Councils undertook the following:

- Set up an Internal Project Group of the Directors/Managers of each Council to implement the resolutions
- Made an initial formal submission to the Minister for Planning to seek to establish the RAP – involving meetings with senior officials of DPTI.
- Prepared Terms of Reference and Council Service Agreement for the setup and operation of the RAP.

### Terms of Reference and Council Service Agreement

The Terms of Reference and Council Service Agreement for the operation of the RAP were adopted by each USG Council in March 2020 – as were resolutions to work with the Minister on the establishment of the RAP.

Key elements of the adopted Terms of Reference and Council Service Agreement were as follows:-

#### The Regional Assessment Panel (the Panel)

- The Panel will act as a relevant planning authority for certain types of development applications only, being Performance Assessed applications that are subject to public notification
- The Panel will comprise of five (5) independent members - none of which would be an elected member of a Council
- Each of the 5 Panel members must be accredited as an accredited professional – planning level 2 under the *Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019*
- Members of the Panel would be appointed for two (2)-year terms
- Members would receive a sitting fee per meeting attended by each individual.

#### The Assessment Manager

- The Assessment Manager will be a relevant authority for certain planning applications only, being Deemed to Satisfy and Performance Assessed applications that are not subject to public notification – applications that receive no representations may be delegated to the Assessment Manager by the RAP
- The Assessment Manager will also be responsible for managing the operations of the Panel and for providing advice to the Panel, as appropriate.

#### Council planners and administrative staff

- The Council planners and administrative staff would act under delegated authority of the Assessment Manager
- The Council planners would retain their day to day duties, as employees of the Council
- The Council planners will also prepare and submit reports to the RAP, in the same manner as they currently do for the Council Assessment Panel.

#### Host Council

- Each Council would be responsible for the administration duties associated with the Panel, as Host Council, on a yearly rotational basis, for matters such as Agendas, Minutes, and hosting meetings – we are confident that the current costs for Council administration duties would not be greater than it is currently and any additional workload can be managed with existing resources.
- The Host Council will ensure the delegations for the Panel and Assessment Manager are in place
- Meetings may be held by telephone, audio-visual or other instantaneous means (telecommunications meeting).

#### Selection process

A selection process, overseen by the Project Group of the Directors/Managers of each Council was undertaken recently, via:

- Select EOI for the Assessment Manager, three approaches, two submissions received:
  - Development Answers - David Altmann
  - Fyfe – Zoe Garnaut
  - Robert Donaldson – Declined to submit
- Open EOI for Panel Members including the ability for current members to apply.

Each submission was reviewed by the Project Group against assessment criteria.

#### Our recommendation

As a result of the assessment, we recommend the appointment of:-

- Assessment Manager – David Altmann, Development Answers – highly experienced, qualified and certified planner with Level 1 accreditation
- 5 Panel members – Level 2 accreditation:
  - Independent Presiding Member – Stewart Payne
  - Independent Member – Angela Stokes
  - Independent Member – Fiona Barr
  - Independent Member – Nick Stassinopoulos
  - Independent Member – Robert Donaldson

A total possible fee per annum for the panel (4 Panel Members, 12 meetings per year, \$400/meet) of \$19,200 is recommended and a total fee per annum for the Presiding Member (\$550/meet) of \$6,600. This equates to a budget amount of \$25,800 total to be shared equally across the three USG councils which equals \$8,600 per annum per council. Note again that this is based on the maximum number of 12 meetings being held, the panel members will only receive a sitting fee per meeting attended.

*(Note: Historically each of the three member councils have only averaged 2-3 panel meetings per year for a combined total averaging 6-8 per year. As it is not entirely known whether this trend will continue under the new planning system it is recommended to initially budget for the maximum number of meetings.)*

The fee proposal for the Assessment Manager was acceptable, being a retainer of \$32,500 per annum (ex gst) per council – this would cover providing general advice, reviewing the RAP agenda and minutes (as prepared by the Host

Council and relevant planning officer) and have general communication and liaison with delegates and the Presiding Member of the RAP. It is also important to note that under the PDI Act, the Assessment Manager is the relevant authority and their delegations come from the RAP, not Council.

The Assessment Manager can then delegate downward to Council planning staff at each of the participating Council's. As such an appropriate component of the Assessment Manager fee is for the accountability and liability that they carry on behalf of the RAP and Council's.

In addition to the retainer, the Assessment Manager would bill separately (hourly rate of \$250 ex gst – or flat daily rate not marked up for long extended days) for Council visits (to be paid by the Council that requires such), site visits, RAP meetings, if any additional RAP reporting – zoom would be used where applicable – if the Assessment Manager were asked to assist a Council during periods of staff leave or periods of heavy staff work load, or for appeals, expert witness statements, court time, and the like, this would be charged additionally.

There will also be costs for Assessment Manager disbursements for mileage, flights, accommodation, car hire, meals and incidentals. Again, we are confident that the current costs for Council's general development related administration duties would not be greater than it is currently.

The term of the Assessment Manager is to be for 1 year – this will enable the Councils to review the current model, and to also consider other models possibly through use of future Level 1 accredited Council staff. The term of the Panel members to be for 2 years in line with the Terms of Reference and Council Service Agreement – in both cases with the ability for renewal on mutual terms.

The activation of the appointments would marry with the go live date of the Planning and Design Code for Phase 3 Councils, likely to be early in 2021 – however, it is important that we close the loop on the selection process and to ensure that we are business ready in advance.

Based on the Terms of Reference provided to DPTI/Minister's office, the above process is satisfactory in terms of the process for appointment of Panel members – the Minister must be informed.

As it relates to the Assessment Manager, this is technically an appointment of the CE of DPTI, but via the Terms of Reference, the CE would rely on the selection process/decision of the Councils.

Upon your endorsement of our recommendation, the Council Service Agreement requires that the decision be reaffirmed by Council resolution.

Daniele Hockey  
Acting Manager Development  
Services  
City of Port Augusta

Grant McKenzie  
Director Development &  
Regulation  
Port Pirie Regional Council

Jodie Perone  
A/Manager Environmental  
Health & Regulatory  
Services/Planning Officer  
City of Whyalla

ENDORSED BY:

John Baris  
Chief Executive Officer  
City of Port Augusta

Date 9/12/20

Peter Ackland  
Chief Executive Officer  
City of Port Pirie Regional  
Council

Date 10 DEC 2020

Justin Commons  
Chief Executive Officer  
City of Whyalla

Date 8/12/20