



Development Assessment Panel Complaints Handling Policy

Adopted by Council
Updated

24 July 2012
27 September 2016

Contents

1	PURPOSE	1
2	DEFINITIONS	1
3	POLICY STATEMENT	1
4	LEGISLATIVE AND CORPORATE REQUIREMENTS	2
5	MAKING A COMPLAINT	2
6	PROCESSING A COMPLAINT	3
7	INITIAL ASSESSMENT AND REFERRAL BY THE PUBLIC OFFICER	3
8	LEVEL ONE COMPLAINTS.....	4
9	LEVEL TWO COMPLAINTS	5
10	LEVEL THREE COMPLAINTS	6
11	REVIEW	7
12	ACCESS TO THE POLICY	7
13	FURTHER INFORMATION	7

1 Purpose

- 1.1 The Development Assessment Panel Complaints Handling Policy (the Policy) is established to manage the investigation and determination of complaints against Members of Council's Development Assessment Panel.

2 Definitions

- 2.1 **DAP** means a Council's Development Assessment Panel established by a Council under section 56A of the *Development Act 1993*.
- 2.2 **Local Government Governance Panel (LGGP)** means the independent Panel established by the Local Government Association (LGA) to assist Councils to deal with complaints made in respect of the Council's Council Member Code of Conduct or the Minister's code of conduct for DAP Members. The LGGP does not deal with complaints made against independent members of the DAP.
- 2.3 **Public Officer** means a person appointed by the Council under section 56A(22) of the *Development Act 1993* as the Public Officer for its DAP. The Public Officer is not a member of the DAP. The functions of a Public Officer under Section 56A(24) of the Act include ensuring the proper investigation of complaints about the conduct of a member of the DAP, while the Public Officer may refer a complaint to another person or authority for investigation or determination.

The Public Officer for the City of Prospect DAP is:

Cate Atkinson
Chief Executive Officer, City of Prospect
128 Prospect Road
(PO Box 171)
Prospect SA 5082

Email: admin@prospect.sa.gov.au
Phone: 8269 5355
Fax: 8269 5834

- 2.4 **Presiding Member** means the person appointed by the Council under section 56A(3)(b) of the *Development Act 1993* to be the Presiding Member of its DAP. The Presiding Member must not be an officer or member of the Council.
- 2.5 **DAP Member** means a person appointed by Council under section 56A(3) of the *Development Act 1993* to be a member of its DAP and includes the Presiding Member of the DAP.

3 Policy Statement

- 3.1 City of Prospect has established a Development Assessment Panel (DAP), under section 56A of the Act, and appointed its membership and Public Officer in accordance with legislative requirements.

- 3.2 The Minister for Urban Development and Planning has adopted a code of conduct under section 21A of the Act to be observed by DAP Members and officers of relevant authorities exercising delegations under the Act (refer to **Appendix A**). The standards expressed in the code of conduct are complementary to the statutory requirements of the Act and other relevant Acts and Regulations.
- 3.3 The Policy sets out the processes used to handle any complaints received about the conduct of a DAP member or members. It should be noted that this policy does not include concerns and complaints about decisions against the guidelines established in Council's Development Plan, but rather captures concerns and complaints about misconduct or behaviour of a DAP member(s). The Policy therefore focuses on procedural matters under the *Development Act 1993* and its regulations as well as the DAP Code of Conduct.
- 3.4 The Presiding Member should wherever possible attempt to effectively deal with inappropriate behaviour in a meeting at the time it arises. The Presiding Member should take notes of any inappropriate behaviour and preserve those notes to assist in the investigation of any complaint about that behaviour.
- 3.5 Concerns relating to the assessment and/or determination of an application should be dealt with through the appeal process, where those rights are available under the Act.
- 3.6 Nothing in the Policy or the Act prevents a person making a complaint to the Ombudsman under the *Ombudsman Act 1972* or to the Office of Public Integrity under the *Independent Commissioner Against Corruption Act 2012*.

4 Legislative and Corporate Requirements

- 4.1 The Council's Development Assessment Panel Complaints Handling Policy is to be read and implemented in conjunction with the *Development Act 1993* and *Development Regulations 2008*.

5 Making a Complaint

- 5.1 Any person, regardless of their relationship with the Council or DAP, who believes behaviour contrary to the requirements of the *Development Act 1993* or the Code of Conduct or any other misconduct by DAP member(s) may have occurred, should bring details to the attention of the Public Officer.
- 5.2 A complaint made against a DAP Member or Members must be in writing and addressed to the Public Officer.
- 5.3 A complaint must identify by name the DAP Member(s) who is the subject of the complaint.
- 5.4 Provision of a complainant's contact details and written information with supporting evidence are of considerable value in investigating a complaint. A complaint should:
- 5.4.1 Identify the complainant by name, address, telephone number and/or email address;
 - 5.4.2 State the circumstances giving rise to the complaint; and

5.4.3 State the evidence relied upon in making the complaint.

- 5.5 Complaints should be raised in a timely fashion, dependent on circumstances at the time, and will be promptly acted upon. A complaint should be made within six (6) weeks of the alleged incident that is the subject of the complaint. At the discretion of the Public Officer, complaints made beyond this time frame may also be considered.

6 Processing a Complaint

- 6.1 The Public Officer must write to the complainant within 2 working days of receiving the complaint to acknowledge receipt of the complaint and to request the complainant to observe confidentiality regarding the complaint. The complainant will also be informed that, to ensure procedural fairness, particulars of the complaint will be provided to the person against whom the complaint is made.
- 6.2 The Public Officer must write to the DAP Member who is the subject of the complaint to notify them that a complaint has been made concerning them and provide full particulars of the alleged misconduct. The Public Officer will direct the DAP Member to observe confidentiality regarding the complaint.
- 6.3 The Public Officer may seek advice from the DAP Presiding Member in relation to a complaint against a DAP Member. No other DAP Member(s) will be informed of the complaint.
- 6.4 After reviewing the complaint and requesting any with further information from the complainant that may be deemed necessary, the Public Officer will take the steps set out in this Policy, together with such other steps as the Public Officer considers necessary to ensure a proper investigation of the complaint.
- 6.5 Appropriate legal advice and other required support is available on request to assist the Public Officer during both the assessment and investigation of a complaint.
- 6.6 A DAP member against whom a complaint has been made has the right, under natural justice, to be heard by the decision maker regarding the allegation.
- 6.7 All deliberations relating to a complaint against a DAP member or DAP as a whole entity will be conducted in confidence but the number of complaints and their nature, status and outcomes will be publicly reported.
- 6.8 The Public Officer will securely retain all records/material relating to a complaint and investigation, except where the complaint is referred in its entirety to an external authority to investigate and determine.

7 Initial Assessment and Referral by the Public Officer

- 7.1 The initial assessment of complaints will involve determining if an allegation:
- Is trivial, vexatious or frivolous, and accordingly not investigated.
 - Is best described as a Level One, Two or Three complaint, as prescribed below.

- 7.2 The Public Officer may undertake or commission separate investigations and determinations in relation to different elements or aspects of any one complaint. The Public Officer may also split a complaint into component parts and treat each component as a complaint in its own right to be dealt with in accordance with this Policy.
- 7.3 Once the Public Officer has obtained all necessary information about the complaint they will advise the complainant(s) of:
- 7.3.1 If the complaint will be investigated further
 - 7.3.2 If the complaint is to be investigated further, the respective course of action to be taken; and
 - 7.3.3 A timeframe for how long the investigation may take.
- 7.4 The Public Officer may refer the complaint to the LGGP Chair or an independent legal adviser to assess the severity of the complaint for the purposes of the initial assessment.
- 7.5 Depending on the information provided and on considering the possible nature, category and severity of the complaint, the Public Officer may determine that the complaint is without basis and does not have sufficient substance to warrant further investigation.

8 Level One Complaints

- 8.1 Level One is the lowest category of complaint. Level One complaints will generally relate to the behaviour of a DAP member or members within the context of a DAP meeting.
- 8.2 Examples of possible conduct leading to Level 1 complaints are:
- 8.2.1 Disrespect to the Presiding Member of the meeting
 - 8.2.2 Disrespect to other DAP members at a meeting
 - 8.2.3 Interruption of another speaker
 - 8.2.4 Failure to accept the Presiding Member's ruling
 - 8.2.5 Failure to observe adopted DAP Operating Procedures
 - 8.2.6 Failure to have regard to the relevant provisions of the Development Plan
 - 8.2.7 Inappropriate comments regarding staff, members of the public or fellow DAP members
 - 8.2.8 Actions in resolving an application or hearing submissions from the public.

- 8.3 Upon receipt of a complaint, if the Public Officer considers that the complaint should be investigated, the Public Officer should first seek the views of the DAP Presiding Member as to the matter complained of, and whether it was (in the Member's view) a matter appropriately dealt with in the course of the meeting.
- 8.4 In the event the Presiding Member is the subject of the complaint, such views should be sought from the deputy presiding member.
- 8.5 The views of the Presiding Member or deputy presiding member should be provided in writing to the Public Officer within two weeks, unless further time is allowed.
- 8.6 The Public Officer will consider whether any further investigative steps are necessary in light of any response. If the Public Officer considers that further steps are necessary, they may take any one or more of the steps set out in Clause 3.2 of the Code of Conduct (including requiring an investigation into the complaint by an appropriate person).
- 8.7 The Public Officer must report the determination in writing to the complainant and the DAP Member who is the subject of the complaint. In determining consequences, the Public Officer may:
 - 8.7.1 Ask that the remarks be withdrawn
 - 8.7.2 Ask that the DAP member offer an apology
 - 8.7.3 Provide additional training to the DAP member(s)
 - 8.7.4 Provide counselling from the DAP Presiding Member or another suitably experienced and qualified person
 - 8.7.5 Recommend a formal letter of apology from the DAP Presiding member be issued to the complainant.

9 Level Two Complaints

- 9.1 Level Two complaints are more serious than Level One complaints. They include possible breaches of the Act and associated regulations that allege improper but not criminal behaviour, as well as conduct contrary to the Code of Conduct.
- 9.2 Examples of possible conduct leading to Level 2 complaints are:
 - 9.2.1 Attempting to inappropriately (but not illegally) influence the decision of an officer of Council
 - 9.2.2 Improper use of Council resources
 - 9.2.3 Improper use of the office of a DAP member
 - 9.2.4 Harassment of Council staff or other DAP members
 - 9.2.5 Improper use of confidential information (where this is not illegal)
 - 9.2.6 Action contrary to the DAP Operating Procedures outside of a DAP meeting

- 9.2.7 Action contrary to a Council policy (where applicable to the behaviour of a DAP member)
- 9.2.8 Public behaviour that causes detriment to the image of the Council
- 9.2.9 A failure to disclose a conflict of interest
- 9.2.10 Persisting in conduct worthy of a Level One complaint without corrective action.
- 9.3 The investigation process would be the same as a Level One complaint, with the inclusion of any investigator appointed by the Public Officer.
- 9.4 The Public Officer must report the determination in writing to the complainant and the DAP Member who is the subject of the complaint, unless the recommended action is the suspension or removal of the DAP member. In this case the Public Officer will put the recommendation to the Council, which will make the final decision.
- 9.5 In determining consequences, the Public Officer may:
 - 9.5.1 Request an apology
 - 9.5.2 Request the member undergo counselling
 - 9.5.3 Recommend to the Council that the member be suspended from the DAP for a period of time (which would require a Council resolution to implement)
 - 9.5.4 Recommend to the Council that the member be removed from the DAP (which would require a Council resolution to implement)
 - 9.5.5 Recommend to the Council that current DAP be dissolved and a new DAP reappointed, for instances where the complaint is pertaining to DAP as a whole entity (which would require a Council resolution to implement)
 - 9.5.6 Recommend a formal letter of apology from the DAP Presiding member be issued to the complainant.

10 Level Three Complaints

- 10.1 Level Three complaints are of a serious nature and allege criminal behaviour.
- 10.2 Examples of possible conduct leading to Level 3 complaints are:
 - 10.2.1 Theft
 - 10.2.2 Fraud
 - 10.2.3 Corruption
 - 10.2.4 Bribery
 - 10.2.5 Conflict of interest contrary to law

- 10.2.6 Misuse of public office
- 10.2.7 Misuse of confidential information for the purpose of or resulting in pecuniary benefit or detriment.
- 10.3 The Public Officer may refer complaints that they consider to meet Level 3 criteria directly to:
 - 10.3.1 The Minister/Office for State/Local Government Relations or other relevant Minister
 - 10.3.2 The SA Police
 - 10.3.3 Responsible Officer appointed under the Whistleblower Protection Act 1993
 - 10.3.4 The Office of Public Integrity
 - 10.3.5 Other relevant investigation authority.
- 10.4 Complaints of this nature will be investigated by the appropriate authority. The authority will report the determination as they see fit, including reporting to the Public Officer, and may enforce any determined consequences.
- 10.5 The Public Officer will refer the outcome of the referral to the independent authority to Council for review to determine whether further internal actions are appropriate. For example, if the independent authority does not prosecute the matter it may be appropriate to treat it as a Level 2 complaint, in which case it would then be investigated by the Public Officer in accordance with the Level Two requirements.

11 Reporting

- 11.1 The Public Officer must prepare a report to Council on an annual basis regarding the number and nature of complaints received, the status of the investigations and the outcomes of the investigations.
- 11.2 The report must not contain any personal identifying information about the complainant or the DAP Member who is the subject of the complaint.

12 Review

- 12.1 The Policy will be reviewed in line with Council's Corporate Governance Framework.

13 Access to the Policy

- 13.1 The Policy is available for public inspection on Council's website www.prospect.sa.gov.au and from Customer Service at the Civic Centre, 128 Prospect Road, Prospect SA 5082.

14 Further Information

- 14.1 For further information about the Policy please contact:

Director Community and Planning
City of Prospect
128 Prospect Road
Prospect SA 5082

Ph 8269 5355
Email admin@prospect.sa.gov.au

Appendix A

MINISTER'S CODE OF CONDUCT

Code of Conduct

Section 21A of the *Development Act 1993*

This Code has been adopted pursuant to the provisions of the *Development Act 1993* as a Code of Conduct to be observed by Members of the Development Assessment Commission, Members of Regional Development Assessment Panels, Members of Council Development Assessment Panels and delegates.

In order to foster the respect of applicants, representors and the community, panel members and delegates must uphold the highest standards of behaviour and ensure that they act in accordance with the provisions of the Act at all times.

This Code is binding on all panel members and delegates exercising their powers and functions as members of a panel or as a delegate.

This Code must be read in conjunction with the Act.

1. Interpretation

Act means the Development Act 1993.

closed meeting means a panel meeting, or a part of a panel meeting where the public is excluded in accordance with the Act :

Code means a code of conduct established under section 21A of the Act.

confidential information includes but is not limited to:

- (a) information derived from a document marked by the presiding member to clearly show that the information in the document is confidential or not to be disclosed;
- (b) information you acquired in a closed meeting ; and
- (c) any other information which would be considered confidential and not generally available to members of the public

delegate means a person who is authorised to act as a delegate under sections 20 or 34(23) of the Act but does not include a panel member.

disclosure of financial interest means disclosing a pecuniary interest as set out in Schedule 2 of the Act.

interest has the same meaning as in Section 56A (7)&(8) of the Act

Minister means the Minister responsible for the administration, from time to time, of the Act.

Appendix A

Continued

panel means an assessment panel as defined in Schedule 2 of the Act.

panel information means information that is disclosed at a panel meeting or in the course of a panel member's duties.

panel member means a person who is a member of a panel under the Act.

presiding member means a panel member appointed as presiding member under the Act.

public officer means a person appointed as a public officer under the Act .

2. Panel Member Behaviour

Panel information

2.1 As a panel member, you hold a position of trust and must not misuse or derive undue benefit from your position. As such, you must treat panel information appropriately by:

- (a) Not using information gained by virtue of your membership of the panel for any purpose than to exercise your role as a panel member;
- (b) Respecting the panel's procedures in relation to public comments and communications with the media;
- (c) Not releasing confidential information;
- (d) Ensuring that you take care and maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible; and
- (e) Recognising that information may be subject to the requirements of the Privacy Act 2000 and abiding by the principles of that legislation.

However, nothing in this Code prevents you from disclosing information:

- 2.2 At a closed meeting;
- (a) To the extent specified by the panel and subject to such other conditions as the panel determines;
 - (b) That is already in the public domain; or
 - (c) If the disclosure is required by law.

Appendix A

Continued

Conflict of Interest

- 2.3 You must make all decisions impartially and in accordance with the requirements of the Act. You must recognise the importance of fully observing the requirements of the Act in regard to disclosure of financial interests and disclosure of any other interest which may affect your ability to fulfil your duties on a panel.
- 2.4 If you consider that you have, or might reasonably be perceived to have an interest in the matter before the panel, you must clearly state the nature of that interest in writing to the presiding member before the matter is considered.
- 2.5 If you consider that you have a personal interest which may be in conflict with your public duty to act impartially and in accordance with the principles of the Act, you must declare a conflict of interest as above.
- 2.6 If you have an interest in a matter, you must not partake in any of the assessment processes involving the matter. You must leave the room at any time in which the matter is discussed by the panel including during the hearing of any representations or during any vote on the matter. You must not vote on the matter and you must not move or second any motion or participate in any discussion through the consensus process.
- 2.7 If an interest has been declared by any member of the panel, the presiding member must record the nature of the interest in the minutes of meeting.

Relations with State/local government employees and applicants/representors

- 2.8 In your role as panel member, you must not (other than in accordance with the provisions of the Act):
 - (a) Direct a person who is a local government employee to do or not to do anything in the person's capacity as a local government employee;
 - (b) In the case of members of the Development Assessment Commission, direct a person who is a State government employee to do or not do anything in the person's capacity as a State government employee;
 - (c) Attempt to influence the conduct of a person who is a local government employee in the person's capacity as a local government employee;
 - (d) Approach or discuss with an applicant or representor any application which is either before the panel or will come before the panel at some future time, except during the course of a panel meeting where the application forms part of the agenda and the applicant or representor has a right to be heard by the panel; and
 - (e) Except where required as part of the assessment of a particular decision such as a formal panel viewing of a development site, you should not enter a development site, even if invited by the land owner or a neighbouring property owner or any other person.

Appendix A

Continued

Development Assessment Conduct

- 2.9 You acknowledge that the assessment of development by the panel requires that you act impartially and limit yourself to assessing an application strictly in accordance with the Act. Panel members must determine whether or not to grant development plan consent by assessing the development against the provisions of the appropriate Development Plan without reference to extraneous matters but with due regard to relevant matters such as representations made in accordance with the provisions of the Act.
- 2.10 You must not:
- (a) Engage in consultation outside of the panel process with any party on a proposed development application that is likely to be heard by the panel;
 - (b) Give advice to an applicant or other third party on a development application after it has been lodged outside of a panel meeting;
 - (c) Speak at a public meeting for or against a proposal where the purpose of the meeting is to discuss either a proposed development or a development application unless required by the Act;
 - (d) Express an opinion on a development application or a proposed development outside of a panel meeting; and
 - (e) Engage in any other act or omission which may give rise to a reasonable presumption that you have prejudged a development proposal or application.
- 2.11 In regard to attendance of a public meeting as set out in point 2.10 (c) above, you must inform the panel that you have attended such a meeting and confirmed that you have not made representations to the meeting, discussed the matters raised at the meeting with any person or given an indication as to the merits of a particular development application or proposed development application outside of a panel meeting.

Note that nothing in this Code prevents you from properly seeking clarification or comment from staff members prior to or during the discussion of any matter in a panel meeting.

Public Comment

- 2.12 Only the presiding member or another person determined by the panel is permitted to speak publicly to the media and address the public on behalf of the panel. No other panel member may make comment to the media or the public in relation to any matter before the panel or any decision of the panel.

Appendix A
Continued

3. Breaches of the Code, Complaints and Sanctions (Panel Members)

- 3.1 You have an obligation to act honestly and diligently as a panel member. You should report any instances of suspected breach of the Act, this Code or any other misconduct by other panel members immediately to the public officer in writing and refrain from discussing those matters at future panel meetings.
- 3.2 Upon receipt of this information the public officer may:
- (a) Seek legal advice; and/or
 - (b) Require an investigation into the allegations by an appropriate person; and/or
 - (c) Refer the matter to the police; and/or
 - (d) Take any other action which the public officer deems appropriate and which accords with the Act.
- Note that nothing in this Code prevents you, or any other person from making a complaint under the Ombudsman Act 1972.*
- 3.3 Where an investigation is undertaken in accordance with this Code, the person to whom the allegation of misconduct relates must be given by the public officer:
- (a) Full particulars of the alleged misconduct in advance of the investigation (at least 7 days prior to the date of the meeting at which the complaint will be investigated);
 - (b) An opportunity to respond to the allegations; and
 - (c) The right to have a representative attend any hearing with them (including legal counsel).
- 3.4 Where an allegation of misconduct is made out, the Minister (in regard to the Development Assessment Commission), the relevant Councils (in regard to a Regional Development Assessment Panel) and the relevant Council (in regard to a Council Development Assessment Panel or a Regional Development Assessment Panel) may:
- (a) Remove the person from the panel;
 - (b) Suspend the person from the panel for a period of time; or
 - (c) Take any other reasonable action deemed appropriate.

Appendix A
Continued**4. Delegate Behaviour**

- 4.1 In order to foster the respect of applicants, representors and the community, delegates must uphold the highest standards of behaviour and ensure that they act in accordance with the provisions of the Act at all times.

Development application information

- 4.2 As a delegate, you hold a position of trust and must not misuse or derive undue benefit from your position. As such, you must treat development application information appropriately by:
- (a) Not using information gained by virtue of your role as delegate for any purpose than to exercise that role;
 - (b) Not releasing confidential information;
 - (c) Ensuring that you take care and maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible; and
 - (d) Recognising that information may be subject to the requirements of the *Privacy Act 2000* and abiding by the principles of that legislation.

Conflict of Interest

- 4.3 You must make all decisions impartially and in accordance with the requirements of the Act. You must recognise the importance of fully observing the requirements of the Act in regard to disclosure of any interest which may affect your ability to fulfil your duties as a delegate:
- (a) If you consider that you have, or might reasonably be perceived to have an interest in the matter before you as delegate, you must clearly state the nature of that interest in writing and must not proceed to exercise your delegation; and
 - (b) If you consider that you have a personal interest which may be in conflict with your public duty to act impartially and in accordance with the principles of the Act, you must declare a conflict of interest as above and must not proceed to exercise your delegation.

Development Assessment Conduct

- 4.4 You acknowledge that the exercising of a delegation by you in relation to the assessment of development requires that you act impartially and limit yourself to assessing an application strictly in accordance with the Act. Delegates must determine whether or not to grant development plan consent by assessing the development against the provisions of the appropriate Development Plan without reference to extraneous matters but with due regard to relevant matters such as representations made in accordance with the provisions of the Act.

Appendix A
Continued

4.5 You must not:

- (a) Exercise a delegation to make a decision on an application for development plan consent, or issue an instruction in relation to the exercise of a delegation held by another person, where you have assisted the applicant in the preparation of the application, to the extent that it leads to an expectation that if the applicant followed this advice you would grant delegated consent to the application;
- (b) Speak at a public meeting for or against a proposal where the purpose of the meeting is to discuss either a proposed development or a development application where you hold a delegation other than to outline process and/or requirements of the Act or Regulations or, unless required by the Act; and
- (c) Engage in any other act or omission which may give rise to a reasonable presumption that you have prejudged a development proposal or application.

5. Breaches of the Code (Delegates)

- 5.1 Breaches of this code by a delegate are to be reported to either the chief executive of the relevant council or the chief executive of the relevant government department. The responsible chief executive will take the appropriate action as required.

Hon. Paul Holloway M.L.C
Minister for Urban Development and Planning

Dated: / /

P.H.

Page 7 of 7