

TERMS OF REFERENCE

Building Fire Safety Committee



Building Fire Safety Committee

Terms of Reference

Adopted by Instrument of delegation on 19 October 2022 by Ben Thompson, Acting Chief Executive Officer.

1. Name

The name of the committee is the Yorke Peninsula Council Building Fire Safety Committee.

2. Establishment

- 2.1 Section 157(17) of the *Planning, Development and Infrastructure Act 2016* enables the Council to establish an Appropriate Authority which is responsible for matters pertinent to section 157 of that Act.
- 2.2 The Council has designated the Building Fire Safety Committee as an Appropriate Authority pursuant to section 157(16) of the *Planning, Development and Infrastructure Act 2016*.

3. Interpretation

- 3.1 In these Terms of Reference:
 - 3.1.1 “Act” means the *Planning, Development and Infrastructure Act 2016*;
 - 3.1.2 “Appropriate Authority” refers to the BFSC which is a body established by the Council under s157(17) of the Act;
 - 3.1.3 “BFSC” means the Yorke Peninsula Council Building Fire Safety Committee;
 - 3.1.4 “BFSC Member” or “BFSC Members” means a member or members of the BFSC (and includes a deputy member if the context so provides);
 - 3.1.5 “Building Surveyor” means the BFSC Member under paragraph 4.1.1;
 - 3.1.6 “Council” means the Yorke Peninsula Council and includes a delegate of Yorke Peninsula Council;
 - 3.1.7 “Council Representative” means the BFSC Member under paragraph 4.1.4;
 - 3.1.8 “Electronic Meeting” means a meeting under paragraph 8.4;

- 3.1.9 “Operating Procedures” means the operating procedures determined by the BFSC;
 - 3.1.10 “Reasonable Cause” includes the matters specified in paragraphs 6.1 and 6.2;
 - 3.1.11 “SAMFS Representative and/or SA CFS Representative” means the BFSC Member(s) under paragraph 4.1.2;
 - 3.1.12 “Technical Expert” means the BFSC Member under paragraph 4.1.3
 - 3.1.13 “TOR” means these Terms of Reference.
- 3.2 The TOR will be interpreted subject to the provisions of the Act and its regulations.

4. Membership

- 4.1 The BFSC will comprise the following BFSC Members to be appointed by the Council:
- 4.1.1 a person who holds prescribed qualifications in building surveying appointed by the Council **Roger Brooks Accreditation Level 2**; and
 - 4.1.2 an authorised officer under Part 3 Division 5 or section 86 of the *Fire and Emergency Services Act 2005* who, depending on the location of the Council area, has been approved by the Chief Officer of the relevant fire authority to participate as a BFSC Member of the Appropriate Authority (**SAMFS Representative and/or SA CFS Representative**); and
 - 4.1.3 a person with expertise in the area of fire safety appointed by the Council **Peter Harmer** and
 - 4.1.4 if so determined by the Council – a person/s selected by the Council and whom the Council considers to be an appropriate person/s to be a members of the BFSC **Dustin Guthberg – Accreditation Level 2 and Paul Gates – Accreditation Level 3**.
- 4.2 The Council may appoint at least one deputy BFSC Member for each ordinary BFSC Member to undertake the business of the BFSC in the absence of an ordinary BFSC Member. A person may only be appointed as a deputy BFSC Member if that person meets the same applicable requirements under paragraphs 4.1.1 to 4.1.4 that would apply were that person to seek appointment as the ordinary BFSC Member to which that deputy relates. A deputy BFSC Member may only act as a deputy for one BFSC Member. Unless the context provides otherwise a reference to a BFSC Member in this document includes a deputy BFSC Member.
- 4.3 The appointment of a BFSC Member may be subject to such conditions and limitations as the Council deems fit.
- 4.4 The Council must select one of the BFSC Members to be the Presiding Member of the BFSC. The Presiding Member should be either the Building Surveyor or Technical Expert (and if practicable also an employee of the Council).

- 4.5 The Chief Executive Officer of the Council will allocate to the BFSC administrative support in the form of human resources to ensure that reports, agendas, notice of meetings and minutes of the BFSC are recorded and managed in accordance with legislative requirements and the Operating Procedures. Other resources will be allocated as required at the discretion of the Chief Executive Officer of the Council.
- 4.6 The term of office for a Member of the BFSC will be a period not exceeding three (3) years (other than a SAMFS Representative and/or SA CFS Representative).
- 4.7 A BFSC Member is eligible for reappointment for a further term, upon the expiry of his or her current term.
- 4.8 The Council may remunerate BFSC Members for the reasonable time and costs incurred by BFSC Members in attending BFSC meetings. Different levels of remuneration may be fixed by the Council for the Presiding Member as distinct from other BFSC Members.
- 4.9 All BFSC Members shall conduct themselves in a professional manner in accordance with Council requirements. By virtue of the Terms of Reference, section 62 of the *Local Government Act 1999* is taken to apply to BFSC Members as if they were Council members and confidential information or documents of the BFSC as if they were documents of the Council.

5. Vacancy of office

- 5.1 The office of a BFSC Member (other than a SAMFS Representative and/or SA CFS Representative) will become vacant if the BFSC Member:
 - 5.1.1 dies; or
 - 5.1.2 completes a term of office and is not reappointed; or
 - 5.1.3 resigns by written notice addressed to the Council; or
 - 5.1.4 is removed from office by the Council for any Reasonable Cause.
- 5.2 A BFSC Member whose term of office has expired may nevertheless continue to act as a BFSC Member until the vacancy is filled or for a period of six (6) months from the expiry of the BFSC Member's term of office, whichever occurs first.

6. Removal from office

- 6.1 Except for the SAMFS Representative and/or SA CFS Representative, the Council may remove a BFSC Member from office where:
 - 6.1.1 the BFSC Member has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors;
 - 6.1.2 the BFSC Member has been convicted of an indictable offence punishable by imprisonment; or
 - 6.1.3 in the case of an employee of the Council, the BFSC Member ceases to be in the employ of the Council.

- 6.2 Except for the SAMFS Representative and/or SA CFS Representative, the Council may remove a BFSC Member from office where, in the opinion of the Council, the behaviour of the BFSC Member amounts to:
- 6.2.1 a breach of a condition of his or her appointment as a BFSC Member;
 - 6.2.2 misconduct;
 - 6.2.3 a breach of any legislative obligation or duty of a BFSC Member;
 - 6.2.4 neglect of duty in attending to the role and responsibilities as a BFSC Member;
 - 6.2.5 a failure to carry out satisfactorily the duties of his or her office;
 - 6.2.6 a breach of fiduciary duty that arises by virtue of his or her office;
 - 6.2.7 inability to carry out satisfactorily the duties of his or her office;
 - 6.2.8 a failure without reasonable excuse to attend three consecutive BFSC meetings without the BFSC previously having resolved to grant a leave of absence to the BFSC Member; or
 - 6.2.9 for any other reasonable cause determined by the Council.
- 6.3 The removal of the BFSC Member pursuant to paragraph 6.2 will take effect upon the Council resolution or delegates determination to remove the BFSC Member from office (unless the Council or delegate determines otherwise), and such decision will be confirmed in writing by the Chief Executive Officer of the Council to the BFSC Member within seven (7) days.
- 6.4 Prior to determining to remove a BFSC Member from office pursuant to paragraph 6.1 or 6.2, the Council or delegate must:
- 6.4.1 not less than seven (7) days before the Council or delegate considers the matter of the possible removal of the BFSC Member from office, give written notice to the BFSC Member of its intention to remove the BFSC Member from office pursuant to paragraph 6.1 or 6.2 and such notice must detail the alleged matter or behaviour of the BFSC Member falling within paragraph 6.1 or 6.2 or other reason the Council considers it appropriate to remove the BFSC Member;
 - 6.4.2 give the BFSC Member an opportunity to make a written or verbal submission to the Council or delegate on the intention to remove the BFSC Member from office by such date as the Council or delegate reasonably determines but in all circumstance prior to the Council or delegate determining to remove the BFSC Member from office pursuant to paragraph 6.1 or 6.2; and
 - 6.4.3 have due regard to the BFSC Member's submission in paragraph 6.4.2 in determining whether to remove the BFSC Member from office.
- 6.5 If it appears reasonably likely that the SAMFS Representative and/or SA CFS Representative:
- 6.5.1 suffers any of the events under paragraphs 6.1.1 to 6.1.3; or

- 6.5.2 undertakes behaviours that amount to any of the matters in paragraphs 6.2.1 to 6.2.8

(as if paragraphs 6.1 and 6.2 applied to the SAMFS Representative and/or SA CFS Representative) then, upon a decision of the BFSC to provide such notification, the Presiding Member will write to the Chief Officer of the relevant fire authority to:

- 6.5.3 notify the Chief Officer that the BFSC is concerned that the SAMFS Representative and/or SA CFS Representative may have suffered and event under paragraphs 6.1.1 to 6.1.2 and/or may have undertaken behaviour that amounts to a matter under paragraphs 6.2.1 to 6.2.8; and
- 6.5.4 request that the Chief Officer consider whether in those circumstances it is appropriate for the SAMFS Representative and/or SA CFS Representative to continue their appointment to the BFSC.

7. Roles and functions

- 7.1 The BFSC is charged with the responsibility for all matters arising under Section 157 of the Act and any associated regulations which are of a building fire safety nature.
- 7.2 The BFSC should consider the following priorities when conducting its business:
- 7.2.1 the South Australian Metropolitan Fire Service or South Australian Country Fire Service requests an inspection to be carried out on a building;
 - 7.2.2 any complaint received in relation to a building;
 - 7.2.3 advice received from an Authorised Officer of the Council that the fire safety of a building is deficient; or
 - 7.2.4 if a building is a type of building designated as a building inspection priority or building investigation priority as determined in a guideline of the BFSC from time to time.
- 7.3 The BFSC will generally notify the manager or owner in writing of the building that it wishes to inspect. Where time does not permit written notification and other than in a situation of emergency or other urgent circumstances, verbal notice on the day of inspection or prior to the inspection will be undertaken.
- 7.4 Letters and documentation will be written and presented in accordance with any guidelines adopted by the BFSC. All correspondence will be presented on Council letterhead and signed by the Presiding Member on behalf of the BFSC or a BFSC Member who is an employee of the Council.
- 7.5 Notices and methods implemented when dealing with issues arising for the BFSC will be conducted in accordance with any guidelines adopted by the BFSC and pursuant to the Act.
- 7.6 Subject to paragraph 7.7, issues will generally be addressed initially with the building owner or delegate via a letter that will clearly state a response date. If no adequate action has been undertaken after the initial response date the BFSC

will consider the matter and may decide to issue a notice requiring a report detailing the adequacy of the fire safety of the building.

- 7.7 In emergency circumstances or other matters of urgency, the BFSC may elect to issue a notice as an initial course of action prior to taking any informal steps.

8. Meetings

- 8.1 A quorum for a meeting of the BFSC shall be:
- 8.1.1 a minimum of two BFSC Members; and
 - 8.1.2 those BFSC Members in attendance must be the:
 - 8.1.2.1 Building Surveyor or Technical Expert; and
 - 8.1.2.2 SAMFS Representative and/or SA CFS Representative.
- 8.2 In the event that the Presiding Member is not present at a meeting (or part thereof) or has declared a personal interest or a direct or indirect pecuniary interest in any matter before the BFSC, or is for any other reason is unable to take part in any deliberations or decision of the BFSC then an Acting Presiding Member will be appointed by those BFSC Members who are present at the meeting for the purpose of presiding at that BFSC meeting.
- 8.3 All decisions made by the BFSC shall be made on the basis of a majority decision of the BFSC Members present. In an event of a tied vote the Presiding Member shall not have a casting vote in addition to their deliberative vote.
- 8.4 The BFSC shall meet at the Council's offices at 15 Elizabeth Street, Maitland, or at such other places as determined by the BFSC from time to time. Provided that the BFSC may also conduct its meetings in whole or in part by electronic means by way of telephone, computer or other electronic device used for communication.
- 8.5 The BFSC shall meet on a day and at a time nominated by the Presiding Member. The BFSC must hold a minimum of three (3) ordinary meetings in each calendar year and may hold a special meeting at any other time at the determination of the Presiding Member or at the written request of at least two other BFSC Members.
- 8.6 A BFSC Member who has a personal interest or a direct or indirect pecuniary interest in any matter before the BFSC (other than an indirect interest that exists in common with a substantial class of persons) must disclose that interest to the BFSC, must not take part in any deliberations of the BFSC in relation to that matter and must comply with paragraph 8.7.
- 8.7 A BFSC Member who has an interest specified in paragraph 8.6 must remove themselves from the room or electronic forum where the BFSC is considering the matter and cannot return until consideration of that item has concluded. It is inappropriate for a BFSC Member to represent any third parties before the BFSC in relation to a matter in which they have interest.
- 8.8 It is expected that a BFSC Member who has a personal interest or a direct or indirect pecuniary interest of a kind specified in paragraph 8.6 and Section 157(18) of the Act will not exercise any power or function under the Act or

participate in any decisions, inspection or other work under the Act in relation to the matter.

8.9 The following provisions apply to the calling of meetings:

- 8.9.1 In the case of an ordinary meeting of the BFSC, the Presiding Member must give each BFSC Member notice of a meeting at least five (5) clear days before the date of the meeting.
- 8.9.2 In the case of an Electronic Meeting to be held by way of electronic means (in whole or in part), the notice must include details of how to connect to the meeting.
- 8.9.3 In the case of a special meeting of the BFSC, the Presiding Member must give each Member of the BFSC a notice of meeting at least twenty-four (24) hours before the commencement of the meeting.
- 8.9.4 Notice must be given to a BFSC Member:
 - 8.9.4.1 personally; or
 - 8.9.4.2 by posting or otherwise delivering it to any place authorised in writing by the member; or
 - 8.9.4.3 by any other means authorised in writing by the member as being a preferable means of giving notice (e.g. email); and
 - 8.9.4.4 in writing; and
 - 8.9.4.5 setting out the date, time and place of the meeting; and
 - 8.9.4.6 containing or accompanied by the agenda and any documents and/or reports that are to be considered at the meeting (insofar as is practicable).
- 8.9.5 Notice that is not given in accordance with paragraph 8.9.4 is taken to have been validly given if the Presiding Member considers it impracticable to give the notice in accordance with that paragraph and takes action the Presiding Member considers reasonably practicable in the circumstances to bring the notice to the attention of the BFSC Member.
- 8.9.6 The Presiding Member may delegate the notification and agenda responsibilities under paragraphs 8.9.1 to 8.9.5 to another BFSC Member (which if practicable should be the Council Representative).

- 8.9.7 A BFSC Member attending an Electronic Meeting by electronic means is taken to be present at the meeting provided that the BFSC Member:
 - 8.9.7.1 can hear and, where possible, see all other BFSC Members who are present at the meeting;
 - 8.9.7.2 can be heard and, where possible, be seen by all other BFSC Members present at the meeting; and
 - 8.9.7.3 can be heard and, where possible, be seen by the person recording the minutes of the meeting.
- 8.9.8 Each Member present at a meeting (either in person or by electronic means) must, subject to that person having an interest in the matter under paragraph 8.6, vote on a question arising for decision at that meeting.
- 8.9.9 The Presiding Member must keep, or arrange to be kept, minutes of every meeting of the BFSC. The minutes of the meetings must include:
 - 8.9.9.1 the names of the BFSC Members present;
 - 8.9.9.2 in relation to each BFSC Member present, if the BFSC Member was not present for the entire meeting, the time at which the person entered or left the meeting;
 - 8.9.9.3 all motions or amendment, and the names of the mover and seconder;
 - 8.9.9.4 whether a motion or amendment is carried or lost;
 - 8.9.9.5 any disclosure of interest made by a BFSC Member under paragraph 8.6; and
 - 8.9.9.6 any other matter required to be included in the minutes by a decision of the Council or the BFSC.
- 8.9.10 The role of the Presiding Member of the BFSC includes (but is not limited to):
 - 8.9.10.1 the conduct of the business of the BFSC at meetings and during site inspections;
 - 8.9.10.2 ensuring appropriate meeting procedures are followed; and
 - 8.9.10.3 ensuring the BFSC complies with the TOR and Act.
- 8.9.11 All matters considered by the BFSC, including agendas and minutes will be recorded and stored electronically in the Council's Records Management System by the Council Representative in accordance with Council policy.

- 8.9.12 The Council will be responsible for the management of all records of the BFSC as required under the State Records Act 1997.
- 8.9.13 Subject to compliance with any relevant law, all BFSC proceedings shall generally be treated as confidential and shall not be made available to the public. In particular,
- 8.9.13.1 all meetings of the BFSC are to be held in confidence unless otherwise determined by the BFSC;
- 8.9.13.2 all documentation provided to the BFSC by external parties engaged by, directed or confided in by the BFSC, shall be treated as confidential;
- 8.9.13.3 no BFSC related document, advice or proceeding shall be distributed outside of the Council (unless required by *any* relevant law), without the consent of the Council or its delegate; and
- 8.9.13.4 if a document, advice or proceeding is distributed with the consent of the Council, that distribution is to be limited to the party/s authorised to receive it.
- 8.9.14 The BFSC shall provide a report to the Council on an annual basis outlining the BFSC's activities, including the number of notices issued, types of notices issued, the outcomes of the respective notices, the number of inspections which have been undertaken, and any outstanding matters that the BFSC is currently pursuing.
- 8.9.15 The procedure to be observed at a meeting of the BFSC, insofar as the procedure is not prescribed by these TOR, may be determined by the BFSC.

Adopted by Council	Next Review	Version	RM8 Ref #	Owner
14/09/2016	September 2018	1	16/12872[V1]	Development Services
12/04/2017	April 2019	2	16/12872[V2]	Development Services
12/12/2018	December 2020	3	16/12872[V3]	Development Services
12/06/2019	July 2020 (Updated accordance with the PDI ACT 2016)	4	16/12872[V4]	Development Services
09/09/2020	9 September 2023 (Updated in preparedne	V5	16/12872[V5]	Development Services

	ss with the PDI Act 2016 becoming fully operational)			
Adopted by Delegation of CEO 5/10/2021	5/10/2024	V6	16/12872[V6]	Development Services
Adopted by Delegation of CEO	1/08/2022	V7	16/12872[V7]	Development Services
Adopted by Delegation of CEO	5/06/2022	V8	16/12872[V8]	Development Services
Adopted by Delegation of the Acting CEO	16/10/2022	V9	16/1287[V9]	Development Services