

# Council Assessment Panel

## Meeting Procedures

*Adopted by CAP on 28 August 2023*



These Meeting Procedures are to be read in conjunction with the meeting procedures contained within the *Planning, Development and Infrastructure (General) Regulations 2017 (Regulations)* and Council's adopted CAP Terms of Reference.

### 1. CAP Meetings

#### Ordinary Meetings

- 1.1 Subject to clause 1.2, ordinary meetings of the Council Assessment Panel (CAP) will be held at such times and places as determined by the CAP.
- 1.2 The time and place of the first meeting of the CAP following its establishment will be determined by the Assessment Manager. The Assessment Manager must give notice of the first CAP meeting to the CAP and the public in accordance with clauses 1.4 and 1.6.
- 1.3 Notice of an ordinary meeting will be given to all CAP Members by the Assessment Manager not less than 3 clear days prior to the holding of the meeting in accordance with clause 1.4.
- 1.4 Notice of a meeting of the CAP must:
  - 1.4.1 be in writing;
  - 1.4.2 set out the date, time and place of the meeting;
  - 1.4.3 contain or be accompanied by the agenda and any documents and/or reports that are to be considered at the meeting (in so far as practicable); and
  - 1.4.4 be given to a CAP Member:
    - 1.4.4.1 via email to an email address authorised in writing by the CAP Member; or
    - 1.4.4.2 by other means authorised by the CAP Member as being an available means of giving notice;
  - 1.4.5 pursuant to clause 8, where attendance at the meeting is to occur by electronic means (in whole or in part), include details of how to connect to the meeting; and
  - 1.4.6 where the meeting is live streamed for viewing by members of the public pursuant to clause 8, include details of how to access and/or connect to the live stream.
- 1.5 A notice that is not given in accordance with clause 1.4 is taken to have been validly given if the Assessment Manager considers it impracticable to give the notice in accordance with that clause and takes action the Assessment Manager considers reasonably practicable in the circumstances to bring the notice to the attention of the CAP Member.
- 1.6 Subject to clause 1.7, the agenda, CAP report and associated attachments for all meetings of the CAP will be available for viewing by the public on the Council's website and at the Council's offices as soon as practicable after the time that notice of the meeting has been given to CAP Members.
- 1.7 If the CAP is receiving information and/or legal advice that in the opinion of the Assessment Manager relates to a matter under regulation 13(2)(a)(i) – (x) (inclusive) of the Regulations, then that information and/or legal advice will not be made publicly available pursuant to clause 1.6 until the CAP has considered the agenda item to which it relates. However, if in considering that agenda item, the CAP decides to retain the information and/or legal advice in confidence, then it will not be made publicly available until such time, event, or circumstance as is stipulated by the CAP in its absolute discretion.

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- 1.8 The Assessment Manager may, with leave or at the request of the Presiding Member, include in the agenda an item to be considered at the meeting to which the agenda relates after notice of the meeting has been given to CAP Members. In such instance, the Assessment Manager shall provide an updated agenda and any documents and/or reports relating to that item to be considered at the meeting to CAP Members as soon as practicable. The Assessment Manager will also make an updated agenda available to the public.
- 1.9 The Presiding Member may adjourn a CAP Meeting to a future date and time, unless the CAP resolves to continue the meeting.
- 1.10 A meeting may break for a period of time as determined by the Presiding Member.

### **Special Meetings**

- 1.11 The Assessment Manager may by delivering a written request to the Presiding Member, or two or more CAP Members, require a special meeting of the CAP to be held. The written request must be accompanied by the agenda for the special meeting.
- 1.12 On receipt of a request pursuant to clause 1.11, the Assessment Manager must determine the date, time and place of the special meeting and give notice to all CAP Members at least 4 hours before the commencement of the special meeting.

## **2. Deputy Members**

- 2.1 If a CAP Member is unable to attend a meeting or part of a meeting, he or she must use his or her best endeavours to notify the Assessment Manager at his or her earliest opportunity.
- 2.2 If notification pursuant to clause 2.1 is given, the Assessment Manager may request a Deputy Member (subject to relevant clauses in relation to Deputy Members within the CAP Terms of Reference) attend the meeting in place of a CAP Member for the meeting or part of the meeting.
- 2.3 Unless the context otherwise requires, a reference to a CAP Member in these Meeting Procedures includes a Deputy Member.

## **3. Commencement of Meetings**

- 3.1 Subject to a quorum (minimum of three (3) CAP Members) being present, a meeting of the CAP will commence as soon as possible after the time specified in the notice of a meeting.
- 3.2 If the number of apologies received by the Assessment Manager indicates that a quorum will not be present at a meeting, the Assessment Manager may adjourn the meeting to a specified day and time.
- 3.3 If at the expiration of thirty minutes from the commencement time specified in the notice of the meeting a quorum is not present, the Presiding Member may adjourn the meeting to a specified date and time.
- 3.4 In the instance when the Presiding Member is absent from a meeting, the Assessment Manager, or such other person as nominated by the Assessment Manager, will preside at the meeting until such time as the meeting appoints an Acting Presiding Member.

## **4. Representations**

- 4.1 The Assessment Manager and/or Presiding Member may in his or her discretion exclude a representation or response to representation(s) which is received out of time;

- 4.2 The Presiding Member may in his or her discretion accept and allow to be considered by the CAP any new or additional material submitted by a representor or applicant. The CAP may defer consideration of the application to enable full and proper assessment of the further information.
- 4.3 Any material to be considered by the CAP pursuant to clause 4.2 must be provided to the applicant and/or representor(s) (as the case may be) and those parties be provided with an opportunity to respond, either in writing or verbally, at the discretion of the Presiding Member.
- 4.4 In relation to each application to be considered and determined by the CAP:
  - 4.4.1 a person who has lodged a representation which has not been excluded pursuant to clause 4.1 and who has indicated that they wish to be heard on their representation is entitled to appear before the CAP and be heard in support of their representation, in person or by an agent;
  - 4.4.2 where one or more representors are heard by the CAP, the applicant is entitled to appear before the CAP to respond to any matters raised by a representor, in person or by an agent;
  - 4.4.3 representors and applicants will be allowed five minutes each to address the CAP. The Presiding Member may allow a party additional time at his or her discretion;
  - 4.4.4 CAP Members may question and seek clarification from a representor or applicant who has addressed the CAP at the conclusion of their address; and
  - 4.4.5 following addresses from representors and the applicant, the Presiding Member will invite all CAP Members to speak on any matter relevant to the application.

## 5. Review of an Assessment Manager Decision

### Commencing a Review

- 5.1 An application for review must relate to a prescribed matter, as defined in section 201 of the Act (**Prescribed Matter**), for which an Assessment Manager was the relevant authority.
- 5.2 An application for review must be:
  - 5.2.1 made using the "Application to Assessment Panel for Assessment Manager's Decision Review" published on the SA Planning Portal (**Form**);
  - 5.2.2 lodged in a manner identified on the Form; and
  - 5.2.3 lodged within one (1) month of the applicant receiving notice of the Prescribed Matter unless the Presiding Member in his or her discretion grants an extension of time.
- 5.3 In determining whether to grant an extension of time, the Presiding Member may consider:
  - 5.3.1 the reason for the delay;
  - 5.3.2 the length of the delay;
  - 5.3.3 whether any rights or interests of other parties would be affected by allowing the review to be commenced out of time;
  - 5.3.4 the interests of justice;
  - 5.3.5 whether the applicant has, or is within time to, appeal the Prescribed Matter to the Environment, Resources and Development Court; and
  - 5.3.6 any other matters the Presiding Member considers relevant.

### Materials for Review Process

- 5.4 The Assessment Manager shall present to the CAP all materials which were before the Assessment Manager (or delegate) at the time of the decision on the Prescribed Matter including:
  - 5.4.1 application documents, reports, submission, plans specifications or other documents submitted by the applicant; and
  - 5.4.2 internal and/or external referral responses and any checklist and/or report from Council staff or an external planning consultant written for the Assessment Manager.
- 5.5 The Assessment Manager (or delegate) must:
  - 5.5.1 prepare a report to the CAP setting out details of the relevant development application, the Prescribed Matter the subject of the review, any additional written submissions (including additional information or materials) prepared by the applicant pursuant to paragraph 5.6.3, and the reasons for the Assessment Manager's (or delegate's) decision and response to such additional written submission of the applicant so provided; and
  - 5.5.2 not introduce new material (except to address any written submission of the applicant under paragraph 5.6.3.3 or referral response under paragraph 5.6.4) or review the decision previously made.

### Review Process

- 5.6 The review hearing shall be undertaken in accordance with the following:
  - 5.6.1 The Assessment Manager must advise the applicant in writing of the time and date of the CAP meeting at which the review application will be heard not less than five (5) business days before the CAP meeting.
  - 5.6.2 On review, the CAP will consider the decision afresh.
  - 5.6.3 An applicant for an application to the CAP for a review of a Prescribed Matter must be notified in writing by the Assessment Manager within five (5) business days of receipt of the application of the opportunity to:
    - 5.6.3.1 provide the CAP with their written submissions (which may include additional information and materials) in relation to the review; and
    - 5.6.3.2 appear and make submissions at the hearing in person, and the applicant must provide to the Assessment Manager:
    - 5.6.3.3 any such written submissions within ten (10) clear business days of the date of that notification (or such longer period as requested by the applicant and granted by the Presiding Member's discretion); and
    - 5.6.3.4 written confirmation of whether the applicant will appear and make submissions at the hearing at least five (5) business days prior to the hearing.
  - 5.6.4 Within five (5) business days of the receipt of any written submissions under paragraph 5.6.3.3, the Presiding Member should determine in their discretion whether any referral agency who previously provided a response on the application should be given an opportunity to review and respond to the additional information and/or materials in a manner and timeframe determined by the Presiding Member. Any response received from such a referral agency should be provided to the applicant by the Assessment Manager within two (2) business days of receipt.

- 5.6.5 The Presiding Member may defer the date for a hearing of the review application for a reasonable period, if it considers that the written submissions received under paragraph 5.6.3.3 are substantial, in order to enable reasonable time for any response on the written submissions of a referral agency under paragraph 5.6.4 and/or response by the Assessment Manager. Written notice advising of any such deferral by the Presiding Member must be provided to the applicant by the Assessment Manager as soon as reasonably practicable and no less than 24 hours before the hearing at the CAP meeting.
- 5.6.6 The Presiding Member may however, ask or permit CAP Members to ask questions or seek clarification from the applicant and/or the Assessment Manager (or delegate), in his or her discretion.
- 5.6.7 The Assessment Manager must be present at the CAP meeting to respond to any questions or requests for clarification from the CAP.
- 5.6.8 Where the decision on the Prescribed Matter was made by a delegate of the Assessment Manager, the delegate may appear in place of the Assessment Manager.
- 5.6.9 The Presiding Member will invite all CAP Members to speak on any matter relevant to the review.
- 5.6.10 The CAP may resolve to defer its decision if it considers it requires additional time or information to make its decision.

#### **Outcome of Review**

- 5.7 The CAP may, on a review:
  - 5.7.1 affirm the Assessment Manager's decision;
  - 5.7.2 vary the Assessment Manager's decision; or
  - 5.7.3 set aside the Assessment Manager's decision and substitute its own decision.
- 5.8 An applicant should be advised in writing of the CAP's decision by the Assessment Manager within a reasonable time.

## **6. Decision Making**

- 6.1 Subject to complying with these procedures, during debate and decision making, the CAP will act with a minimum of formality and without regard to formal procedures or protocols.
- 6.2 At all times, discussion will be managed by the Presiding Member in the Presiding Member's absolute discretion. The Presiding Member will ensure that each CAP Member has an opportunity for discussion, comments and questions about the matter for decision.
- 6.3 At the conclusion of discussion and debate on a matter, the Presiding Member will call for a motion to vote in relation to the recommendation as printed in the agenda report or for a motion on alternative terms to that recommendation (including, but not limited to, the addition, deletion or amendment of a condition or note proposed in that recommendation).
- 6.4 Each CAP Member present at a meeting of the CAP, (including a Deputy Member who has been requested to attend the meeting or part of the meeting in place of a CAP Member who is unable to attend the meeting) is entitled to one vote on any matter arising for decision. Additional experts/advisors appointed by the CAP to provide expert advice and assistance are not entitled to vote.

- 6.5 Matters arising for decision at a meeting of the CAP will be decided by a majority of the votes cast by CAP Members present at the meeting and entitled to vote. If the votes are equal, the Presiding Member is entitled to a second or casting vote.
- 6.6 In relation to each application it considers, the CAP must:
  - 6.6.1 determine whether the proposal is seriously at variance with the Development Plan or Planning Rules (as relevant); and
  - 6.6.2 provide reasons for refusing Development Plan consent or planning consent (as relevant) (including reasons for any determination that the proposal is seriously at variance).
- 6.7 The Presiding Member may adjourn a meeting in the event of a disruption or disturbance by any person (including a CAP Member, applicant, representor or other member of the public) to a specified date and time.
- 6.8 The Presiding Member may ask a member of the public (including an applicant, representor or other member of the public) to leave or be disconnected from a meeting where he or she is, in the opinion of the Presiding Member:
  - 6.8.1 behaving in a disorderly manner; or
  - 6.8.2 causing an interruption or disruption to the meeting.

## 7. Minutes and Reporting

- 7.1 The CAP must ensure that accurate minutes are kept of all meetings.
- 7.2 The Assessment Manager, or a person nominated by the Assessment Manager, will take minutes of all meetings.
- 7.3 The minutes will record:
  - 7.3.1 the names of all CAP Members present;
  - 7.3.2 the names of all CAP Members from whom apologies have been received;
  - 7.3.3 the name and time that a CAP Member enters or leaves the meeting;
  - 7.3.4 the name of every person (and their representative) who makes or responds to a representation;
  - 7.3.5 the methods of attendance by all CAP Members present and by every person who makes or responds to a representation (and their representative);
  - 7.3.6 in relation to each application determined by the CAP:
    - 7.3.6.1 the determination of the CAP as to whether the proposal is seriously at variance with the Development Plan or Planning Rules (as relevant);
    - 7.3.6.2 the reasons for refusing Development Plan consent or planning consent (as relevant) (including reasons for any determination that the proposal is seriously at variance); and
  - 7.3.7 if an application is not determined by the CAP, the deferral of the application and the reasons for the deferral;
  - 7.3.8 a decision to exclude the public from attendance and retain the minutes of the item in confidence pursuant to the *Regulations*;
  - 7.3.9 in relation to each application for review of an Assessment Manager decision:
    - 7.3.9.1 the determination of the CAP as to whether the proposal is seriously at variance with the Planning Rules; and
    - 7.3.9.2 the reasons for the CAP's decision under section 203(4) of the PDI Act;

- 7.3.10 any disclosure of a direct or indirect pecuniary interest in any aspect of a development or anybody associated with any aspect of a development made by a CAP Member in accordance with Section 83(1)(g) of the PDI Act, and the nature of the interest;
  - 7.3.11 any disclosure of a conflict of interest made by a CAP Member pursuant to the Code of Conduct adopted by the Minister under Clause 1(1)(c) of Schedule 3 of the PDI Act (Code of Conduct), and the nature of the interest; and
  - 7.3.12 if a meeting is adjourned by the Presiding Member, the reason for the adjournment and the date and time to which the meeting is adjourned.
- 7.4 All minutes must be confirmed by the CAP as being accurate, at the commencement of the following CAP meeting.

## 8. Electronic Meetings

- 8.1 Definitions:
- 8.1.1 **connect** means able to hear and/or see the meeting by electronic means, including via live stream;
  - 8.1.2 **disconnect** means to remove the connection so as to be unable to hear and see the meeting;
  - 8.1.3 **electronic** means includes using 1 or both (including a combination) of the following means of communication:
    - 8.1.3.1 audio visual;
    - 8.1.3.2 audio,and includes a telephone, computer or other device used for communication;
  - 8.1.4 **live stream** means the transmission of audio and/or video from a meeting at the time the meeting is occurring.
- 8.2 Pursuant to section 39 of the *Legislation Interpretation Act 2021*, at the discretion of the Assessment Manager and/or Presiding Member:
- 8.2.1 a CAP meeting may take place entirely by electronic means; and/or
  - 8.2.2 a CAP meeting may be livestreamed; and/or
  - 8.2.3 one or more CAP Members may attend a CAP meeting via electronic means; and/or
  - 8.2.4 a representor and/or applicant under clause 4 may attend a CAP meeting via electronic means; and/or
  - 8.2.5 an applicant for a review of a decision of an Assessment Manager under clause 5 may attend a CAP meeting via electronic means.
- 8.3 The discretion of the Assessment Manager and/or Presiding Member under clause 8.2 may be exercised to require attendance at the CAP meeting by electronic means regardless of whether a request for attendance by electronic means has been received or not by the Assessment Manager and/or Presiding Member.
- 8.4 A CAP Member who is attending a meeting by electronic means is taken to be present at the meeting provided that the Presiding Member can see and hear each CAP Member and a CAP Member:
- 8.4.1 can hear and, where possible, see all CAP Members who are present at the meeting;
  - 8.4.2 can hear and, where possible, see all representors (or their representatives) and applicants (or their representatives) who speak at the meeting;
  - 8.4.3 can be heard and, where possible, be seen by CAP Members present at the meeting; and



- 8.4.4 can be heard and, where possible, be seen by the person recording the minutes of the meeting.
- 8.5 Where a meeting occurs solely via electronic means, it shall (to the extent that the public is not able to physically attend the meeting) be live streamed.
- 8.6 Where a meeting is being live streamed, the live stream shall be disconnected only during those parts of the meeting during which the public has been excluded from attendance pursuant to regulation 13(2) of the Regulations.
- 8.7 Where the public has been excluded from attendance pursuant to regulation 13(2) of the Regulations, the Assessment Manager or a person nominated by the Assessment Manager shall ensure that all parties except for CAP Members (and the Assessment Manager, Council Administration, the meeting minute taker and any other person identified by the CAP (such as professional advisors to the CAP)) disconnect from or are disconnected from the meeting.

## **9. Additional Procedures and Support**

- 9.1 Insofar as any procedure to be followed by the CAP is not prescribed by the PDI Act and Regulations, the CAP's Terms of Reference, the Code of Conduct or these Meeting Procedures - the CAP may by resolution determine the procedure for itself. Any such determination may be added to these Meeting Procedures.
- 9.2 The CAP may call for and consider such professional assistance from the Assessment Manager and, in consultation with the Assessment Manager, other professional advisors as it deems necessary and appropriate from time to time.
- 9.3 The CAP will permit and encourage active participation of Council staff in attendance at a meeting in providing advice to the CAP.
- 9.4 If a CAP Member requires additional information or clarification on a matter contained within an Agenda, an email shall be directed to the Assessment Manager as soon as practicable. The response will be provided to all CAP Members.
- 9.5 If a CAP Member has a conflict of interest on a matter contained with the Agenda, that CAP Member must advise the Assessment Manager in writing as soon as practicable after distribution of the Agenda.