

**CITY OF MARION**  
**COUNCIL ASSESSMENT PANEL**  
**TERMS OF REFERENCE**  
**(Adopted by Council on 22 August 2017)**

**PREAMBLE**

This document embodies the Constitution of the City of Marion Council Assessment Panel.

**1. ESTABLISHMENT**

- 1.1. Pursuant to Section 83 of the *Planning, Development and Infrastructure Act 2016* (“the Act”), the City of Marion (“the Council”) has established a Council Assessment Panel (“CAP”) for the purpose of acting as the “*relevant authority*” in respect of all matters prescribed to it under the Act and, during the transition to the Act, the *Development Act 1993* and by this Terms of Reference.
- 1.2. The City of Marion CAP was established by way of resolution of Council at its meeting of 22 August 2017 (Ref No. GC220817R0X).
- 1.3. This Terms of Reference first came into operation on 22 August 2017.
- 1.4. The CAP is separate from and operates wholly independently of the Elected Body of the Council.

**2. FUNCTIONS**

- 2.1. The functions of the CAP are:
  - 2.1.1 to act as a delegate of the Council in accordance with the requirements of the Development Act during transition from the Development Act to the Act;
  - 2.1.2 thereafter, to act as a relevant authority under the Act;
  - 2.1.3 to act in accordance with the requirements of this Terms of Reference.
- 2.2 The CAP may provide advice and reports to the Council as it thinks fit on trends, issues and other matters relating to planning or development that have become apparent or arisen through its assessment of development applications;
- 2.3 The CAP may cause an Annual Performance Review (APR) to be undertaken of the CAP, examining the composition of the CAP from a 'needs' perspective, the contribution, behaviour and conduct of CAP Members, the function and procedures of the CAP, and other relevant matters. The outcome of any APR undertaken by the CAP shall be reported to Council within one month of being completed.

**3. MEMBERSHIP & RE-APPOINTMENT**

- 3.1. The CAP shall comprise five Members appointed by the Council as follows:
  - 3.1.1 up to one person who is an Elected Member of the Council (“Council Representative”); and

- 3.1.2 the balance being persons selected from the community (“Independent Representatives”), who satisfy the requirements of Section 83(1)(c) or Section 83(2)(b) of the Act, one of whom will be appointed by the Council as the Presiding Member and another as a Deputy Presiding Member;
- 3.2. Independent Representatives appointed pursuant to Clause 3.1.2 of the Terms of Reference are eligible for membership of the CAP only if:
  - 3.2.1 they have demonstrated appropriate skills or knowledge of town planning and CAP processes and have a reasonable knowledge of the operation and requirements of the Act and, during the transition to the Act, the Development Act, and appropriate qualifications or experience in a field that is relevant to the activities of the CAP and/or demonstrated experience in local government; and
  - 3.2.2 they meet any other reasonable criteria imposed by resolution of the Council.
- 3.3. A Council Representative is entitled to be re-appointed as a CAP Member for a second successive term, by being expressly authorised by a resolution of the Council.
- 3.4. An Independent Representative is entitled to be re-appointed as a CAP Member for multiple successive terms by Council resolution.
- 3.5. The term of office for each CAP Member is as determined by the Council but in any event shall not exceed 2 years.
- 3.6. A CAP Member whose term of office expires (as distinct from resignation or removal from office) may nevertheless continue to act as a member of the CAP for a period of up to 6 months until either he or she is reappointed or a successor is appointed.
- 3.7. The Presiding Member of the CAP is appointed by the Council and will preside at all CAP meetings.
- 3.8. The Presiding Member will be appointed by the Council taking into account the following requirements:
  - 3.8.1 he or she must not be a member or officer of the Council; and
  - 3.8.2 he or she must be a person who is determined by Council to have a reasonable knowledge of the operation and requirements of the Act and, during the transition to the Act, the Development Act, and appropriate qualifications or experience in a field that is relevant to the activities of the Panel.
- 3.9. In the event the Presiding Member is not present at any meeting, or part thereof, the person to act as Acting Presiding Member will be chosen by those members present at the meeting. In the absence of consensus, this will be decided by majority vote.

#### **4. VACANCY OF OFFICE/RESIGNATION/REMOVAL AND REPLACEMENT OF A MEMBER**

- 4.1. The office of a CAP Member becomes vacant if the member:

- 4.1.1 dies; or
  - 4.1.2 completes a term of office and is not reappointed; or
  - 4.1.3 resigns by written notice to the Assessment Manager; or
  - 4.1.4 becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
  - 4.1.5 is convicted of an indictable offence punishable by imprisonment; or
  - 4.1.6 is removed from office by the Council pursuant to Clause 4.3.
- 4.2. A CAP Member may resign from the CAP by giving the Assessment Manager notice in writing to that effect. Such notice takes effect immediately upon receipt by the Assessment Manager.
- 4.3. Subject to Clause 4.4 of the Terms of Reference, the Council may, at its absolute discretion, remove a CAP Member from office for any of the following inappropriate behaviours:
- 4.3.1 a breach of, or failure to comply with, the conditions of appointment to the CAP; or
  - 4.3.2 misconduct detrimental to the interests of the CAP, the Council and/or the administration of the planning system (and in this context "misconduct" includes any conduct of a CAP Member known to the CAP, the Council or the public which offends the social mores of the community); or
  - 4.3.3 neglect of duty; or
  - 4.3.4 incapacity to carry out satisfactorily the duties of his or her office; or
  - 4.3.5 failure to carry out satisfactorily the duties of his or her office; or
  - 4.3.6 failure to declare a direct or indirect pecuniary interest in a matter before the CAP or a body associated with a matter before the CAP in breach of Section 83(1)(g) of the Act; or
  - 4.3.7 with respect to a CAP Member who is an Independent Representative - failure to disclose his or her financial interests in accordance with Section 83(1)(e) and Schedule 1 of the Act; or
  - 4.3.8 failure to attend three consecutive meetings of the CAP without the CAP having previously resolved to grant a leave of absence to the CAP member; or
  - 4.3.9 breach of the CAP Code of Conduct adopted under Schedule 3 Part 1 of the Act.
- 4.4. The Council must give written notice to a CAP Member of its intention to consider removing the CAP Member from office for any of the behaviours set out in Clause 4.3 above. Further, the Council must give the CAP Member an opportunity to respond to an allegation of inappropriate behaviour (either verbally or in writing). Any response provided by the CAP Member must be taken into account before the Council makes a determination on whether to remove the CAP Member from office.

- 4.5. Particulars of an allegation of inappropriate behaviour must be communicated in writing to the CAP Member at least seven days before the meeting of the Council at which the matter will be determined.
- 4.6. The decision of the Council in consideration of an allegation of inappropriate behaviour will have immediate effect and must be communicated to the CAP Member in writing.
- 4.7. Should a vacancy in the membership of the CAP occur for whatever reason, the Council will fill that vacancy at the earliest opportunity in accordance with this Terms of Reference.
- 4.8. A replacement CAP Member shall be appointed to serve the remainder of the term of the CAP Member whose position is being filled and shall enjoy the same rights and obligations as that CAP Member.
- 4.9. The appointment of a replacement CAP Member should be made expeditiously, but need not be made in the instance where the vacancy to be filled will be for a period of less than three months.
- 4.10. A vacancy in the membership of the CAP will not invalidate any decision by the remaining CAP Members, provided a quorum is maintained during meetings.

## **5. ROLE OF THE CAP**

- 5.1. The CAP is responsible for all matters prescribed to it under Section 83 and Schedule 8 of the Act, and;
  - 5.1.1 must act in strict accordance with the Act and in accordance with the terms of delegations, policies, procedures and protocols which are relevant to the CAP. In that regard, the CAP must prepare and adopt an operating procedure, which sets out the manner in which the CAP conducts its business; and
  - 5.1.2 has no obligation to report to the Council on its development application decisions, except by the publication of the CAP Minutes.
- 5.2. The CAP is invited to ensure that its procedures:
  - 5.2.1 are fair and contribute to informed decision-making; and
  - 5.2.2 reflect the levels of formality appropriate to the nature and scope of responsibilities exercised at that meeting; and
  - 5.2.3 are sufficiently certain to give the community and decision makers confidence in the deliberations undertaken at the meeting.

## **6. CAP SUPPORT**

- 6.1. The CEO of the Council will appoint an Assessment Manager to support the CAP in undertaking its functions.
- 6.2. The CAP may call for such professional assistance from Council staff and other professional advisors as it deems necessary and appropriate. Such requests are to be made to the Assessment Manager.

## **7. REPORTS TO COUNCIL**

- 7.1. The CAP is invited to report to the Urban Planning Committee on an “as needs” basis, detailing issues it wishes be considered by the Council. Any such report may include advice on trends, issues and other matters relating to planning or development that have become apparent or arisen through the CAP’s assessment of development applications.