

Marion Council Assessment Panel General Operating Procedures

Adopted by CAP 16/12/2020



1. TIMING & NOTICE OF MEETINGS

- 1.1. CAP meetings will be scheduled by the CAP to occur in the first week of every month (except the first week of January), with a second meeting to occur on the third week of the month, on an as need basis.
- 1.2. The CAP will meet in the Council Administration Centre at 245 Sturt Road, Sturt or at such other place as the CAP may determine.
- 1.3. The Assessment Manager must provide written notice to all CAP members at least three working days before the meeting.
- 1.4 Notice of a meeting of the CAP must:
 - 1.4.1 set out the date, time and place of the meeting;
 - 1.4.2 include the agenda for the meeting and any documents and/or reports that are to be considered at the meeting (in so far as practicable);
- 1.5 The Presiding Member may include late items in the Agenda of a meeting with the leave of the meeting.
- 1.6. Notice of CAP meetings may be given to CAP members by email to an address nominated by a CAP Member, or by personal delivery or post to the usual residence of a CAP Member, or via such other means as authorised in writing by a CAP Member.
- 1.7. A copy of the Agenda for every meeting of the CAP shall be available for viewing by the public on the Council's web site at least three working days before the meeting.
- 1.8. A special meeting of the CAP may be convened by the Presiding Member at any time to consider urgent business by giving not less than forty eight hours written notice to all CAP Members.
- 1.9. Notice of a Special Meeting must be accompanied by an Agenda stating the item(s) of business for which the meeting has been convened. A Special Meeting must only deal with the business for which the meeting has been convened.

2. COMMENCEMENT OF MEETINGS & QUORUM

- 2.1. CAP Meetings will be conducted in accordance with the *Planning, Development and Infrastructure Act* ('the Act') and *Planning, Development and Infrastructure (General) Regulations* ('the Regulations'), the CAP's Terms of Reference, the CAP's Policy for Assessment Panel Review of Decision of Assessment Manager ('Assessment Manager Review Policy') and these Operating Procedures.
- 2.2. Meetings will commence on time and as soon as a quorum is present. If a quorum is not present within thirty minutes of the time for commencement, the Presiding Member may adjourn the meeting to the next scheduled meeting time and date, or to another time and date.
- 2.3. In accordance with Regulation 15 of the Regulations, a quorum for a meeting of the CAP is three (3) CAP Members.

- 2.4. If the number of apologies received by the Assessment Manager in advance of a meeting indicate that a quorum will not be present at a meeting, the Presiding Member may, by notice from the Assessment Manager provided to all CAP Members in advance of the meeting, (a copy of which will be placed on the Council's website) adjourn the meeting to a future time and date specified in the notice.
- 2.5. If a meeting is required to be adjourned by the Presiding Member, the reason for the adjournment, and the date and time to which the meeting is adjourned will be recorded in the minutes.
- 2.6. A Deputy Presiding Member of the CAP must be appointed by resolution of the CAP at its first meeting, and will preside at any meeting or part thereof when the Presiding Member is not present.
- 2.7. The Presiding Member will preside at all CAP meetings, however, in the absence of the Presiding Member, the Deputy Presiding Member will preside at the meeting (or part thereof).
- 2.8. If both the Presiding Member and Deputy Presiding Member are absent from a CAP meeting (or part thereof), a CAP Member chosen from those present will preside at the meeting and will have all of the powers and duties of the Presiding Member.
- 2.9. Subject to the Act, the Terms of Reference and these Operating Procedures, the Presiding Member will facilitate the meeting in a manner which promotes healthy, orderly, constructive, respectful and expeditious discussion, but not repetitious or irrelevant discussion.
- 2.10. The Presiding Member may adjourn a meeting in the event of a disruption or disturbance by a CAP Member, an applicant, a representor or any other person present at the CAP meeting until such time as the disruption or disturbance ceases.
- 2.11. The Presiding Member may ask a member of the public who is present at a meeting of a CAP who is:
 - 2.11.1 behaving in a disorderly manner; or
 - 2.11.2 causing an interruption; or
 - 2.11.3 using audio and video recording devices, without the prior agreement of the Presiding Member;
to leave the meeting.

3. DECISION MAKING

- 3.1. In the interest of raising accountability and promoting transparency in local government decision making, the CAP will conduct its meetings and undertake all considerations in accordance with Section 83 and 85 of the Act and Part 3 of the Regulations, and will only exclude the public from attendance when one or more of the requirements of Clause 13(2)(a) or 13(2)(b) of the Regulations are met, or in accordance with clause 2.11 above.
- 3.2. Each CAP Member present at a meeting is entitled to one vote on any matter arising for decision and, if the votes are equal, the Member presiding at the meeting is entitled to a second or casting vote.
- 3.3. All decisions of the CAP shall be made on the basis of a majority decision of the Members present (subject to clause 3.2) and the minutes shall record that decision

only (votes for/against will not be recorded and are not relevant once the majority is determined).

4. ASSESSMENT OF DEVELOPMENT APPLICATIONS

The procedures in Part 3 of these Operating Procedures relate only to the CAP's assessment of development applications under Part 7 of the Act and Part 4 of the *Development Act 1993* ('D Act'). NB: The procedures for determining an application for review of an Assessment Manager's decision are contained in the Assessment Manager Review Policy.

- 4.1 The CAP must use the Development Plan or Planning Rules (as relevant) as the basis for its decisions, having had regard to any written and verbal representations made in accordance with the provisions of the Act and Regulations or the DAct and *Development Regulations 2008* ('D Regulations') (as relevant).
- 4.2 The CAP must, for each and every application, determine whether the proposal is seriously at variance with the Development Plan and expressly record its determination on this matter in the minutes. If the CAP determines that the proposal is seriously at variance with the Development Plan or the Planning Rules (as relevant), and the CAP must provide reasons for its determination and must expressly record those reasons in the minutes.
- 4.3. A development application that is assessed by the CAP as being seriously at variance with the Development Plan or the Planning Rules (as relevant) will not be granted approval.
- 4.4. The CAP must, for each and every application, provide reasons for granting or refusing Development Plan Consent or planning consent (as relevant) and expressly record those reasons in the minutes.
- 4.5 If the CAP determines to defer making a decision on an application, the reasons for that deferral must be clearly articulated and recorded in the minutes. Reasons to defer making a decision must be limited to;
 - 4.5.1 a need for additional information/clarification regarding a matter(s) to be considered; and/or
 - 4.5.2 an opportunity to address concerns of the CAP that will not alter the essential nature of the development, and where the applicant/proponent has indicated a willingness to undertake such amendments.
- 4.6. Subject to the Act, Instrument of Delegation under the DAct and DRegulations , and Development Delegations Policy endorsed at the General Council 19 May 2019, a person who has lodged a development application or a valid representation and wishes to be heard by the CAP in relation to a matter, is entitled to appear before the CAP and be heard in support of the application or representation, in person or by an agent. Representors and applicants will be allowed 5 minutes each to address the CAP, unless a longer time is allowed by the Presiding Member.
- 4.7. At the discretion of the Presiding Member, any new or additional material to be submitted to the CAP by a person who has made a development application or a valid representation in relation to a matter may be accepted and considered by the CAP.
- 4.8. At the discretion of the Presiding Member, a CAP Member may ask questions of any person appearing before the CAP. The Presiding Member may refuse any such

question posed by a CAP Member if in his/her opinion it is not relevant to the subject development application. The Presiding Member's determination in this regard is final.

5. MINUTES

- 5.1. The Assessment Manager is responsible for ensuring that accurate minutes are kept of CAP meetings and that they are confirmed by the CAP and signed by the Presiding Member.
- 5.2. The minutes of the proceedings of a CAP meeting will record:
 - 5.2.1 the names of the CAP Members present;
 - 5.2.2 the name and time that a CAP Member enters or leaves the meeting;
 - 5.2.3 the name of a person who has made a representation to the CAP at the meeting;
 - 5.2.4 in relation to each development application:
 - 5.2.4.1 the decision of the CAP, including an express opinion on whether the proposed development is seriously at variance with the Development Plan or Planning Rules (as relevant) (including reasons as appropriate);
 - 5.2.4.2 detailed reasons for granting or refusing Development Plan Consent;
 - 5.2.5 In relation to each application for review of an Assessment Manager decision:
 - 5.2.5.1 the determination of the CAP as to whether the proposal is seriously at variance with the Development Plan or Planning Rules (as relevant); and
 - 5.2.5.2 the reasons for the CAP's decision under Section 203(4) of the Act, including the reasons for the imposition of any new or varied conditions;
 - 5.2.6 in the absence of a decision, the deferral of the application including the reasons for the deferral;
 - 5.2.7 any disclosure of interest made by a CAP Member in accordance with Section 83(1)(g) of the Act, or the Code of Conduct adopted by the Minister under Clause 1(1)(c) of Schedule 3 of the Act, and the nature of the interest;
 - 5.2.8 a decision to exclude public attendance; and
 - 5.2.9 a notation, describing the confidential nature of the information and matter, in the event that a matter has been excluded from the minutes; and
 - 5.2.10 the start, finish and overall duration of the meeting; and
 - 5.2.11 the total number of applicants, appellants and representors appearing (i.e. speaking) before the Panel; and
 - 5.2.12 a numerical summary of the decisions made during the meeting (excluding items considered in confidence); and
 - 5.2.13 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
- 5.3. Minutes of the meeting shall be adopted prior to the conclusion of the meeting.
- 5.4. On the confirmation of the Minutes, the member presiding at the meeting will place his or her signature and the date of confirmation on the last page of the Minutes.
- 5.5. The Minutes of a CAP meeting must be forwarded to the Council and must be publicly available within two business days after their confirmation by the CAP.

6. CAP PROCEDURES & SUPPORT

- 6.1. Insofar as the Act and Regulations (and, during the transition to the Act and Regulations, the D Act and D Regulations), the Terms of Reference, the Assessment Manager Review Policy and these Operating Procedures do not prescribe the procedure to be followed at a CAP meeting, the CAP may determine the procedure at that time. Any such determination will be added to these Operating Procedures.

- 6.2. The CAP will permit and encourage the active participation of Council staff in attendance at a meeting in providing advice to the CAP.
- 6.3. The CAP may call for and consider such professional assistance from Council staff and other professional advisors as it deems necessary and appropriate.
- 6.4. The CAP will undertake an Annual Performance Review (APR), 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.

TEMPORARY ADDENDUM TO FACILITATE ELECTRONIC MEETINGS

On 9 April 2020, the *COVID-19 Emergency Response Act 2020* (**COVID Act**) commenced operation. The COVID Act will expire on the earlier of 6 February 2021 or 28 days after the day on which all relevant declarations relating to the outbreak of COVID-19 within South Australia have ceased (**Expiry Day**).

Section 17 of the COVID Act provides (relevantly) that despite a provision of any other act, a requirement that a meeting occur that requires 2 or more persons to be physically present will be taken to be satisfied if the persons meet remotely using audio-visual or audio only communication.

In reliance on Section 17 of the COVID Act, on 16 December 2020, the CAP adopts the following temporary amendments to the General Operating Procedures numbered 1 to 6 above (**Ordinary Procedures**). These amendments will operate until the Expiry Day of the COVID Act.

7. DEFINITIONS

The following definitions apply in relation to these temporary amendments:

- 7.1 *connect* means able to hear and/or see the meeting by electronic means, including via a live stream
- 7.2 *disconnect* means to remove the connection so as to be unable to hear and see the meeting
- 7.3 *electronic means* includes a telephone, computer or other electronic device used for communication
- 7.4 *live stream* means the transmission of audio and/or video from a meeting at the time the meeting is occurring

8. AMENDMENTS TO CLAUSE 1

8.1 Sub-clause 1.4 of the Ordinary Procedures is supplemented with the inclusion of the following additional paragraph:

1.4.3 where attendance at the meeting is able to occur by electronic means (in whole or in part), include details of how to connect to the meeting; and

- 8.2 Sub-clause 1.7 of the Ordinary Procedures is supplemented with the inclusion of the following additional text after the words “the CAP”

and, where the meeting is to be live streamed for viewing by members of the public, details of how to access and/or connect to the live stream,

9. AMENDMENTS TO CLAUSE 2

- 9.1 New sub-clauses 2.1A to 2.1E are inserted into the Ordinary Procedures after Clause 2.1 as follows:

2.1A *One or more Panel members may attend a meeting via electronic means.*

2.1B *A Member attending a meeting by electronic means is taken to be present at the meeting provided that the Member:*

2.1B.1 *can hear and, where possible, see all other Members who are present at the meeting;*

2.1B.2 *can hear and, where possible, see, all representors (or their representatives) and applicants (or their representatives) who speak at the meeting;*

2.1B.3 *can be heard and, where possible, seen by all other Members present at the meeting; and*

2.1B.4 *can be heard and, where possible, seen by the person recording the minutes of the meeting.*

2.1C *Where a meeting occurs via electronic means, it shall (to the extent that the public is not able to physically attend the meeting) be live streamed.*

2.1D *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.*

2.1E *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 disconnect from or are disconnected from the meeting.*

- 9.2 Sub-clause 2.11 of the Ordinary Procedures is amended with the inclusion of the words “or disconnect from” after the word “leave”.

10. AMENDMENTS TO CLAUSE 3

- 10.1 New sub-clause 3.4 is inserted into the Ordinary Procedures as follows

3.4 *Where a person is entitled or has been requested to appear before the CAP in relation to an application for review of an Assessment*

Manager decision (including the Assessment Manager or delegate), the person may appear via electronic means. The Presiding Member may require that any such appearance be via electronic means

11. AMENDMENTS TO CLAUSE 4

11.1 Sub-clause 4.6 of the Ordinary Procedures is supplemented with the inclusion of the following additional paragraph:

4.9 *Clause 4.6 is satisfied if a representor or applicant (as the case may be) appears via electronic means. The Presiding Member may require that any such appearance be via electronic means.*

12. AMENDMENTS TO CLAUSE 5

Sub-clause 5.2 of the Ordinary Procedures is supplemented with the inclusion of the following additional paragraph:

5.2.3A *methods of attendance by all Members present and by every person who makes or responds to a representation.*

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Owner: Marion Council Assessment Panel
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