

Marion Council Assessment Panel Operating Procedures

Adopted by CAP 01/02/2023



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
- the CAP's Policy for Assessment Panel Review of Decision of Assessment Manager (**Assessment Manager Review Policy**).

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);
 - 1.4.3 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
 - 1.4.4 where the meeting is to be live streamed for viewing by members of the public, include details of how to access and/or connect to the live stream.
- 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.

Special 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.

Deputy Members

- 1.10 If a CAP Member is unable or unwilling to attend a meeting or part of a meeting, he or she must use his or her best endeavours to notify the Presiding Member or Assessment Manager at his or her earliest opportunity.
- 1.11 If notification pursuant to clause 1.10 is given, the Assessment Manager may request a Deputy Member attend the meeting in place of the CAP Member for the meeting or part of the meeting.
- 1.12 If the Presiding Member is unable to attend a meeting or part of a meeting, the nominated Deputy Presiding Member shall attend the meeting in place of the Presiding Member for the meeting or part of the meeting

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 the CAP meeting, , to leave the meeting, if he/she 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.

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.
- If deferring an application under the Act, the Panel must take into account the applicable assessment timeframes remaining. The Panel should seek the consent of the applicant for the application to be placed 'on hold' until further information has been provided to the Panel.*
- 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 the following are entitled to appear before the CAP, in person or by an agent;
- 4.6.1 a person who has lodged a development application;
- 4.6.2 a person who has submitted a valid representation and wishes to be heard;
- or
- 4.6.3 a person who is representing an item previously deferred by the CAP
- 4.7. Subject to Clause 4.6, persons appearing before the CAP will be allowed 5 minutes each to address the CAP, unless a longer time is allowed by the Presiding Member.
- 4.8. 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. This information must be formally accepted by the Presiding Member and subsequently noted in the minutes.
- 4.9. 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.

7. ELECTRONIC MEETINGS

- 7.1 One or more CAP Members may attend a meeting via electronic means with prior approval of the presiding member and assessment manager.
- 7.2 A CAP Member attending a meeting via electronic means is taken to be present at the meeting provided that the CAP Member:
- 7.2.1 can hear and, where possible, see all other CAP Members who are present at the meeting;
 - 7.2.2 can hear and, where possible, see all representors (or their representatives) and applicants (or their representatives) who speak at the meeting;
 - 7.2.3 can be heard and, where possible, seen by all other CAP Members present at the meeting; and
 - 7.2.4 can be heard and, where possible, seen by the person recording the minutes of the meeting.
- 7.3 Where a meeting occurs via electronic means, it will (to the extent that the public is not able to physically attend the meeting) be live streamed.
- 7.4 Where a meeting is being live streamed, the live stream must 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.
- 7.5 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 must ensure that all parties except for the CAP Members disconnect from or are disconnected from the meeting.

8 DEFINITIONS

The following definitions apply in relation to these Meeting Procedures:

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

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Owner: Marion Council Assessment Panel

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