

CITY OF WEST TORRENS



## Council Assessment Panel Operating Procedures

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<b>Related Policies or Corporate Documents:</b>	<ul style="list-style-type: none"><li>• <a href="#">Terms of Reference - Council Assessment Panel</a></li></ul>
<b>Associated Forms:</b>	<ul style="list-style-type: none"><li>• Council Assessment Panel Member Conflict of Interest Declaration Form</li></ul>
<b>Note:</b>	
<b>Responsible Manager:</b>	<b>Assessment Manager</b>
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## Council Assessment Panel Operating Procedures

### (1) Introduction

The *Planning, Development and Infrastructure (General) Regulations 2017* (Regulations) stipulate certain statutory procedures to be observed at or undertaken during meetings of the Council Assessment Panel (CAP). Otherwise, the CAP determines its own procedures so long as they are not inconsistent with the Regulations.

The combined document is the City of West Torrens' CAP Operating Procedures (Operating Procedures) adopted by the CAP.

The Operating Procedures are available to the public to assist their understanding of the procedures associated with the operation of CAP meetings.

The CAP may, at any time by resolution, alter or substitute these Operating Procedures.

### (2) Interpretation

**Act** means the *Planning, Development and Infrastructure Act 2016*.

**Additional Member** - a person who holds a qualification, or has expertise or experience recognised by a practice direction for the purposes of section 85 of the Act. An Additional Member is not able to vote on any matter arising for determination by the CAP.

**Assessment Manager** means a person appointed by the Chief Executive Officer pursuant to section 87 of the Act. The Assessment Manager is responsible for overseeing the operations of and providing advice to the CAP.

**Member** means a member of the Council Assessment Panel and includes a Deputy Member.

**Planning Rules** means the same as defined in the Act.

**Presiding Member** means the person who is formally appointed by Council as the presiding member of the CAP and includes any person who is presiding at a particular meeting of the CAP.

**Representor** means a member of the public who wishes to present information to the CAP in relation to a proposed development being considered by the CAP.

**Written notice** includes a notice given in a manner or form determined by the CAP.

- (1) In the calculation of “**clear days**” in relation to the giving of notice before a meeting -
  - (a) the day on which the notice is given, and the day on which the meeting occurs, will not be taken into account; and
  - (b) Saturdays, Sundays and public holidays will be taken into account.
- (2) For the purposes of the calculation of clear days, if a notice is given after 5 pm on a day, the notice will be taken to have been given on the next day.

### (3) Guiding Principles

The following principles (the **Guiding Principles**) should be applied with respect to the procedures to be observed at a meeting of the CAP:

- (a) procedures should be fair and contribute to open, transparent and informed decision-making;
- (b) procedures should encourage appropriate community participation in the affairs of the CAP;
- (c) procedures should reflect levels of formality appropriate to the nature and scope of responsibilities exercised at the meeting;
- (d) procedures should be sufficiently certain so as to give the community and decision-makers confidence in the deliberations undertaken at the meeting.

### (4) Notice of Meetings

- (1) Subject to this clause, clause (11) and clause (14) of these Operating Procedures, the CAP will meet at 165 Sir Donald Bradman Drive, Hilton SA 5033 at 5.00pm on the second Tuesday of each month and in January of each year when it will meet on the third Tuesday of the month at 5.00pm.
- (2) Notice of a CAP meeting must:
  - (a) be in writing;
  - (b) set out the time, date and place of the meeting;
  - (c) be signed by the Assessment Manager to the CAP;
  - (d) 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);
  - (e) be provided electronically to Members a minimum of three (3) clear days before the meeting; and
  - (f) be displayed at the Civic Centre, Hamra Centre Library and on Council's website a minimum of three (3) clear days before the meeting.
- (3) The Assessment Manager may vary the meeting place, date and time in consultation with the Presiding Member but must ensure that a minimum of three (3) clear days' notice of the new meeting date is provided and the meeting is notified according to clause (4)(2) of these Operating Procedures.
- (4) The Assessment Manager may vary the meeting place and/or time in consultation with the Presiding Member to facilitate all or part of a meeting to be held remotely by means of audio visual and/or audio communication without the requirement for three (3) clear days' notice. Members of the CAP, Applicants, Representors and the public that will access the meeting by means of audio visual and/or audio communication must be given appropriate notice before the commencement of the meeting.
- (5) The Assessment Manager may cancel a meeting in consultation with the Presiding Member. A notice regarding the cancellation must:
  - (a) be in writing;
  - (b) set out the time, date and place of the next meeting;
  - (c) be signed by the Assessment Manager to the CAP;
  - (d) be provided electronically to Members; and
  - (e) be displayed at the Civic Centre, Hamra Centre Library and on Council's

website.

- (6) Special meetings of the CAP may be required in special circumstances to expedite decisions on applications before the CAP and will be called at the discretion of the Assessment Manager in consultation with the Presiding Member. Members of the CAP, Applicants, Representors and the public must be given a minimum of four (4) hours' notice before the commencement of the special meeting.
- (7) 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 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 Members as soon as practicable. The Assessment Manager will also make an updated agenda available to the public in accordance with clause (4)(2) despite it being within the minimum of three (3) clear days before the meeting.

#### **(5) Deputy Members**

- (1) If a Member is unable to attend a meeting, they must notify the Assessment Manager as soon as reasonably practicable.
- (2) The Assessment Manager may request the Deputy Member to the Elected Member attend a meeting in the place of the CAP Elected Member for all or part of a meeting.
- (3) The Assessment Manager may request that the Deputy Independent Member or Members attend a meeting in lieu of an Independent Member or Members for all or part of a meeting.

#### **(6) Additional Members**

- (1) The CAP may, by resolution, appoint up to two Additional Members to assist the CAP in dealing with a particular matter.
- (2) Such Additional Members must hold a qualification, or have expertise or experience, recognised by *Practice Direction 5 - Appointment of additional members to an Assessment Panel* issued by the State Planning Commission.
- (3) The Assessment Manager may request in writing for an Additional Member to attend a CAP meeting and this request must be accompanied by the notice for the meeting in accordance with clause 4(2), highlighting the item(s) the Additional Member is required to consider.
- (4) Additional Members appointed by the CAP are not entitled to vote at meetings.
- (5) Additional Members will be remunerated accordingly.

## **(7) Quorums (Regulation 15)**

- (1) A quorum at a meeting of the CAP is the minimum number of voting Members in order for the meeting to occur and/or continue. The quorum is derived by dividing the total number of voting members of the CAP by 2, ignoring any fraction resulting from the division, and adding 1 i.e. as the CAP is constituted of 5 members, quorum is three (3).

## **(8) Commencement of Meetings**

- (1) A meeting will commence as soon after the time specified in the notice of meeting as a quorum is present.
- (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) If, at the expiration of 30 minutes from the time specified in the notice of meeting as the time of commencement a quorum is not present, the Presiding Member or, in the absence of the Presiding Member, the Deputy Presiding Member, or in the absence of both members, the Assessment Manager, will adjourn the meeting to a specified day and time.
- (4) If a meeting is adjourned for want of a quorum, the Assessment Manager will record in the minutes the reason for the adjournment, the names of any members present, and the date and time to which the meeting is adjourned.
- (5) The Presiding Member may, with the leave of the meeting, adjourn the meeting to a future date and time.
- (6) If a meeting is adjourned to another day, the Assessment Manager must:
  - (a) give notice of the adjourned meeting to each Member setting out the date, time and place of the meeting;
  - (b) give notice of the adjourned meeting to Applicants and Representors setting out the date, time and place of the meeting; and
  - (c) give notice of the adjourned meeting to the public by causing a notice setting out the date, time and place of the meeting to be placed on display at the principal office of the Council and on the Council's website.

## **(9) Order of Business**

- (1) Prior to the commencement of business the Presiding Member will read the Fire Evacuation Statement if members of the public are present.
- (2) Prior to the commencement of business the Presiding Member will read the Acknowledgement of Country.
- (3) If any Members or the public are attending the CAP meeting remotely by means of audio visual and/or audio communication, prior to the commencement of business, the Presiding Member will explain the particulars relating to the communication methods for the meeting.
- (4) If both the Presiding Member and the Deputy Presiding Member are absent from a meeting, or for any agenda item at the meeting, a Member will be chosen from

those present to preside at the meeting until the Presiding Member or the Deputy Presiding Member is present. That Member presiding will have all the powers and duties of the Presiding Member at that meeting.

- (5) The Presiding Member may alter the order of business listed in the agenda with the leave of the meeting, e.g. if the majority of the Representors are interested in a particular item.
- (6) Members are required to make any disclosure of a conflict of interest, pursuant to the Act and/or the Code of Conduct adopted by the Minister, prior to the commencement of the items of business before the meeting.

#### **(10) Debate and Voting (Regulation 16)**

- (1) Each Member of the CAP who is present at a meeting of the CAP is entitled to 1 vote on a matter arising for decision and, if the votes are equal, the Presiding Member will have an additional, casting vote.
- (2) Sub-regulation (1) does not apply to a person who is taken to be a Member of the CAP under section 85 of the Act\*.

\*Section 85 precludes additional members from voting.

- (3) Comment and discussion on a matter presented to the CAP for determination may be sought by a Member or the Presiding Member. These discussions are not minuted.
- (4) Prior to calling for a motion, the Presiding Member will utilise their discretion to conclude the opportunity for discussion and comment only after each Member present at the meeting has been provided the opportunity to speak.
- (5) Decisions of the Panel will be where possible by consensus determined through debate and discussion of the agenda item, and where a consensus is reached the Presiding Member shall then call for a mover, and confirm the consensus by a show of hands. Motions or amendments need not be seconded.
- (6) Where it is evident through debate and discussion that a consensus will not be reached by the CAP, the Presiding Member shall call for a mover, and put the matter to a formal vote to determine. Motions or amendments need not be seconded.
- (7) All CAP Members in attendance at a meeting who are entitled to vote must vote on each item present unless they have declared a conflict of interest in relation to a particular item.
- (8) All decisions of the CAP shall be made on the basis of a majority decision of the Members present and the minutes shall record that decision only (votes for/against will not be recorded, and are not relevant once the majority is determined).
- (9) The Presiding Member may refuse to accept a motion if the subject matter, is in their opinion, beyond the power of the CAP with reasons being provided to the Panel and recorded in the minutes.
- (10) The Presiding Member, in the absence of comment/discussion in relation to the business requiring determination, will request a motion to be moved and may also move a motion.

- (11) Decisions will normally be made at the meeting at which the application is considered by the CAP, however the CAP may defer consideration of an application to a future meeting to enable further information to be obtained to assist in the determination of the application. Members should be aware of the time frames within which certain decisions are required to be made under the Act.
- (12) Where notice is given to Representors in accordance with the requirements of the Act and the Representor is not present at the time for the hearing of the representation the CAP will not defer consideration of the application.

### **(11) Public Access to Meetings (Regulation 13)**

- (1) In connection with the conduct of the proceedings of the CAP, members of the public are entitled to attend a meeting of the CAP other than as set out in sub-regulation (2).

- (2) The Presiding Member may adjourn a meeting in the event of a disruption or disturbance by any person (including a Member, Applicant, Representor or other member of the public) to a specified date and time.
- (3) The Presiding Member may ask a member of the public (including an Applicant, Representor or other member of the public) to leave a meeting where they are, in the opinion of the Presiding Member:
  - (a) behaving in a disorderly manner; or
  - (b) causing an interruption or disruption to the meeting.
- (4) In the event that that the member of public refuses to leave the meeting, a senior member of staff will contact SAPOL for assistance or in the case of a meeting held remotely, mute or disconnect their audio visual or audio connection.
- (5) Public access to meetings may be facilitated remotely by means of audio visual and/or audio communication in a manner to be determined by the Assessment Manager.
- (6) If it is determined that public access will be facilitated by means of audio visual and/or audio communication, the Presiding Member must ensure that the remote access technology allows the public to hear the meeting if they are accessing the meeting via audio communication, and hear and see the meeting if they are accessing audio visual communication.
- (7) Where public access to the CAP meeting is provided remotely by means of audio visual and/or audio communication, Council does not accept responsibility for any attendees' technical difficulties associated with the remote access technology.
- (8) The Presiding Member may cause the broadcast to be muted if appropriate and required to facilitate the proper carrying out of the meeting.

- (9) The CAP may exclude the public from attendance at a meeting:
  - (a) during so much of the meeting as is necessary to receive, discuss or consider in confidence any of the following matters:



- i. information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
  - ii. information the disclosure of which:
    - A. could unreasonably be expected to confer a commercial advantage on a person, or to prejudice the commercial position of a person; and
    - B. would, on balance, be contrary to the public interest;
  - iii. information the disclosure of which would reveal a trade secret;
  - iv. commercial information of a confidential nature (not being a trade secret) the disclosure of which:
    - A. could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
    - B. would, on balance, be contrary to the public interest;
  - v. matters affecting the safety or security of any person or property;
  - vi. information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;
  - vii. matters that should be considered in confidence in order to ensure that the assessment panel, or any other entity, does not breach any law, or any order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
  - viii. legal advice;
  - ix. information relating to actual litigation, or litigation that the assessment panel believes on reasonable grounds will take place;
  - x. information the disclosure of which:
    - A. would divulge information provided on a confidential basis by or to a Minister of the Crown, the Commission, or another public authority or official; and
    - B. would, on balance, be contrary to the public interest;
- (b) during so much of the meeting that consists of its discussion or determination of any application or other matter that falls to be determined by the assessment panel.

- (10) If the public have been excluded from attendance at a meeting, the CAP must resolve whether or not to retain, (in confidence), the reports and documents which have been considered by it in confidence.
- (11) If the CAP orders, by resolution, that the information is to remain confidential it must also determine the circumstances in which that the confidential order will cease to apply or a period after which the order is to be reviewed. Any order exceeding a twelve (12) month period will be reviewed at least once in every twelve (12) month period.
- (12) At the end of each financial year the Assessment Manager will undertake a review of the reports and documents which remain in confidence.
- (13) The annual review will be presented to CAP and will identify which confidentiality orders have expired and which remain in place.

- (14) The outcome of the annual review will also be presented to Council for information and included within the Annual Report.
- (15) If public access to the meeting is being facilitated by means of audio visual and/or audio communication, the Presiding Member must ensure that any broadcast ceases at the time the meeting enters into confidence

## **(12) Minutes and Other Documents (Regulation 14)**

- (1) The Assessment Manager must ensure that accurate minutes are kept of the proceedings of the CAP.
- (2) Any disclosure by a Member of a direct or indirect pecuniary interest in any aspect of a development or any body associated with any aspect of a development required under the Act must be recorded in the minutes of the CAP.
- (3) Members of the public are entitled to reasonable access to:
  - (a) the agendas for meetings of the CAP; and
  - (b) the minutes of meetings of the CAP.
- (4) However, the CAP may, before it releases a copy of any minutes under sub-regulation (3), exclude from the minutes information about any matter dealt with on a confidential basis by it.
- (5) Minutes must be available under sub-regulation (3) within 5 business days after being adopted by the CAP.

- (6) The minutes of the proceedings at a meeting must be submitted for confirmation at the next meeting or, if that is omitted, at a subsequent meeting.
- (7) No discussion on the minutes may occur before confirmation, except as to the accuracy of the minutes as a record of proceedings.
- (8) On the confirmation of the minutes, the Presiding Member will:
  - (a) initial each page of the minutes, which pages are to be consecutively numbered; and
  - (b) place their signature and the date of confirmation at the foot of the last page of the minutes.
- (9) The minutes of proceedings of a meeting must include:
  - (a) the names of all Members present;
  - (b) the names of all Members from whom apologies have been received;
  - (c) any disclosure by a Member pursuant to regulation 14(2) of the Regulations;
  - (d) the name and time that a Member enters or leaves the meeting, once the meeting has commenced;
  - (e) the name of every person who makes a representation;
  - (f) reference to new or additional material submitted to the CAP after the publication of the agenda;
  - (g) in relation to each application determined or reviewed by the CAP the determination of the CAP as to whether the proposal is seriously at variance with the Planning Rules and;
    - i. if refusing consent, provide reasons for refusing;

- ii. if granting consent of an application submitted under the *Development Act 1993*, provide the reasons for the imposition of any conditions;
  - (h) if an application is not determined by the CAP, the deferral of the application and the reasons for the deferral;
  - (i) a decision to exclude the public from attendance pursuant to the Regulations; and
  - (j) 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.
- (10) All minutes must be confirmed by the Assessment Manager in conjunction with the Presiding Member as being accurate prior to, or at the commencement of, the subsequent CAP meeting.
- (11) If Members, Applicants or Representatives are attending the meeting remotely (either via telephone and/or by online platform), the method of their attendance at the meeting must be accurately recorded in the minutes.

### **(13) Validity of Proceedings (Regulation 17)**

- (1) A proceeding of the CAP (and any decision made by it) is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a Member.

### **(14) Discretionary Procedures (Regulation 18)**

- (1) Except insofar as a procedure is not prescribed by the Act or Regulations, the procedures of the CAP in relation to the conduct of its business will be as determined by the CAP.

- (1) The CAP should, at least annually, review its Operating Procedures.
- (2) The CAP may, at any time, by resolution supported by the majority of the Members entitled to vote on the resolution, alter or substitute the Operating Procedures.
- (3) The CAP must, in considering the exercise of a power under this regulation, take into account the Guiding Principles.
- (4) A person is entitled to inspect (without charge) the Operating Procedures of the CAP at the principal office of the Council during ordinary office hours. These Operating Procedures are also published and available for public access on Council's website.
- (5) A person is entitled, on payment of a fee fixed by Council, to a copy of these Operating Procedures.
- (6) The Presiding Member may, at their discretion, exclude:
- (a) a representation or response to representation(s) which is received out of time;
  - (b) a representation from a person who was not entitled to submit a representation; or
  - (c) a representation or response to representation(s) which is otherwise invalid.
- (7) After the publication of the agenda, any new or additional material to be submitted to the CAP by a person who has made a development application or a valid representation may be accepted and considered by the CAP at the discretion of the Presiding Member. This information must be formally accepted by the

Presiding Member and subsequently noted in the minutes. This material 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.

- (8) In determining whether to accept and consider the new or additional information pursuant to clause (14)7, the Presiding Member may consider the following:
  - (a) the content of the information and whether it is relevant to the development;
  - (b) the time available for the information to be properly considered by the Applicant, the Representors (as relevant) and the CAP;
  - (c) the reasons why the information was not provided within the application (or representation as relevant);
  - (d) prejudice that may be suffered on the other party (Applicant or Representor/s as relevant) by accepting or not accepting the information.
  
- (9) In relation to each application determined or reviewed, the CAP must determine whether the proposal is seriously at variance with the Planning Rules and:
  - (a) if refusing consent, provide reasons for refusing;
  - (b) if granting consent of an application submitted under the *Development Act 1993*, provide the reasons for the imposition of any conditions.
  
- (10) If the CAP determines that a proposal is seriously at variance with the Planning Rules, it must refuse consent to the application.
  
- (11) In relation to each application to be considered and determined by the CAP:
  - (a) a person who has lodged a representation in relation to an application which has not been excluded pursuant to clause (14)(6) of these Operating Procedures, 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;
  - (b) the Presiding Member may invite a Representor who has made a written representation and is present at the meeting, who has not been scheduled to be heard but wishes to be heard, to appear before the CAP and be heard in support of their Representation, in person or by an agent;
  - (c) where a Representor who has been scheduled to be heard but is not present at the meeting when invited to speak by the Presiding Member, the CAP may proceed with the determination of the application;
  - (d) where one or more Representors are heard by the CAP, the Applicant is entitled to appear before the CAP to respond to any relevant matter raised by a Representor, in person or by an agent;
  - (e) unless otherwise determined by the Presiding Member, Representors will not be entitled to a right of reply;
  - (f) where no Representors appear at the meeting and the staff recommendation is to refuse consent, the Applicant is entitled to appear before the CAP and be heard in support of their application, in person or by an agent;
  - (g) where no Representors appear at the meeting and the staff recommendation is to approve consent, the Presiding Member may, at their discretion, allow an Applicant to be heard to answer questions of the CAP, in person or by an agent;
  - (h) Representors and Applicants will be allowed five minutes each to address the CAP. The Presiding Member may allow a party additional time at their discretion;
  - (i) the hearing of Representors and Applicants shall be confined to the summary of relevant issues and to response on those issues. The Presiding Member

- may restrict submissions not related to the planning issues of a particular matter;
- (j) Members may question and seek clarification from a Representor or Applicant who has addressed the CAP at the conclusion of their address; and
  - (k) for applications that are deferred by the CAP, the Assessment Manager shall inform Representors of the date and time of the meeting when the deferred application is re-presented to the CAP (noting that these Representors are not entitled to make any further representation(s)).
- (12) In relation to meetings to be held remotely:
- (a) The Assessment Manager may determine that some or all Members may attend the meeting remotely.
  - (b) Attendance at meetings held remotely may be by means of using audio visual and/or audio communication.
  - (c) If a Member has been granted permission to attend a meeting remotely, their participation must be able to be viewed and heard by Representors, Applicants and the public gallery.
  - (d) If multiple Members are participating in the meeting remotely, the Presiding Member must ensure that it is clear as to which Member is making a contribution.
  - (e) The Assessment Manager may determine that any Applicant or Representor (and/or their agent) is entitled to appear at the meeting remotely by means of audio visual and/or audio communication, as relevant.
- (13) In relation to reporting provided to CAP:
- (a) Subject to the available reporting functionality in the SA Planning Portal, the Assessment Manager will present to the CAP a regular summary report of:
    - i. applications that have been determined under delegated authority and CAP is the relevant authority;
    - ii. applications that are currently under appeal and CAP is the relevant authority;
    - iii. applications previously deferred by CAP and yet to be returned to CAP for decision; and
    - iv. applications under assessment where SCAP is the relevant authority.
  - (b) Following receipt of a deemed consent notice on an application where CAP is the relevant authority, the Assessment Manager will present a report at the next available CAP meeting.
- (14) In relation to appeals to external bodies:
- (a) The Chief Executive Officer of the City of West Torrens and/or Assessment Manager are authorised to make decisions as to the conduct of appeals, subject to consulting with the Presiding Member.
  - (b) When the Chief Executive Officer of the City of West Torrens and/or Assessment Manager has acted on a matter under appeal, a report will be provided to the CAP at the next meeting.
  - (c) Any proposed compromise arising from an appeal shall be presented to the CAP for decision.
- (15) In relation to assistance from staff or experts:
- (a) At its discretion, the CAP can call for and hear professional advice from the Assessment Manager or planning staff as it deems necessary and appropriate.
  - (b) In calling for specialist assistance, the CAP should be mindful of allowing the Applicant and Representors a reasonable opportunity to consider the

information that may be provided before making a determination on a development application.

- (c) Where a Member disagrees with a recommendation put forward by staff, they may seek the assistance of staff in the wording of, but not the substance of, an alternate resolution.