

# Council Assessment Panel Meeting Procedures

Record number D23/16235

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Panel Members

Independent Member(s):

Mr Mark Adcock (Presiding Member)  
Ms Nitsan Taylor  
Mr Alex Mackenzie  
Mr Grant Hewitt  
Mr Adam Squires (Deputy Member)

Elected Member(s):

Cr Kristianne Foreman  
Cr B Lawrenson (Deputy Elected Member)

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Last reviewed 19 December 2023

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Resolution number 3

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Previous review dates 21 March 2023

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## 1. INTERPRETATION

**Act** means the *Planning, Development and Infrastructure Act 2016 (SA)*.

**Additional Member** means a person appointed pursuant to clause 4.1.

**CAP** means the Tea Tree Gully Council Assessment Panel.

**connect** means able to hear and/or see the meeting by electronic means, including via live stream;

**Code of Conduct** means the code of conduct to be observed by members of an assessment panel adopted by the Minister under clause 1(1)(c) of Schedule 3 of the Act.

**Council** means the City of Tea Tree Gully constituted under the *Local Government Act 1999 (SA)*.

**Deputy Member** means a person appointed pursuant to clause 3.3 of the Terms of Reference.

**Development Act** means the *Development Act 1993 (SA)*.

**disconnect** means to remove the connection so as to be unable to hear and see the meeting;

**electronic** means includes a telephone, computer or other electronic device used for communication;

**ERD Court** means the Environment, Resources and Development Court constituted under the *Environment, Resources and Development Court Act 1993*.

**live stream** means the transmission of audio and/or video from a meeting at the time the meeting is occurring.

**Planning Rules** has the meaning given to it in the Act and includes the Planning and Design Code.

**Prescribed Matter** has the meaning given to it in section 201 of the Act.

**Presiding Member** means an Independent Member appointed pursuant to clause 3.11 of the Terms of Reference.

**Regulations** means the *Planning, Development and Infrastructure (General) Regulations 2017 (SA)*.

**Terms of Reference** means the Tea Tree Gully Council Assessment Panel Terms of Reference.

These Meeting Procedures will be interpreted subject to the provisions of the Act and the Tea Tree Gully Council Assessment Panel Terms of Reference.

## 2. MEETINGS

### Ordinary Meetings

- 2.1 Ordinary meetings of the CAP will be held at such times and places as determined by the CAP.
- 2.2 Notice of an ordinary meeting will be given to all CAP Members by the Assessment Manager not less than five clear days prior to the holding of the meeting in accordance with clause 2.3.
- 2.3 Notice of a meeting of the CAP must:
  - 2.3.1 be in writing;
  - 2.3.2 set out the date, time and place of the meeting;
  - 2.3.3 be signed by the Assessment Manager;
  - 2.3.4 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);
  - 2.3.5 be given to a CAP Member personally, by post to a place authorised in writing by the CAP Member or by other means authorised by the CAP Member as being an available means of giving notice;
  - 2.3.6 where attendance at the CAP Meeting is able to occur by electronic means (in whole or in part), include details of how to connect to the meeting.
- 2.4 A notice that is not given in accordance with clause 2.3 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 Members.
- 2.5 A copy of the agenda and all available attachments for meetings of the CAP will be available for viewing by the public on the Council's website as soon as practicable after the time that notice of the meeting has been given to CAP Members and until the conclusion of the CAP meeting. Where the CAP 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 will be made available to the public on the Council's website as soon as possible.
- 2.6 If a representor or applicant is to appear before the CAP and be heard pursuant to clauses 7.4.1 to 7.4.3 (inclusive) of these Meeting Procedures, the Assessment Manager must provide written notice of the following to such persons as soon as practicable after the time that notice of the CAP meeting has been given to CAP Members:
  - 2.6.1 an invitation to appear and be heard at the meeting;
  - 2.6.2 the date, time and place of the meeting; and

- 2.6.3 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.
- 2.7 The Assessment Manager may cancel or reschedule the scheduled CAP meeting where circumstances dictate or where there are no matters of business listed on the agenda.
- 2.8 In rescheduling a meeting, the Assessment Manager will work with the CAP Members to ensure the availability and convenience of CAP Members.
- 2.9 The Assessment Manager may, with leave or at the request of the Presiding Member:
  - 2.9.1 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 as soon as practicable; and
  - 2.9.2 at the written request of the applicant, remove from the agenda the applicant's item which was to be considered at the meeting to which the agenda relates (including after notice of the agenda has been given to CAP Members). In such an instance, if practicable, the Assessment Manager shall provide an updated agenda to CAP Members and notice of the removal of the item from the agenda to the applicant and any representors who had indicated a wish to appear before the CAP in relation to that agenda item. The Assessment Manager will also make an updated agenda available to the public as soon as practicable.
- 2.10 The Presiding Member may adjourn a CAP Meeting to a future date, time and place, unless the CAP resolves to continue the meeting.
- 2.11 A CAP meeting will break as determined by the Presiding Member.
- 2.12 The CAP may exclude the public from attendance at a meeting in accordance with regulation 13(2) of the Regulations.

### **Special Meetings**

- 2.13 The Presiding Member or two or more CAP Members, may by delivering a written request to the Assessment Manager, require a special meeting of the CAP to be held. The written request must be accompanied by the agenda for the special meeting.
- 2.14 On receipt of a request pursuant to clause 2.13, the Assessment Manager must determine the date, time and place of the special meeting and give notice to all CAP members at least 4 days before the commencement of the special meeting.

- 2.15 The Assessment Manager can of their own accord require a special meeting of the CAP to be held where there exists in their opinion a justifiable reason for holding the special meeting.
- 2.16 On forming the relevant opinion in clause 2.15, the Assessment Manager must determine the date, time and place of the special meeting and give notice to all CAP Members at least 4 days before the commencement of the special meeting.

### **3. DEPUTY MEMBERS**

- 3.1 If a CAP Member is unable or unwilling to attend a meeting or part of a meeting, they must use their best endeavours to notify the Presiding Member or Assessment Manager at the earliest opportunity.
- 3.2 If notification pursuant to clause 3.1 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.
- 3.3 Unless the context otherwise requires, a reference to a CAP Member in these Meeting Procedures includes a Deputy Member.

### **4. ADDITIONAL MEMBERS**

- 4.1 The CAP may appoint up to two Additional Members in accordance with Section 85 of the Act.
- 4.2 Where the CAP has appointed Additional Member(s), the Presiding Member, in consultation with the Assessment Manager, may invite one or both Additional Members to attend any meeting (or part thereof) where they consider the Additional Member(s) will, by virtue of their qualifications, expertise or experience, assist the CAP in dealing with a matter that it must assess under the Act (or the Development Act (as applicable)).
- 4.3 A request that an Additional Member attend a meeting must be made in writing and be accompanied by the notice for the meeting in accordance with clause 2.3, highlighting the item(s) the Additional Member is required to consider.
- 4.4 Unless the context otherwise requires, a reference to a CAP Member in these Meeting Procedures includes an Additional Member, save that an Additional Member is not able to vote on any matter arising for determination by the CAP.

### **5. ELECTRONIC MEETINGS**

- 5.1 One or more CAP Members may attend a meeting via electronic means.

- 5.2 A CAP Member attending a meeting via electronic means is taken to be present at the meeting provided that the CAP Member:
- 5.2.1 can hear and, where possible, see all other CAP Members who are present at the meeting;
  - 5.2.2 can hear and, where possible, see all representors (or their representatives) and applicants (or their representatives) who speak at the meeting;
  - 5.2.3 can be heard and, where possible, seen by all other CAP Members present at the meeting; and
  - 5.2.4 can be heard and, where possible, seen by the person recording the minutes of the meeting.
- 5.3 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.
- 5.4 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.
- 5.5 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 Assessment Manager or a person nominated by the Assessment Manager and CAP Members disconnect from or are disconnected from the meeting.
- 5.6 Where a person is entitled or has been requested to appear before the CAP (including the Assessment Manager or delegate), the person may appear via electronic means at the discretion of the Assessment Manager or the Presiding Member.

## **6. COMMENCEMENT OF MEETINGS**

- 6.1 Subject to a quorum being present, a meeting of the CAP will commence as soon as possible after the time specified in the notice of a meeting.
- 6.2 If the number of apologies received by the Assessment Manager or Presiding Member indicates that a quorum will not be present at a meeting, the Presiding Member may adjourn the meeting to a specified date, time and place.
- 6.3 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, time and place.

## 7. ASSESSMENT OF DEVELOPMENT APPLICATIONS

- 7.1 In relation to each application it considers, the CAP:
- 7.1.1 must determine whether the proposal is seriously at variance with the Planning Rules (or Development Plan (as applicable)) and provide reasons for its determination;
  - 7.1.2 if the CAP determines that a proposal is seriously at variance with the Planning Rules (or Development Plan (as applicable)), must refuse Planning Consent to the application and provide specific reasons for refusal;
  - 7.1.3 must provide reasons for granting or refusing Planning Consent and for the imposition of any conditions; and
  - 7.1.4 may defer consideration of the application to enable full and proper assessment of the application.
- 7.2 **If the CAP** determines that a proposal is seriously at variance with the Planning Rules (or Development Plan (as applicable)), it must refuse development authorisation to the application.
- 7.3 The Presiding Member may, in their discretion, exclude:
- 7.3.1 a representation or response to representation(s) which is received out of time; or
  - 7.3.2 a representation or response to representation(s) which is otherwise invalid.
- 7.4 In relation to each application to be considered and determined by the CAP:
- 7.4.1 a person who has lodged a representation in relation to a publicly notified application which has not been excluded pursuant to clause 7.3 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;
  - 7.4.2 where one or more representors are heard by the CAP, the applicant is entitled to appear before the CAP to respond to any relevant matter raised by a representor, in person or by an agent;
  - 7.4.3 where no representors appear at the meeting, the Presiding Member may, in their discretion, allow an applicant to be heard in support of their application, in person or by an agent;
  - 7.4.4 representors and applicants will be allowed five (5) minutes each to address the CAP. The representative of multiple representors will be allowed five (5) minutes in total to address the CAP. The Presiding Member may allow a party additional time at their discretion;
  - 7.4.5 CAP Members may question and seek clarification from a representor or applicant who has addressed the CAP at the conclusion of their address; and
  - 7.4.6 following addresses from representors and the applicant, the Presiding Member will invite all CAP Members to speak on any matter relevant to the application.

- 7.4.7 clauses 7.4.1 to 7.4.3 are 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 by electronic means.
- 7.5 The Presiding Member may in their discretion accept and allow any additional material submitted by a representor or applicant after notice of the CAP meeting has been given in accordance with clause 2.3. The CAP may defer consideration of the application to enable full and proper assessment of the further information.
- 7.6 Such additional material to be considered by the CAP pursuant to clause 7.5 must, to the extent practicable, be provided to the applicant and/or representor(s) (as the case may be) and those parties are to be provided with an opportunity to respond either in writing or verbally, at the discretion of the Presiding Member.

## 8. REVIEW OF DECISION OF AN ASSESSMENT MANAGER

### Commencing a review

- 8.1 An application for review of a decision of an Assessment Manager must relate to a Prescribed Matter in relation to which the Assessment Manager was the relevant authority.
- 8.2 An application for review of a Prescribed Matter must be:
- 8.2.1 made using the *Application to CAP for Assessment Manager's Decision Review (Form)*;
  - 8.2.2 lodged in a manner identified on the Form; and
  - 8.2.3 lodged within one (1) month of the applicant receiving notice of the Prescribed Matter, unless the CAP in its discretion grants an extension of time.
- 8.3 In determining whether to grant an extension of time, the CAP may consider:
- 8.3.1 the reason for the delay;
  - 8.3.2 the length of the delay;
  - 8.3.3 whether any rights or interests of other parties would be affected by allowing the review to be commenced out of time;
  - 8.3.4 the interests of justice;
  - 8.3.5 whether the applicant has, or is within time to, appeal the prescribed matter to the ERD Court; and
  - 8.3.6 any other matters the CAP considers relevant.

### Materials for review hearing

- 8.4 The Presiding Member may, in his or her discretion, determine that an application for review shall not be considered by the CAP on the basis that it is frivolous or vexatious, or is otherwise an abuse of process.



- 8.5 The Assessment Manager shall provide to the CAP:
- 8.5.1 all materials which were received by the Assessment Manager (or delegate) in relation to the Prescribed Matter including the delegated officer's assessment report;
  - 8.5.2 a further report on any aspect of the subject matter of the review, or any other relevant material if requested by the Presiding Member or a CAP Member.

### **Review hearing**

- 8.6 The Assessment Manager must advise the applicant of the time and date of the CAP meeting at which the review application will be heard and 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 not less than 5 clear business days before the meeting.
- 8.7 If the Presiding Member so requires:
- 8.7.1 the Assessment Manager must be present at the CAP meeting to respond to any questions or requests for clarification from the CAP; or
  - 8.7.2 where the Prescribed Matter relates to a decision which was made by a delegate of the Assessment Manager, the delegate may appear in place of the Assessment Manager.
- 8.8 The review hearing will be conducted within the following parameters:
- 8.8.1 the CAP will consider the matter afresh;
  - 8.8.2 subject to clause 8.8.3, information, materials and submissions which were not before the Assessment Manager at the time of the decision on the Prescribed Matter will not be considered by the CAP, except for information provided to the CAP in response to a request from the Presiding Member or a CAP Member;
  - 8.8.3 the CAP may receive submissions or additional information from the applicant as part of the review process at the discretion of the Presiding Member;
  - 8.8.4 the Presiding Member will permit CAP Members to ask questions or seek clarification from the applicant and/or Assessment Manager (or delegate) in their discretion.

### **Outcome on review hearing**

- 8.9 The CAP may, on a review:
- 8.9.1 affirm the Assessment Manager's decision on the Prescribed Matter;
  - 8.9.2 vary the Assessment Manager's decision on the Prescribed Matter;
  - 8.9.3 set aside the Assessment Manager's decision on the Prescribed Matter and substitute its own decision;
  - 8.9.4 defer review of the Prescribed Matter with the agreement of the applicant.

## 9. **QUORUM**

A quorum at a meeting of the CAP is the number obtained by dividing the total number of CAP Members for the time being in office by 2, ignoring any fraction resulting from the division, and adding 1.

## 10. **DECISION MAKING**

- 10.1 Each CAP Member present at a meeting of the CAP (including a Deputy Member) is entitled to one vote on any matter arising for decision. If the votes are equal, the Presiding Member is entitled to a second or casting vote. Additional Members appointed to the CAP to provide expert advice and assistance are not entitled to vote.
- 10.2 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, being no less than a quorum.
- 10.3 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, time and place.
- 10.4 The Presiding Member may ask a member of the public (including an applicant, representor or other member of the public) to leave or disconnect from a meeting where the person/people are, in the opinion of the Presiding Member:
  - 10.4.1 behaving in a disorderly manner; or
  - 10.4.2 causing an interruption or disruption to the meeting.

## 11. **MINUTES AND REPORTING**

- 11.1 The CAP must ensure that accurate minutes are kept of all meetings.
- 11.2 The Assessment Manager, or a person nominated by the Assessment Manager, will take minutes of all meetings.
- 11.3 The minutes will record:
  - 11.3.1 the names of all CAP Members present;
  - 11.3.2 the names of all CAP Members from whom apologies have been received;
  - 11.3.3 the name and time that a CAP Member enters or leaves the meeting;
  - 11.3.4 the name of every person who makes a representation;
  - 11.3.5 in relation to each application determined by the CAP:
    - (a) the determination of the CAP as to whether the proposal is seriously at variance with the Planning Rules (or Development Plan (as applicable));
    - (b) the reasons for granting or refusing Planning Consent and for the imposition of any conditions; and

- (c) where a decision is by majority vote, the decision and its mover and seconder, but not each CAP Member's vote;
- 11.3.6 if an application is not determined by the CAP, the deferral of the application and the reasons for the deferral;
- 11.3.7 in relation to the review of a decision of an Assessment Manager, the determination of the CAP pursuant to clause 8.9;
- 11.3.8 a decision to exclude the public from attendance pursuant to the Regulations;
- 11.3.9 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 Act, and the nature of the interest;
- 11.3.10 any disclosure of a conflict of interest made by a CAP Member pursuant to the Code of Conduct, and the nature of the interest; and
- 11.3.11 if a meeting is adjourned by the Presiding Member, the reason for the adjournment and the date, time and place to which the meeting is adjourned.
- 11.4 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 following CAP meeting.
- 11.5 Minutes must be available under to the public within 5 clear business days after their adoption by the CAP.

## 12. **NOMINATION BY ASSESSMENT MANAGER**

- 12.1 Subject to clause 12.4, the Assessment Manager may nominate another person (**Nominee**) to undertake the powers and functions of the Assessment Manager contained in these Meeting Procedures for a period of time not exceeding three (3) months. This is primarily to ensure that the CAP can continue to function efficiently in the absence of the Assessment Manager from time to time, for periods of annual or personal leave of the Assessment Manager.
- 12.2 Any nomination under clause 12.1 must be made by notice in writing from the Assessment Manager to the Presiding Member and the Nominee, and may relate to all or only some of the powers and functions of the Assessment Manager in these Meeting Procedures.
- 12.3 Where a nomination has been made pursuant to clauses 12.1 and 12.2, a reference to the Assessment Manager in these Meeting Procedures will be taken to include (for the duration of the nomination) a reference to the Nominee (as applicable).
- 12.4 The Nominee is not themselves permitted to nominate another person to undertake the powers and functions of the Assessment Manager under this clause 12.

13. **ADDITIONAL PROCEDURES**

- 13.1 Insofar as any procedure to be followed by the CAP is not prescribed by the Act, Regulations, Terms of Reference or the Code of Conduct the CAP may by resolution determine the procedure for itself. Any such determination may amend or add to these Meeting Procedures.
  
- 13.2 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.