

Procedure Name:	Council Assessment Panel Meeting Operating Procedures
Classification:	Mandatory
Adopted:	7 April 2020
Frequency of Review:	Annual
Last Review:	8 October 2018
Next Review Due:	12 Months
Responsible Officer(s):	Assessment Manager
Procedure Manual File Ref:	CC14/407
Council File Reference:	CR20/25206
Legislation Authority:	Planning, Development and Infrastructure Act 2016
Related Policies:	
Related Procedures:	

These procedures apply and are in relation to the Town of Gawler Council Assessment Panel (the CAP) established by The Town of Gawler (the Council) under section 83 of the Planning, Development and Infrastructure Act 2016 (the PDI Act) and having regard to the Terms of Reference for the Panel as adopted by the Council.

From 1 October 2017 to a date to be determined by the Minister, the Panel is a delegate of the Council pursuant to Sections 34(23) and 34(24) of the Development Act 1993 (the Development Act).

1. **COUNCIL ASSESSMENT PANEL ROLE**

The role of the Panel is that of a decision-maker charged with the responsibility of assessing each proposal against the relevant Development Plan provisions. It is a role that is inquisitorial rather than adversarial. The Panel does not, therefore, have a role as a mediator or arbitrator at its meetings or otherwise between an applicant and representors.

2. **MEETINGS**

Ordinary Meetings

-
- 2.1 Subject to clause 2.3, ordinary meetings of the CAP are to occur on the fourth Tuesday of each month at 6.30pm.
- 2.2 The CAP may determine whether ordinary meetings are to be held at a physical place or online.
- 2.2.1 If the former, ordinary meetings will occur in the Council Administration Centre, 43 High Street Gawler East.
- 2.2.2 Online meetings will be convened via appropriate online meeting software which ensures that CAP members can see, hear and interact with one another, that the CAP meeting can be viewed by members of the public and that representors and applicants can see, hear and interact with the CAP.
- 2.2.3 For the sake of clarity, the CAP may, in its discretion, determine that all of its meetings are to be convened at a physical place or online or determine that meetings may be convened at a physical place or online for a certain period of time.
- 2.3 Ordinary meetings will be convened as per clause 2.2 above unless there are no matters to be considered by the CAP. The Presiding Member has the discretion to nominate an alternative meeting venue and/or time prior to the issue of the agenda should circumstances warrant.
- 2.4 The time and place of the first meeting of the CAP following its establishment will be determined by the Assessment Manager.
- 2.5 The Assessment Manager must give notice of all CAP meetings to the CAP and the public in accordance with clauses 2.6, 2.7, 2.8 and 2.9.
- 2.6 Notice of an ordinary meeting will be given to all CAP Members by the Assessment Manager not less than three (3) clear days prior to the holding of the meeting.
- 2.7 Notice of a meeting of the CAP must:
- 2.7.1 be in writing;
- 2.7.2 set out the date, time and place of the meeting;
- 2.7.3 be signed by the Assessment Manager;
- 2.7.4 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); and
- 2.7.5 be given to a CAP Member personally, by post to a place authorised in writing by the Member or by other means authorised by the Member as being an available means of giving notice.
- 2.8 A notice that is not given in accordance with clause 2.7 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 Member.

- 2.9 Notice of an ordinary meeting of the CAP is given to the public by publishing details of the meeting on the Council's website. Notice of a meeting to representors and applicants must be provided in accordance with the Development Act 1993 and the Development Regulations 2008.
- 2.10 A copy of the agenda for all meetings of the CAP will be available for viewing by the public on the Council's website and at the Council's offices as soon as practicable after the time that notice of the meeting has been given to CAP Members.
- 2.11 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 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 Members as soon as practicable. The Assessment Manager will also make an updated agenda available to the public.
- 2.12 The Presiding Member may adjourn a CAP Meeting to a future date and time, unless the CAP resolves to continue the meeting.
- 2.13 A meeting will break for ten (10) minutes once every two (2) hours, or more or less often as determined by the Presiding Member.

Special Meetings

- 2.14 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.
- 2.15 On receipt of a request pursuant to clause 2.14, the Assessment Manager must determine the date, time and place of the special meeting and give notice to all CAP members at least 4 hours 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, he or she must use his or her 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 Presiding Member 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 Member in these Meeting Procedures includes a Deputy Member.
- 3.4 A Deputy Member that is also a Member of Council may not be substitute for an Independent Panel Member.

4. ADDITIONAL MEMBERS

- 4.1 The CAP may appoint up to two (2) Additional Members in accordance with Section 85 of the Planning, Development and Infrastructure Act 2016 (Act) and Practice Direction 5 issued by the State Planning Commission.
- 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 he or she considers 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, during the transition to the Act, the Development Act 1993).
- 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 1.4, highlighting the item(s) the Additional Member is required to consider.
- 4.4 Unless the context otherwise requires, a reference to a 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. COMMENCEMENT OF MEETINGS

- 5.1 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.
- 5.2 A quorum at a meeting of the CAP is a number obtained by dividing the total number of members of the Panel for the time being in office by two (2), ignoring any fraction resulting from the division, and adding one (1).
- 5.3 The CAP comprises of five (5) members and therefore a quorum at a meeting of the CAP is three (3) members.
- 5.4 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 day and time.
- 5.5 If at the expiration of thirty (30) minutes from the commencement time specified in the notice of the meeting a meeting a quorum is not present, the Presiding Member may adjourn the meeting to a specified date and time.
- 5.6 In the event that the Presiding Member is absent from a meeting, the Assessment Manager, or such other person as nominated by the Assessment Manager, will preside at the meeting until such time as the meeting appoints an Acting Presiding Member.

6. DECISION MAKING

- 6.1 The Presiding Member may in his or her discretion exclude:
 - 6.1.1 a representation or response to representation(s) which is received out of time;

-
- 6.1.2 a representation in relation to Category 2 development from a person who was not entitled to be given notice of the application; or
 - 6.1.3 a representation or response to representation(s) which are otherwise invalid.
 - 6.2 The Presiding Member may in his or her discretion accept and allow to be considered by the CAP any new or additional material submitted by a representor or applicant. The CAP may defer consideration of the application to enable full and proper assessment of the further information.
 - 6.3 Any material to be considered by the CAP pursuant to clause 5.2 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.
 - 6.4 In relation to each application it considers, the CAP must:
 - 6.4.1 determine whether the proposal is seriously at variance with the Development Plan and provide reasons for its determination; and
 - 6.4.2 provide reasons for granting or refusing Development Plan consent and for the imposition of any conditions.
 - 6.5 If the CAP determines that a proposal is seriously at variance with the Development Plan, it must refuse Development Plan consent to the application.
 - 6.6 In relation to each application to be considered and determined by the CAP:
 - 6.6.1 a person who has lodged a representation in relation to a Category 2 or 3 application which has not been excluded pursuant to clause 6.1 and
 - 6.6.2 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;
 - 6.6.3 a person who has lodged a representation in relation to a Category 2 application which has not been excluded pursuant to clause 6.1 and who has indicated that they wish to be heard on their representation may, at the discretion of the Presiding Member, appear before the CAP and be heard in support of their representation, in person or by an agent;
 - 6.6.4 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;
 - 6.6.5 where no representors appear at the meeting, the Presiding Member may, in his or her discretion, allow an applicant to be heard in support of his or her application, in person or by an agent;

- 6.6.6 representors and applicants will be allowed five (5) minutes each to address the CAP. The Presiding Member may allow a party additional time at his or her discretion;
 - 6.6.7 CAP members may question and seek clarification from a representor or applicant who has addressed the CAP at the conclusion of their address; and
 - 6.6.8 following addresses from representors and the applicant, the Presiding Member will invite all Members to speak on any matter relevant to the application.
- 6.7 Each Member present at a meeting of the CAP, including a Deputy Member who has been requested to attend the meeting or part of the meeting in place of a Member who is unable or unwilling to attend the meeting, 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.
- 6.8 Clause 6.7 above does not apply to a person who is taken to be a member of an assessment panel under section 85 of the Act.
- 6.9 Matters arising for decision at a meeting of the CAP will be decided by a majority of the votes cast by Members present at the meeting and entitled to vote.
- 6.10 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 and time.
- 6.11 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 he or she is, in the opinion of the Presiding Member:
- 6.11.1 behaving in a disorderly manner; or
 - 6.11.2 causing an interruption or disruption to the meeting.

7. PUBLIC ACCESS TO MEETINGS

- 7.1 In connection with the conduct of the proceedings of the Panel, members of the public are entitled to attend a meeting of the panel other than as set out in clause 7.2.
- 7.2 For the sake of clarity, public attendance includes physical attendance at a physical meeting of the CAP, or by way of online log-in to an online meeting or, subject to clause 7.3 below and where a member of the public does not have access to the internet, watching a live-stream of an online meeting at the Council's principal office.
- 7.3 During the COVID-19 pandemic and until the pandemic is declared to have ended by the South Australian State Coordinator, CAP meetings will occur as follows:
- 7.3.1 all meetings will be held online or via teleconference as appropriate;

-
- 7.3.2 representors and applicants will be provided with online or teleconference log-in details to participate in the meeting;
- 7.3.3 meetings will be live-streamed over the internet with a link to the live-stream facility being provided on the Council's website.
- 7.4 In accordance with regulation 13(2) of the Planning, Development and Infrastructure (General) Regulations 2017, the Panel may exclude the public from attendance at a meeting—
- 7.4.1 during so much of the meeting as is necessary to receive, discuss or consider in confidence any of the following matters:
- (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
 - (b) information the disclosure of which:
 - (i) could unreasonably be expected to confer a commercial advantage on a person, or to prejudice the commercial position of a person; and
 - (ii) would, on balance, be contrary to the public interest;
 - (c) information the disclosure of which would reveal a trade secret;
 - (d) commercial information of a confidential nature (not being a trade secret) the disclosure of which—
 - (i) 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
 - (ii) would, on balance, be contrary to the public interest;
 - (e) matters affecting the safety or security of any person or property;
 - (f) 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;
 - (g) matters that should be considered in confidence in order to ensure that the 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;
 - (h) legal advice;
 - (i) information relating to actual litigation, or litigation that the Panel believes on reasonable grounds will take place;

- (j) information the disclosure of which—
 - (i) 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
 - (ii) would, on balance, be contrary to the public interest;
- 7.4.2 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 Panel.

8. MINUTES AND REPORTING

- 8.1 The CAP must ensure that accurate minutes are kept of all meetings.
- 8.2 The Assessment Manager, or a person nominated by the Assessment Manager, must ensure that accurate minutes are kept of its proceedings.
- 8.3 Members of the public are entitled to reasonable access to:
 - 8.3.1 the agendas for meetings of an assessment panel; and
 - 8.3.2 the minutes of meetings of an assessment panel.
- 8.4 Minutes must be available under sub regulation (7.3) within 5 business days after their adoption by the members of the assessment panel.
- 8.5 The minutes will record:
 - 8.5.1 the names of all Members present;
 - 8.5.2 the names of all Members from whom apologies have been received;
 - 8.5.3 the name and time that a Member enters or leaves the meeting;
 - 8.5.4 the name of every person who makes a representation;
 - 8.5.5 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 Development Plan;
 - (b) the reasons for granting or refusing Development Plan 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 Members' vote;
 - 8.5.6 if an application is not determined by the CAP, the deferral of the application and the reasons for the deferral;
 - 8.5.7 a decision to exclude the public from attendance pursuant to the Regulations;

- 8.5.8 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 Member in accordance with Section 83(1)(g) of the Act, and the nature of the interest;
- 8.5.9 any disclosure of a conflict of interest made by a Member pursuant to the Code of Conduct adopted by the Minister under Clause 1(1)(c) of Schedule 3 of the Act (Code of Conduct), and the nature of the interest; and
- 8.5.10 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.
- 8.6 The Panel may, before it releases a copy of any minutes to the public, exclude from the minutes information about any matter dealt with on a confidential basis by Members of the Panel.
- 8.7 Upon adoption of the Minutes, the Presiding Member shall authorise the Minutes by signature and date of adoption on the last page of the Minutes.
- 8.8 Copies of the draft Minutes will be available to the public at the Council offices at least three (3) working days after the date of the meeting.
- 8.9 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. However, this does not preclude the issue of a Decision Notification under the Development Act 1993 advising of the determination of the Panel immediately after a meeting at which the Panel made its determination.

9. SITE INSPECTIONS AND LOCALITY VISITS

- 9.1 Formal site visits by the Panel Members may be arranged on request in writing to the Assessment Manager from any member of the Panel on specific matters scheduled to be presented at a meeting. The Panel may request attendance of a Council Officer to provide relevant information. The Panel will not hear deputations at a formal site visit.
- 9.2 Locality visits by one or more Panel Members will be undertaken in accordance with the Minister's Code of Conduct.

10. PLANNING POLICY

- 10.1 The Panel may, from time to time, consider trends, issues and other matters relating to planning or development that have become apparent or arisen through the assessment of development applications, and report to Council accordingly. However, the Act does not empower the Panel to act as a policy formulating body.
- 10.2 The Panel may upon request from the Council comment on draft planning policy.

11. **PLANNING APPEALS**

Should an appeal be lodged in relation to a decision of the Panel the Panel will determine whether any “compromise proposal” is appropriate or the matter proceed to a Hearing of the Environment, Resources and Development Court.

12. **COMPLIANCE WITH THE CODE OF CONDUCT**

12.1 A person may make a complaint to the State Planning Commission (the Commission) if the person believes that a member of the Panel has acted in contravention of the code of conduct.

12.2 A complaint must:

12.2.1 be in writing; and

12.2.2 contain particulars of the allegation on which the complaint is based; and

12.2.3 be verified by statutory declaration.

12.3 Except with the approval of the Commission, a complaint must not be lodged with the Commission more than six (6) months after the day on which the complainant first had notice of the matters alleged in the complaint.

13. **ADDITIONAL PROCEDURES**

13.1 Insofar as any procedure to be followed by the CAP is not prescribed by the Act and Regulations (and, during the transition to the Act and Regulations, the Development Act and Development Regulations 2008), the CAP’s Terms of Reference, the Code of Conduct or these Meeting Procedures - the CAP may by resolution determine the procedure for itself. Any such determination may be added 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.

13.3 The role of the Council staff is to assist the CAP to undertake its tasks under the Act and to perform administrative duties including preparation of agendas and minutes, the arrangement of meetings and facilitating attendance of all Category 2 and 3 representors (or nominees) who requested to be heard at a meeting.

13.4 An applicant may not defer matters from the meeting agenda after the agenda has been sent to Panel Members, unless agreed at the meeting or by the Presiding Member prior to the meeting. The applicant must make this request in writing to the Assessment Manager and include reason(s) for their request to defer.

13.5 Should a Panel Member receive by direct post, fax, e-mail or other means, information in relation to a development application being assessed by Council’s development assessment officers which may be referred for decision by the Panel at a future time, then the Panel Member should immediately forward the information received to the Assessment Manager. The Panel Members should not acknowledge

receipt of the information nor enter into discussion with the sender in relation to any matters contained within the information received. If a Panel Member receives such information, he or she must disclose this fact to the meeting, and confirm that the information will not be taken into account for the purposes of making a decision on the relevant application.

- 13.6 Should a request be made for public comment on the operations or decisions made by the Panel then the matter should be referred to the Presiding Member. Comment may be made at the discretion of the Presiding Member.

14. REVIEW AND EVALUATION

The effectiveness of these Operating Procedures will be reviewed on an annual basis to ensure that the CAP's commitment to the principles of good conduct and standards is being achieved.