

## Terms of reference

Adopted by Council on 10 December 2019

### 1. BACKGROUND

- 1.1 The City of Onkaparinga Council Assessment Panel (**CAP**) was appointed as a relevant authority under Sections 82 and 83 of the *Planning, Development and Infrastructure Act 2016 (Act)* by resolution of the City of Onkaparinga (**the Council**) on 13 June 2017.
- 1.2 The CAP is a relevant authority under the Act and, during transition to the Act, will act as a delegate of the Council for the purpose of the *Development Act 1993*.

### 2. MEMBERSHIP OF CAP

#### Appointment of Members

- 2.1 The CAP will be constituted of five Members (**CAP Members**), to be appointed by the Council, comprising:
  - 2.1.1 one Member of the Council (**Council Member**), and
  - 2.1.2 four Independent Members (**Independent Members**), not being Members of the Council or State Parliament.
- 2.2 When appointing CAP Members, the Council may have regard to the following:
  - 2.2.1 the candidate's knowledge of the operation and requirements of the Act and, during transition to the Act, the Development Act 1993
  - 2.2.2 in relation to Independent Members, the candidate's qualifications or experience in a field that is relevant to the activities of the CAP
  - 2.2.3 in relation to the Council Member, the candidate's experience in local government
  - 2.2.4 that a balance of qualifications and experience among CAP Members is desirable
  - 2.2.5 that gender diversity among CAP Members is desirable, and

2.2.6 such other matters as the Council considers relevant.

### **Appointment of Deputy Members**

- 2.3 The Council may appoint at least one Deputy Member to the CAP for the purpose of filling in for a CAP Member who is unable to attend a CAP meeting or part of a CAP meeting.
- 2.4 Subject to clause 2.5, a Deputy Member must not be a Member of the Council or State Parliament.
- 2.5 Where a Deputy Member appointed for the Council Member is also a member of the Council, that person may not act as a deputy for any other CAP Member (whereas a Deputy Member who is not a member of the Council may act as a deputy for any CAP Member).
- 2.6 In appointing a Deputy Member, the Council may have regard to the matters in clause 2.2, as well as to the qualifications and experience of the CAP Council Member to whom the candidate will be a deputy.
- 2.7 Unless the context otherwise requires, a reference to a CAP Council Member in this document includes a Deputy Council Member.

### **Presiding Member and Acting Presiding Member**

- 2.8 The Council will appoint an Independent Member to be the Presiding Member of the CAP for such term and on such conditions as determined by the Council.
- 2.9 The Presiding Member will preside at any CAP meeting at which he or she is present.
- 2.10 In the event that the Presiding Member is not present at a meeting (or part thereof) an Acting Presiding Member will be appointed by those CAP Members who are present at the meeting.
- 2.11 The role of the Presiding Member will include, but not be limited to:
- 2.11.1 ensuring that the business of the CAP at meetings, including hearings, is conducted in a reasonable and appropriate manner and that any unreasonable, unruly or inappropriate behaviour is dealt with, and ensuring that appropriate meeting procedures are followed, and
  - 2.11.2 ensuring that CAP Members are aware of their role and responsibilities under the Act and that the Council Member does not confuse that role with their role under the *Local Government Act 1999*.

- 2.12 A Presiding Member is eligible to be reappointed as the Presiding Member at the expiry of his or her term of office as Presiding Member.
- 2.13 In the event that the Presiding Member resigns or is removed from office, the Council will appoint an Independent Member to be the Presiding Member for such term and on such conditions as determined by the Council.

### **Term of Appointment**

- 2.14 Subject to clause 6, the Presiding Member will be appointed for a term of up to three years and on such other conditions as determined by the Council.
- 2.15 Subject to clause 6, Independent Members will be appointed for a term of up to two years and on such other conditions as determined by the Council.
- 2.16 Subject to clause 6, the Council Member will be appointed for a term of up to two years and on such other conditions as determined by the Council.
- 2.17 Subject to clause 6, the Deputy Council Member will be appointed for a term of up to two years and on such other conditions as determined by the Council.
- 2.18 A CAP Member is eligible for reappointment for a further term, or further terms, upon the expiry of his or her current term.
- 2.19 A CAP Member whose term of office has expired may nevertheless continue to act as a Member until the vacancy is filled or for a period of six months from the expiry of the Member's term of office, whichever occurs first.

### **3. VACANCY IN MEMBERSHIP**

- 3.1 In the event of a vacancy arising in the office of a CAP Member, the Council may appoint a person to be a CAP Member for the balance of the original CAP Member's term of office as soon as is reasonably practicable in the same manner as the original CAP Member was appointed.
- 3.2 A vacancy in the membership of the CAP will not invalidate any decisions of the CAP, provided a quorum is maintained during meetings.

### **4. CONDITIONS OF APPOINTMENT**

- 4.1 At all times, CAP Members must act honestly, lawfully, in good faith, and in accordance with any code of conduct applicable to CAP Members.
- 4.2 CAP Members may be remunerated as determined by the Council for the reasonable time and costs incurred by CAP Members in attending CAP meetings.

- 4.3 Different levels of remuneration may be fixed by the Council for Independent Members, the Council Member and the Presiding Member.
- 4.4 Upon the commencement of Section 83(1)(c) of the Act:
  - 4.4.1 CAP Members, excluding a Member who is a Member or former Member of the Council, must be accredited professionals under the Act, and
  - 4.4.2 CAP Members who are Members or former Members of the Council must have sufficient experience in local government to satisfy the Council that they are appropriately qualified to act as a Member of the CAP.

## 5. DELEGATIONS

- 5.1 Development applications that are complex or controversial or subject to a high level of public interest should be determined by the CAP. These include:
  - 5.1.1 Development applications that are subject to public representations (that is, category 2 or 3 applications) and where valid representations have been received and the representors wish to be heard in support of their representations.
  - 5.1.2 Major non-complying development applications, where exceptional merit should be displayed in order to be approved.
- 5.2 Development applications that are of significant social, economic or environmental interest, but which would otherwise be dealt with under delegation to council officers may, at the discretion of the Assessment Manager, be referred to the CAP for decision.
- 5.3 Development applications where the Minister has determined that the CAP is the relevant authority to decide the matter.
- 5.4 In relation to an appeal of a decision by the CAP to the Environment, Resources and Development Court, the Assessment Manager is authorised by the CAP to determine whether any 'compromise proposal' is appropriate. The Assessment Manager may, in determining whether any 'compromise proposal' is appropriate, consult with the CAP or refer the matter to the CAP for a decision.

## 6. REMOVAL FROM OFFICE

- 6.1 A CAP Member will automatically lose office where:

- 6.1.1 the CAP Member has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors
  - 6.1.2 the CAP Member has been convicted of an indictable offence punishable by imprisonment
  - 6.1.3 in the case of a Council Member, the Member ceases to be a member of the Council.
- 6.2 Subject to Clause 6.4, the Council may by resolution remove a CAP Member from office where, in the opinion of the Council, the behaviour of the CAP Member amounts to:
- 6.2.1 a breach of a condition of his or her appointment as a CAP Member
  - 6.2.2 misconduct
  - 6.2.3 a breach of any legislative obligation or duty of a CAP Member
  - 6.2.4 neglect of duty in attending to role and responsibilities as a CAP Member
  - 6.2.5 a failure to carry out satisfactorily the duties of his or her office
  - 6.2.6 a breach of fiduciary duty that arises by virtue of his or her office
  - 6.2.7 inability to carry out satisfactorily the duties of his or her office
  - 6.2.8 a failure without reasonable excuse to attend three consecutive CAP meetings without the CAP previously having resolved to grant a leave of absence to the CAP Member, or
  - 6.2.9 for any other reason the Council considers appropriate.
- 6.3 The removal of the CAP Member pursuant to clause 6.2 will take effect upon the Council passing a resolution to remove the CAP Member from office (unless the Council resolves otherwise), and such resolution will be confirmed in writing to the CAP Member within seven days of being passed.
- 6.4 Prior to resolving to remove a CAP Member from office pursuant to clause 6.2, the Council must:
- 6.4.1 give written notice to the CAP Member of:

6.4.1.1 its intention to remove the CAP Member from office pursuant to clause 6.2, and

6.4.1.2 the alleged behaviour of the CAP Member falling within clause 6.2.1 or reason the Council considers it appropriate to remove the CAP Member

not less than seven days before the meeting of the Council at which the matter is to be considered

6.4.2 give the CAP Member an opportunity to make submissions to the Council on its intention to remove the CAP Member from office either orally at the Council meeting at which the matter is to be considered, or in writing by such date as the Council reasonably determines, and

6.4.3 have due regard to the CAP Member's submission in determining whether to remove the CAP Member from office.