

# COUNCIL ASSESSMENT PANEL TERMS OF REFERENCE



## 1. Purpose

The terms of reference outlines the operating procedures for the City of Playford Council Assessment Panel.

## 2. Approval and Change History

Version	Approval Date	Approved By	Review By	Change
1	22 August 2017	Ordinary Council	Senior Manager – Development Services	New Legislation
2	28 November 2017	Ordinary Council	Senior Manager – Development Services	Updates Required
2.1	25 May 2021	Ordinary Council	CAP Assessment Manager	Insurance and Remuneration Clauses added

## 3. Definitions

The following definitions apply:

**CAP** means the City of Playford Council Assessment Panel

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

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

**Development Plan** means the City of Playford Development Plan

**Staff** includes Council staff, contractors, volunteers and all others who perform work on behalf of Council

## 4. Establishment

The City of Playford CAP has been established pursuant the Section 83 of the Act by resolution of the Playford Council on 22 August 2017.

## 5. The Role of the CAP

**5.1** The role of the CAP is:

5.1.1 To act as delegate of the Council in accordance with the requirements of the Act;

5.1.2 As it thinks fit, to provide advice and reports to the Council on trends, issues and other matters relating to planning or development that have become apparent or arisen through its assessment of applications under the Act; and

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- 5.1.3 To perform other functions (other than functions involving the formulation of policy) assigned to it by Council.
- 5.2 The CAP will review its performance annually in line with Council's financial calendar year.
  - 5.2.1 The Annual Report may include information identifying:
    - a) The number of meetings held;
    - b) The attendance record of Members;
    - c) The number and nature of applications for Development Plan Consent that were considered (including the number of confidential items considered);
    - d) Advice in respect of any trends, issues or other matters that have become apparent or arisen through the CAP's assessment of applications for Development Plan Consent; and
    - e) The number of decisions of the CAP that were appealed to the Environment, Resources and Development Court.
  - 5.2.2 The Annual Report will be forwarded to Members of the Council, CAP Members and the Minister for Planning for information.

## **6. The Role of Council Administration**

- 6.1 The Council will provide an Assessment Manager for the CAP. The role of the Assessment Manager is to:
  - 6.1.1 Act as a relevant authority as provided under the Act;
  - 6.1.2 Be responsible for managing the staff and operations of the CAP; and
  - 6.1.3 Provide advice to the CAP as appropriate.
- 6.2 Council administration may provide advice and further clarification of issues during the meeting upon request of a CAP Member through the Presiding Member.
- 6.3 Council staff, (unless appointed as Members of the CAP) are not Members of the CAP and do not have voting rights. Their role is to provide professional advice to assist the CAP to make decisions based on the provisions of the City of Playford's Development Plan.
- 6.4 The Council is responsible for any costs, expenses or liabilities arising in relation to the activities of the CAP.
  - 6.4.1 Whilst acting in their capacity as an Independent Member, for any honest act or omission, Members will be provided indemnity for civil liability claims under the Local Government Association Mutual Liability Scheme.
  - 6.4.2 Whilst acting in their capacity as an Independent Member, personal accident coverage will be provided to Independent Members. Note that under the Private Health Act 2007 and the rules attached to that Act, the personal accident policy may not cover medical expenses and Independent Members are responsible for their own medical expenses.

## **7. Membership**

- 7.1** The CAP will consist of 5 members to be appointed by the Council, comprising:
- 7.1.1 1 Member of the Council; and
  - 7.1.2 4 Independent Members, not being Members of the Council or State Parliament.
- 7.2** The Presiding Member will be appointed by the Council taking into account the following requirements:
- 7.2.1 The Presiding Member must be an Independent Member; and
  - 7.2.2 The Presiding Member must be a fit and proper person to be a member of a CAP, in that he or she must be a person who has a reasonable knowledge of the operation and requirements of the Act, and appropriate qualifications or experience in a field that is relevant to the activities of the CAP
- 7.3** 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.
- 7.4** When appointing CAP Members, the Council may have regard to the following:
- 7.4.1 The candidates knowledge of the operation and requirements of the Act and, during transition of the Act, the *Development Act 1993*;
  - 7.4.2 In relation to the Independent Members, the candidate's qualifications or experience in a field that is relevant to the activities of the CAP;
  - 7.4.3 In relation to the Council Member, the candidate's experience in Local Government;
  - 7.4.4 That a balance of qualifications and experience among CAP Members is desirable;
  - 7.4.5 That gender diversity among CAP Members is desirable; and
  - 7.4.6 Such other matters as the Council considers relevant.
- 7.5** The Council may determine that the CAP will be constituted by a different number of members for different classes of development, in which case the relevant details will be specified by the Council.
- 7.6** The term of office of a Member will be for a period, not exceeding 2 years, determined by the Council. At the expiration of a term of appointment, a member is eligible for reappointment.
- 7.7** A Member of the CAP whose term of office expires, may, nevertheless, continue to act as a Member, for a period of up to 6 months, until he or she is reappointed or a successor is appointed (as the case may be).
- 7.8** The Members of the CAP who are independent of the Council will receive a sitting fee for each meeting; the fee (exclusive of GST) is prescribed by Council.
- 7.9** Independent Members who are required to attend an Ordinary Council meeting, other Committee meetings or mandatory training are entitled to 50% of the sitting fee.

**7.10** The Presiding Member is entitled to 125% of the sitting fee.

Sitting fee	50 %	125 %
\$ 450	\$ 225	\$ 563

**7.11** Independent Members must provide a return in accordance with Schedule 1 of the Act.

**7.12** Independent Members may be offered to undertake training relevant to their role on the Committee. This may include mandatory training required of Council Members and Council and Committee Meeting Procedure training.

## **8. Appointment of Deputy Members**

**8.1** The Council may appoint at least 1 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.

**8.2** Subject to clause 8.3, a Deputy Member must not be a Member of the Council or State Parliament.

**8.3** 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).

**8.4** Where more than 1 Deputy Member is appointed, the Council must specify the circumstances in which each Deputy Member (or any one or more of them) will be invited to attend a CAP meeting.

**8.5** In appointing a Deputy Member, the council may have regard to the matters in clause 7.4, as well as to the qualifications and experience of the CAP Member or CAP Members to whom the candidate will be a Deputy.

**8.6** Unless the context otherwise requires, a reference to a CAP Member in this document includes a Deputy Member.

## **9. Term of Appointment**

**9.1** Independent Members will be appointed for a term of up to 2 years and on any such other conditions as determined by the Council.

**9.2** The Council Member will be appointed for a term of up to 2 years and on any such other conditions as determined by the Council.

**9.3** Deputy Members will be appointed for a term of up to 2 years and on any such other conditions as determined by the Council.

**9.4** A CAP Member is eligible for reappointment for a further term, or further terms, upon the expiry of his or her current term.

**9.5** 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 6 months from the expiry of the Member's term of office, whichever occurs first.

## **10. Removal of a Member**

**10.1** A CAP Member will automatically lose office where:

- 10.1.1 The CAP Member has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors;
- 10.1.2 The CAP Member has been convicted of an indictable offence punishable by imprisonment;
- 10.1.3 In the case of a Council Member, the Member ceases to be a Member of the Council.

**10.2** Subject to Clause 10.4. 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:

- 10.2.1 A breach of a condition of his or her appointment as a CAP Member;
- 10.2.2 Misconduct
- 10.2.3 A breach of any legislative obligation or duty of a CAP Member;
- 10.2.4 Neglect of duty in attending to role and responsibilities as a CAP Member;
- 10.2.5 A failure to carry out satisfactorily the duties of his or her office;
- 10.2.6 A breach of fiduciary duty that arises by virtue of his or her office;
- 10.2.7 Inability to carry out satisfactorily the duties of his or her office;
- 10.2.8 Except in relation to Deputy Members, 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;
- 10.2.9 In relation to a Deputy Member, a failure without reasonable excuse of three consecutive occasions to attend a meeting of the CAP when requested to do so; or
- 10.2.10 For any other reason the Council considers appropriate.

**10.3** The removal of the CAP Member pursuant to clause 10.2 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 7 days of being passed.

**10.4** Prior to resolving to remove a CAP Member from office pursuant to clause 10.2, the Council must:

- 10.4.1 Give written notice to the CAP Member of:
  - a) Its intention to remove the CAP Member from office pursuant to clause 10.2; and
  - b) The alleged behaviour of the CAP Member falling within clause 10.2.1 or the reason the Council considers it appropriate to remove the CAP Member,

Not less than 7 days before the meeting of the Council at which the matter is to be considered;

- 10.4.2 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
- 10.4.3 Have due regard to the CAP Member's submission in determining whether to remove the CAP Member from office.

## **11. Disclosure of Interests**

- 11.1 A Member of the CAP who has direct or indirect personal or pecuniary interest in a matter before the CAP (other than an indirect interest that exists in common with a substantial class or persons):
  - 11.1.1 Must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the CAP;
  - 11.1.2 Must not take part in any hearings conducted by the CAP, or in any deliberations or decision of the CAP, on the matter and must be absent from the meeting when any deliberations are taking place or a decision is being made.
- 11.2 A Member of the CAP will be taken to have an interest in a matter if an associate of the Member has an interest in the matter.
- 11.3 The provisions of Chapter 13 Part 1 of the *Local Government Act 1999* extend to the CAP to Members of the CAP as if:
  - 11.3.1 A reference to a Member of a Council were a reference to a Member of CAP;
  - 11.3.2 A reference to Section 74 of that Act were a reference to item 11.2 of this Terms of Reference;
  - 11.3.3 A reference to any office under the *Local Government Act 1999* were a reference to the office of a Member of a CAP under the Act;
  - 11.3.4 A reference to a Council were a reference to a CAP; and
  - 11.3.5 A reference to a public official included a reference to a public officer of a CAP appointed under item 10 of this Terms of Reference.
- 11.4 A Member of a CAP incurs no liability for an honest act done in the exercise of performance, or purported exercise or performance, of powers or functions under this Part.

## **12. Meetings, Agendas and Minutes**

- 12.1 The CAP meets on the third Monday of each month at 6:00pm at the Playford Civic Centre, 10 Playford Boulevard, Elizabeth. The date, time and location of the meeting may be altered with the agreement of the Presiding Member and Assessment Manager.

In circumstances where the third Monday of that month is a public holiday, an alternate meeting time will be determined by the Assessment Manager in consultation with the Presiding Member. Additional meetings due to business demands must be called by the Presiding Member in consultation with the CAP Assessment Manager.

- 12.2** CAP will ensure that accurate minutes are kept of its proceedings.
- 12.3** A disclosure under item 11 of this Terms of Reference will be recorded in the minutes of the CAP.
- 12.4** Members of the public are able to access agendas and minutes of meetings of the CAP on Council's website at [www.playford.sa.gov.au](http://www.playford.sa.gov.au).
- 12.5** The CAP may, before it releases a copy of any minutes, exclude from the minutes information about any matter dealt with on a confidential basis.
- 12.6** An act of the CAP is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a Member.
- 12.7** A quorum at a meeting of the CAP is a number ascertained by dividing the total number of Members of the CAP by 2, ignoring any fraction resulting from the division, and adding 1.

### **13. Review of CAP Decisions**

- 13.1** CAP Decisions are final and shall not be referred to Council for further consideration.
- 13.2** In circumstances prescribed by the Act, an applicant or third party who is dissatisfied with the CAP's decision may appeal to the judicial system of the State.

### **14. Review of Terms of Reference**

- 14.1** A review of this Terms of Reference will be undertaken annually with any amendments to be presented to Council for endorsement.

### **15. Supporting Documentation**

The following documents support this Terms of Reference:

- Schedule 3 of the *Planning, Development and Infrastructure Act 2016*

### **16. Appendix**

- Appendix 1 - Code of Conduct – Schedule 3 of the *Planning, Development and Infrastructure Act 2016*

# Assessment Panel Members – Code of Conduct

## Introduction

Under Schedule 3 of the *Planning, Development and Infrastructure Act 2016* (PDI Act) the Minister may adopt a code of conduct to be observed by members of an assessment panel established under the PDI Act. This code of conduct sets out standards of conduct and professionalism that are to be observed by all members of assessment panels under the PDI Act. This code of conduct must be read in conjunction with the Act.

For the purposes of the PDI Act, a key requirement is that all members of assessment panels must carry out, and be seen to carry out, their functions with the highest ethical standards so as to maintain public confidence in the integrity of development assessment under the Act.

The code is the key tool to ensure that all members of assessment panels act honestly and ethically with a high degree of accountability. If a member of an assessment panel has any doubt in regard to any function they may perform under the Act they should seek the advice of the panel's assessment manager or some other appropriate person.

While some members of an assessment panel may also be bound by other codes of conduct or professional standards issued by their respective professional associations, they have no legal status under the Act. If there is a conflict between a requirement in this code of conduct and any other professional code or standard, this code prevails for the purposes of the Act.

## Legislative framework

Under section 15 of the PDI Act, all members of assessment panels are subject to a statutory duty as described in the section as follows:

- (1) *It is expected that a person or body that—*
  - (a) *seeks to obtain an authorisation under this Act; or*
  - (b) *performs, exercises or discharges a function, power or duty under this Act; or*
  - (c) *takes the benefit of this Act or is otherwise involved in a process provided by this Act, will—*
  - (d) *act in a cooperative and constructive way; and*
  - (e) *be honest and open in interacting with other entities under this Act; and*
  - (f) *be prepared to find reasonable solutions to issues that affect other interested parties or third parties.*

- (2) *Without limiting subsection (1), a person or body performing, exercising or discharging a function, power or duty under this Act must-*
- (a) *exercise professional care and diligence; and*
  - (b) *act honestly and in an impartial manner; and*
  - (c) *be responsible and accountable in its conduct; and*
  - (d) *comply with any code of conduct, service benchmark or other requirement that applies in relation to the person or body.*
- (3) *The Minister may, after taking into account the advice of the Commission, establish and maintain service benchmarks for the purposes of this section.*
- (4) *The principles and benchmarks under this section— (a) do not give rise to substantive rights or liabilities; but (b) may lead to action being taken on account of a breach of a code of conduct or professional standard that applies in relation to a relevant person or body.*

## **Code of conduct requirements**

In acting as a member of an assessment panel, a member must comply with the following requirements.

### **General duties**

1. A member of an assessment panel must in performing, exercising or discharging a function, power or duty under the PDI Act, act in accordance with the general duties as set out in section 15 of the PDI Act.

### **Act in the public interest**

2. A member of an assessment panel must act in a manner that promotes or protects the public interest.

### **Procedures**

3. A member of an assessment panel must ensure that the procedures specified in the Act or prescribed in the *Planning Development and Infrastructure (General) Regulations 2017* are complied with.
4. A member of an assessment panel must comply with the panel procedures in relation to public comments and communication with the media

### **Regard for honesty**

5. A member of an assessment panel must act with integrity, good faith and equity and must not discriminate toward any person in performing their duties.
6. A member of an assessment panel must advise the assessment manager and the Commission immediately if the member:
  - a. is the subject of a formal investigation into, or have been found to have, breached any other code of conduct, ethical standards or similar, either in another State or through a professional body of which they are a member; or
  - b. has been found guilty of a breach of any Act related to planning, building or a development related matter.

### **Conflict of interest**

7. A member of an assessment panel who has a direct or indirect personal or pecuniary interest in a matter before the council development assessment panel (other than an indirect interest that exists in common with a substantial class of persons)—
  - a. must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the panel; and
  - b. must not take part in any hearings conducted by the panel, or in any deliberations or decision of the panel, on the matter and must be absent from the meeting when any deliberations are taking place or decision is being made.
8. A member of an assessment panel will be taken to have an interest in a matter for the purposes of item 7 if an associate of the member (within the meaning of section 3 (7) of the PDI Act) has an interest in the matter.
9. If an interest has been declared by a member of an assessment panel the nature of the interest must be recorded in the minutes of the meeting.

### **Making decisions and taking action**

10. A member of an assessment panel must take all reasonable steps to obtain all relevant facts and information when making a decision on a matter before the panel.
11. A member of an assessment panel must ensure that the member's decisions and actions are reasonable, fair and appropriate to the circumstances, based on consideration of all relevant facts obtained, and supported by adequate documentation.
12. A member of an assessment panel must not approach or discuss with an applicant or representor any application which is either before the panel or will come before the panel at some future time expect during the course of a panel meeting where the application forms part of the agenda and the applicant or representor has a right to be heard by the panel.
13. Except where required as part of the assessment of a particular decision such as a formal panel viewing of a site of a proposed development, you should not enter the site even if invited by the land owner or a neighbouring property owner or any other person.
14. A member of an assessment panel must not:
  - a. engage in consultation outside of the panel process with any party on a proposed development application that is likely to be heard by the panel;
  - b. give advice to an applicant or other third party on a development application after it has been lodged outside of a panel meeting;
  - c. speak at a public meeting for or against a proposal where the purpose of the meeting is to discuss either a proposed development or a development application unless required by the Act;
  - d. express an opinion on a development application or a proposed development outside of a panel meeting; and
  - e. engage in any other act or omission which may give rise to a reasonable presumption that you have prejudged a development proposal or application.

### **Public comment**

15. Only the presiding member or another person determined by the panel is permitted to speak publicly to the media and address the public on behalf of the panel. No other panel member may make comment to the media or the public in relation to any matter before the panel or any decision of the panel.

### **Protection and use of information**

16. A member of an assessment panel must maintain the integrity and security of confidential information in their possession and must not use confidential information gained by virtue of the member's official position for the purpose of securing a private benefit for the member or any other person.
17. A member of an assessment panel must not disclose information acquired in the course of their professional work other than if consent of the relevant person has been granted or where there is a legal or professional duty to disclose such information.

### **Proper exercise of power**

18. A member of an assessment panel must not take advantage of the member's position, power or duties for the purpose of obtaining, either directly or indirectly, any preferential treatment or other improper advantage for the member or any other person.

### **Gifts and benefits**

19. A member of an assessment panel must not seek or accept a gift or benefit that is intended to, is likely to or could be perceived as likely to, cause them to act in an unfair or biased manner in the course of the member's duties.
20. A member of an assessment panel must take all reasonable steps to ensure that a person related to the member does not receive gifts or benefits that could appear to be an attempt to influence or secure or have the effect of influencing or securing a favour from the member of an assessment panel. A person is related to a member of an assessment panel for the purpose of this provision if the person is spouse, de facto partner, sibling, parent or child of the member of the assessment panel.

### **Bias**

21. A member of an assessment panel should always have regard to any affiliation, disposition or any material, pecuniary or other interest that would lead to a reasonable apprehension that they may be biased in carrying out any aspect of their role under the Act.