

# NARACOORTE LUCINDALE COUNCIL

## TERMS OF REFERENCE AND MEETING PROCEDURES - ASSESSMENT PANEL

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### TERMS OF REFERENCE

The **Naracoorte Lucindale Council Assessment Panel (CAP)** is appointed as a relevant authority under Sections 82 and 83 of the Planning, Development and Infrastructure Act 2016 (Act) by resolution of the Naracoorte Lucindale Council on 26 September 2017 (52/18) having effect on and from 1 October 2017.

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.

#### 1. PURPOSE

- 1.1. To make decisions on more complex developments (as defined in the Planning, Development and Infrastructure Act 2016) and on those matters which may be prescribed by regulations.

#### 2. MEMBERSHIP OF CAP

##### 2.1. Appointment of Members

The CAP will be constituted of up to 5 Members (CAP Members), to be appointed by the Council, comprising:

- one Member of the Council (Council Member); and
- up to 4 Independent Members (Independent Members), not being Members of the Council or State Parliament.

##### 2.2. Appointment of Deputy Members

Council has determined that it will not appoint Deputy Members to the CAP.

##### 2.3. Expression of Interest

Council will call for expressions of interest for appointment of CAP Members.

##### 2.4. Presiding Member and Acting Presiding Member

- Council will appoint an Independent Member to be the Presiding Member of the CAP for a nominal period of three years or as may otherwise be determined by Council and on such conditions as determined by the Council.
- The Presiding Member will preside at any CAP meeting at which he or she is present.
- 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.
- 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.

## **2.5. Term of Appointment**

Subject to the Removal from Office clauses,

- Independent Members will be appointed for a term of up to three years and on such other conditions as determined by the Council.
- the Council Member will be appointed for a term of up to two years and on such other conditions as determined by the Council.

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

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 Council for the reasonable time and costs incurred by CAP Members in attending CAP meetings.
- 4.3. If a CAP Member is not able 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 his or her earliest opportunity.
- 4.4. Upon the commencement of Section 83(1)(c) of the Act:
  - CAP Members, excluding a Member who is a Member or former Member of the Council, must be accredited professionals under the Act; and
  - 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. REMOVAL FROM OFFICE**

- 5.1. A CAP Member will automatically lose office where:
  - the CAP Member has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors;
  - the CAP Member has been convicted of an indictable offence punishable by imprisonment;
  - in the case of a Council Member, the Member ceases to be a member of the Council.

5.2. Subject to the clause 5.1, 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:

- a breach of a condition of his or her appointment as a CAP Member;
- misconduct;
- a breach of any legislative obligation or duty of a CAP Member;
- neglect of duty in attending to role and responsibilities as a CAP Member;
- a failure to carry out satisfactorily the duties of his or her office;
- a breach of fiduciary duty that arises by virtue of his or her office;
- inability to carry out satisfactorily the duties of his or her office.
- 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
- for any other reason the Council considers appropriate.

5.3. The removal of the CAP Member 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.

5.4. Prior to resolving to remove a CAP Member from office, the Council must:

- give written notice to the CAP Member of:
  - its intention to remove the CAP Member from office pursuant to clause 5.2; and
  - the alleged behaviour of the CAP Member falling within clause 5.2 or 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;
- 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
- have due regard to the CAP Member's submission in determining whether to remove the CAP Member from office.

## **6. ADMINISTRATIVE RESOURCES**

6.1. The Chief Executive Officer will provide sufficient administrative resources to the CAP to enable it to adequately carry out its functions.

## **7. STATUS**

7.1. The CAP will remain in operation for such time as determined by the Naracoorte Lucindale Council.

# **MEETING PROCEDURES**

These Meeting Procedures are to be read in conjunction with the meeting procedures contained within the Planning, Development and Infrastructure (General) Regulations 2017 (Regulations).

## **1. ORDINARY CAP MEETINGS**

1.1. Ordinary meetings of the Naracoorte Lucindale Council Assessment Panel (CAP) will be held at such times and places as determined by the CAP.

- 1.2. Notice of an ordinary meeting will be given to all CAP Members by the Assessment Manager or Chief Executive Officer not less than three clear days prior to the holding of the meeting
- 1.3. Notice of a meeting of the CAP must:
  - be in writing;
  - set out the date, time and place of the meeting;
  - be signed by the Assessment Manager or Chief Executive Officer;
  - 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
  - be given to a CAP Member in electronic format unless a different method is requested by an individual Member or is specified by Council or the CAP.
- 1.4. A notice that is not given in accordance with the above clauses is taken to have been validly given if the Assessment Manger or Chief Executive Officer considers it impracticable to give the notice in accordance with that clause and takes action the Assessment Manager or Chief Executive Officer considers reasonably practicable in the circumstances to bring the notice to the attention of the Member.
- 1.5. 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.
- 1.6. The Assessment Manger or Chief Executive Officer 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 Manger or Chief Executive Officer will 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 or Chief Executive Officer will also make an updated agenda available to the public.
- 1.7. The Presiding Member may adjourn a CAP Meeting to a future date and time, unless the CAP resolves to continue the meeting.

## **2. SPECIAL CAP MEETINGS**

- 2.1. The Presiding Member, or two or more CAP Members, may by delivering a written request to the Assessment Manager or Chief Executive Officer require a special meeting of the CAP to be held. The written request must be accompanied by the agenda for the special meeting.
- 2.2. On receipt of a request, the Assessment Manager or Chief Executive Officer 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. COMMENCEMENT OF MEETINGS**

- 3.1. 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.
- 3.2. If the number of apologies received indicates that a quorum will not be present at a meeting, the Presiding Member may adjourn the meeting to a specified day and time.
- 3.3. If at the expiration of thirty 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.

3.4. 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.

#### **4. QUORUM**

4.1. A quorum is determined using the Local Government Procedures at Meetings Regulation 26(a) which is the total number of members of the committee divided by 2, ignoring any fraction resulting from the division, and adding one and can be no less than 3, therefore a quorum for the CAP is 3 members.

#### **5. DECISION MAKING**

5.1. The Assessment Manager or Chief Executive Officer may in his or her discretion exclude:

- a representation or response to representation(s) which is received out of time;
- a representation in relation to Category 2 development from a person who was not entitled to be given notice of the application; or
- a representation or response to representation(s) which is otherwise invalid.

5.2. The Assessment Manager or Chief Executive Officer 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.

5.3. 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 Assessment Manager or Chief Executive Officer.

5.4. In relation to each application it considers, the CAP must:

- determine whether the proposal is seriously at variance with the Development Plan and provide reasons for its determination; and
- provide reasons for granting or refusing Development Plan consent and for the imposition of any conditions.

5.5. If the CAP determines that a proposal is seriously at variance with the Development Plan, it must refuse Development Plan consent to the application.

5.6. In relation to each application to be considered and determined by the CAP:

- a person who has lodged a representation in relation to a Category 2 or 3 application which has not been excluded pursuant to clause 5.1 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;
- a person who has lodged a representation in relation to a Category 2 application which has not been excluded pursuant to clause 5.1 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;
- 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;
- 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;

- representors and applicants will be allowed five minutes each to address the CAP. The Presiding Member may allow a party additional time at his or her discretion;
  - CAP members may question and seek clarification from a representor or applicant who has addressed the CAP at the conclusion of their address; and
  - following addresses from representors and the applicant, the Presiding Member will invite all Members to speak on any matter relevant to the application.
- 5.7. Each Member present at a meeting of the CAP, or attending via electronic means, 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.
- 5.8. 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.
- 5.9. 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.
- 5.10. 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:
- behaving in a disorderly manner; or
  - causing an interruption or disruption to the meeting.

## **6. MINUTES AND REPORTING**

- 6.1. The CAP must ensure that accurate minutes are kept of all meetings.
- 6.2. The Assessment Manager, or a person nominated by the Assessment Manager or Chief Executive Officer, will take minutes of all meetings.
- 6.3. The minutes will record:
- the names of all Members present;
  - the names of all Members from whom apologies have been received;
  - the name and time that a Member enters or leaves the meeting;
  - the name of every person who makes a representation;
  - in relation to each application determined by the CAP:
    - the determination of the CAP as to whether the proposal is seriously at variance with the Development Plan;
    - the reasons for granting or refusing Development Plan consent and for the imposition of any conditions; and
    - where a decision is by majority vote, the decision and its mover and seconder, but not each Members' vote;
  - if an application is not determined by the CAP, the deferral of the application and the reasons for the deferral;
  - a decision to exclude the public from attendance pursuant to the Regulations;
  - 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;

- 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
- 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.

6.4. All minutes must be confirmed by the Assessment Manager or Chief Executive Officer in conjunction with the Presiding Member as being accurate at the commencement of the following CAP meeting.

6.5. A copy of the minutes, including recommendations, of the CAP will be presented to the next available Council meeting.

## 7. ADDITIONAL PROCEDURES

7.1. 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.

7.2. 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.

## ADOPTION AND AMENDMENT HISTORY

<i>Date</i>	<i>Authorised by</i>	<i>Minute Reference</i>
<i>November 2020</i>		<i>Next review</i>
<i>27/11/2018</i>	<i>Council</i>	<i>105/19</i>
<i>27/03/2018</i>	<i>Council</i>	<i>247/18</i>
<i>26/09/2017</i>	<i>Council</i>	<i>52/18</i>