



## Yankalilla Council Assessment Panel

### Terms of Reference

Adopted 16<sup>th</sup> April, 2019

#### 1. BACKGROUND

- 1.1 The Yankalilla Council Assessment Panel (**CAP**) was appointed as a relevant authority under Section 82 and 83 of the *Planning, Development and Infrastructure Act 2016 (Act)* by resolution of the District Council of Yankalilla (**the Council**) on 18<sup>th</sup> July, 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 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.
- 2.3 When appointing CAP Members, the Council may have regard to the following:
  - 2.3.1 the candidate's knowledge of the operation and requirements of the Act and, during transition to the Act, the Development Act;
  - 2.3.2 in relation to Independent Members, the candidate's qualifications or experience in a field that is relevant to the activities of the CAP;
  - 2.3.3 in relation to the Council Member, the candidate's experience in local government;

- 2.3.4 that a balance of qualifications and experience among CAP Members is desirable;
- 2.3.5 that gender diversity among CAP Members is desirable; and
- 2.3.6 such other matters as the Council considers relevant.

### **Appointment of Deputy Members**

- 2.4 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.
- 2.5 Subject to clause 2.6, a Deputy Member must not be a Member of the Council or State Parliament.
- 2.6 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).
- 2.7 Where more than one Deputy Member is appointed, the Council must specify the circumstances in which each Deputy Members (or any one or more of them) will be invited to attend a CAP meeting.
- 2.8 In appointing a Deputy Member, the Council may have regard to the matters in clause 2.3, as well as to the qualifications and experience of the CAP Member or CAP Members to whom the candidate will be a deputy.
- 2.9 Unless the context otherwise requires, a reference to a CAP Member in this document includes a Deputy Member.

### **Expression of Interest**

- 2.10 The Council will call for expressions of interest for appointment of CAP Members.

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

- 2.11 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.
- 2.12 The Presiding Member will preside at any CAP meeting at which he or she is present.
- 2.13 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.
- 2.14 A Presiding Members is eligible to be reappointed as the Presiding Member at the expiry of his or her term of office as Presiding Member.
- 2.15 In the event that the Presiding Member resigns or is removed from office, the Council will appoint an Independent Member to be the Presiding Members for such term and on such conditions as determined by the Council.

### **Term of Appointment**

- 2.16 Subject to clause 5, Independent Members 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 5, the Council Member will be appointed for a term of up to two years and on such other conditions as determined by the Council.
- 2.18 Deputy Members will be appointed for a term of up to two years and on such other conditions as determined by the Council.
- 2.19 A CAP Member is eligible for reappointment for a further term, or further terms, upon the expiry of his or her current term.
- 2.20 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 The CAP Member appointed to fill a vacancy may be a Deputy Member in which case that person will automatically cease to be a Deputy Member.
- 3.3 In appointing a CAP Member pursuant to clause 3.1, the Council may have regard to the matters in clause 2.2 or 2.8 as the case requires.
- 3.4 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, the Presiding Member and Deputy Members.
- 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. REMOVAL FROM OFFICE

- 5.1 A CAP Member will automatically lose office where:
  - 5.1.1 the CAP Member has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors;
  - 5.1.2 the CAP Member has been convicted of an indictable offence punishable by imprisonment;
  - 5.1.3 in the case of a Council Member, the Member ceases to be a member of the Council.
- 5.2 Subject to Clause 5.4, 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:
  - 5.2.1 a breach of a condition of his or her appointment as a CAP Member;
  - 5.2.2 misconduct;
  - 5.2.3 a breach of any legislative obligation or duty of a CAP Member;
  - 5.2.4 neglect of duty in attending to role and responsibilities as a CAP Member;
  - 5.2.5 a failure to carry out satisfactorily the duties of his or her office;
  - 5.2.6 a breach of fiduciary duty that arises by virtue of his or her office;
  - 5.2.7 inability to carry out satisfactorily the duties of his or her office.
  - 5.2.8 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; or
  - 5.2.9 in relation to a Deputy Member, a failure without reasonable excuse on three consecutive occasions to attend a meeting of the CAP when requested to do so; or
  - 5.2.10 for any other reason the Council considers appropriate.
- 5.3 The removal of the CAP Member pursuant to clause 5.2 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.

- 5.4 Prior to resolving to remove a CAP Member from office pursuant to clause 5.2, the Council must:
- 5.4.1 give written notice to the CAP Member of:
- 5.4.1.1 its intention to remove the CAP Member from office pursuant to clause 5.2; and
- 5.4.1.2 the alleged behaviour of the CAP Member falling within clause 5.2.1 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;
- 5.4.2 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
- 5.4.3 have due regard to the CAP Member's submission in determining whether to remove the CAP Member from office.

## **6. DELEGATIONS**

- 6.1 In accordance with the delegations conferred by the Council, the Council Assessment Panel is responsible for assessing and determining the following;
- 6.1.1 To act as the relevant authority pursuant to the provisions of the Act and the *Development Regulations 2008* ("the Regulations") in assessing development applications and where appropriate, approve or refuse the following types of applications:
- All Category 3 non-complying Development Applications (with the exception of, the administrative task of determining whether to proceed to an assessment of a non-complying development).
  - Any 'merit' application that has undergone Category 2 or Category 3 public notification where representations have indicated that they oppose the development.
  - Any application where an appeal has been made to the Environment, Resources and Development Court in relation to a matter determined by the Council Assessment Panel and a compromise is proposed by the Appellant.
  - Any application where the Assessment Manager has determined that the application warrants assessment by the Panel due to its significant, unusual or controversial nature.

## **7. CAP MEETINGS**

- 7.1 Subject to clause 7.2 ordinary meetings of the District Council of Yankalilla Council Assessment Panel (CAP) will be held at such times and places as determined by the CAP.
- 7.2 The time and place for the first meeting of the CAP following its establishment will be determined by the Assessment Manager. The Assessment Manager must give notice of the first CAP meeting to the CAP and the public in accordance with clauses 7.4.
- 7.3 Notice of an ordinary meeting will be given to all CAP Members by the Assessment Manager not less than 3 clear days prior to the holding of the meeting in accordance with clause 7.4.
- 7.4 Written notice detailing the date, time and place of a meeting must be given to each member at least three clear days before the date of the meeting. The notice shall include the agenda for the meeting.
- 7.5 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 the CAP Members. In such instances, 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.
- 7.6 A special meeting of the CAP may be called by the Presiding Member at any time to consider urgent business by giving not less than 48 hours written notice to members.
- 7.7 If a CAP Member is unable 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 convenience.
- 7.8 If notification pursuant to clause 7.7 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.
- 7.9 Unless the context otherwise requires, a reference to a Member in these Meeting Procedures includes a Deputy Member.
- 7.10 A quorum for a meeting of the CAP shall be one half of the total number of members of the CAP in office divided by two (2) (ignoring any fraction) and adding one (1).
- 7.11 Meetings will commence on time and as soon as a quorum is present. If at the expiration of 30 minutes from the time specified in the notice of meeting as the time of commencement a quorum is not present, the Presiding Member or Acting Presiding Member, in the absence of a Presiding Member will adjourn the meeting to a specified day and time.

7.12 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.

## **8. NOTICE**

8.1 Notices required to be given to members of the CAP may be given:

- (a) personally; or
- (b) by delivering the notice (whether by post or otherwise) to the usual place of residence of the member or to another place authorised in writing by the member; or
- (c) by leaving the notice for the member at an appropriate place at the principal office of the Council, if authorised in writing by the member to do so; or
- (d) by a means authorised in writing by the member as being an available means of giving notice (e.g. facsimile transmission, email etc).

8.2 A notice that is not given in accordance with Clause 8.1 is taken to have been validly given if the Assessment Manager considers it impracticable to give the notice in accordance with that sub-clause and takes action the Assessment Manager considers reasonably practicable in the circumstances to bring the notice to the attention of the member.

## **9. PROCEDURAL MATTERS**

9.1 The CAP shall consider matters in public unless a matter falls within the ambit of Section 56A(12)(a) of the Act or where the CAP resolves that the public will be excluded from attendance at that part of the meeting where the CAP discusses or determines any application or other matter that falls to be decided by the CAP in accordance with Section 56A(12)(b) of the Act.

9.2 Time shall be allocated at the CAP meeting to allow applicants and representors the opportunity to make verbal representations to the Panel in relation to Development Applications being considered by the CAP. The following procedure will be followed:

9.2.1 The District Council of Yankalilla's Council Assessment Panel will hear representors and applicants as follows:

- a) Category 2 and 3 representors who request to be heard (or their nominees).
- b) Where representors are heard, the applicant (or nominee) shall have the opportunity to respond.
- c) Where either party (representors/applicant) shall have the opportunity to be heard is at the discretion of the Presiding Member.
  - o Where there are no representations an applicant (or nominee) may be heard at the discretion of the Presiding Member.

- Representors and applicants are allowed five (5) minutes each to address the panel in support of their representation/application. Further time may be allowed at the Presiding Member's discretion.
  - Where a representor to a Category 2 or 3 development proposal who has requested to be heard in support of their representation by the CAP does not appear at the CAP Meeting, when their representation has been listed to be heard, at the presiding members discretion, the CAP may hear the applicant or seek a response from the applicant to a specific question from a member of CAP.
  - Presentations shall directly relate to the application that is before the CAP. Matters that are not part of the application will not usually be considered.
- 9.3 No Member or any other person present shall behave in an improper or disorderly manner, cause an interruption or disrupt a person who is speaking.
- 9.4 The Presiding Member may adjourn a meeting in the event of a disruption or disturbance by a Member, an applicant, a representor or any person present at the meeting of the CAP until such time as the disruption or disturbance ceases.
- 9.5 The CAP may call for and consider such professional assistance from Council staff and other professional advisors as it deems necessary and appropriate.
- 9.6 The CAP will permit and encourage the active participation of Council staff in attendance and in providing advice to the CAP at a meeting.

## **10. DECISION MAKING**

- 10.1 Decisions of the CAP should ideally be made by consensus, following open discussion. In the event that this cannot occur, a matter must be determined by a vote. All members of the CAP, including the Presiding Member, shall have a deliberative vote.
- 10.2 In the event of an equality of votes, the member presiding at the meeting is entitled to a second or casting vote.
- 10.3 If the CAP cannot agree to approve or refuse an application, its decision should be deferred to the next meeting. The CAP should only defer a decision if it considers that the additional time allowed will create benefit in allowing a thorough decision to be made and provided that the reasons for the deferral are clear to the applicant and any representors that may be involved. CAP members however should be aware of timeframes within which certain decisions are required to be made under the Act.
- 10.4 When moving to refuse an application, members of the CAP will be required to provide reasons why the proposed development warrants a refusal.

## **11. MINUTES & REPORTING**

- 11.1 The Assessment Manager must ensure that notice is given to the public of the times and places of meetings of the CAP by causing a copy of the notice and agenda to be placed on public display at the principal office of the Council as soon as practicable after the time that notice of the meeting is given to CAP members. The notice and agenda must be kept on public display until the completion of the relevant meeting of the CAP.
- 11.2 The Assessment Manager must maintain a record of all notices of meetings given under this clause.
- 11.3 The Presiding Member is responsible for ensuring that accurate minutes are kept and that they are confirmed at the next meeting of the CAP and signed by the Presiding Member.
- 11.4 The CAP is required to make available copies of the minutes of the meeting of the CAP to the members of the public within five days of their adoption by the CAP.
- 11.5 The minutes must include the detail of every resolution and any disclosure of an interest. These minutes may exclude information with on a confidential basis by the CAP.