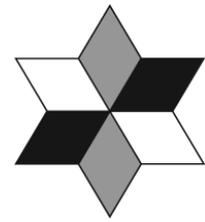


## City of Norwood Payneham & St Peters

### **COUNCIL ASSESSMENT PANEL** TERMS OF REFERENCE

Adopted 16 October 2017



*City of*  
**Norwood  
Payneham  
& St Peters**

#### 1. **BACKGROUND**

- 1.1 The City of Norwood Payneham & St Peters 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 City of Norwood Payneham & St Peters (**the Council**) on 4 September 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 5 Members (**CAP Members**), to be appointed by the Council, comprising:
  - 2.1.1 one Member of the Council (**Council Member**); and
  - 2.1.2 4 Independent Members (**Specialist External 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 one or more Deputy Members 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. The nature and extent of the call for expressions of interest may change from time to time at the discretion of the Assessment Manager.

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

- 2.11 The Council will appoint a Specialist External 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 Member 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 Member 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 (2) 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 (2) 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 (2) 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, other than where the matter relates to a type of development that falls within Schedule 4 of the *Development Regulations 2008* or that is a complying form of development by virtue of Section 35(1b) of the *Development Act 1993*;

- any Development Application classified as Category 3, except where such Applications relate to the installation of satellite dishes, solar panels, water tanks and similar structures, for which no representations opposing the proposal have been received;
- any Development Application classified as Category 2, to which there are unresolved representations opposing the development, relating directly to the component of the development that triggered the need for public notification;
- any Development Application of a form deemed to be non-complying (not including minor alterations and additions, or the decision to proceed to notification and assessment of the application);
- any Development Application for more than two dwellings on one allotment;
- any Development Application for two dwellings on one allotment which do not meet the relevant quantitative Development Plan criteria with respect to dwelling type, site area, site frontage, site coverage, height, setbacks, car parking and private open space, unless the Development Application fails only one of those criteria and both the Manager, Development Assessment and the General Manager, Urban Planning & Environment determine that the variation is very minor in nature;
- any new dwelling in an Historic (Conservation) Zone;
- Development Applications for land division to which there is no approved related development and which does not meet the relevant quantitative Development

Plan criteria with respect to site area or site frontage, unless the Development Application fails only one of those criteria and both the Manager, Development Assessment and the General Manager, Urban Planning & Environment determine that the variation is very minor in nature;

- any Development Applications that seek to vary a Development Plan Consent which has previously been issued, provided that such Applications are processed in accordance with the Council's Policy relating to 'Applications to vary a previously issued Consent', adopted by the Council on 18 January 2016;
- any Development Application, where a Council Employee or an Elected Member or, in either case, a member of their immediate family<sup>2</sup>, own or have an interest<sup>3</sup> in the property, with the following exceptions:
  - any Development Application for the installation of satellite dishes, solar panels, water tanks, and similar structures;
  - any Land Division Development Application relating to a boundary realignment or the amalgamation of allotments; and
- any other Development Application which, in the opinion of staff, should be referred to the Panel for determination

#### **Notes**

<sup>1</sup> In the event that the Development Plan contains two or more conflicting criteria, the relevant quantitative Development Plan criteria will be the higher order criteria (i.e. Policy Area criteria prevails over Zone criteria and Zone criteria prevails over City-wide criteria).

<sup>2</sup> An immediate family member for the purpose of this clause is defined as a persons parents, step-parents, siblings, spouse, children, step-children, foster children, in-laws, sibling in-laws, grandparents, grandchildren, aunts, uncles, nieces, and nephews.

<sup>3</sup> An 'interest' in a property for the purpose of this clause is defined as a person receiving or having a reasonable expectation of receiving a direct or indirect pecuniary benefit or a non-pecuniary benefit."

## 7. CAP MEETINGS

### Ordinary Meetings

- 7.1 Subject to clause 7.2, ordinary meetings of the City of Norwood Payneham & St Peters Council Assessment Panel (**CAP**) will be held at such times and places as determined by the CAP.
- 7.2 The time and place of 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 and 7.6.
- 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 Notice of a meeting of the CAP must:
- 7.4.1 be in writing;
  - 7.4.2 set out the date, time and place of the meeting;
  - 7.4.3 be signed by the Assessment Manager;
  - 7.4.4 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
  - 7.4.5 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.
- 7.5 A notice that is not given in accordance with clause 7.4 is taken to have been validly given if the Assessment Manger 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.
- 7.6 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.
- 7.7 The Assessment Manger 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 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.

- 7.8 The Presiding Member may adjourn a CAP Meeting to a future date and time, unless the CAP resolves to continue the meeting.
- 7.9 Meetings of the Panel shall conclude at 11.00pm. In the event that matters are outstanding the meeting will be adjourned to reconvene on the fourth Monday of the month or as determined by the Council's Chief Executive Officer in consultation with the Presiding Member. However, the Presiding Member may use his/her discretion to extend the meeting by 15 minutes, provided that all Panel Members are in agreement to extend the meeting and provided that, in the opinion of the Presiding Member, there is a reasonable chance that the Panel's business will be concluded by 11.15pm.

### **Special Meetings**

- 7.10 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.
- 7.11 On receipt of a request pursuant to clause 7.10, 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.

## **8. DEPUTY MEMBERS**

- 8.1 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 his or her earliest opportunity.
- 8.2 If notification pursuant to clause 8.1 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.
- 8.3 Unless the context otherwise requires, a reference to a Member in these Meeting Procedures includes a Deputy Member.

## **9. COMMENCEMENT OF MEETINGS**

- 9.1 A quorum for a meeting of the Development Assessment Panel, shall be the total number of members of the Development Assessment Panel in office, divided by two (2) (ignoring any fraction) and adding one (1) and no business shall be transacted at a meeting unless a quorum is present.
- 9.2 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.

- 9.3 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.
- 9.4 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.
- 9.5 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.

## 10. **DECISION MAKING**

- 10.1 The Presiding Member may in his or her discretion exclude:
  - 10.1.1 a representation or response to representation(s) which is received out of time;
  - 10.1.2 a representation in relation to Category 2 development from a person who was not entitled to be given notice of the application; or
  - 10.1.3 a representation or response to representation(s) which is otherwise invalid.
- 10.2 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.
- 10.3 Any material to be considered by the CAP pursuant to clause 10.2 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.
- 10.4 In relation to each application it considers, the CAP must:
  - 10.4.1 consider whether the proposal is seriously at variance with the Development Plan; and
  - 10.4.2 provide reasons for granting or refusing Development Plan consent and for the imposition of any conditions.
- 10.5 If the CAP determines that a proposal is seriously at variance with the Development Plan, it must refuse Development Plan consent to the application.

- 10.6 In relation to each application to be considered and determined by the CAP:
- 10.6.1 a person who has lodged a representation in relation to a Category 2 or 3 application which has not been excluded pursuant to clause 10.1 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;
  - 10.6.2 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;
  - 10.6.3 where no representors appear at the meeting, the Presiding Member may, in his or her discretion, allow an applicant to address the CAP, for the purpose of answering any questions that the CAP may have;
  - 10.6.4 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;
  - 10.6.5 CAP members may question and seek clarification from a representor or applicant who has addressed the CAP at the conclusion of their address; and
  - 10.6.6 following addresses from representors and the applicant, the Presiding Member will invite all Members to speak on any matter relevant to the application.
- 10.7 As determined by the Presiding Member, meetings of the Panel may involve tele-conferencing.
- 10.8 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.
- 10.9 Subject to a Member of the Development Assessment Panel having a direct or indirect personal or pecuniary interest, each Member present at a meeting of the Development Assessment Panel, must vote on a question arising for decision.
- 10.10 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.

- 10.11 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.
- 10.12 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:
- 10.12.1 behaving in a disorderly manner; or
  - 10.12.2 causing an interruption or disruption to the meeting.
- 10.13 Prior to calling for a motion, the Presiding Member in facilitating comment/discussion, will utilise his/her discretion, to allow discussion of any matter and to conclude the opportunity for discussion/comment only after each Panel Member present at the meeting, has been provided with the opportunity to speak.
- 10.14 An outcome to comment or discussion must be given effect by and shall only be valid when presented as a motion by a mover and seconder.
- 10.15 A motion will lapse if it not seconded at the appropriate time.

## 11. **MINUTES AND REPORTING**

- 11.1 The CAP must ensure that accurate minutes are kept of all meetings.
- 11.2 The Assessment Manager, or a person nominated by the Assessment Manager, will take minutes of all meetings.
- 11.3 The minutes will record:
- 11.3.1 the names of all Members present;
  - 11.3.2 the names of all Members from whom apologies have been received;
  - 11.3.3 the name and time that a Member enters or leaves the meeting;
  - 11.3.4 the name of every person who makes a representation;
  - 11.3.5 in relation to each application determined by the CAP, the reasons for refusing Development Plan consent and for the imposition of any conditions;
  - 11.3.6 if an application is not determined by the CAP, the deferral of the application and the reasons for the deferral;

- 11.3.7 a decision to exclude the public from attendance pursuant to the Regulations;
  - 11.3.8 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;
  - 11.3.9 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
  - 11.3.10 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.
- 11.4 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.

## 12. **ADDITIONAL PROCEDURES**

- 12.1 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.
- 12.2 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.