

Council Assessment Panel (CAP)

Adopted by Council:
25 September 2018

Review Date:
Annually

1. Background

1.1 The Town of Gawler Council Assessment Panel (CAP) was appointed as a relevant authority under Section 82 and 83 of the *Planning, Development and Infrastructure Act 2016* (the Act) by resolution of the Town of Gawler (the Council) on 26 September 2017.

2. Function of the Council Assessment Panel

2.1 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*:

2.1.1 to act as a delegate of the Council in accordance with the requirements of the *Development Act 1993*;

2.1.2 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 *Development Act 1993*;

2.1.3 to perform other functions (other than functions involving the formulation of policy) assigned to the Panel by the Council.

3. Delegations

3.1 This Terms of Reference should be read in conjunction with this Panel's instrument of delegation as the Panel has been delegated powers under certain Acts of legislation.

4. Membership

4.1 Appointment of Members

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

4.1.1.1 one (1) Member of the Council (**Council Member**); and

4.1.1.2 four (4) Independent Members (**Independent Members**), not being Members of the Council or State Parliament.

- 4.1.2 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.
- 4.1.3 Council will call for expressions of interest when seeking nominations for CAP Membership and an advertisement shall be circulated via appropriate publications for nominations for the positions of Independent Members.
- 4.1.4 When appointing CAP Members, the Council may have regard to the following:
 - 4.1.1.1 the candidate's knowledge of the operation and requirements of the Act and, during transition to the Act, the *Development Act 1993*;
 - 4.1.1.2 in relation to Independent Members, the candidate's accreditation as required under Part 2 of the Planning, Development and Infrastructure Regulations (the Regulations) or, prior to their gazettal, qualifications likely to align with the Regulations;
 - 4.1.1.3 in relation to a Council Member, that the candidate is appropriately qualified to act as a member of the assessment panel on account of the person's experience in local government;
 - 4.1.1.4 that a balance of qualifications and experience among CAP Members is desirable;
 - 4.1.1.5 that gender diversity among CAP Members is desirable; and
 - 4.1.1.6 such other matters as the Council considers relevant.
- 4.1.5 Nominations shall open and close at a time determined by the Council, provided the period for nomination is no less than three (3) weeks.
- 4.1.6 The Council shall appoint independent members and the Presiding Member from the list of nominees at a meeting of the Council.
- 4.1.7 Appointments shall be made public by way on Council's website within 14 days of appointment.

4.2 Appointment of Deputy Members

- 4.2.1 The Council must 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.

- 4.2.2 Subject to clause 4.2.3, a Deputy Member must not be a Member of the Council or State Parliament.
- 4.2.3 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).
- 4.2.4 Where more than one 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.
- 4.2.5 Subject to Clause 4.2.3, where a CAP Member who is also a Member of the Council is unable to attend, or consider an item presented to CAP, a Deputy Member shall replace that member for the duration of the meeting or item.
- 4.2.6 Subject to Clause 4.2.3, where a CAP Member who is also a Member of the Council is unable to attend, or consider an item for any reason (including conflict of interest) presented to the CAP, at least two (2) clear business days' notice shall be given to Deputy Members.
- 4.2.7 In appointing a Deputy Independent Member, the Council shall have regard to the matters in Clause 4.1.
- 4.2.8 Subject to Clause 4.2.3, in the event that no Council Member or Deputy Council member is able to attend the CAP, that member position may be filled by a Deputy Independent Member and the meeting may proceed provided that a quorum of Independent Members is achieved.
- 4.2.9 The Deputy Independent Member shall be called upon in the event that a quorum would otherwise not be achieved for any CAP meeting.
- 4.2.10 Should the Deputy Independent Member not be available when called upon to attend a meeting of the CAP, the meeting may proceed without his or her attendance subject to a quorum being achieved.
- 4.2.11 Unless the context otherwise requires, a reference to a CAP Member in this document includes a Deputy Member.

4.3 Appointment of Members of Council

- 4.3.1 Council shall determine the method of choosing the appointment of elected Members of Council to the Council Assessment Panel to be by an election process.
- 4.3.2 If more than 1 nomination is received then Council shall determine that the method of choosing an appointee be by a ballot process. Each candidate

shall have up to 2 minutes to explain their reasons for standing, including the candidate's experience in local government.

- 4.3.3 Council shall adopt a preferential method of voting where a valid vote must have a candidate's name. Where there are 3 candidates, 3 candidates' names in a 1, 2 and 3 preference recorded where there are 4 candidates and so on.
- 4.3.4 Council shall appoint a Deputy Council Member and a second Deputy Council Member to act for the Council member in the event of the Council Member's inability to attend any CAP meeting or item.
- 4.3.5 The Deputy Council member and second Deputy Council member shall be appointed from the remaining candidates by order of preferential vote.
- 4.3.6 The Mayor and all Council Members present at the meeting are eligible to vote.
- 4.3.7 The Chief Executive Officer shall be appointed Returning Officer for the election. If at any stage during the process there are an equal number of votes the Returning Officer will decide the issue by the drawing of lots. The name of the candidate/s withdrawn will be the one/s excluded from the ballot.
- 4.3.8 Upon completion of counting the ballot, the Returning Officer will report to the Council the successful candidate. A Council resolution is needed to confirm the appointment of the elected Council Member, the elected Deputy Council Member and the elected second Deputy Council Member.

5. Presiding Member and Acting Presiding Member

- 5.1** Pursuant to Clause 4.1, 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.
- 5.2** The Presiding Member will preside at any CAP meeting at which he or she is present.
- 5.3** 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.
- 5.4** 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.
- 5.5** 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.

6. Term of Appointment

- 6.1** Subject to Clause 9, Independent Members will be appointed for a term of up to two (2) years and on such other conditions as determined by the Council.
- 6.2** Subject to Clause 9, 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.
- 6.3** Deputy Members will be appointed for a term of up to two (2) years and on such other conditions as determined by the Council.
- 6.4** A CAP Member is eligible for reappointment for a further term, or further terms, upon the expiry of his or her current term.
- 6.5** 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 six months from the expiry of the Member's term of office, whichever occurs first.

7. Vacancy in Membership

- 7.1** 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.
- 7.2** 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.
- 7.3** In appointing a CAP Member, the Council will have regard to the matters in Clause 2.
- 7.4** A vacancy in the membership of the CAP will not invalidate any decisions of the CAP, provided a quorum is maintained during meetings.

8. Conditions of Appointment and Remuneration

- 8.1** At all times, CAP Members must act honestly, lawfully, in good faith, and in accordance with any code of conduct applicable to CAP Members.
- 8.2** CAP Members may be remunerated as determined by the Council for the reasonable time and costs incurred by CAP Members in attending CAP meetings. Remuneration will be reviewed every 2 years.
- 8.3** Different levels of remuneration may be fixed by the Council for Independent Members, the Presiding Member and Deputy Independent Members.
- 8.4** Upon the commencement of Section 83(1)(c) of the Act:

- 8.4.1 CAP Members, excluding a Member who is a Member or former Member of the Council, must be accredited professionals under the Act; and
- 8.4.2 CAP Members who are 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.

9. Removal from Office

9.1 A CAP Member will automatically lose office where:

- 9.1.1 the CAP Member has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors;
- 9.1.2 the CAP Member has been convicted of an indictable offence punishable by imprisonment;
- 9.1.3 in the case of a Council Member, the Member ceases to be a member of the Council.

9.2 Subject to Clause 9.4, 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:

- 9.2.1 a breach of a condition of his or her appointment as a CAP Member;
- 9.2.2 misconduct;
- 9.2.3 a breach of any legislative obligation or duty of a CAP Member;
- 9.2.4 neglect of duty in attending the role and responsibilities as a CAP Member;
- 9.2.5 a failure to carry out satisfactorily the duties of his or her office;
- 9.2.6 a breach of fiduciary duty that arises by virtue of his or her office;
- 9.2.7 inability to carry out satisfactorily the duties of his or her office;
- 9.2.8 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
- 9.2.9 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
- 9.2.10 for any other reason the Council considers appropriate.

- 9.3** The removal of the CAP Member pursuant to Clause 9.2 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.
- 9.4** Prior to resolving to remove a CAP Member from office pursuant to Clause 9.2, the Council must:
- 9.4.1 give written notice to the CAP Member of:
 - 9.4.1.1 its intention to remove the CAP Member from office pursuant to Clause 9.2;
 - 9.4.1.2 the alleged behaviour of the CAP Member falling within Clause 9.2 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;
 - 9.4.1.3 an opportunity for the CAP Member 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
 - 9.4.1.4 having due regard to the CAP Member's submission in determining whether to remove the CAP Member from office.

10. Register of Interests

- 10.1** Members of the CAP are required to register their interests and complete a disclosure of interests return pursuant to Schedule 1—Disclosure of financial interests under the PDI Act.

11. Meeting Details

- 11.1** Ordinary meetings of the CAP will be held at such times and places as determined by the CAP.
- 11.2** The time and place of the first meeting of the CAP following its establishment will be determined by the Council appointed Assessment Manager. The Assessment Manager must give notice of the first CAP meeting to the CAP and the public. 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.

12. Reporting Requirements

- 12.1** The CAP must ensure that accurate minutes are kept of all meetings.