

COUNCIL ASSESSMENT PANEL MEETING
10 March 2021
AGENDA
BUSINESS ITEM – 10.2

Originating Officer: Deryn Atkinson, Assessment Manager

Subject: Amendment to Council Assessment Panel (CAP) Operating and Meeting Procedures

For: Decision

SUMMARY

The Council Assessment Panel (CAP) was established by the Council on 26 September 2017 under Section 83 of the *Planning, Development and Infrastructure Act 2016* (PDI Act)

The *Planning, Development and Infrastructure (General) Regulations 2017* (the PDI Regulations) came into operation on 1 October 2017 and prescribe basic meeting procedures for Council Assessment Panels (CAPs). These meeting procedures are limited to:

- Instances where a CAP may exclude the public from attendance (i.e., go into confidence)
- The recording of minutes and access to agendas and minutes by members of the public
- The determination of a meeting quorum
- Voting rights
- The validity of CAP proceedings in the event of a vacancy in membership or a defect in the appointment of a member.

Further meeting procedures are determined by the CAP itself in accordance with Regulation 18 of the PDI Regulations. The current Operating and Meeting Procedures were last adopted by CAP on 10 June 2020.

On 9 April 2020 the *COVID-19 Emergency Response Act 2020* (COVID Act) commenced operation in response to the COVID-19 pandemic. The COVID Act originally expired on 9 October 2020 or on the day on which all relevant declarations relevant to COVID-19 have ceased in South Australia (Expiry Day). Section 17 of the COVID Act provides that despite a provision of any other act, a requirement that a meeting occur that requires two (2) or more persons to be physically present will be taken to be satisfied if the persons meet remotely using audio-visual or audio-only communication. An addendum to the current Operating and Meeting Procedures prepared for the Local Government Association was adopted as part of the updated meeting procedures. The date in this addendum has now been amended to 31 May 2021 to facilitate temporary electronic meetings whether necessary until the expiry date day of the COVID Act.

As part of business readiness for Go Live for Phase 3 of the implementation PDI Act the model Assessment Panel meeting procedures prepared for the LGA have also been updated to largely reflect the hearing of applications for review of an Assessment Manager decision and to make reference to the Planning Rules along with other minor wording changing and heading restructure. These latest changes have been incorporated into the draft revised Operating and Meeting Procedures prepared by staff for consideration and recommended for adoption by the CAP (refer to **Appendix 1**).

RECOMMENDATION

That the Council Assessment Panel adopts the revised Operating and Meeting Procedures as detailed in Appendix 1 of this report to replace the Operating and Meeting Procedures adopted on 10 June 2020.

1. GOVERNANCE

➤ Legal Implications

The Council is required to have an Assessment Panel in place which is comprised of independent members and up to one Council Elected Member.

The *Planning, Development and Infrastructure Act 2016* (PDI Act) was assented to by the Governor on 21 April 2016 after the passage through Parliament. The implementation has been staged over the last 5 years.

On 1 October 2017 the operation of Council Assessment Panel (CAP) pursuant to Sections 82 and 83 of the PDI Act commenced and the *Planning, Development and Infrastructure (General) Regulations 2017* (the PDI Regulations) came into operation.

All development applications continue to be lodged under the *Development Act 1993* until 18 March 2021. From the designated date of 19 March 2021 development applications for Phase 3 Councils will be lodged under the PDI Act.

Pursuant to Section 83(1) (f) of the PDI Act the operating procedures of the CAP must be in accordance with any requirements prescribed by the regulations. Regulations 13 to 18 of the PDI Regulations address matters including public access to meetings, minutes, documents, quorum and voting. Regulation 18 permits the CAP to adopt other procedures not prescribed as it considers necessary.

The COVID-19 Emergency Response Act 2020 (COVID Act) commenced operation on 9 April 2020 in response to the COVID-19 pandemic. Section 17 of the COVID Act provides that despite a provision of any other act, a requirement that a meeting occur that requires two (2) or more persons to be physically present will be taken to be satisfied if the persons meet remotely using audio-visual or audio-only communication. An addendum to the current Operating and Meeting Procedures was adopted to facilitate temporary electronic meetings until the expiry day of the COVID Act (originally 9 October 2020 or on the day on which all relevant declarations relevant to COVID-19 have ceased in South Australia). This date has now been amended to be 31 May 2021.

Under the PDI Act the requirement to provide reasons for the imposition of conditions is no longer present.

The current requirement to provide reasons pursuant to Regulation 42(3) of the Development Regulations 2008 is not replicated in the new requirement pursuant to Regulation 58 of the PDI Regulations.

➤ **Customer Service and Community/Cultural Implications**

All applications which have been publicly notified and have representors who wish to be heard (unless otherwise delegated to the Assessment Manager) are reported to the CAP for consideration. This ensures that such members of the community have an opportunity to present their views about a specific development and its potential impacts to the CAP. The CAP involvement in the assessment process provides for a high level of independent scrutiny of applications and the determination of certain developments in public meeting forum, providing a transparent process.

Under the temporary arrangements, representors who wish to be heard and applicants are able to connect to the CAP meeting by electronic means, including telephone, computer or other electronic device used for communication. The public has access to the virtual meeting room in a similar way. The information and link for connection to the virtual meeting room is advertised on the Council website and the link is included in the Notice of Meeting.

The minutes will record the methods of attendance by all CAP members present and by every person who makes or responds to a representation.

2. AMENDMENTS TO CAP OPERATING AND MEETING PROCEDURES

A Panel may adopt its own procedures as long as they are consistent with the PDI Act or the PDI (General) Regulations.

In consideration of the updated Model Meeting Procedures prepared by the LGA, the following matters are recommended to be included in the revised Operating and Meeting Procedures for CAP:

- Introduction – reference to the CAP’s Policy for Assessment Panel Review of Decision of Assessment Manger
- 5. Deletion of heading of HEARING OF REPRESENTATIONS and replacement with new heading ASSESSMENT OF DEVELOPMENT APPLICATIONS (and explanation) with sub-clauses 5.1, 5.2 and 5.3 relocated from clause 6 and Presiding Member changed to Assessment Manager out of necessity as these decisions occur prior to the CAP meeting.
- 5. 4 Hearing of representations renumbered to continue on after sub-clause 5.3
- 5.4.1 Wording added to clarify that Category 2 and 3 applications are under the *Development Act* and other applications for which notice must be given are under the PDI Act and to exclude applications where there are only supporting representations which are delegated to be determined by the Assessment Manager.
- 6.1.1 Addition of Planning Rules (as relevant)
- 6.1.2 Amendment of Development Plan Consent to development authorisation and inclusion of a footnote that imposition of reasons for conditions is only required for assessment against the Development Plan.
- 6.2 As per 6.1.1 and 6.1.2 above

- 7.3.4 Wording added to clarify that names of every person who makes a representation or responds to a representation in relation to a development application needs to be recorded in the minutes
- 7.3.5 New clause to recognise the requirement to record the names of every person who appears before the CAP for review of an Assessment Manager decision).
- 7.3.6 & 7.3.6.1 Addition of development and Planning Rules (as relevant)
- 7.3.6.2 Inclusion of a footnote that imposition of reasons for conditions is only required for assessment against the Development Plan
- 7.3.7 Addition of new sub-clauses for the review of Assessment Manager decisions with the aforementioned footnote
- 7.3.8 Addition of a new sub-clause requiring the decision, mover and seconder to be recorded in the minutes where the decision is by majority vote.
- 7.4 Amendment to the timeframe from five to three business days in consideration of quicker turnarounds.
- 9.1 Inclusion of the Council Assessment Panel Review of Decisions of the Assessment Manager Policy
- Temporary Addendum – Amendment of the date to 31 May 2021 and inclusion of the additional paragraph relating to persons appearing before the CAP for review of an Assessment Manager decision.

- Staff recommend that the revised Operating and Meeting Procedures in Appendix 1 are adopted to replace the Operating and Meeting Procedures adopted on 10 June 2020.

3. APPENDICES

- (1) Revised Draft Operating and Meeting Procedures for CAP
- (2) Marked up Revised Draft Operating and Meeting Procedures for CAP

Council Assessment Panel

Operating and Meeting Procedures

Adopted by the CAP on 10 March 2021



ADELAIDE HILLS COUNCIL ASSESSMENT PANEL (CAP)

Operating and Meeting Procedures

Adopted by the CAP on **10 March 2021**

These Meeting Procedures are to be read in conjunction with:

- the meeting procedures contained within the *Planning, Development and Infrastructure (General) Regulations 2017 (Regulations)*; and
- the CAP's Policy for Assessment Panel Review of Decision of Assessment Manager

All meetings of the CAP will be held in public except for that portion of the meeting where the CAP resolves to exclude the public in accordance with the provisions of Regulation 13(2).

1. CAP MEETINGS

Ordinary Meetings

- 1.1 The business and meetings of the CAP will be coordinated by the Assessment Manager, in consultation with the Presiding Member.
- 1.2 Unless otherwise determined by the CAP, subject to there being business to consider and determine ordinary meetings of the CAP will be held on the second Wednesday of each month at a time and venue as determined by the Assessment Manager.
- 1.3 Notice of an ordinary meeting will be given to all CAP Members by the Assessment Manager not less than three (3) clear business days prior to the holding of the meeting in accordance with clause 1.4
- 1.4 Notice of a meeting of the CAP must:
 - 1.4.1 Be in writing;
 - 1.4.2 Set out the date, time and place of the meeting;
 - 1.4.3 Be signed by the Assessment Manager;
 - 1.4.4 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);
 - 1.4.5 Be given to a CAP Member personally, by post to a place authorised in writing by the Member or by email or by other means authorised by the Member as being an available means of giving notice;

- 1.4.6 Where attendance at the meeting is able to occur by electronic means (in whole or in part), include details of how to connect to the meeting; and
- 1.4.7 Where the meeting is to be live streamed for viewing by members of the public, include details of how to access and/or connect to the live stream.
- 1.5 A notice that is not given in accordance with clause 1.4 is taken to have been validly given if the Assessment Manager 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.
- 1.6 A copy of the agenda (including the attachments to reports) for all meetings of the CAP will be available for viewing by the public on the Council's website as soon as practicable after the time that notice of the meeting has been given to CAP Members.
- 1.7 Copies of staff planning reports (excluding attachments) and recommendations will be made available to the applicant and any representors prior to the meeting on request.
- 1.8 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 CAP Members. In such instance, 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.
- 1.9 Members shall forward any questions or requested amendments in relation to the agenda items or staff recommendation wording to the Assessment Manager no less than 24 hours prior to the commencement of the meeting.
- 1.10 The Presiding Member may adjourn a CAP Meeting to a future date and time, unless the CAP resolves to continue the meeting.
- 1.11 A meeting may break for a specified time as determined by the Presiding Member.

Special Meetings

- 1.12 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.

- 1.13 On receipt of a request pursuant to clause 1.12, the Assessment Manager must determine the date, time and place of the special meeting and give notice to all CAP members at least 24 hours before the commencement of the special meeting.

2. DEPUTY MEMBERS

- 2.1 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 and the Assessment Manager at his or her earliest opportunity.
- 2.2 If notification pursuant to clause 2.1 is given, the Assessment Manager may request a Deputy Member attend the meeting in place of the CAP Member for the meeting or part of the meeting.
- 2.3 Unless the context otherwise requires, a reference to a Member in these Meeting Procedures includes a Deputy Member.

3A. MEETING BY ELECTRONIC MEANS

- 3A.1 One or more CAP Members may attend a meeting via electronic means.
- 3A.2 A Member attending a meeting by electronic means is taken to be present at the meeting provided that the Member:
 - 3A.2.1 can hear and, where possible, see all other Members who are present at the meeting;
 - 3A.2.2 can hear and, where possible, see all representors (or their representatives) and applicants (or their representatives) who speak at the meeting;
 - 3A.2.3 can be heard and, where possible, seen by all other Members present at the meeting; and
 - 3A.2.4 can be heard and, where possible, seen by the person recording the minutes of the meeting.
- 3A.3 Where a meeting occurs via electronic means, it shall (to the extent that the public is not able to physically attend the meeting) be live streamed.
- 3A.4 Where a meeting is being live streamed, the live stream shall be disconnected only during those parts of the meeting during which the public has been excluded from attendance pursuant to Regulation 13(2) of the Regulations.
- 3A.5 Where the public has been excluded from attendance pursuant to Regulation 13(2) of the Regulations, the Assessment Manager or a person nominated by the Assessment Manager shall ensure that all parties except for CAP Members disconnect from or are disconnected from the meeting.

3. **ADDITIONAL MEMBERS**

- 3.1 The CAP may appoint up to two Additional Members in accordance with Section 85 of the *Planning, Development and Infrastructure Act 2016 (Act)*.
- 3.2 Where the CAP has appointed Additional Member(s), the Presiding Member, in consultation with the Assessment Manager, may invite one or both Additional Members to attend any meeting (or part thereof) where he or she considers the Additional Member(s) will, by virtue of their qualifications, expertise or experience, assist the CAP in dealing with a matter that it must assess under the Act (or, during the transition to the Act, the *Development Act 1993*).
- 3.3 A request that an Additional Member attend a meeting must be made in writing, including email and be accompanied by the notice for the meeting in accordance with clause 1.4, highlighting the item(s) the Additional Member is required to consider.
- 3.4 Unless the context otherwise requires, a reference to a Member in these Meeting Procedures includes an Additional Member, save that an Additional Member is not able to vote on any matter arising for determination by the CAP.

4. **COMMENCEMENT OF MEETINGS**

- 4.1 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. A quorum is three (3) members for a CAP of five (5) members.
- 4.2 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 will adjourn the meeting to a specified date and time.
- 4.3 If at the expiration of thirty minutes from the commencement time specified in the notice of the meeting a quorum is not present, the Presiding Member will adjourn the meeting to a specified date and time.
- 4.4 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.
- 4.5 CAP members are to declare any conflicts of interest in relation to a particular item prior to that item being discussed.

5. ASSESSMENT OF DEVELOPMENT APPLICATIONS

The procedures in Part 5 of these Meeting Procedures relate only to the CAP's assessment of development applications under Part 7 of the Act and Part 4 of the Development Act. NB: The procedures for determining an application for review of an Assessment Manager's decision are contained in the Assessment Manager Review Policy.

- 5.1 The Assessment Manager may in her or his discretion exclude:
 - 5.1.1 a representation or response to representation(s) which is received out of time;
 - 5.1.2 a representation in relation to Category 2 development from a person who was not entitled to be given notice of the application; or
 - 5.1.3 a representation or response to representation(s) which is otherwise invalid
- 5.2 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.
- 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) in a matter directed by the Assessment Manager and those parties be provided with an opportunity to respond, either in writing or verbally, at the discretion of the Presiding Member in consultation with the Assessment Manager.
- 5.4 In relation to each application to be considered and determined by the CAP where there is hearing of representations:
 - 5.4.1 A person who has lodged a representation in relation to a Category 2 or 3 application under the Development Act 1993 or an application for which notice must be given under the Act which has not been excluded pursuant to clause **Error! Reference source not found.** 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 (excluding applications where there are only supporting representations of the proposal as decisions in this case are delegated to the Assessment Manager);
 - 5.4.2 Where a person is entitled or has been requested to appear before the CAP in relation to an application for review of an Assessment Manager decision (including the Assessment Manager or delegate), the person may appear by electronic means. The Presiding Member may require that any such appearance be via electronic means.

- 5.4.3 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;
- 5.4.4 The CAP will hear representors in support of their representations first, and then the applicant's response to the representations;
- 5.4.5 At the discretion of the Presiding Member, where no representors appear at the meeting an applicant may be allowed to be heard in support of his or her application, in person or by an agent;
 - 5.4.5A Clauses 5.4.1 to 5.4.5 are satisfied if a representor or applicant (as the case may be) appears via electronic means. The Presiding Member may require that any such appearance be via electronic means;
- 5.4.6 Representors and applicants will be allowed a maximum of five minutes each to address the CAP. At the discretion of the Presiding Member, a party may be allowed additional time. Where a person is nominated to speak on behalf of a group of people, a maximum time of 20 minutes will be granted. In such an instance the applicant shall be granted the same amount of time as the group to respond to the representation;
- 5.4.7 All persons presenting to the CAP shall adhere to the *Guidelines and Protocols for Council Assessment Panel Meetings* and the *Presentation Procedures* as outlined in Attachments A and B;
- 5.4.8 Representors and applicants must avoid raising new material that has not been raised in their written submissions when appearing before the CAP. In rare circumstances where it is necessary for new information to be presented it should be forwarded to the Assessment Manager at least 5 business days prior to the meeting to allow distribution to relevant parties and CAP Members;
- 5.4.9 At the discretion of the Presiding Member and in consultation with CAP members and the Assessment Manager, any new information presented by any party at the CAP meeting may or may not be considered. The decision of the Presiding Member is final in this regard;
- 5.4.10 CAP members may ask questions and seek clarification from a representor or applicant who has addressed the CAP at the conclusion of their address; and ask questions of planning staff;
- 5.4.11 Representors will not be allowed a further opportunity to address the CAP once the applicant has concluded their response;

5.4.12 Following hearing from representors and the applicant, the Presiding Member will invite CAP Members to speak on any matter relevant to the application; and

5.4.13 At the conclusion of the CAP discussion, should the CAP defer a decision on the development subject to 7.3.6 when the development is considered at a subsequent CAP meeting the applicant and representors will not be heard again by the CAP unless the application has been re-advertised and a new hearing of representations is to be held. However, the Presiding Member may allow CAP Members to ask questions of the applicant or representor, who must limit their response to the question raised.

6. DECISION MAKING

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

6.1.1 Determine whether the proposal is seriously at variance with the Development Plan or the Planning Rules (as relevant) and provide reasons for its determination; and

6.1.2 Provide reasons for granting or refusing development authorisation and for the imposition of any conditions¹ (the latter relates only to assessment of development applications against the Development Plan)

6.2 If the CAP determines that a proposal is seriously at variance with the Development Plan or the Planning Rules (as relevant), it must refuse development authorisation of the application.

6.3 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 Member Presiding at the meeting 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.

6.4 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.

6.5 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.

¹ Reasons for conditions imposed relate only to the assessment of development applications against the Development Plan

6.6 The Presiding Member may ask a member of the public (including an applicant, representor or other member of the public) to leave or disconnect from a meeting where he or she is, in the opinion of the Presiding Member:

6.6.1 Behaving in a disorderly manner; or

6.6.2 Causing an interruption or disruption to the meeting.

7. MINUTES AND REPORTING

7.1 The CAP must ensure that accurate minutes are kept of all meetings.

7.2 The Assessment Manager, or a person nominated by the Assessment Manager, will take minutes of all meetings.

7.3 The Minutes will record:

7.3.1 The names of all Members present;

7.3.2 The names of all Members from whom apologies have been received;

7.3.3 The name and time that a Member enters or leaves the meeting;

7.3.4 The name of every person who makes or responds to a representation in relation to a development application;

7.3.4A Methods of attendance by all Members present and by every person who makes or responds to a representation;

7.3.5 The name of every person who appears in relation to an application for review of an Assessment Manager decision (including the Assessment Manager or delegate);

7.3.6 In relation to each development application:

7.3.6.1 The determination of the CAP as to whether the proposal is seriously at variance with the Development Plan or Planning Rules (as relevant); and

7.3.6.2 The reasons for granting or refusing Development Plan consent and for the imposition of any conditions² (the latter relates only to assessment of development applications against the Development Plan); and

7.3.7 In relation to each application for review of an Assessment Manager decision:

- 7.3.7.1 The determination of the CAP as to whether the proposal is seriously at variance with the Development Plan or planning rules (as relevant); and
- 7.3.7.2 The reasons for the CAP's decision under Section 203(4) of the Act, including the reasons for the imposition of any new or varied conditions³; and
- 7.3.8 Where a decision is by majority vote, the decision and its mover and seconder, but not each Member's vote;
- 7.3.9 If an application is not determined by the CAP, the deferral of the application and the reasons for the deferral;
- 7.3.10 A decision to exclude the public from attendance pursuant to the Regulations;
- 7.3.11 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;
- 7.3.12 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
- 7.3.13 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.
- 7.4 Minutes of each meeting of CAP will be made available to each member of Council within three (3) business days of the meeting date.
- 7.5 A copy of the Minutes is to be included in the agenda for the next available ordinary meeting of Council.
- 7.6 Members of the public are entitled to access a copy of the Minutes within three (3) business days of the meeting date.
- 7.7 All minutes must be confirmed by the Presiding Member, in conjunction with the Assessment Manager, as being accurate prior to, or at the commencement of, the following CAP meeting. On adoption of the Minutes by CAP the Presiding Member will sign and date the Minutes.

³ Reasons for conditions imposed relate only to the assessment of development applications against the Development Plan

8. RECORDING OF MEETINGS

- 8.1 The meetings of CAP will be recorded by Council staff to provide reference material as part of the process of preparing accurate minutes of the meeting. Recordings will be kept securely. Confidential items will not be recorded.
- 8.2 Other than the minute taker, Assessment Manager and the Director Development & Regulatory Services (or his/her designate), recordings of the meeting are only accessible to members of Council or CAP via the Chief Executive Officer. Requests should be made within four (4) weeks of the CAP meeting date.
- 8.3 Recordings will only be retained for a period of four (4) weeks commencing from the date the Minutes are released to CAP Members.
- 8.4 Recordings of meetings may be provided to members of the public upon request through a Freedom of Information Application within four (4) weeks of the CAP meeting date. Each application to obtain a copy of the recording will be considered on its merits and the particular circumstances of the situation.
- 8.5 Members of the media and public are not permitted to use a recording device to record any part of the meeting process unless authority is provided by way of a CAP resolution to allow this. To do so without authorisation would be a contravention of the Listening Devices Act 1972. A request to use a recording device to record deliberations or any part of the CAP meetings shall be made to the Assessment Manager or the Presiding Member prior to, or at the commencement of the meeting. The Presiding Member shall put the request to the CAP Members to vote on.

9. ADDITIONAL PROCEDURES

- 9.1 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, Council Assessment Panel Review of Decisions of the Assessment Manager Policy or these Meeting Procedures - the CAP may by resolution determine the procedure for itself. Any such determination may be added to these Meeting Procedures.
- 9.2 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.
- 9.3 An applicant may not defer a development application from the meeting agenda after the agenda has been sent to CAP Members, unless the deferral is agreed to by the CAP Members at the meeting. The applicant must make this request in writing to the Assessment Manager with reason(s) for their request for deferral prior to the meeting.

- 9.4 Should a CAP Member receive by post, email, or other means information in relation to a development application being assessed by Council development assessment staff which may be referred for decision to CAP at a future time, then the CAP Member should immediately forward the information received to the Assessment Manager. The CAP Members should not acknowledge receipt of the information nor enter into discussion with the sender about the information received.
- 9.5 Should a CAP Member wish to take an extended leave of absence (e.g. for more than 2 consecutive meetings) then such a request shall be made in writing to Council CEO and the Assessment Manager, who shall report the matter to Council for approval.
- 9.6 The CAP may revise the Meeting Procedures as and when required but as a minimum every two years or when a new CAP is appointed.

10. **SITE INSPECTIONS**

- 10.1 The Presiding Member may on occasion call for a site visit to be organised for CAP members in consultation with the Assessment Manager. Examples of where a site visit may be included are:
 - 10.1.1 Where the site of the development is not readily visible from the road and the topography of the land is not flat; or
 - 10.1.2 Where there are multiple opposing representations in relation to a commercial development and the potential impacts need to be considered further through a viewing; or
 - 10.1.3 Where the CAP determine at the CAP meeting that there is an aspect of the proposed development or site that can only be clarified by a viewing and the CAP defer making a decision until the site visit has occurred.
- 10.2 All CAP Members shall adhere to the Site Meeting Protocol/Rules as outlined in ***Attachment C***.

TEMPORARY ADDENDUM TO FACILITATE ELECTRONIC MEETINGS

On 9 April 2020, the *COVID-19 Emergency Response Act 2020* (**COVID Act**) commenced operation. The COVID Act will expire on the earlier of 31 May 2021 or the day on which all relevant declarations relating to the outbreak of COVID-19 within South Australia have ceased (**Expiry Day**).

Section 17 of the COVID Act provides (relevantly) that despite a provision of any other act, a requirement that a meeting occur that requires 2 or more persons to be physically present will be taken to be satisfied if the persons meet remotely using audio-visual or audio-only communication.

In reliance on Section 17 of the COVID Act, on 10 March 2021 the CAP adopts the following temporary amendments to the ordinary meeting procedures numbered 1 to 10 in the CAP Operating and Meeting Procedures, and these amendments will operate until the Expiry Day of the COVID Act.

11. DEFINITIONS

The following definitions apply in relation to these temporary amendments:

- 11.1 *connect* means able to hear and/or see the meeting by electronic means, including via a live stream.
- 11.2 *disconnect* means to remove the connection so as to be unable to hear and see the meeting.
- 11.3 *electronic* means includes a telephone, computer or other electronic device used for communication.
- 11.4 *live stream* means the transmission of audio and/or video from a meeting at the time the meeting is occurring.

12. AMENDMENTS TO CLAUSE 1

- 12.1 Sub-clause 1.4 of the Operating and Meeting Procedures is supplemented with the inclusion of the following additional paragraphs:

1.4.6 where attendance at the meeting is able to occur by electronic means (in whole or in part), include details of how to connect to the meeting; and

1.4.7 where the meeting is to be live streamed for viewing by members of the public, include details of how to access and/or connect to the live stream.

- 12.2 Sub-clause 1.6 of the Operating and Meeting Procedures is amended with the deletion of the words “and at the Council’s offices”.

13. ADDITIONAL CLAUSE 3A

A new clause 3A is inserted into the Operating and Meeting Procedures as follows:

- 3A.1 *One or more Panel members may attend a meeting via electronic means.*
- 3A.2 *A Member attending a meeting by electronic means is taken to be present at the meeting provided that the Member:*
 - 3A.2.1 *can hear and, where possible, see all other Members who are present at the meeting;*
 - 3A.2.2 *can hear and, where possible, see all representors (or their representatives) and applicants (or their representatives) who speak at the meeting;*
 - 3A.2.3 *can be heard and, where possible, seen by all other Members present at the meeting; and*
 - 3A.2.4 *can be heard and, where possible, seen by the person recording the minutes of the meeting.*
- 3A.3 *Where a meeting occurs via electronic means, it shall (to the extent that the public is not able to physically attend the meeting) be live streamed.*
- 3A.4 *Where a meeting is being live streamed, the live stream shall be disconnected only during those parts of the meeting during which the public has been excluded from attendance pursuant to Regulation 13(2) of the Regulations.*
- 3A.5 *Where the public has been excluded from attendance pursuant to Regulation 13(2) of the Regulations, the Assessment Manager or a person nominated by the Assessment Manager shall ensure that all parties except for CAP members disconnect from or are disconnected from the meeting.*

14. AMENDMENTS TO CLAUSE 5

- 14.1 Sub-clause 5.1 of the Operating and Meeting Procedures is supplemented with the inclusion of the following additional paragraph after 5.1.4:
 - 5.1.4A *Clauses 5.1.1 to 5.1.4 are satisfied if a representor or applicant (as the case may be) appears via electronic means. The Presiding Member may require that any such appearance be via electronic means.*

15. AMENDMENTS TO CLAUSE 6

15.1 Sub-clause 6.6 of the Operating and Meeting Procedures is amended with the inclusion of the words “*or disconnect from*” after the word “leave”. As amended, sub-clause 6.9 is as follows:

6.6 The Presiding Member may ask a member of the public (including an applicant, representor or other member of the public) to leave or disconnect from a meeting where he or she is, in the opinion of the Presiding Member:....”

15.2 Clause 5 of the Ordinary Meeting Procedures is supplemented with the inclusion of the following additional paragraph:

5.4.2 Where a person is entitled or has been requested to appear before the CAP in relation to an application for review of an Assessment Manager decision (including the Assessment Manager or delegate), the person may appear by electronic means. The Presiding Member may require that any such appearance be via electronic means.

16. AMENDMENTS TO CLAUSE 7

Sub-clause 7.3 of the Operating and Meeting Procedures is supplemented with the inclusion of the following additional paragraph:

7.3.4A methods of attendance by all Members present and by every person who makes or responds to a representation.



Guidelines & Protocols for Council Assessment Panel Meetings

The Development Act 1993 and the Development Regulations 2008 provide for the Council to be responsible for the management of most development within its area. The Council is the authority for determining most applications for development within its area.

The Council, pursuant to Section 83 of *Planning Development and Infrastructure Act 2016* has established a Council Assessment Panel known as the Adelaide Hills Council Assessment Panel (hereafter referred to as “the CAP”) to assist the Council to exercise or perform its development assessment functions in accordance with the delegations that the Council has conferred upon it.

Where the CAP hears representors and/or the applicant

- (1) This should not be a debate but an opportunity for persons to summarise and/or respond to representations and to answer any questions that the CAP may have. The purpose of such representations and submissions is to ensure that the CAP is informed about any relevant planning issues with respect to any particular matter. The Presiding Member will restrict submissions and questions to the planning issues related to a particular matter.
- (2) Representors to the CAP, or their nominated spokesperson, will speak first followed by the applicant who will be invited to respond to the points made by the representors. Either party may speak on their own behalf or seek assistance from other persons such as lawyers, planning consultants or other advisors. Representations are to be limited to a maximum of 5 minutes per party but the Presiding Member has discretion to extend this by 5 minutes for the purpose of questions from the CAP members or staff. Where a person is nominated to speak on behalf of a recognised group of people (e.g. a resident’s association or community group), then the Presiding Member shall upon request from such a group, have the ability to grant such a person more time as deemed appropriate (a maximum of 20 minutes) to speak in support of their representation. In such an instance the applicant shall be granted the same amount of time as the group to respond to representations.
- (3) Members of the CAP may ask the representors or applicant questions to clarify points of a planning nature only. Members of the CAP acknowledge that they should not use ‘leading questions’. Questions will only be initiated through the Presiding Member.
- (4) If all information is before the CAP, a decision will usually be made at the time the matter is considered. However, on occasions the CAP may defer the matter for whatever reason (e.g. to enable a site visit to occur or to seek further information to be obtained to fully address matters raised during consideration of the matter). The development assessment staff may also require further time to complete the assessment where further information is sought.

- (5) The CAP will then deliberate on each item in public (unless it is a confidential matter pursuant to the provisions of Regulation 13(2) of the *Planning Development and Infrastructure (General) Regulations 2017*).
- (6) At the conclusion of the Hearing of Representations and the applicant, the CAP may either resolve to approve, refuse or for whatever reason, defer a decision on the application. When the application has been deferred and then brought back before the CAP for consideration, the applicant and representor(s) will not again be heard by the CAP unless the application has been readvertised and a new Hearing of Representations is to be held. However the Presiding Member may allow CAP Members to ask questions of the applicant or the representor who must limit their response to the question raised.
- (7) Where notice is given to representors in accordance with the requirements of the Development Regulations 2008 and the representor is not present at the scheduled meeting when the matter is to be considered, the CAP will not defer consideration of the matter to enable the representor to be present. Further, in the event the matter is deferred as contemplated in point (6) above, then the representor shall not have a right to be heard.
- (8) Each matter of development assessment, whether it be an application for consent or the imposition or variation of conditions should be considered and determined individually upon its own merits.
- (9) The role of the CAP is not one of mediator or arbitrator for parties expressing divergent views but is as a decision maker charged with the responsibility of assessing each proposal against the relevant Development Plan provisions. It is a role that is inquisitorial rather than adversarial. The CAP does not therefore have a role as a mediator or arbitrator at its meetings or otherwise between an applicant and representors. The Council will, where considered appropriate, support mediation processes between the parties as a means to try and resolve issues for consideration by the CAP.



Council Assessment Panel

Presentation Procedures

All persons presenting to the CAP shall adhere to the following Presentation Procedures when addressing the Council Assessment Panel (CAP):

1. Persons addressing the CAP shall give their full name, location of their property in relation to the applicant's property, an indication as to whether they are speaking on their own behalf or for another person or a group. When responding to questions or providing information to the CAP, persons should address the Presiding Member.
2. The order of presentations will be as follows:
 - a. Council staff will present a video in relation to the item. Members of the CAP may then ask questions of clarification.
 - b. The representors to the application or their nominee will make their submissions followed by questions from the CAP.
 - c. The applicant or their nominee will make his/her submission, followed by questions from the CAP.
3. The representors and applicant are permitted a maximum of 5 minutes each for their presentations, and should allow time for questions from the CAP. Persons presenting to the CAP shall be succinct, avoid repetition and focus on key points remembering the members of the CAP have a copy of their submission. The applicant will then be given an opportunity to respond to the representations made to the CAP. Where a person is nominated to speak on behalf of a recognised group of people (e.g. a resident's association or community group), then the Presiding Member shall upon request from such a group, have the ability to grant such a person more time as deemed appropriate (maximum of 20 minutes) to speak in support of their representations. In such an instance the applicant shall be granted the same amount of time as the group to respond to such representations.
4. The CAP will then deliberate on the matter and make its determination to approve, refuse or for whatever reason defer a decision on the application.
5. It should be noted that the CAP will not tolerate any inflammatory, derogatory or racist comments and persons presenting to the CAP are requested to restrict their submissions to planning matters only.
6. It should also be noted that a petition cannot be accepted by the CAP, and should be submitted to the Council at its next available ordinary meeting.

7. The use of slides, maps, videos, in addition to written and verbal submissions is permitted. It should be noted by persons presenting to the CAP that a copy of any information, photos, maps, plans, videos etc. presented to the CAP on the night is required for Council records. Persons requiring the use of audio visual equipment shall advise staff at least a day before the scheduled meeting of their audio visual requirements in order to facilitate the provision of these resources.

8. Representors are provided with only one opportunity to address the CAP. If a decision on a proposal is deferred by the CAP after the hearing of representations, advice of the new meeting date will be provided in writing but no further opportunity to address the CAP will be given.



Site Meeting Protocols/Rules for CAP Members where Applicant Present

1. All site meetings must be arranged by and be conducted in the presence of a Council Officer who will manage and conduct the meeting.
2. Such site meetings should involve all CAP members where possible.
3. The purpose of the meeting is to gather information on the application. The Council Officer present will summarise and clarify any aspect of the application for CAP members and may seek information from the applicant and others present.
4. No individual discussions about the application should take place directly between a CAP member and the applicant.
5. Any questions/queries by a CAP member should be addressed to the Council Officer present.
6. It is inappropriate for any CAP member to make any comment/express an opinion/support or express any negative views on the application at the meeting.
7. Individual site visits by CAP members should be very rare and totally avoided if possible. If unavoidable there must be no contact nor any discussions with any applicant, resident or interested party to avoid any perception of unfairness, bias, etc. CAP members must adhere to the Code of Conduct. Except where required as part of a formal CAP viewing of a development site, CAP members should not enter a development site or a neighbouring property, even if invited by the land owner/applicant or a neighbouring land owner.
8. Visual drive-bys (not site visits) of a site/locality are not prohibited but extreme caution must be exercised and the procedure set out in paragraph 7 carefully followed.
9. For their own protection CAP members should record the time/date/duration of any site visit/drive-by and if any other person was present/spoken to.
10. Failure to comply with the appropriate procedures may result in significant penalties for a CAP member.
11. The above rules must be read in conjunction with the Code of Conduct.



Council Assessment Panel

Operating and Meeting Procedures

~~Adopted by the CAP on 10 June 2020~~

Adopted by the CAP on 10 March 2021

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ADELAIDE HILLS COUNCIL ASSESSMENT PANEL (CAP)

Operating and Meeting Procedures

Adopted by the CAP on ~~10 June 2020~~ **10 March 2021**

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These Meeting Procedures are to be read in conjunction with:

- ~~the meeting procedures contained within the *Planning, Development and Infrastructure (General) Regulations 2017 (Regulations)*; and~~
- ~~the CAP's Policy for Assessment Panel Review of Decision of Assessment Manager~~

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~~Pursuant to Regulation 12 of the Regulations, the procedures to be observed in relation to the conduct of the business of the Council Assessment Panel (CAP) are:~~

- ~~(a) As prescribed by the Regulations; and~~
- ~~(b) Insofar as a procedure is not prescribed by Regulation as determined by the CAP.~~

All meetings of the CAP will be held in public except for that portion of the meeting where the CAP resolves to exclude the public in accordance with the provisions of Regulation 13(2).

1. CAP MEETINGS

Ordinary Meetings

- 1.1 The business and meetings of the CAP will be coordinated by the Assessment Manager, in consultation with the Presiding Member.
- 1.2 Unless otherwise determined by the CAP, subject to there being business to consider and determine ordinary meetings of the CAP will be held on the second Wednesday of each month at a time and venue as determined by the Assessment Manager.
- 1.3 Notice of an ordinary meeting will be given to all CAP Members by the Assessment Manager not less than three (3) clear business days prior to the holding of the meeting in accordance with clause ~~1.41-4~~
- 1.4 Notice of a meeting of the CAP must:
 - 1.4.1 Be in writing;
 - 1.4.2 Set out the date, time and place of the meeting;
 - 1.4.3 Be signed by the Assessment Manager;

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- 1.4.4 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);
 - 1.4.5 Be given to a CAP Member personally, by post to a place authorised in writing by the Member or by email or by other means authorised by the Member as being an available means of giving notice;
 - 1.4.6 Where attendance at the meeting is able to occur by electronic means (in whole or in part), include details of how to connect to the meeting; and
 - 1.4.7 Where the meeting is to be live streamed for viewing by members of the public, include details of how to access and/or connect to the live stream.
- 1.5 A notice that is not given in accordance with clause ~~1.41.4~~ is taken to have been validly given if the Assessment Manager 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.
- 1.6 A copy of the agenda (including the attachments to reports) for all meetings of the CAP will be available for viewing by the public on the Council's website as soon as practicable after the time that notice of the meeting has been given to CAP Members.
- 1.7 Copies of staff planning reports (excluding attachments) and recommendations will be made available to the applicant and any representors prior to the meeting on request.
- 1.8 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 CAP Members. In such instance, 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.
- 1.9 Members shall forward any questions or requested amendments in relation to the agenda items or staff recommendation wording to the Assessment Manager no less than 24 hours prior to the commencement of the meeting.
- 1.10 The Presiding Member may adjourn a CAP Meeting to a future date and time, unless the CAP resolves to continue the meeting.
- 1.11 A meeting may break for a specified time as determined by the Presiding Member.

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Special Meetings

- 1.12 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.
- 1.13 On receipt of a request pursuant to clause 1.12, the Assessment Manager must determine the date, time and place of the special meeting and give notice to all CAP members at least 24 hours before the commencement of the special meeting.

2. DEPUTY MEMBERS

- 2.1 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 and the Assessment Manager at his or her earliest opportunity.
- 2.2 If notification pursuant to clause ~~2.12-1~~ is given, the Assessment Manager may request a Deputy Member attend the meeting in place of the CAP Member for the meeting or part of the meeting.
- 2.3 Unless the context otherwise requires, a reference to a Member in these Meeting Procedures includes a Deputy Member.

3A. MEETING BY ELECTRONIC MEANS

- 3A.1 One or more CAP Members may attend a meeting via electronic means.
- 3A.2 A Member attending a meeting by electronic means is taken to be present at the meeting provided that the Member:
 - 3A.2.1 can hear and, where possible, see all other Members who are present at the meeting;
 - 3A.2.2 can hear and, where possible, see all representors (or their representatives) and applicants (or their representatives) who speak at the meeting;
 - 3A.2.3 can be heard and, where possible, seen by all other Members present at the meeting; and
 - 3A.2.4 can be heard and, where possible, seen by the person recording the minutes of the meeting.
- 3A.3 Where a meeting occurs via electronic means, it shall (to the extent that the public is not able to physically attend the meeting) be live streamed.

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- 3A.4 Where a meeting is being live streamed, the live stream shall be disconnected only during those parts of the meeting during which the public has been excluded from attendance pursuant to Regulation 13(2) of the Regulations.
- 3A.5 Where the public has been excluded from attendance pursuant to Regulation 13(2) of the Regulations, the Assessment Manager or a person nominated by the Assessment Manager shall ensure that all parties except for CAP Members disconnect from or are disconnected from the meeting.

3. ADDITIONAL MEMBERS

- 3.1 The CAP may appoint up to two Additional Members in accordance with Section 85 of the *Planning, Development and Infrastructure Act 2016 (Act)*.
- 3.2 Where the CAP has appointed Additional Member(s), the Presiding Member, in consultation with the Assessment Manager, may invite one or both Additional Members to attend any meeting (or part thereof) where he or she considers the Additional Member(s) will, by virtue of their qualifications, expertise or experience, assist the CAP in dealing with a matter that it must assess under the Act (or, during the transition to the Act, the *Development Act 1993*).
- 3.3 A request that an Additional Member attend a meeting must be made in writing, including email and be accompanied by the notice for the meeting in accordance with clause 1.41-4, highlighting the item(s) the Additional Member is required to consider.
- 3.4 Unless the context otherwise requires, a reference to a Member in these Meeting Procedures includes an Additional Member, save that an Additional Member is not able to vote on any matter arising for determination by the CAP.

4. COMMENCEMENT OF MEETINGS

- 4.1 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. A quorum is three (3) members for a CAP of five (5) members.
- 4.2 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 will adjourn the meeting to a specified date and time.
- 4.3 If at the expiration of thirty minutes from the commencement time specified in the notice of the meeting a quorum is not present, the Presiding Member will adjourn the meeting to a specified date and time.
- 4.4 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.

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4.5 CAP members are to declare any conflicts of interest in relation to a particular item prior to that item being discussed.

4.5

5. ASSESSMENT OF DEVELOPMENT APPLICATIONS

The procedures in Part 5 of these Meeting Procedures relate only to the CAP's assessment of development applications under Part 7 of the Act and Part 4 of the Development Act. NB: The procedures for determining an application for review of an Assessment Manager's decision are contained in the Assessment Manager Review Policy.

5.1 The Assessment Manager may in her or his discretion exclude:

5.1.1 a representation or response to representation(s) which is received out of time;

5.1.2 a representation in relation to Category 2 development from a person who was not entitled to be given notice of the application; or

5.1.3 a representation or response to representation(s) which is otherwise invalid

5.2 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.

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) in a matter directed by the Assessment Manager and those parties be provided with an opportunity to respond, either in writing or verbally, at the discretion of the Presiding Member in consultation with the Assessment Manager.

5. HEARING OF REPRESENTATIONS

5.4 In relation to each application to be considered and determined by the CAP where there is hearing of representations:

5.4.1 A person who has lodged a representation in relation to a Category 2 or 3 application under the Development Act 1993 or an application for which notice must be given under the Act which has not been excluded pursuant to clause 1.16.1 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

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by an agent (excluding applications where there are only supporting representations of the proposal as decisions in this case are delegated to the Assessment Manager);

5.1.45.4.2 -Where a person is entitled or has been requested to appear before the CAP in relation to an application for review of an Assessment Manager decision (including the Assessment Manager or delegate), the person may appear by electronic means. The Presiding Member may require that any such appearance be via electronic means.

5.1.25.4.3 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;

5.1.35.4.4 The CAP will hear representors in support of their representations first, and then the applicant's response to the representations;

5.1.45.4.5 At the discretion of the Presiding Member, where no representors appear at the meeting an applicant may be allowed to be heard in support of his or her application, in person or by an agent;

5.415.4A Clauses 5.4.1 ~~5.1.1~~ to 5.4.5 ~~5.1.4~~ are satisfied if a representor or applicant (as the case may be) appears via electronic means. The Presiding Member may require that any such appearance be via electronic means;

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5.1.55.4.6 Representors and applicants will be allowed a maximum of five minutes each to address the CAP. At the discretion of the Presiding Member, a party may be allowed additional time. Where a person is nominated to speak on behalf of a group of people, a maximum time of 20 minutes will be granted. In such an instance the applicant shall be granted the same amount of time as the group to respond to the representation;

5.1.65.4.7 All persons presenting to the CAP shall adhere to the *Guidelines and Protocols for Council Assessment Panel Meetings* and the *Presentation Procedures* as outlined in Attachments A and B;

5.1.75.4.8 Representors and applicants must avoid raising new material that has not been raised in their written submissions when appearing before the CAP. In rare circumstances where it is necessary for new information to be presented it should be forwarded to the Assessment Manager at least 5 business days prior to the meeting to allow distribution to relevant parties and CAP Members;

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~~5.1.8~~~~5.4.9~~ At the discretion of the Presiding Member and in consultation with CAP members and the Assessment Manager, any new information presented by any party at the CAP meeting may or may not be considered. The decision of the Presiding Member is final in this regard;

~~5.1.9~~~~5.4.10~~ CAP members may ask questions and seek clarification from a representor or applicant who has addressed the CAP at the conclusion of their address; and ask questions of planning staff;

~~5.1.10~~~~5.4.11~~ Representors will not be allowed a further opportunity to address the CAP once the applicant has concluded their response;

~~5.1.11~~~~5.4.12~~ Following hearing from representors and the applicant, the Presiding Member will invite CAP Members to speak on any matter relevant to the application; and

~~5.1.12~~~~5.4.13~~ At the conclusion of the CAP discussion, should the CAP defer a decision on the development subject to 7.3.6 when the development is considered at a subsequent CAP meeting the applicant and representors will not be heard again by the CAP unless the application has been re-advertised and a new hearing of representations is to be held. However, the Presiding Member may allow CAP Members to ask questions of the applicant or representor, who must limit their response to the question raised.

6. DECISION MAKING

~~6.1~~ At the discretion of the Presiding Member, the following may be excluded:

~~6.1.1~~ A representation or response to representation(s) which is received out of time;

~~6.1.2~~ A representation in relation to Category 2 development from a person who was not entitled to be given notice of the application; or

~~6.1.3~~ A representation or response to representation(s) which is otherwise invalid.

~~6.2~~ At the discretion of the Presiding Member, should any new or additional material be presented in accordance with 5.1.8, the CAP may defer consideration of the application to enable full and proper assessment of the further information, and the additional material shall be made available for viewing by the representors and/or applicant as soon as practicable.

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~~6.3 Any material to be considered by the CAP pursuant to clause 6.2 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 in consultation with the Assessment Manager.~~

Commented [KS4]: Relocated to Clause 5.3

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

~~6.4.16.1.1~~ Determine whether the proposal is seriously at variance with the Development Plan or the Planning Rules (as relevant) and provide reasons for its determination; and

~~6.4.26.1.2~~ Provide reasons for granting or refusing development authorisation ~~Development Plan Consent~~ and for the imposition of any conditions¹ (the latter relates only to assessment of development applications against the Development Plan).

6.56.2 If the CAP determines that a proposal is seriously at variance with the Development Plan or the Planning Rules (as relevant), it must refuse development authorisation of the application. ~~Development Plan Consent.~~

6.66.3 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 Member Presiding at the meeting 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.

6.76.4 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.

6.86.5 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.

6.96.6 The Presiding Member may ask a member of the public (including an applicant, representor or other member of the public) to leave or disconnect from a meeting where he or she is, in the opinion of the Presiding Member:

~~6.9.16.6.1~~ Behaving in a disorderly manner; or

~~6.9.26.6.2~~ Causing an interruption or disruption to the meeting.

¹ Reasons for conditions imposed relate only to the assessment of development applications against the Development Plan.

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7. **MINUTES AND REPORTING**

- 7.1 The CAP must ensure that accurate minutes are kept of all meetings.
- 7.2 The Assessment Manager, or a person nominated by the Assessment Manager, will take minutes of all meetings.

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7.3 The Minutes will record:

7.3.1 The names of all Members present;

7.3.2 The names of all Members from whom apologies have been received;

7.3.3 The name and time that a Member enters or leaves the meeting;

7.3.4 The name of every person who makes or responds to a representation in relation to a development application;

7.3.47.3.5 The name of every person who appears in relation to an application for review of an Assessment Manager decision (including the Assessment Manager or delegate);

7.3.4A Methods of attendance by all Members present and by every person who makes or responds to a representation;

7.3.57.3.6 In relation to each development application determined by the CAP:

7.3.517.3.6.1 The determination of the CAP as to whether the proposal is seriously at variance with the Development Plan or Planning Rules (as relevant); and

7.3.527.3.6.2 The reasons for granting or refusing Development Plan consent and for the imposition of any conditions² (the latter relates only to assessment of development applications against the Development Plan); and

7.3.537.3.6.3 ~~Where a decision is by majority vote, the decision and its mover and seconder, but not each Member's vote;~~

7.3.7 In relation to each application for review of an Assessment Manager decision:

7.3.7.1 The determination of the CAP as to whether the proposal is seriously at variance with the Development Plan or planning rules (as relevant); and

7.3.7.2 The reasons for the CAP's decision under Section 203(4) of the Act, including the reasons for the imposition of any new or varied conditions³; and

² _____
³ Reasons for conditions imposed relate only to the assessment of development applications against the Development Plan

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~~7.3.8~~ Where a decision is by majority vote, the decision and its mover and seconder, but not each Member's vote;

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~~7.3.6~~~~7.3.9~~ If an application is not determined by the CAP, the deferral of the application and the reasons for the deferral;

~~7.3.7~~~~7.3.10~~ A decision to exclude the public from attendance pursuant to the Regulations;

~~7.3.8~~~~7.3.11~~ 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;

~~7.3.9~~~~7.3.12~~ 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

~~7.3.10~~~~7.3.13~~ 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.

- 7.4 Minutes of each meeting of CAP will be made available to each member of Council within ~~three~~~~five~~ (35) business days of the meeting date.
- 7.5 A copy of the Minutes is to be included in the agenda for the next available ordinary meeting of Council.
- 7.6 Members of the public are entitled to access a copy of the Minutes within ~~three~~ ~~five~~ (3 5) business days of the meeting date.
- 7.7 All minutes must be confirmed by the Presiding Member, in conjunction with the Assessment Manager, as being accurate prior to, or at the commencement of, the following CAP meeting. On adoption of the Minutes by CAP the Presiding Member will sign and date the Minutes.

8. RECORDING OF MEETINGS

- 8.1 The meetings of CAP will be recorded by Council staff to provide reference material as part of the process of preparing accurate minutes of the meeting. Recordings will be kept securely. Confidential items will not be recorded.
- 8.2 Other than the minute taker, Assessment Manager and the Director Development & Regulatory Services (or his/her designate), recordings of the meeting are only accessible to members of Council or CAP via the Chief Executive Officer. Requests should be made within four (4) weeks of the CAP meeting date.

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- 8.3 Recordings will only be retained for a period of four (4) weeks commencing from the date the Minutes are released to CAP Members.
- 8.4 Recordings of meetings may be provided to members of the public upon request through a Freedom of Information Application within four (4) weeks of the CAP meeting date. Each application to obtain a copy of the recording will be considered on its merits and the particular circumstances of the situation.
- 8.5 Members of the media and public are not permitted to use a recording device to record any part of the meeting process unless authority is provided by way of a CAP resolution to allow this. To do so without authorisation would be a contravention of the Listening Devices Act 1972. A request to use a recording device to record deliberations or any part of the CAP meetings shall be made to the Assessment Manager or the Presiding Member prior to, or at the commencement of the meeting. The Presiding Member shall put the request to the CAP Members to vote on.

9. **ADDITIONAL PROCEDURES**

- 9.1 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, Council Assessment Panel Review of Decisions of the Assessment Manager Policy or these Meeting Procedures - the CAP may by resolution determine the procedure for itself. Any such determination may be added to these Meeting Procedures.
- 9.2 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.
- 9.3 An applicant may not defer a development application from the meeting agenda after the agenda has been sent to CAP Members, unless the deferral is agreed to by the CAP Members at the meeting. The applicant must make this request in writing to the Assessment Manager with reason(s) for their request for deferral prior to the meeting.
- 9.4 Should a CAP Member receive by post, email, or other means information in relation to a development application being assessed by Council development assessment staff which may be referred for decision to CAP at a future time, then the CAP Member should immediately forward the information received to the Assessment Manager. The CAP Members should not acknowledge receipt of the information nor enter into discussion with the sender about the information received.
- 9.5 Should a CAP Member wish to take an extended leave of absence (e.g. for more than 2 consecutive meetings) then such a request shall be made in writing to Council CEO and the Assessment Manager, who shall report the matter to Council for approval.

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9.6 The CAP may revise the Meeting Procedures as and when required but as a minimum every two years or when a new CAP is appointed.

10. SITE INSPECTIONS

10.1 The Presiding Member may on occasion call for a site visit to be organised for CAP members in consultation with the Assessment Manager. Examples of where a site visit may be included are:

10.1.1 Where the site of the development is not readily visible from the road and the topography of the land is not flat; or

10.1.2 Where there are multiple opposing representations in relation to a commercial development and the potential impacts need to be considered further through a viewing; or

10.1.3 Where the CAP determine at the CAP meeting that there is an aspect of the proposed development or site that can only be clarified by a viewing and the CAP defer making a decision until the site visit has occurred.

10.2 All CAP Members shall adhere to the Site Meeting Protocol/Rules as outlined in **Attachment C**.

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TEMPORARY ADDENDUM TO FACILITATE ELECTRONIC MEETINGS

On 9 April 2020, the *COVID-19 Emergency Response Act 2020* (**COVID Act**) commenced operation. The COVID Act will expire on the earlier of ~~31 May 2021~~ ~~9 October 2020~~ or the day on which all relevant declarations relating to the outbreak of COVID-19 within South Australia have ceased (**Expiry Day**).

Section 17 of the COVID Act provides (relevantly) that despite a provision of any other act, a requirement that a meeting occur that requires 2 or more persons to be physically present will be taken to be satisfied if the persons meet remotely using audio-visual or audio-only communication.

In reliance on Section 17 of the COVID Act, on ~~10 March 2021~~ ~~10 June 2020~~ the CAP adopts the following temporary amendments to the ordinary meeting procedures numbered 1 to 10 in the CAP Operating and Meeting Procedures, and these amendments will operate until the Expiry Day of the COVID Act.

11. DEFINITIONS

The following definitions apply in relation to these temporary amendments:

- 11.1 *connect* means able to hear and/or see the meeting by electronic means, including via a live stream.
- 11.2 *disconnect* means to remove the connection so as to be unable to hear and see the meeting.
- 11.3 *electronic* means includes a telephone, computer or other electronic device used for communication.
- 11.4 *live stream* means the transmission of audio and/or video from a meeting at the time the meeting is occurring.

12. AMENDMENTS TO CLAUSE 1

- 12.1 Sub-clause 1.4 of the Operating and Meeting Procedures is supplemented with the inclusion of the following additional paragraphs:
 - 1.4.6 *where attendance at the meeting is able to occur by electronic means (in whole or in part), include details of how to connect to the meeting; and*
 - 1.4.7 *where the meeting is to be live streamed for viewing by members of the public, include details of how to access and/or connect to the live stream.*
- 12.2 Sub-clause 1.6 of the Operating and Meeting Procedures is amended with the deletion of the words “and at the Council’s offices”.

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13. ADDITIONAL CLAUSE 3A

A new clause 3A is inserted into the Operating and Meeting Procedures as follows:

- 3A.1 *One or more Panel members may attend a meeting via electronic means.*
- 3A.2 *A Member attending a meeting by electronic means is taken to be present at the meeting provided that the Member:*
 - 3A.2.1 *can hear and, where possible, see all other Members who are present at the meeting;*
 - 3A.2.2 *can hear and, where possible, see all representors (or their representatives) and applicants (or their representatives) who speak at the meeting;*
 - 3A.2.3 *can be heard and, where possible, seen by all other Members present at the meeting; and*
 - 3A.2.4 *can be heard and, where possible, seen by the person recording the minutes of the meeting.*
- 3A.3 *Where a meeting occurs via electronic means, it shall (to the extent that the public is not able to physically attend the meeting) be live streamed.*
- 3A.4 *Where a meeting is being live streamed, the live stream shall be disconnected only during those parts of the meeting during which the public has been excluded from attendance pursuant to Regulation 13(2) of the Regulations.*
- 3A.5 *Where the public has been excluded from attendance pursuant to Regulation 13(2) of the Regulations, the Assessment Manager or a person nominated by the Assessment Manager shall ensure that all parties except for CAP members disconnect from or are disconnected from the meeting.*

14. AMENDMENTS TO CLAUSE 5

- 14.1 Sub-clause 5.1 of the Operating and Meeting Procedures is supplemented with the inclusion of the following additional paragraph after 5.1.4:
 - 5.1.4A *Clauses 5.1.1 to 5.1.4 are satisfied if a representor or applicant (as the case may be) appears via electronic means. The Presiding Member may require that any such appearance be via electronic means.*

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15. AMENDMENTS TO CLAUSE 6

15.1 Sub-clause 6.69 of the Operating and Meeting Procedures is amended with the inclusion of the words “or disconnect from” after the word “leave”. As amended, sub-clause 6.9 is as follows:

6.69 The Presiding Member may ask a member of the public (including an applicant, representor or other member of the public) to leave or disconnect from a meeting where he or she is, in the opinion of the Presiding Member:....”

15.2 Clause 5 of the Ordinary Meeting Procedures is supplemented with the inclusion of the following additional paragraph:

5.4.2 Where a person is entitled or has been requested to appear before the CAP in relation to an application for review of an Assessment Manager decision (including the Assessment Manager or delegate), the person may appear by electronic means. The Presiding Member may require that any such appearance be via electronic means.

16. AMENDMENTS TO CLAUSE 7

Sub-clause 7.3 of the Operating and Meeting Procedures is supplemented with the inclusion of the following additional paragraph:

7.3.4A methods of attendance by all Members present and by every person who makes or responds to a representation.

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Guidelines & Protocols for Council Assessment Panel Meetings

The Development Act 1993 and the Development Regulations 2008 provide for the Council to be responsible for the management of most development within its area. The Council is the authority for determining most applications for development within its area.

The Council, pursuant to Section 83 of *Planning Development and Infrastructure Act 2016* has established a Council Assessment Panel known as the Adelaide Hills Council Assessment Panel (hereafter referred to as “the CAP”) to assist the Council to exercise or perform its development assessment functions in accordance with the delegations that the Council has conferred upon it.

Where the CAP hears representors and/or the applicant

- (1) This should not be a debate but an opportunity for persons to summarise and/or respond to representations and to answer any questions that the CAP may have. The purpose of such representations and submissions is to ensure that the CAP is informed about any relevant planning issues with respect to any particular matter. The Presiding Member will restrict submissions and questions to the planning issues related to a particular matter.
- (2) Representors to the CAP, or their nominated spokesperson, will speak first followed by the applicant who will be invited to respond to the points made by the representors. Either party may speak on their own behalf or seek assistance from other persons such as lawyers, planning consultants or other advisors. Representations are to be limited to a maximum of 5 minutes per party but the Presiding Member has discretion to extend this by 5 minutes for the purpose of questions from the CAP members or staff. Where a person is nominated to speak on behalf of a recognised group of people (e.g. a resident’s association or community group), then the Presiding Member shall upon request from such a group, have the ability to grant such a person more time as deemed appropriate (a maximum of 20 minutes) to speak in support of their representation. In such an instance the applicant shall be granted the same amount of time as the group to respond to representations.
- (3) Members of the CAP may ask the representors or applicant questions to clarify points of a planning nature only. Members of the CAP acknowledge that they should not use ‘leading questions’. Questions will only be initiated through the Presiding Member.
- (4) If all information is before the CAP, a decision will usually be made at the time the matter is considered. However, on occasions the CAP may defer the matter for whatever reason (e.g. to enable a site visit to occur or to seek further information to be obtained to fully address matters raised during consideration of the matter). The development assessment staff may also require further time to complete the assessment where further information is sought.

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- (5) The CAP will then deliberate on each item in public (unless it is a confidential matter pursuant to the provisions of Regulation 13(2) of the *Planning Development and Infrastructure (General) Regulations 2017*).
- (6) At the conclusion of the Hearing of Representations and the applicant, the CAP may either resolve to approve, refuse or for whatever reason, defer a decision on the application. When the application has been deferred and then brought back before the CAP for consideration, the applicant and representor(s) will not again be heard by the CAP unless the application has been readvertised and a new Hearing of Representations is to be held. However the Presiding Member may allow CAP Members to ask questions of the applicant or the representor who must limit their response to the question raised.
- (7) Where notice is given to representors in accordance with the requirements of the Development Regulations 2008 and the representor is not present at the scheduled meeting when the matter is to be considered, the CAP will not defer consideration of the matter to enable the representor to be present. Further, in the event the matter is deferred as contemplated in point (6) above, then the representor shall not have a right to be heard.
- (8) Each matter of development assessment, whether it be an application for consent or the imposition or variation of conditions should be considered and determined individually upon its own merits.
- (9) The role of the CAP is not one of mediator or arbitrator for parties expressing divergent views but is as a decision maker charged with the responsibility of assessing each proposal against the relevant Development Plan provisions. It is a role that is inquisitorial rather than adversarial. The CAP does not therefore have a role as a mediator or arbitrator at its meetings or otherwise between an applicant and representors. The Council will, where considered appropriate, support mediation processes between the parties as a means to try and resolve issues for consideration by the CAP.

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Council Assessment Panel

Presentation Procedures

All persons presenting to the CAP shall adhere to the following Presentation Procedures when addressing the Council Assessment Panel (CAP):

1. Persons addressing the CAP shall give their full name, location of their property in relation to the applicant's property, an indication as to whether they are speaking on their own behalf or for another person or a group. When responding to questions or providing information to the CAP, persons should address the Presiding Member.
2. The order of presentations will be as follows:
 - a. Council staff will present a video in relation to the item. Members of the CAP may then ask questions of clarification.
 - b. The representors to the application or their nominee will make their submissions followed by questions from the CAP.
 - c. The applicant or their nominee will make his/her submission, followed by questions from the CAP.
3. The representors and applicant are permitted a maximum of 5 minutes each for their presentations, and should allow time for questions from the CAP. Persons presenting to the CAP shall be succinct, avoid repetition and focus on key points remembering the members of the CAP have a copy of their submission. The applicant will then be given an opportunity to respond to the representations made to the CAP. Where a person is nominated to speak on behalf of a recognised group of people (e.g. a resident's association or community group), then the Presiding Member shall upon request from such a group, have the ability to grant such a person more time as deemed appropriate (maximum of 20 minutes) to speak in support of their representations. In such an instance the applicant shall be granted the same amount of time as the group to respond to such representations.
4. The CAP will then deliberate on the matter and make its determination to approve, refuse or for whatever reason defer a decision on the application.
5. It should be noted that the CAP will not tolerate any inflammatory, derogatory or racist comments and persons presenting to the CAP are requested to restrict their submissions to planning matters only.
6. It should also be noted that a petition cannot be accepted by the CAP, and should be submitted to the Council at its next available ordinary meeting.

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7. The use of slides, maps, videos, in addition to written and verbal submissions is permitted. It should be noted by persons presenting to the CAP that a copy of any information, photos, maps, plans, videos etc. presented to the CAP on the night is required for Council records. Persons requiring the use of audio visual equipment shall advise staff at least a day before the scheduled meeting of their audio visual requirements in order to facilitate the provision of these resources.
8. Representors are provided with only one opportunity to address the CAP. If a decision on a proposal is deferred by the CAP after the hearing of representations, advice of the new meeting date will be provided in writing but no further opportunity to address the CAP will be given.

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Site Meeting Protocols/Rules for CAP Members where Applicant Present

1. All site meetings must be arranged by and be conducted in the presence of a Council Officer who will manage and conduct the meeting.
2. Such site meetings should involve all CAP members where possible.
3. The purpose of the meeting is to gather information on the application. The Council Officer present will summarise and clarify any aspect of the application for CAP members and may seek information from the applicant and others present.
4. No individual discussions about the application should take place directly between a CAP member and the applicant.
5. Any questions/queries by a CAP member should be addressed to the Council Officer present.
6. It is inappropriate for any CAP member to make any comment/express an opinion/support or express any negative views on the application at the meeting.
7. Individual site visits by CAP members should be very rare and totally avoided if possible. If unavoidable there must be no contact nor any discussions with any applicant, resident or interested party to avoid any perception of unfairness, bias, etc. CAP members must adhere to the Code of Conduct. Except where required as part of a formal CAP viewing of a development site, CAP members should not enter a development site or a neighbouring property, even if invited by the land owner/applicant or a neighbouring land owner.
8. Visual drive-bys (not site visits) of a site/locality are not prohibited but extreme caution must be exercised and the procedure set out in paragraph 7 carefully followed.
9. For their own protection CAP members should record the time/date/duration of any site visit/drive-by and if any other person was present/spoken to.
10. Failure to comply with the appropriate procedures may result in significant penalties for a CAP member.
11. The above rules must be read in conjunction with the Code of Conduct.

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