

## CITY OF WEST TORRENS



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### Terms of Reference

## COUNCIL ASSESSMENT PANEL

### PREAMBLE

Pursuant to section 83 of the *Planning, Development and Infrastructure Act 2016* (the Act) the Council may establish an Assessment Panel for the purpose of acting as a designated authority as that term is defined in the Act.

These Terms of Reference detail the operating parameters of Council's Assessment Panel.

### 1. ESTABLISHMENT

Pursuant to section 83 of the *Planning, Development and Infrastructure Act 2016* (Act) Council establishes a Council assessment panel to be known as the City of West Torrens Council Assessment Panel (referred to in these Terms of Reference as "the CAP") for the purpose of acting as a "*relevant authority*" in respect of relevant development assessment matters.

The Terms of Reference have been reviewed and this document constitutes the Terms of Reference for the CAP from 12 December 2018.

### 2. OBJECTIVES

The objectives of the CAP are as follows:

- 2.1 To act as the relevant authority for the assessment of proposed development to be undertaken in the council area pursuant to legislative requirements.
- 2.2 To provide advice and reports to Council on trends, issues and other matters relating to planning or development that have become apparent or arisen through its assessment of applications under this Act; and
- 2.3 To perform other functions (other than functions involving the formulation of policy) assigned to the CAP by the Act.

### 3. MEMBERSHIP

- 3.1 Membership of the CAP will be appointed by Council taking into account the requirements of sections 83(1)(b)(i), 83(1)(c) and 83(1)(d) of the Act.
- 3.2 The CAP will consist of a maximum of five (5) members, only one (1) of whom may be a currently sitting Council Member.
- 3.3 The Presiding Member will be appointed by Council and must be a person who has reasonable knowledge of the operation and requirements of the Act; and have experience in a recognised profession.
- 3.4 The Council will appoint a Council Member to stand as a Deputy Member to a Council Member appointed to the CAP.
- 3.5 The Council may appoint an Independent Member to stand as a Deputy Member to the Independent Members appointed to the CAP.
- 3.6 The CAP will appoint the Deputy Presiding Member at its first meeting.
- 3.7 If neither the Presiding Member nor Deputy Presiding Member are in attendance at the commencement of a meeting, either in person or remotely, then the Assessment Manager may open the meeting and the present CAP Members can nominate a Presiding Member from the CAP Members present.
- 3.8 The CAP may appoint 1 or 2 members to act as additional members of the assessment panel for the purposes of dealing with a matter that it must assess under this Act provided the person holds a qualification, or has expertise or experience, recognised by a practice direction for the purposes of section 85 of the Act.
  - 3.8.1 Additional Members are taken to be members of the assessment panel in all respects with the exception of being able to vote on matters for determination. As such they will be subject to the CAP Members Code of Conduct.
- 3.9 Members will hold their positions for a period of 2 years, commencing on 1 January 2019, expiring on 31 December 2020.
- 3.10 A member whose term of office expires may nevertheless continue to act as a member for a period of up to 6 months until he or she is reappointed or a successor is appointed (whichever the case may be) except in the instance they have not obtained accreditation as required.
- 3.11 A member may resign from the CAP by giving notice, in writing, to that effect to the Chief Executive Officer (CEO).
- 3.12 All members of the CAP are public officers for the purpose of the *Independent Commissioner Against Corruption Act 2012* and Part 7 Division 4 (Offences relating to Public Officers) of the *Criminal Law Consolidation Act 1935*. As such they are subject to the provisions of those Acts, including reporting requirements.
- 3.13 Independent Members to the CAP are subject to the Code of Conduct relating to Assessment Panel Members.

- 3.14 Council Members to the CAP are subject to both the Code of Conduct relating to Assessment Panel Members and the Code of Conduct for Council Members.
- 3.15 Upon commencement section 88 of the Act, Independent Members of the CAP must be Accredited Professionals pursuant to section 83(1)(c) of the Act.

#### **4. REMOVAL OF A MEMBER**

- 4.1 Subject to giving a member an opportunity to be heard or to make a written submission, the Council may resolve to remove a member for:
  - 4.1.1 breach of, or failure to comply with, the conditions of appointment; or
  - 4.1.2 failure to disclose his or her financial interests in accordance with section 83(1)(e) of the Act; or
  - 4.1.3 failure to comply with a requirement under section 83(1)(g) of the Act or a breach of, or failure to comply with, a code of conduct in accordance with the Schedule 3(1) of the Act.
  - 4.1.4 failure to obtain Accredited Professional status, pursuant to clause 3.14.
  - 4.1.5 or any for any other reason as Council sees fit.
- 4.2 The Council must substitute existing members of the CAP with new members if directed to do so by the Minister acting on the recommendation from the State Planning Commission.
- 4.3 Particulars of the grounds for removal will be communicated to the member at least one (1) calendar month before the meeting of the Council at which the matter will be determined.
- 4.4 The member will provide any written representation in response to the particulars at least fourteen (14) days before the meeting of the Council at which the matter will be determined.
- 4.5 The determination of the Council will be communicated to the member, and in the event of an adverse determination the member shall cease to be a member immediately when the Council has communicated its determination to him/her.
- 4.6 The determination must be communicated to the member:
  - (a) personally; or
  - (b) by delivering the notice (whether by post or otherwise) to the usual place of residence of the member or to another place authorised in writing by the member for the purpose of receiving notices of CAP or Council meetings, as the case may be; or
  - (c) by leaving it for the member at an appropriate place at the principal office of the Council, if authorised in writing by the member to do so for the purpose of receiving notices of CAP meetings, as the case may be; or

- (d) by a means authorised in writing by the member as being an available means of giving notice (e.g. facsimile transmission or email) for the purpose of receiving notices of CAP or Council meetings, as the case may be.

4.7 Notice of the determination not given in accordance with clause 4.6 is taken to have been validly given if the CEO considers it impracticable to give the notice in accordance with that clause and takes action the CEO considers reasonably practicable in the circumstances to bring the notice to the attention of the member.

4.8 A member who has been removed from the CAP pursuant to clause 4 of these Terms of Reference may apply to the Council for reappointment to the CAP. The decision whether to allow a person to re-join the CAP is at the Council's absolute discretion.

## **5. VACANCY OF OFFICE**

5.1 The office of a member will become vacant if the member:

- 5.1.1 dies;
- 5.1.2 completes a term of office and is not reappointed;
- 5.1.3 resigns by written notice to the CEO;
- 5.1.4 is convicted of a relevant offence; or
- 5.1.5 is removed from office under clause 4 of these Terms of Reference.

5.2 If a vacancy in membership occurs at any time then the Council will fill that vacancy at the earliest opportunity by Council resolution.

## **6. FUNCTIONS AND RESPONSIBILITIES**

6.1 The functions and responsibilities for the CAP are as follows:

6.1.1 In accordance with the delegations conferred by the Council, the CAP is charged with responsibility for all matters arising under the *Development Act 1993* until such a time as the powers and functions with regard to delegations are operational under the *Planning, Development and Infrastructure Act 2016*.

6.1.2 The CAP must act, at all times, in strict accordance with relevant legislation (being the Act and the Regulations) including any relevant code of conduct under the Act and/or Regulations which are relevant to the CAP in the performance of its functions.

6.2 The CAP will meet on the second Tuesday of each month at 5:00pm.

## **7. CONFLICT OF INTERESTS**

7.1 Members of the CAP must disclose their financial interests in accordance with section 83(1)(e) and Schedule 1 of the Act. Failure to do so may result in the removal of the member from office pursuant to clause 4 of these Terms of Reference.

- 7.2 Members must not act in relation to a development if he or she has a direct or indirect pecuniary interest in any aspect of the development or any body associated with any aspect of the development in accordance with section 83(1)(g). Failure to do so is an offence with a maximum penalty of \$20 000.

## **8. REPORTS TO COUNCIL**

The CAP will report to Council at least once per year, detailing issues for consideration by the Council. The Annual Report should include the following information:

- (a) The number of meetings held;
- (b) The number and nature of applications that were considered (including the number of confidential items considered);
- (c) Advice in respect of any trends, issues and other matters that have become apparent or arisen through the CAP's assessment of applications, and
- (d) The number of decisions of the CAP that were appealed to the Environment, Resources and Development Court.

## **9. LIABILITY**

No civil liability attaches to a member of a committee for an honest act or omission in the exercise, performance or discharge, or purported exercise, performance or discharge, of the members' or committee's powers, functions or duties. Such a liability attaches instead to the Council.

## **10. REMUNERATION**

The members of the CAP, including Deputy Members and Members appointed in accordance with clause 3.7 of these Terms of Reference, will receive an annual allowance (exclusive of GST), as approved by Council.