

# **Mid Murray Council Assessment Panel**

## **Terms of Reference**

**Adopted 9 February 2021**

### **1. ESTABLISHMENT OF THE COUNCIL ASSESSMENT PANEL**

- 1.1. The Mid Murray Council Assessment Panel (CAP) is appointed as a relevant authority under Section 82 and 83 of the *Planning, Development and Infrastructure Act 2016* (Act) by resolution of the Mid Murray Council.
- 1.2. The CAP is a relevant authority under the *Planning, Development & Infrastructure Act 2016* and, during transition to the Act, will act as a delegate of the Council for the purpose of the *Development Act 1993*.

### **2. MEMBERSHIP OF CAP**

#### **Appointment of Members**

- 2.1. The CAP will be constituted of five (5) Members (CAP Members), to be appointed by the Council, comprising:
  - 2.1.1. one member of the Council (Council Member); and
  - 2.1.2. four (4) Independent Members (Independent Members) inclusive of the Presiding Member, not being members of the Council or State Parliament.
- 2.2. The Council may determine that the CAP will be constituted by a different number of members for different classes of development, in which case the relevant details will be specified by the Council.
- 2.3. When appointing CAP Members, the Council may have regard to the following:
  - 2.3.1. the candidate's knowledge of the operation and requirements of the Act and, during transition to the Act, the *Development Act 1993*;
  - 2.3.2. in relation to Independent Members, the candidate's qualifications or experience in a field that is relevant to the activities of the CAP;
  - 2.3.3. in relation to Independent Members, the candidate's qualification as an Accredited Professional (refer to Clause 8.4);
  - 2.3.4. in relation to the Council Member, the candidate's experience in local government;
  - 2.3.5. that a balance of qualifications and experience among CAP Members is desirable;
  - 2.3.6. that gender diversity among CAP Members is desirable; and
  - 2.3.7. such other matters as the Council considers relevant.

#### **Appointment of Deputy Members**

- 2.4. The Council may appoint at least one Deputy Member to the CAP for the purpose of filling in for a CAP Member who is unable to attend a CAP meeting or part of a CAP meeting. The Council CAP member, however, cannot act as a Deputy Member for any other CAP Member (i.e. Independent member). A Council CAP member may act a Deputy Member if the elected CAP member is not available for the CAP meeting.

## **2. MEMBERSHIP OF CAP CONT'D**

### **Appointment of Deputy Members cont'd**

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

## **3. DISCLOSURE OF INTEREST**

- 3.1. A member of the CAP must:
  - 3.1.1. on appointment, submit to the Chief Executive Officer (CEO) a return in the prescribed form relating to his or her direct or indirect pecuniary interests in accordance with the regulations; and
- 3.2. A member who has submitted a return under this Schedule may at any time notify the CEO of a change or variation in the information appearing on the register in respect of the member.

## **4. EXPRESSION OF INTEREST**

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

## **5. PRESIDING MEMBER AND ACTING PRESIDING MEMBER**

- 5.1. The Council will appoint an Independent Member to be the Presiding Member of the CAP for such term and on such conditions as determined by the Council.
- 5.2. The Presiding Member will preside at any CAP meeting at which he or she is present.
- 5.3. In the event that the Presiding Member is not present at a meeting (or part thereof) the Acting Presiding Member will be appointed by those CAP Members who are present at the meeting. The CAP will determine its Acting Presiding Member at its first meeting of the newly constituted Panel.
- 5.4. In the event that the Presiding Member is absent from a meeting, the Assessment Manager, will preside at the meeting until such time as the meeting appoints an Acting Presiding Member.
- 5.5. A Presiding Member is eligible to be reappointed as the Presiding Member at the expiry of his or her term of office as Presiding Member.
- 5.6. In the event that the Presiding Member resigns or is removed from office, the Council will appoint an Independent Member to be the Presiding Member for such term and on such conditions as determined by the Council.

**6. TERM OF APPOINTMENT**

- 6.1. Subject to Clause 9, Independent Members will be appointed for a term of up to two (2) years and on such other conditions as determined by the Council.
- 6.2. Subject to Clause 9, the Council Member will be appointed for a term of up to two (2) years and on such other conditions as determined by the Council.
- 6.3. Deputy Members will be appointed for a term of up to two (2) years and on such other conditions as determined by the Council.
- 6.4. A CAP Member is eligible for reappointment for a further term, or further terms, upon the expiry of his or her current term.
- 6.5. A CAP Member whose term of office has expired may nevertheless continue to act as a Member until the vacancy is filled or for a period of six (6) months from the expiry of the Member's term of office, whichever occurs first.

**7. VACANCY IN MEMBERSHIP**

- 7.1. In the event of a vacancy arising in the office of a CAP Member, the Council may appoint a person to be a CAP Member for the balance of the original CAP Member's term of office as soon as is reasonably practicable in the same manner as the original CAP Member was appointed.
- 7.2. The CAP Member appointed to fill a vacancy may be a Deputy Member in which case that person will automatically cease to be a Deputy Member.
- 7.3. In appointing a CAP Member pursuant to Clause 7.1, the Council may have regard to the matters in clause 2.2 or 2.3 as the case requires.
- 7.4. A vacancy in the membership of the CAP will not invalidate any decisions of the CAP, provided a quorum is maintained during meetings.

**8. CONDITIONS OF APPOINTMENT**

- 8.1. At all times, CAP Members must act honestly, lawfully, in good faith, and in accordance with any code of conduct applicable to CAP Members.
- 8.2. CAP Members may be remunerated as determined by the Council for the reasonable time and costs incurred by CAP Members in attending CAP meetings.
- 8.3. Different levels of remuneration may be fixed by the Council for Independent Members, the Council Member, the Presiding Member and Deputy Members.
- 8.4. Upon the commencement of Section 83(1)(c) of the Act:
  - 8.4.1. CAP Members, excluding a member who is a member or former member of the Council, must be accredited professionals under the Act; and
  - 8.4.2. CAP Members who are members or former members of the Council must have sufficient experience in local government to satisfy the Council that they are appropriately qualified to act as a member of the CAP.

## **9. REMOVAL FROM OFFICE**

- 9.1. A CAP Member will automatically lose office where:
  - 9.1.1. the CAP Member has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors;
  - 9.1.2. the CAP Member has been convicted of an indictable offence punishable by imprisonment;
  - 9.1.3. in the case of a Council Member, the member ceases to be a member of the Council.
- 9.2. Subject to Clause 9.4, the Council may by resolution remove a CAP Member from office where, in the opinion of the Council, the behaviour of the CAP Member amounts to:
  - 9.2.1. a breach of a condition of his or her appointment as a CAP Member;
  - 9.2.2. misconduct;
  - 9.2.3. a breach of any legislative obligation or duty of a CAP Member;
  - 9.2.4. neglect of duty in attending to role and responsibilities as a CAP Member;
  - 9.2.5. a failure to carry out satisfactorily the duties of his or her office;
  - 9.2.6. a breach of fiduciary duty that arises by virtue of his or her office;
  - 9.2.7. inability to carry out satisfactorily the duties of his or her office;
  - 9.2.8. except in relation to Deputy Members, a failure without reasonable excuse to attend consecutive CAP meetings without the CAP previously having resolved to grant a leave of absence to the CAP Member; or
  - 9.2.9. in relation to a Deputy Member, a failure without reasonable excuse on three (3) consecutive occasions to attend a meeting of the CAP when requested to do so; or
  - 9.2.10. If the Minister provides the Council direction to remove a Panel member from the CAP; or
  - 9.2.11. for any other reason the Council considers appropriate.
- 9.3. The removal of the CAP Member pursuant to Clause 9.2 will take effect upon the Council passing a resolution to remove the CAP Member from office (unless the Council resolves otherwise), and such resolution will be confirmed in writing to the CAP Member within seven (7) days of being passed.
- 9.4. Prior to resolving to remove a CAP Member from office pursuant to Clause 9.2, the Council must:
  - 9.4.1. give written notice to the CAP Member of its intention to remove the CAP Member from office pursuant to Clause 9.2; and
  - 9.4.2. the alleged behaviour of the CAP Member falling within Clause 9.2.1 or reason the Council considers it appropriate to remove the CAP Member, not less than seven (7) days before the meeting of the Council at which the matter is to be considered;

9. **REMOVAL FROM OFFICE CONT'D**

- 9.4.3. give the CAP Member an opportunity to make submissions to the Council on its intention to remove the CAP Member from office either orally at the Council meeting at which the matter is to be considered, or in writing by such date as the Council reasonably determines; and
- 9.4.4. have due regard to the CAP Member's submission in determining whether to remove the CAP Member from office.

10. **TERMS OF REFERENCE**

- 10.1. In respect of development applications lodged under the *Development Act 1993*, the CAP is the delegate of the Council in accordance with Staff Delegations as follows:
  - 10.1.1. in determining Category 2 or 3 development applications where representors wish to be heard on their representation. Category 2 or 3 development applications with no representors who wish to be heard will be determined by Council's Administration;
  - 10.1.2. in respect to Clause 10.1.1 above, where an application has been publicly notified and no representors wish to appear before CAP, the CAP delegates the assessment of the application to the Council Assessment Manager or delegate;
  - 10.1.3. variations of development consent and conditions, where the original application was assessed by the CAP and whereby the Planning and Design Code requires the variation to undergo public notification, and where a representor objects or wishes to appear in support of their submission;
  - 10.1.4. an application where the Council is a party to an application or the Applicant in its own right where the development exceeds a cost of \$100,000;
  - 10.1.5. the Assessment Manager or delegate have the discretion to present an Application to the CAP during the transition of the *Development Act 1993* to the *Planning, Development and Infrastructure Act 2016* and subsequent implementation date of Phase 3 of the Planning and Design Code that include:
    - 10.1.5.1 providing comment on projects declared to be major pursuant to Section 46 of the *Development Act 1993*;
    - 10.1.5.2 providing comment on applications pursuant to the Crown development provisions of Section 49 of the *Development Act 1993* other than where the nature of development is deemed to be minor by Council's Administration;
  - 10.1.6. the objectives of the *Character Preservation (Barossa Valley) Act 2012*.
- 10.2. The specific nature of development applications to be presented to the CAP as per the Staff Delegations are:
  - 10.2.1. resolving to grant development plan consent to a non-complying development application pursuant to the *Development Act 1993* except non-complying applications that the Director – Development & Environmental Services or the Manager – Environmental Services has determined to be of a minor nature;

## 10. TERMS OF REFERENCE CONT'D

- 10.2.2. Category 2 and 3 development applications where third party representor(s) do not support the proposal and have a desire to be heard in support of their submission;
- 10.2.3. applications for development plan consent which are performance assessed, which require public notification and where a representor wishes to appear in support of their submission;
- 10.2.4. an application where the Council is a party to an application or the Applicant in its own right, where the development exceeds a cost of \$100,000.
- 10.3. The CAP shall act at all times in strict accordance with relevant legislation and with written policies, guidelines and protocols of the Council which are relevant to the CAP in the performance of its functions.
- 10.4. The Council delegates authority to the Mid Murray CAP to determine its own meeting times.
- 10.5. The CAP shall meet at the Council Chamber at Main Street, Cambrai or at such other place as the CAP may determine from time to time.
- 10.6. A quorum for a meeting of the CAP shall be one half of the total number of members of the CAP in office divided by two (2) (ignoring any fraction) and adding one (1). To form a quorum a minimum of 3 Panel members must be in attendance.
- 10.7. A special meeting of the CAP may be required in special circumstances and will be called at the discretion of the Presiding Member in consultation with the Assessment Manager. The Assessment Manager must contact the Presiding Member and all other Panel Members to determine if Panel Members are able to attend a special meeting and if a quorum can be achieved, if so, then a special meeting may be called. An agenda for the meeting shall be prepared and distributed in accordance with the Mid Murray Council CAP Meeting and Operating procedures.
- 10.8. All decisions of the CAP shall be made on the basis of a majority decision of the members present.
- 10.9. Subject to a member of the CAP having a direct or indirect personal or pecuniary interest in accordance with Section 3 (7) of the Act, each member present at a meeting of the CAP must vote on a question arising for decision.
- 10.10. All members of the CAP, including the Presiding Member, shall have a deliberative vote, and in the event of an equality of votes, the Presiding Member shall have a casting vote.
- 10.11. If the Presiding Member of the CAP is absent from a meeting of the Panel, the Acting Presiding Member will preside at the meeting.
- 10.12. If the Presiding Member of the CAP and the Acting Presiding Member are absent from a meeting, a member of the CAP shall be chosen from those present to undertake the role of Presiding member at that meeting.
- 10.13. The Assessment Manager is responsible for ensuring that accurate minutes are kept of all proceedings of the Panel. The minutes must include any disclosure of a conflict of interest.
- 10.14. Insofar as the Act and these Terms of Reference do not prescribe the procedure to be followed at a meeting of the CAP, the Panel may determine its own procedure.

**11. ASSESSMENT MANAGER**

- 11.1. The Assessment Manager of the Mid Murray CAP shall be appointed by the Chief Executive Officer.

**12. COMPLAINTS AGAINST THE CAP OR MEMBER OF THE CAP**

- 12.1. No member of the CAP or Council will have any responsibility for handling complaints against CAP Members.
- 12.2. A person may make a complaint to the State Planning Commission (SPC) if the person believes a member of a CAP has acted in contravention of the code of conduct.
- 12.3. A complaint must:
- 12.3.1. be in writing; and
  - 12.3.2. contain particulars of the allegation on which the complaint is based; and
  - 12.3.3. be verified by statutory declaration.
- 12.4. Except with the approval of the Commission, a complaint must not be lodged with the Commission more than six (6) months after the day on which the complainant first had notice of the matters alleged in the complaint.

**13. MINISTER'S CODE OF CONDUCT**

- 13.1. *The Code of Conduct* is the code of conduct to be observed by members of an assessment panel adopted by the Minister under Clause 1 (1) (c) of Schedule 3 of the Act. *The Code of Conduct* sets out the standard of conduct and professionalism that are to be observed by all members of assessment panels under the *Planning, Development and Infrastructure Act 2016*. The *Minister's Code of Conduct* forms Appendix 1. The members of the Mid Murray CAP shall at all times comply with the Minister's Code of Conduct.

**14. LODGEMENT OF DEVELOPMENT APPLICATIONS**

Where an applicant seeks to have the Council lodge a Development Application on their behalf on the SA Planning Portal, the application will need to be submitted at one of the following locations:

- Mannum Council Office, 49 Adelaide Road, Mannum
- Cambrai Council Office, Main Street, Cambrai
- Blanchetown Community Hub, 3 Shaw Street, Blanchetown
- Morgan & Districts Community Hub, Corner Fourth & Eighth Streets, Morgan.

**15. PAYMENT OF FEES FOR DEVELOPMENT APPLICATIONS**

The payment of Development Application fees can be made via the SA Planning Portal or at one of the following locations:

- Mannum Council Office, 49 Adelaide Road, Mannum
- Cambrai Council Office, Main Street, Cambrai
- Blanchetown Community Hub, 3 Shaw Street, Blanchetown
- Morgan & Districts Community Hub, Corner Fourth & Eighth Streets, Morgan.

**Appendix 1**  
**Minister's Assessment Panel Members - Code of Conduct**





Assessment  
Panel  
Members

# Assessment Panel Members – Code of Conduct

## Introduction

Under Schedule 3 of the *Planning, Development and Infrastructure Act 2016* (PDI Act) the Minister may adopt a code of conduct to be observed by members of an assessment panel established under the PDI Act. This code of conduct sets out standards of conduct and professionalism that are to be observed by all members of assessment panels under the PDI Act. This code of conduct must be read in conjunction with the Act.

For the purposes of the PDI Act, a key requirement is that all members of assessment panels must carry out, and be seen to carry out, their functions with the highest ethical standards so as to maintain public confidence in the integrity of development assessment under the Act.

The code is the key tool to ensure that all members of assessment panels act honestly and ethically with a high degree of accountability. If a member of an assessment panel has any doubt in regard to any function they may perform under the Act they should seek the advice of the panel's assessment manager or some other appropriate person.

While some members of an assessment panel may also be bound by other codes of conduct or professional standards issued by their respective professional associations, they have no legal status under the Act. If there is a conflict between a requirement in this code of conduct and any other professional code or standard, this code prevails for the purposes of the Act.

## Legislative framework

Under section 15 of the PDI Act, all members of assessment panels are subject to a statutory duty as described in the section as follows:

- (1) *It is expected that a person or body that—*
- (a) *seeks to obtain an authorisation under this Act; or*
  - (b) *performs, exercises or discharges a function, power or duty under this Act; or*
  - (c) *takes the benefit of this Act or is otherwise involved in a process provided by this Act, will—*
  - (d) *act in a cooperative and constructive way; and*
  - (e) *be honest and open in interacting with other entities under this Act; and*
  - (f) *be prepared to find reasonable solutions to issues that affect other interested parties or third parties.*

- (2) *Without limiting subsection (1), a person or body performing, exercising or discharging a function, power or duty under this Act must-*
- (a) *exercise professional care and diligence; and*
  - (b) *act honestly and in an impartial manner; and*
  - (c) *be responsible and accountable in its conduct; and*
  - (d) *comply with any code of conduct, service benchmark or other requirement that applies in relation to the person or body.*
- (3) *The Minister may, after taking into account the advice of the Commission, establish and maintain service benchmarks for the purposes of this section.*
- (4) *The principles and benchmarks under this section— (a) do not give rise to substantive rights or liabilities; but (b) may lead to action being taken on account of a breach of a code of conduct or professional standard that applies in relation to a relevant person or body.*

## **Code of conduct requirements**

In acting as a member of an assessment panel, a member must comply with the following requirements.

### **General duties**

1. A member of an assessment panel must in performing, exercising or discharging a function, power or duty under the PDI Act, act in accordance with the general duties as set out in section 15 of the PDI Act.

### **Act in the public interest**

2. A member of an assessment panel must act in a manner that promotes or protects the public interest.

### **Procedures**

3. A member of an assessment panel must ensure that the procedures specified in the Act or prescribed in the *Planning Development and Infrastructure (General) Regulations 2017* are complied with.
4. A member of an assessment panel must comply with the panel procedures in relation to public comments and communication with the media

### **Regard for honesty**

5. A member of an assessment panel must act with integrity, good faith and equity and must not discriminate toward any person in performing their duties.
6. A member of an assessment panel must advise the assessment manger and the Commission immediately if the member:
  - a. is the subject of a formal investigation into, or have been found to have, breached any other code of conduct, ethical standards or similar, either in another State or through a professional body of which they are a member; or
  - b. has been found guilty of a breach of any Act related to planning, building or a development related matter.

### **Conflict of interest**

7. A member of an assessment panel who has a direct or indirect personal or pecuniary interest in a matter before the council development assessment panel (other than an indirect interest that exists in common with a substantial class of persons)—
  - a. must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the panel; and
  - b. must not take part in any hearings conducted by the panel, or in any deliberations or decision of the panel, on the matter and must be absent from the meeting when any deliberations are taking place or decision is being made.
8. A member of an assessment panel will be taken to have an interest in a matter for the purposes of item 7 if an associate of the member (within the meaning of section 3 (7) of the PDI Act) has an interest in the matter.
9. If an interest has been declared by a member of an assessment panel the nature of the interest must be recorded in the minutes of the meeting.

### **Making decisions and taking action**

10. A member of an assessment panel must take all reasonable steps to obtain all relevant facts and information when making a decision on a matter before the panel.
11. A member of an assessment panel must ensure that the member's decisions and actions are reasonable, fair and appropriate to the circumstances, based on consideration of all relevant facts obtained, and supported by adequate documentation.
12. A member of an assessment panel must not approach or discuss with an applicant or representor any application which is either before the panel or will come before the panel at some future time expect during the course of a panel meeting where the application forms part of the agenda and the applicant or representor has a right to be heard by the panel.
13. Except where required as part of the assessment of a particular decision such as a formal panel viewing of a site of a proposed development, you should not enter the site even if invited by the land owner or a neighbouring property owner or any other person.
14. A member of an assessment panel must not:
  - a. engage in consultation outside of the panel process with any party on a proposed development application that is likely to be heard by the panel;
  - b. give advice to an applicant or other third party on a development application after it has been lodged outside of a panel meeting;
  - c. speak at a public meeting for or against a proposal where the purpose of the meeting is to discuss either a proposed development or a development application unless required by the Act;
  - d. express an opinion on a development application or a proposed development outside of a panel meeting; and
  - e. engage in any other act or omission which may give rise to a reasonable presumption that you have prejudged a development proposal or application.

### **Public comment**

15. Only the presiding member or another person determined by the panel is permitted to speak publicly to the media and address the public on behalf of the panel. No other panel member may make comment to the media or the public in relation to any matter before the panel or any decision of the panel.

### **Protection and use of information**

16. A member of an assessment panel must maintain the integrity and security of confidential information in their possession and must not use confidential information gained by virtue of the member's official position for the purpose of securing a private benefit for the member or any other person.
17. A member of an assessment panel must not disclose information acquired in the course of their professional work other than if consent of the relevant person has been granted or where there is a legal or professional duty to disclose such information.

### **Proper exercise of power**

18. A member of an assessment panel must not take advantage of the member's position, power or duties for the purpose of obtaining, either directly or indirectly, any preferential treatment or other improper advantage for the member or any other person.

### **Gifts and benefits**

19. A member of an assessment panel must not seek or accept a gift or benefit that is intended to, is likely to or could be perceived as likely to, cause them to act in an unfair or biased manner in the course of the member's duties.
20. A member of an assessment panel must take all reasonable steps to ensure that a person related to the member does not receive gifts or benefits that could appear to be an attempt to influence or secure or have the effect of influencing or securing a favour from the member of an assessment panel. A person is related to a member of an assessment panel for the purpose of this provision if the person is spouse, de facto partner, sibling, parent or child of the member of the assessment panel.

### **Bias**

21. A member of an assessment panel should always have regard to any affiliation, disposition or any material, pecuniary or other interest that would lead to a reasonable apprehension that they may be biased in carrying out any aspect of their role under the Act.