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**Rural City of Murray Bridge**

# **Council Assessment Panel**

## **Meeting Procedures**

February 2023

## RURAL CITY OF MURRAY BRIDGE COUNCIL ASSESSMENT PANEL

### Meeting Procedures

Adopted by the CAP on 10 February 2023

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 Review of Decision of Assessment Manager Policy.

#### Definitions

**Electronic** means and includes a telephone, computer or other electronic device used for communication by one or both (including a combination) of the following means:

- (a) Audio visual;
- (b) Audio;

**Connect** means able to hear and/or see the meeting electronically, including via a live stream or recording of the meeting;

**Disconnect** means remove the connection from an electronic means so as to be unable to hear and see the meeting;

**Live Stream** means the transmission of audio and/or video from a meeting at the time that the meeting is occurring.

#### 1. CAP MEETINGS

##### Ordinary Meetings

- 1.1 Ordinary meetings of the Rural City of Murray Bridge Council Assessment Panel (**CAP**) will be held on the second Friday of each month (unless there are no items to be considered, in which case no meeting will be held).
- 1.2 Meetings will ordinarily be held in the Local Government Centre (2, Seventh Street, Murray Bridge) and / or a Virtual Meeting Room. However the Assessment Manager, in consultation with the Presiding Member, may nominate an alternative venue and / or time should the circumstances warrant.
- 1.3 Meetings will ordinarily commence at 10:00 am, but earlier or later commencement times may be required to facilitate inspections of land which is the subject of current, past or future proposals for consideration by the Panel.



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- 1.4 The ability exists pursuant to Section 39 of the Legislation Interpretation Act 2021 for the Council Assessment Panel to hold its scheduled meeting(s) remotely using one or both (including a combination) of the following means of communication:

(1.4.1) Audio visual;

(1.4.2) Audio

in order to meet its legislative obligations. The Council Assessment Panel will hold its scheduled meeting(s) by electronic means, consistent with that Section 39, at the discretion of the Presiding Member and / or Assessment Manager.

*Note: Nothing in this clause prevents a Panel Member attending the meeting in person (even if other Panel Members attend via electronic means) unless the Presiding Member and / or Assessment Manager deem it unsafe or unsuitable to do so.*

- 1.5 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 1.6

- 1.6 Notice of a meeting of the CAP must:

1.6.1 be in writing;

1.6.2 set out the date, time and place of the meeting;

1.6.3 be signed by the Assessment Manager;

1.6.4 contain or be accompanied by the agenda and any documents and/or reports that are to be considered at the meeting (in so far as practicable); and

1.6.5 be given to a CAP Member personally, by post to a place authorised in writing by the Member, by email or by other means authorised by the Member as being an available means of giving notice.

- 1.7 A notice that is not given in accordance with clause 1.6 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.

- 1.8 A copy of the agenda (excluding 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.



- 1.9 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.
- 1.10 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, at the request of a CAP Member or the Assessment Manager, break for a specified time period to be determined by the CAP.
- 1.12 Meetings of the Council Assessment Panel shall be conducted in public and / or via livestream except where the Panel may exclude the public pursuant to Clause 13 of Part 3 of the *Planning, Development & Infrastructure Regulations 2017*.

### **Special Meetings**

- 1.13 The Presiding Member or, in the absence of the Presiding Member, 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.
- 1.14 On receipt of a request pursuant to clause 1.13, the Assessment Manager must determine the date, time and place of the special meeting and give notice to all CAP members at least two (2) days before the commencement of the special meeting.
- 1.15 An Assessment Manager may require a special meeting of the CAP to be held. Members must be advised of the special meeting in accordance with the procedures set out in clauses 1.5 and 1.6.

## **2. DEPUTY MEMBERS**

- 2.1 If a CAP Member is unable or unwilling to attend a meeting or part of a meeting, they must use their best endeavours to notify the Presiding Member and Assessment Manager at their 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.



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### 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 Assessment Manager, in consultation with the Presiding Member, may invite one or both Additional Members to attend any meeting (or part thereof) where they consider 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 and be accompanied by the notice for the meeting in accordance with clause 1.6, 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.
- 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 may adjourn the meeting to a specified day and time.
- 4.3 If at the expiration of ten minutes from the commencement time specified in the notice of the meeting a meeting a quorum is not present, the Presiding Member may adjourn the meeting to a specified date and time.
- 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.

### 5. APPLICANTS TO ADDRESS THE PANEL

- 5.1 An applicant has the right to address the CAP at a Hearing of Representations in accordance with the provisions of the Act and Regulations / Section 38 (10) of the *Development Act 1993*.
- 5.2 Except as provided in the Act and Regulations / Section 38 (10) of the *Development Act 1993* or otherwise provided in these Meeting Procedures an applicant for a matter before the CAP may not address the Panel but the Presiding Member may allow CAP Members to address questions to the applicant





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or their representatives. The applicant or their representatives must limit their response to the questions raised.

- 5.3 Where an applicant has a right to address the Panel and in a circumstance outlined in Clause 1.4, the applicant will be required to attend the meeting via electronic means, which can occur using their own personal equipment, or using the equipment at the Local Government Centre (or other Council venue) if available.

## **6. HEARING OF REPRESENTATIONS**

- 6.1 The CAP shall conduct a Hearing of Representations in accordance with the Act and Regulations / Section 38 (10) of the *Development Act 1993* for publicly notified, Category 2 and 3 developments (where a representor has lodged a valid representation and indicated a desire to be heard). Where required the Hearing of Representations will take place at the commencement of the consideration of the relevant agenda item.
- 6.2 The Hearing of Representations will hear representors in support of their representations before hearing the applicant's response to the representations. At a Hearing the person(s) making representations will be allocated 5 minutes to address the CAP. The applicant will be allocated 10 minutes to respond to the representations made to the CAP, unless otherwise determined by the Presiding Member.
- 6.3 Where two or more persons have nominated a spokesperson to support their representations at the Hearing of Representations the Presiding Member will determine the allocated time that the spokesperson will have to address the CAP.
- 6.4 Where representors are addressing the CAP on a common issue or issues, the CAP may request such representors to address the CAP in a group, rather than individually.
- 6.5 Representors will not be allowed a further opportunity to address the CAP once applicants have concluded their response.
- 6.6 Representors will not be allowed a further opportunity to address the CAP at any subsequent meeting of the CAP to consider the matter, except at the discretion of the Presiding Member.
- 6.7 Only representors (or their nominated representative) who have lodged a valid representation pursuant to the Act and Regulations / Section 38 of the *Development Act 1993* are entitled to be heard by the CAP in accordance with the these Procedures.
- 6.8 Where no representors appear at the Hearing of Representations an applicant may only be heard (at the discretion of the Presiding Member) where their written response to representations requires explanation, or where the CAP will otherwise benefit from hearing them.

- 6.9 At the conclusion of a formal Hearing of Representations with the representor and applicant having addressed the CAP, the CAP may defer a decision on the application in accordance with Clause 10.12 Below.
- 6.10 When the application is next brought before the CAP for consideration the applicant and representor will not again be heard by the CAP unless the application has been re-advertised and a new Hearing of Representations is to be held. The Presiding Member may however allow CAP Members to address questions to the applicant or the representor who must limit their responses to the questions raised.
- 6.11 CAP Members may question and seek clarification from a representor and the applicant at the conclusion of their address to the CAP.
- 6.12 Individual elected members of the Rural City of Murray Bridge do not have a right to be heard by the CAP unless they have made a representation as a private citizen and are a representor pursuant to the Act and Regulations / Section 38 of the *Development Act 1993* or have been appointed by a representor to speak on their behalf.
- 6.13 Where a Hearing of Representations is to be held, and in a circumstance outlined in Clause 1.4, both representors and the applicant will be required to attend the meeting via electronic means, which can occur using their own personal equipment, or using the equipment at the Local Government Centre (or other Council venue) if available.
- 6.14 For the avoidance of doubt, an applicant, representor and / or their associates may request to be heard by the CAP (providing, in the case of a representor, they have lodged a valid representation and indicated a desire to be heard) via electronic means (regardless of whether the CAP is scheduled to meet in person or via electronic means). The facilitation of such will be at the discretion of the Presiding Member and / or Assessment Manager.

## **7. SITE INSPECTIONS**

- 7.1 Formal site inspections of the CAP to sites which are the subject of past, current or future proposals may be arranged upon request to the Assessment Manager from any member of the CAP.
- 7.2 For the avoidance of doubt, the Assessment Manager will arrange site inspections for a majority of development proposals that come before the CAP for consideration.
- 7.3 A member of Council's administration should be present at any site inspection undertaken by the CAP (other than in a situation such as that outlined in Clause 1.4, in which case a Panel Member may attend a site individually, but in doing so they should not enter the site {observe it from a public road only} and must not engage in discussion with the applicant and / or representor {other than to identify themselves if asked and state their purpose in driving past the site}).



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- 7.4 The CAP will not hear deputations during or at a site inspection.
- 7.5 Site inspections undertaken by members of the CAP must be undertaken in accordance with the Minister's Code of Conduct applicable to CAP Members.
- 7.6 In a circumstance such as that outlined in Clause 1.4, site inspection may not be undertaken to reduce the risk to Panel Members and staff. In such circumstances the Assessment Manager will make available as much information as possible (in the form of aerial photography, photographs and / or video) to assist the Panel in understanding the characteristics and nature of the subject land and surrounding locality.

## **8. INFORMATION PROVIDED FOLLOWING PREPARATION OF THE MEETING AGENDA**

- 8.1 Additional information submitted after distribution of the meeting agenda, either before or during a meeting of the CAP, should be submitted to the Assessment Manager so that they may advise the CAP. Additional information submitted at the Panel meeting will not normally be considered unless on the advice of the reporting officer or at the discretion of the Presiding Member. The Panel may defer consideration of the application to enable a full and proper assessment of any further information to be made.
- 8.2 Representors and applicants must avoid raising new material that has not been raised in their written submissions when they appear before the CAP. Where it is necessary, any new additional information that must be presented should be forwarded to Council at least 5 business days prior to the meeting so that staff can confirm necessity of the information and effect distribution to the relevant parties and CAP Members.
- 8.3 Full disclosure of all relevant information prior to the CAP meeting is necessary for adequate assessment and appropriate decision making. In circumstances where new information is discovered as a result of the Hearing of Representations the CAP may, in its discretion, agree to defer the application, conduct a further hearing, or undertake other investigations to determine the relevance of new information if it believes it will assist reaching a decision.
- 8.4 After hearing an applicant and / or representors, the CAP may discuss an application and any new information to determine its relevance and may seek clarification from the Assessment Manager and any Council Planning Staff in attendance.
- 8.5 At the discretion of the Presiding Member (in consultation with members of the CAP and the Assessment Manager), any new information presented by any person appearing before the CAP, may not be considered. The Presiding Member's determination in this regard is final.





## 9. FORM OF DEBATE

- 9.1 In order to ensure informed decision making and to facilitate comprehensive consideration of issues, debate and discussion by the CAP of matters before it shall be, as far as practicable, informal within the bounds of professional meeting procedures whilst still adhering to the correct procedures for the assessment of development applications as set out in the Act and Regulations / *Development Act 1993*, as well as applicable principles of procedural fairness.

## 10. DECISION MAKING

- 10.1 The Assessment Manager may in their discretion exclude:
- 10.1.1 a representation or response to representation(s) which is received out of time;
  - 10.1.2 a representation in relation to Category 2 development from a person who was not entitled to be given notice of the application; or
  - 10.1.3 a representation or response to representation(s) which is otherwise invalid.
- 10.2 The CAP must have regard to the relevant version of the Planning and Design Code / Rural City of Murray Bridge Development Plan as the basis for its decisions, and also have regard to relevant issues raised in any written and / or verbal representations made in accordance with the provisions of the Act and Regulations / *Development Act 1993*.
- 10.3 In relation to each application it considers, the CAP must:
- 10.3.1 determine whether the proposal is seriously at variance with the Planning and Design Code / Development Plan and provide reasons for its determination; and
  - 10.3.2 provide reasons (which may occur verbally through debate on an application / item and need not be in writing) for granting or refusing Planning Consent and for the imposition of any conditions.
- 10.4 If the CAP determines that a proposal is seriously at variance with the Planning and Design Code / Development Plan, it must refuse development authorisation to the application.
- 10.5 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 (where meetings are conducted electronically each Member must ensure they verbally confirm their vote either for or against). If the votes are equal, the Presiding Member is entitled to a second or casting vote.



Additional Members appointed to the CAP to provide expert advice and assistance are not entitled to vote.

- 10.6 Matters arising for decision at a meeting of the CAP will be decided by a majority of the votes cast by Members present at the meeting and entitled to vote.
- 10.7 All CAP members must participate in the decision of the CAP on each matter before it by making one vote.
- 10.8 Members of the CAP are unable to call for a division, nor can they submit any notice of motion to revoke or amend a previous decision of the CAP.
- 10.9 The Presiding Member may adjourn a meeting in the event of a disruption or disturbance by any person (including a CAP Member, applicant, representor or other member of the public) to a specified date and time.
- 10.10 The Presiding Member may ask a member of the public (including an applicant, representor or other member of the public) to leave a meeting where they, in the opinion of the Presiding Member are:
  - 10.10.1 behaving in a disorderly manner; or
  - 10.10.2 causing an interruption or disruption to the meeting.
- 10.11 The CAP must make a determination (which may include deferral) in relation to a matter before it and is unable to 'redesign' a proposal to ensure conformity with the Development Plan.
- 10.12 The CAP may, at its discretion, defer a decision in relation to an application in the following circumstances:
  - 10.12.1 Where a deferral is requested by the applicant or the applicant's representative (refer clause 15.3);
  - 10.12.2 Where a deferral is requested by the Assessment Manager;
  - 10.12.3 To enable additional assessment process steps to be undertaken in accordance with the Act and Regulations / *Development Act 1993* and *Development Regulations 2008* (i.e. referrals or public notification);
  - 10.12.4 To request additional information in relation to an application / proposal so as to enable the CAP to make an informed decision; or
  - 10.12.5 To allow an applicant and / or their representatives an opportunity to reconsider and make alterations / variations to their proposal prior to a decision being made (providing of course, the alterations / variations do not result in a change to the essential nature of the proposal).



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## 11. MINUTES AND REPORTING

- 11.1 The CAP must ensure that accurate minutes are kept of all meetings.
- 11.2 The Assessment Manager, or a person nominated by the Assessment Manager, will take minutes of all meetings.
- 11.3 The minutes will record:
  - 11.3.1 the names of all Members present and the nature of their attendance (i.e. in person or via electronic means);
  - 11.3.2 the names of all Members from whom apologies have been received;
  - 11.3.3 the name and time that a Member enters or leaves the meeting;
  - 11.3.4 the name of every person who makes a representation;
  - 11.3.5 in relation to each application determined by the CAP:
    - 11.3.5.1 the determination of the CAP as to whether the proposal is seriously at variance with the Planning and Design Code / Development Plan;
    - 11.3.5.2 the reasons for granting or refusing Planning Consent; and
    - 11.3.5.3 where a decision is by majority vote, the decision and its mover and seconder, but not each Members' vote;
  - 11.3.6 if an application is not determined by the CAP, the deferral of the application and the reasons for the deferral;
  - 11.3.7 a decision to exclude the public from attendance pursuant to the Regulations;
  - 11.3.8 any disclosure of a direct or indirect pecuniary interest in any aspect of a development or anybody associated with any aspect of a development made by a Member in accordance with Section 83(1)(g) of the Act, and the nature of the interest;
  - 11.3.9 any disclosure of a conflict of interest made by a Member pursuant to the Code of Conduct adopted by the Minister under Clause 1(1)(c) of Schedule 3 of the Act (**Code of Conduct**), and the nature of the interest; and
  - 11.3.10 if a meeting is adjourned by the Presiding Member, the reason for the adjournment and the date and time to which the meeting is adjourned.



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11.4 The minutes shall not be formal minutes until adopted by the CAP at the next meeting of the CAP. However, this does not preclude the issue of Decision Notification Forms under the Act and Regulations / *Development Act 1993* advising of the determination of the CAP immediately after a meeting at which the CAP made its determination.

11.5 Upon adoption of the Minutes, the Presiding Member shall authorise the Minutes by signature and date of adoption on the Minutes.

## 12. PLANNING APPEALS

12.1 Should any appeal be lodged in relation to a decision of the CAP, the CAP will determine whether any "compromise proposal" is appropriate or whether the matter should proceed to a Hearing in the Environment, Resources and Development Court.

## 13. CONDUCT

13.1 If a CAP Member is of the view that they have a conflict of interest in relation to a matter before the Panel they are required to make a disclosure clearly stating the nature of that interest to the CAP, in accordance with the Code of Conduct adopted by the Minister pursuant to Schedule 3 of the *Planning, Development & Infrastructure Act 2016*, and then in the meeting when the relevant agenda item is reached, must remove themselves from the meeting in accordance with the Code of Conduct.

13.2 Members of the CAP must act at all times in accordance with the provisions of the Minister's Code of Conduct and professional standards adopted pursuant to Schedule 3 of the *Planning, Development & Infrastructure Act 2016*.

13.3 CAP Members must not initiate individual discussions with applicants, representors or government agencies regarding a matter that is or is likely to be before the CAP for determination, and if placed in a situation where such discussion is unavoidable, should not express an opinion that could be constructed as having made a decision in relation to the proposal before the CAP has collectively assessed and determined the development application.

## 14. PLANNING POLICY

14.1 The CAP may, from time to time, consider trends, issues and other matters relating to planning or development that have become apparent or arisen through the assessment of development applications, and report to Council accordingly. However the *Development Act 1993* and *Planning, Development & Infrastructure Act 2016* do not empower the CAP to act as a policy formulating body.

14.2 The CAP may, upon request from the Council, comment on draft planning policy.

14.3 The Elected Member on the CAP is able to participate as an Elected Member in the ordinary business of their Council planning policy formulation (i.e. they may sit



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on planning policy committees and undertake other activities associated with the formulation of planning policy) providing they are not acting in their capacity as a member of the CAP.

- 14.4 Independent Members of the CAP may continue to exercise their rights as private citizens with respect to any activity related to the development of planning policy under the Act, providing they are not acting in their capacity as a member of the CAP or do not have a conflict of interest with any business before the CAP.

## 15. ADDITIONAL PROCEDURES

- 15.1 Insofar as any procedure to be followed by the CAP is not prescribed by the Act and Regulations (and, during the transition to the Act and Regulations, the Development Act and *Development Regulations 2008*), the CAP's Terms of Reference, the Code of Conduct or these Meeting Procedures - the CAP may by resolution determine the procedure for itself. Any such determination may be added to these Meeting Procedures.
- 15.2 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.
- 15.3 Any request from an applicant (or their representative) to defer an item listed on the CAP agenda (after the agenda has been sent to CAP Members) must be in writing and sent to the Assessment Manager. The decision to permit a deferral will be made by the Presiding Member (at their discretion) in consultation with the Assessment Manager.
- 15.4 Should a CAP Member receive by direct post, fax, email or any other means, information in relation to a development application current being assessed (or a proposal likely to be assessed) which may be referred to the CAP for a future decision, then the CAP Member must immediately forward the information received to the Assessment Manager. The Panel Member should not acknowledge receipt of the information and must not enter into discussion with the sender in relation to any matters contained within the information received. If a CAP Member receives such information, they must disclose this fact to the meeting, and confirm that the information will not be taken into account for the purposes of making a decision on the relevant application.
- 15.5 Should a request be made for public comment on the operations or decisions made by the CAP, the matter should be referred to the Presiding Member. Comment may be made at the discretion of the Presiding Member, in consultation with the Assessment Manager.
- 15.6 The role of the CAP is one of a decision maker – the CAP is charged with the responsibility of assessing each proposal against the relevant Planning and Design Code / Development Plan provisions. It is a role that is inquisitorial rather than adversarial. The CAP does not have a role as a mediator or arbitrator for parties expressing divergent views.





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- 15.7 The role of the CAP in performing the function of a “relevant authority” under the provisions of the Act and Regulations / *Development Act 1993* is to test each development proposal against the relevant policy provisions, whether general or particular, as expressed in the Planning and Design Code / Rural City of Murray Bridge Development Plan which are relevant to each application / proposal.
- 15.8 Any decision of the CAP is not invalid by reason of a vacancy in its membership or a defect in the appointment of a member.