

ASSESSMENT PANEL MEMBERS – TERMS OF REFERENCE

1. Background

- 1.1 The Wakefield Regional Council, Council Assessment Panel (the Panel) was appointed as a relevant authority under Section 82 and 83 of the Planning, Development and Infrastructure Act 2016 (the PDI Act) by resolution of Wakefield Regional Council (the Council) on 28 June 2017.
- 1.2 The Panel is a relevant authority under the Act and, during transition to the Act, will act as a delegate of the Council for the purposes of the Development Act 1993.

2. Membership

- 2.1 The Panel may consist of up to five (5) members (Panel members), to be appointed by the Council, comprising:
 - a. Up to one (1) member of a Council (Elected Member); and
 - b. Up to four (4) Independent Members (Independent Members), not being Members of a Council or State Parliament, taking into account the accredited professional requirements in section 3 of these Terms of Reference.
- 2.2 The Council may determine that the Panel 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 The Council appoints all members of the Panel including the Presiding Member from the Independent Members. The Panel may appoint an acting Presiding Member whenever required due to the absence of the Presiding Member.
- 2.4 At least one (1) member of the Panel must be a woman and at least one (1) member a man, and should, insofar as is reasonably practicable, ensure that the Panel consists of equal numbers of men and women.
- 2.5 The term of office for all members of the Panel is a maximum of two (2) years or a lesser term determined by Council. Upon expiry of the term of office all retiring members of the Panel are eligible for re-appointment.

Deputy Members

- 2.6 The Council may appoint a Deputy Member to the Panel for the purpose of filling in for a Panel Member who is unable to attend a Panel meeting or part of a Panel meeting.

- 2.7 Subject to clause 2.9, a Deputy Member must not be a member of the Council or State Parliament.
- 2.8 Where a Deputy Member appointed for the Council Member is also a member of the Council, that person may not act as a deputy for any other Panel Member (whereas a Deputy Member who is not a member of the Council may act as a deputy for any Panel Member).
- 2.9 In appointing a Deputy Member, the Council may have regard to the matters in clause 3.2, as well as to the qualifications and experience of the Panel Member or Panel Member to whom the candidate will be a deputy.
- 2.10 Unless the context otherwise requires, a reference to a Panel Member in this document includes a Deputy Member.

General

- 2.11 The Council will call for expressions of interest for appointment of Panel Members.
- 2.12 Panel Members may be remunerated as determined by the Council for the reasonable time and costs incurred by Panel Members in attending Panel meetings.
- 2.13 Different levels of remuneration may be fixed by the Council for Independent Members, the Council Member, the Presiding Member and Deputy Members.
- 2.14 Council must, within 14 days after appointing a person as a member of the Panel, give notice of the appointment by publishing the prescribed particulars in a newspaper circulating in the area of the council.

3. Accredited Professional

3.1 At a date yet to be determined. A person appointed as a member of the Panel must be an Accredited Professional under the PDI Act, with the exception of the member, or former member, of the Council who must be appropriately qualified to act as a member of the Panel on account of the person's experience in local government. **(THIS CLAUSE IS SUBJECT TO PROCLAMATION BY THE MINISTER).**

- 3.2 When appointing Panel Members, the Council may have regard to the following:
- the candidate's knowledge of the operation and requirements of the PDI Act and, during transition to the PDI Act, the Development Act;
 - in relation to Independent Members, the candidate's qualifications or experience in a field that is relevant to the activities of the Panel;
 - in relation to the Council Member, the candidate's experience in local government;

- d. that a balance of qualifications and experience among Panel Members is desirable;
- e. such other matters as the Council considers relevant.

4. Appointment of the Assessment Manager

4.1 Pursuant to Section 87 of the PDI Act, the Chief Executive Officer of the Council has appointed an Assessment Manager for the purpose of:

- a. **At a date yet to be determined**, acting as a 'relevant authority' as provided under the PDI Act; **(SUBJECT TO PROCLAMATION BY THE MINISTER)**
- b. being responsible for managing the staff and operations of the Panel in relation to which the Assessment Manager has been appointed;
- c. providing advice to the Panel (as appropriate)

5. Roles and responsibility

5.1 Notwithstanding this Terms of Reference, all members of the Panel will observe the relevant requirements under the:

- a. PDI and Development Act;
- b. all relevant Regulations;
- c. Code of Conduct; and
- d. Policies and processes which are relevant to the operations of the Panel.

5.2 Members of the Panel are required to register their interests and complete a disclosure of interests return pursuant to Schedule 1 – Disclosure of financial interest under the PDI Act.

5.3 Members of the Panel are expected to read, comply with and, where appropriate, to seek clarification with respect to policies and processes relevant to these Terms of Reference.

Presiding Member

5.4 The role and responsibilities of the Presiding Member are:

- a. be responsible for the proper observance of the Terms of Reference, Meeting Procedures, and Code of Conduct prepared in accordance with the PDI Act;
- b. oversee and facilitate the conduct of Panel meetings in accordance with the PDI Act; and
- c. ensure all members of the Panel have an opportunity to participate in discussions in an open, respectful and encouraging manner;

6. Removal of a member

- 6.1 A Panel Member will automatically lose office where:
- a. the Panel Member has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors;
 - b. the Panel Member has been convicted of an indictable offence punishable by imprisonment;
 - c. in the case of a Council Member, the Member ceases to be a member of the Council.
- 6.2 Subject to Clause 6.4, the Council may by resolution remove a Panel Member from office where, in the opinion of the Council, the behaviour of the Panel Member amounts to:
- a. a breach of a condition of his or her appointment as a Panel Member; or
 - b. misconduct; or
 - c. a breach of any legislative obligation or duty of a Panel Member; or
 - d. neglect of duty in attending to the roles and responsibilities as a Panel Member; or
 - e. a failure to carry out satisfactorily the duties of his or her office; or
 - f. failure to comply with a requirement under schedule 1 – disclosure of financial interests or a breach of, or failure to comply with the Code of Conduct; or
 - g. inability to carry out satisfactorily the duties of his or her office; or
 - h. except in relation to Deputy Members, a failure without reasonable excuse to attend three consecutive Panel meetings without the Panel previously having resolved to grant a leave of absence to the Panel Member; or
 - i. in relation to a Deputy Member, a failure without reasonable excuse on three consecutive occasions to attend a meeting of the Panel when requested to do so; or
 - j. for any other reason the Council considers appropriate.
- 6.3 The removal of the Panel Member pursuant to clause 6.2 will take effect upon the Council passing a resolution to remove the Panel Member from office (unless the Council resolves otherwise), and such resolution will be confirmed in writing to the Panel Member within 7 days of being passed.
- 6.4. Prior to resolving to remove a Panel Member from office pursuant to clause 6.2, the Council must:
- a. give written notice to the Panel Member of:
 - i) its intention to remove the Panel Member from office pursuant to clause 6.2; and
 - ii) the alleged behaviour of the Panel Member falling within clause 6.2a or reason the Council considers it appropriate to remove the Panel Member, not less than 7 days before the meeting of the Council at which the matter is to be considered;
 - b. give the Panel Member an opportunity to make submissions to the Council on its intention to remove the Panel 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

- c. have due regard to the Panel Member's submission in determining whether to remove the Panel Member from office.

Vacancy

- 6.5 In the event of a vacancy arising in the office of a Panel Member, the Council may appoint a person to be a Panel Member for the balance of the original Panel Member's term of office as soon as is reasonably practicable in the same manner as the original Panel Member was appointed.
- 6.6 The Panel Member appointed to fill a vacancy may be a Deputy Member in which case that person will automatically cease to be a Deputy Member.
- 6.7 In appointing a Panel Member pursuant to clause 6.5, the Council may have regard to the matters in clause 2.2 or 2.10 as the case requires.
- 6.8 A vacancy in the membership of the Panel will not invalidate any decisions of the Panel, provided a quorum is maintained during meetings

7. Powers and functions

- 7.1 The Panel will act as delegate of the Council in its role as a relevant authority in respect of the following classes of development.
 - a. to refuse development plan consent with respect to a merit application, other than where requested information has not been provided within legislative timeframes
 - b. with respect to a non-complying application :
 - i) to refuse consent
 - ii) to seek concurrence from the State Commission Assessment Panel to grant consent other than which in the opinion of the Assessment Manager is of a minor nature
 - iii) to grant consent other than which in the opinion of the Assessment Manager is of a minor nature;
 - c. where representations opposing a proposal have been received as a result of category 2 or 3 public notification and the representor has indicated a desire to be heard in support of a representation;
 - d. where a referral agency has recommended refusal;
 - e. where a land division application involves more than 20 allotments;

- f. where the application is related to an enforcement notice pursuant to Section 84 of the Development Act, and application to a court pursuant to Section 85 of the Development Act (by either Council or another party) or other form of legal action, other than which in the opinion of the Assessment Manager is of a minor nature;
- g. where the applicant has requested to pay a car parking contribution in lieu of providing the required car parking spaces
- h. where the application is considered to be contentious, controversial or otherwise of significance by the Assessment Manager.
- i. **At a date yet to be determined.** The Panel is charged with responsibility for undertaking reviews under Section 202(1)(b) and Section 203 of the PDI Act in relation to a decision made by the Assessment Manager acting as a relevant authority. **(THIS SUBSECTION SUBJECT TO PROCLAMATION BY THE MINISTER)**

8. Procedural matters

- 8.1 The Panel shall meet in accordance with the Meeting Procedures.
- 8.2 The Assessment Manager must maintain a record of all notices of meetings given under this clause to members of the Panel.
- 8.3 All meetings of the Panel will be conducted in accordance with these Terms of Reference, Meeting Procedures, and Code of Conduct prepared in accordance with the PDI Act.
- 8.4 A person may make a complaint if the person believes that a member of the Panel has acted in contravention of the Code of Conduct.
- 8.5 The complaint is to be addressed to the State Planning Commission as outlined in the *Planning, Development and Infrastructure (General) Regulations 2017* and the Meeting Procedures.

9. Reports to Council

- 9.1 The CAP shall report to the Council in July of each year in respect of the following matters:
 - a. disclosure by CDAP Members of interests pursuant to Section 83(1)(g) of the Act;
 - b. resignation of a CDAP Member;
 - c. unanimous decision of the CDAP to approve or refuse development applications;
 - d. the incidence of items deferred by the CDAP;

- e. the adjournment of consideration of development applications;
- f. any matter that would improve the effectiveness of, or expedite, the decisions of the CAP;
and
- g. any other matters upon which the CAP is required to report to the Council or thinks fit to report.