



**City of Prospect
Council Assessment Panel**

Terms of Reference

Adopted by the CAP:
Drafted:

27 March 2020
26 March 2020

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1 Interpretation

In these terms of reference:

- 1.1 **Act** means the Planning, Development and Infrastructure Act, 2016.
- 1.2 **Chief Executive Officer** means the Chief Executive Officer of the Council.
- 1.3 **Assessment Manager** means the person appointed by the Chief Executive Officer pursuant to Section 87 of the Act and who is responsible for providing advice to and managing the operations of the Council Assessment Panel.
- 1.4 **Consensus** means the general agreement of the Panel.
- 1.5 **Council** means City of Prospect.
- 1.6 **Member** means a member of the Panel.
- 1.7 **Panel** means the Council Assessment Panel established by the Council pursuant to the provisions of the Act.
- 1.8 **Presiding Member** means the Member of the Panel who is appointed as its Presiding Member.

2 Purpose and Role of the Council Assessment Panel

- 2.1 The Panel is the body established by Council to be a relevant authority appointed pursuant to Section 83 of the Planning, Development and Infrastructure Act, 2016.
- 2.2 The functions of the Panel (during the transition phase) are:
 - to act as a delegate of the Council in accordance with the requirements of the *Development Act 1993*; and
 - 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 the *Development Act 1993*; and
 - to perform other functions (other than functions involving the formulation of policy) assigned to the Panel by the Council.
- 2.3 The Panel shall exercise, perform and discharge the following responsibilities on behalf of the Council:
 - The consideration of matters submitted by the Administration relating to assessment and determination of applications for planning consent.
 - The provision of comment or advice to the State Commission Assessment Panel on major matters submitted to the Council by the Commission.
 - The consideration of proposals for settlement on matters subject to appeal to the Environment, Resources and Development Court.
 - The consideration of such other assessment matters as may be referred to the Panel by the Administration.

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- 2.4 The creation and operation of the Panel shall occur in a manner that confirms and reinforces its independence from the functions of the Elected Council.
- 2.5 The Local Government Act 1999 does not apply to, or in relation to, the Panel (including with respect to its members when acting under Section 83 or its processes or procedures).

3 Membership of the Panel

- 3.1 The Membership of the Panel shall be comprised of:
- Up to 1 Elected Member, who shall be an elected member of Council;
 - 1 Independent Presiding Member; and
 - A minimum of 3 Independent Members.
- 3.2 Council may appoint Deputy Members (both Independent and Elected) who may act as a member of the Panel from time to time in the absence of another panel member.
- 3.3 The Presiding Member will be appointed by the Council taking into account the following requirements:
- the Presiding Member must be a fit and proper person to be a member of the Panel; and
 - the Presiding Member must be a person who is determined by Council to have a high level of knowledge of the operation and requirements of the Development Act, 1993 and appropriate qualifications or experience in a field that is relevant to the activities of the Panel.
- 3.4 The Independent and Deputy Independent Members of the Panel shall be appointed by the Council taking into account the following requirements:
- each must be a person who is determined by Council to have a reasonable knowledge of the operation and requirements of the Development Act, 1993 and appropriate qualifications or experience in a field that is relevant to the activities of the Panel; and
 - the qualifications and experience of these members, when considered in conjunction with the qualifications and experience of the Presiding Member, must provide a reasonable balance across the fields that are relevant to the activities of the Panel; and
- 3.5 The following have been appointed as Members of the City of Prospect Council Assessment Panel for 2019 and beyond:
- Presiding Member: Mr Donato Donaldson
 - Elected Member: Mr Robin Pearce
 - Independent Members: Mr David Cooke, Mr Robert Gagetti & Mr Ruan Perera
 - Deputy Independent Member: Mr Julian Rutt

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- 3.6 A vacancy on the Panel occurs when a member:
- dies; or
 - completes a term of office and is not reappointed; or
 - resigns from the Panel by written notice addressed to Council; or
 - is a member holding the position of Councillor of the City of Prospect, and is not re-elected to the Council in periodic elections; or
 - is removed from office by Council as described by clause 4.8; or
 - becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - is convicted of an indictable offence punishable by imprisonment.

3.7 On the office of a member of the Panel becoming vacant, a person will be appointed in accordance with the provisions of the Act and the Council's Membership & Conditions of Appointment in the Terms of Reference.

3.8 Council may reappoint all or any members of the Panel for a further term of office at their term's expiry.

3.9 A member of the Panel 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 (as the case may be).

4 Conditions of Appointment to the Panel

4.1 The Presiding Member is appointed to the Panel for a maximum period of 2 years.

4.2 Elected and Deputy Elected Members are appointed to the Panel for a maximum period of 2 years.

4.3 Independent and Deputy Independent Members are appointed to the Panel for a maximum period of 2 years.

4.4 Appointment to the Panel for Independent Members has an associated payment of \$475.00 per month for attendance at Panel meetings.

4.5 Appointment to the Panel for the Presiding Member has an associated payment of \$550.00 per month for attendance at Panel meetings.

4.6 A person appointed as a member of the Panel must disclose his or her financial interests in accordance with Schedule 1 of the Act.

- 4.7 The Council may remove a member of the Panel from office for:
- breach of, or failure to comply with, the conditions of appointment;
 - misconduct;
 - neglect of duty;

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- incapacity to carry out satisfactorily the duties of his or her office;
 - non-compliance with the Assessment Panel Code of Conduct as adopted by the Minister under clause 1(1)(c) of Schedule 3 of the Act;
 - non-compliance with Section 83(1)(g) of the Act; or
 - failure to carry out satisfactorily the duties of his or her office.

4.8 Pursuant to Section 56A of the *Development Act 1993*, a member of the Panel incurs no liability for an honest act done in the exercise or performance, or purported exercise or performance, of powers or function under Division 4 Part 4 of the *Development Act 1993*.

5 Responsibilities of the Presiding Member

5.1 The role of the Presiding Member (during the transition phase) will include, but will not be limited to:

- the conduct of the business of the Panel at meetings and ensuring appropriate meeting procedures are followed, including matters relating to the Panel's Code of Conduct and Terms of Reference; and
- ensuring the Panel properly considers matters in terms of the Development Act 1993 in an efficient and timely manner; and
- ensuring that members are aware of their role and responsibilities as a Panel member under the Act and do not confuse that role with any other role or a role as an Elected Member under the Local Government Act 1999.

6 Responsibilities of Panel Members

6.1 Notwithstanding the provisions of the Planning, Development and Infrastructure (General) Regulations 2017, the Panel will ensure that meeting procedures are consistent with the following principles:

- Meetings are fair and contribute to open, transparent and informed decision-making; and
- Meetings reflect the levels of formality appropriate to the nature and scope of responsibilities exercised at that meeting; and
- Meeting outcomes are sufficiently certain to give the community and decision makers confidence in the deliberations undertaken at the meeting.

6.2 The members of the Panel will appoint the Acting Presiding Member of the Panel, as required.

6.3 Panel Members shall advise the Assessment Manager of a known absence at the earliest opportunity to ensure that sufficient notice can be provided to Deputy Members in efforts to maximise attendance at all meetings.

6.4 The Panel shall hold meetings in a manner such that it is reasonably open to the public.

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- 6.5 The Panel shall determine its ordinary meeting schedule.
- 6.6 The Panel shall ensure that accurate minutes are kept of its proceedings.
- 6.7 The Panel shall provide reasonable access to the Public of both the Agenda for and Minutes of a meeting of the Panel.

7 General Operating Procedures

- 7.1 The Panel shall meet at 5.30pm on the second Monday of each month (unless this date falls on a Public Holiday in which case an alternative date will be selected) at 128 Prospect Road, Prospect unless the Panel determines that an alternative venue is more suitable for the consideration of particular Agenda items, subject to there being business to consider. In the event that the Panel is unable to physically meet at 128 Prospect Road, Prospect or any other physical location e.g. due to a health pandemic, then the Panel meeting may be scheduled as an on-line or electronic meeting at the discretion of the Assessment Manager.
- 7.2 In all cases, the Agenda must state the date, time and venue of the meeting, and a minimum of five (5) days' notice must be given to applicants and representors of the date, time and venue of the meeting. If a meeting is to be held on-line or electronically, rather than in a physical venue, this shall be stated in lieu of the venue location.
- 7.3 All meetings of the Panel shall remain open to the public at all stages of assessment unless resolved by the Panel to be confidential pursuant to Regulation 13 of the *Planning, Development and Infrastructure (General) Regulations 2017*.
- 7.4 To ensure Public access to all relevant documents forming part of the assessment of an application; no additional plans and/or materials received after publication of the Panel Agenda will be considered by the Panel.
- 7.5 Upon request in writing from the applicant, an application may be withdrawn from consideration after the publication of the Panel Agenda, so as to allow additional plans and/or materials to be presented to a subsequent meeting of the Panel.
- 7.6 Pursuant to Regulation 13 of the *Planning, Development and Infrastructure (General) Regulations 2017*, the Panel may exclude the public from attendance:
- during so much of a meeting as is necessary to receive, discuss or consider on a confidential basis any of the following information or matters:
 - (1) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
 - (2) information the disclosure of which—
 - (A) could unreasonably be expected to confer a commercial advantage on a person, or to prejudice the commercial position of a person; and
 - (B) would, on balance, be contrary to the public interest;
 - (3) information the disclosure of which would reveal a trade secret;
 - (4) commercial information of a confidential nature (not being a trade secret) the disclosure of which—

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- (A) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
 - (B) would, on balance, be contrary to the public interest;
- (5) matters affecting the safety or security of any person or property;
 - (6) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;
 - (7) matters that should be considered in confidence in order to ensure that the assessment panel, or any other entity, does not breach any law, or any order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
 - (8) legal advice;
 - (9) information relating to actual litigation, or litigation that the assessment panel believes on reasonable grounds will take place;
 - (10) information the disclosure of which—
 - (A) would divulge information provided on a confidential basis by or to a Minister of the Crown, the Commission, or another public authority or official; and
 - (B) would, on balance, be contrary to the public interest; and
- during so much of the meeting that consists of its discussion or determination of any application or other matter that falls to be determined by the assessment panel.
- 7.7 A quorum for meetings of the Panel is ascertained by dividing the total number of members of the Panel by 2, ignoring any fraction resulting from the division, and adding 1. If a quorum is achieved, the meeting must continue as scheduled.
- 7.8 In the event that a quorum is not present (within 30 minutes of the commencement time for a meeting), or in the event that the Presiding Member becomes aware through the receipt of apologies prior to the meeting that a quorum will not be able to be achieved at that meeting, business listed on the Agenda will be dealt with at the next meeting of the Panel.
- 7.9 In the absence of the Presiding Member, the Acting Presiding Member shall preside.
- 7.10 In the absence of the Presiding Member and the Acting Presiding Member, the Panel will select another Panel member to preside.

8 Representations

8.1 The Panel will hear only as follows:

- All Category 3 representors who request to be heard (or their nominees);
- All Category 2 representors who request to be heard (or their nominees);
- In any case where representors are heard, the Panel will give the applicant (or nominee) the opportunity to respond.

8.2 Representors and applicants will be allowed 5 minutes each to address the Panel, in person or via an electronic or on-line medium, unless a longer time is allowed by the Presiding Member. The Panel will have the opportunity to question and seek clarification from representors and applicants at the conclusion of their address to the Panel, but not to debate issues with individual representors or applicants.

8.3 Only those members of the Panel who are present (in person or via an electronic or on-line medium) at any verbal representation made by representors and the applicant shall participate in the consideration of and decision of that application. The absence of a Panel member who was present for the verbal representation of an application does not preclude the remaining members present from proceeding to consider and determine the application.

8.4 At its discretion, the Panel can call for and hear specialist technical/professional advice related to the assessment of any application.

9 Decision Making

9.1 The Panel must use the Prospect (City) Development Plan as the basis for its decisions, having had regard to any written and verbal representations made in accordance with the provisions of the Act and *Development Act 1993*.

9.2 The Panel decision making shall be based on consensus, following open discussion, with a formal motion to be moved in the event of failure to reach consensus.

9.3 In the event of failure to reach consensus, each member of the Panel present at a meeting of the Panel is entitled to 1 vote and, if the votes are equal, the member presiding at the meeting is entitled to a second or casting vote.

9.4 The Panel should only defer a decision if it considers that the additional time allowed will create benefits in allowing a thorough decision to be made and provided that the reasons for the deferral are clear to the applicant and any representors that may be involved. Panel Members, however should be aware of the time frames within which certain decisions are required to be made under the *Development Act 1993*.

9.5 When moving to refuse an application, members of the Panel will be required to provide reasons for refusal.

9.6 The Panel shall conduct its meetings without the practice of 'calling of divisions'.

9.7 The Panel will debate all items within each agenda.

10 Minutes of the Meeting

- 10.1 The decisions of the Panel will be recorded in the Minutes of the meeting.
- 10.2 The Minutes of the proceedings of a meeting will record:
- the names of the Panel members present (physically or through an electronic or on-line medium);
 - the name and time of a Panel member entering or leaving;
 - the name of a person who has made a verbal representation to the Panel at the meeting;
 - the consensus decision of the Panel;
 - in the absence of a consensus decision, each motion (and amendment) moved and the outcome of the vote;
 - any disclosure of interest made by a Panel member;
 - the decision of the Panel to exclude public attendance;
 - a notation, describing the confidential nature of the information and matter, in the event that a matter has been excluded from the Minutes.
- 10.3 The Panel may, before it releases a copy of any minutes to the public, exclude from the minutes information about any matter dealt with on a confidential basis by the assessment panel.
- 10.4 Minutes shall not be formal Minutes of a meeting until adopted by the Panel at the next meeting of the Panel. However, this does not preclude the issue of Decision Notification under the *Development Act 1993* advising of the determination of the Panel of Development Applications immediately after a meeting at which the Panel determined the particular application.
- 10.5 Upon adoption of the Minutes, the Presiding Member shall authorise the Minutes by signature and date of adoption and by initialling each page of the minutes and sign and date the last page of the Minutes.
- 10.6 Copies of the Draft Minutes of meeting will be available to the public at the Civic Centre and on the Council's web site within five (5) working days after the date of the meeting.

11 Notice of Meetings

- 11.1 Public notice of the Panel scheduled meeting will be provided at Payinthe, 128 Prospect Road, Prospect and on the Council's website. In the event of the temporary closure of the Council building at 128 Prospect Road, Prospect e.g. due to a health pandemic or similar, public notice of a Panel meeting may be via Council's website only.
- 11.2 A minimum of five (5) working days' notice of meetings shall be given to Panel members.
- 11.3 A copy of the Agenda for every meeting of the Panel shall be available for viewing by the public at 128 Prospect Road, Prospect and on the Council's web site for a

reasonable period prior to the meeting. In the event of the temporary closure of the Council building at 128 Prospect Road, Prospect e.g. due to a health pandemic or similar, public notice of a Panel meeting may be via Council's website only.

12 Special Meetings

12.1 Special meetings of the Panel may be held at any time.

12.2 A Special meeting of the Panel may be called at the request of:

- the Presiding Member of the Panel; or
- the Assessment Manager.

12.3 A Special meeting will only deal with the business for which the meeting has been called.

12.4 A request to call a Special meeting must be accompanied with an Agenda stating the item(s) of business for which the Panel is being requested to convene. If an Agenda is not provided at the time of the request, the Special meeting will not be called.

12.5 Each Member of the Panel will be provided verbal and/or sent a notice of a Special meeting at least four (4) hours before the commencement of the meeting, accompanied by the Agenda for the meeting.

13 Appeal Matters

13.1 Should an appeal be lodged in relation to a decision of the Panel, the Panel will determine whether any "compromise proposal" is appropriate.

13.2 Any decision of the Panel to reach a compromise with an appellant will not require ratification by the full Council. Should no compromise be reached the normal processes associated with defending a decision before a Hearing of the Environment, Resources and Development Court will remain.

13.3 To reinforce its primary responsibility to evaluate Development Applications in accordance with their compliance with the Prospect (City) Development Plan, the Panel will not call for reports based on the individual cost of appeals to the ERD Court.

13.4 The budget for appeals is a matter for City of Prospect, not the Panel.

14 Policy Feedback to Council

15.1 The Panel shall provide regular feedback to Council on trends, issues, or other planning policy matters by way of an annual (12 month) report. The annual report shall be presented, in so far as it is practicable, to the July Council meeting for consideration.

15.2 Council staff will assist in the preparation of this report, incorporating feedback received from Members during the ordinary course of Panel business or via workshops separate to the formal panel meetings.

15.3 Workshops may be called at the agreement of the Presiding Member and the Assessment Manager.

15 Training and Induction

- 15.1 An induction process shall be undertaken following the appointment of Members who have not previously, or recently, been a Member of the City of Prospect DAP. Such induction shall be undertaken at a time and venue jointly agreed by the Member and the Assessment Manager, but in any event shall take place prior to the first meeting that Member would be required to attend.
- 15.2 At the agreement of the Presiding Member and the Assessment Manager, Members of the Panel shall be provided with suitable training addressing policy or legislative changes, the assessment panel code of conduct, the disclosure of financial interests, or instructive court judgements, on an as needs basis.