



# COUNCIL ASSESSMENT PANEL MEETING PROCEDURES

*Adopted 19 June 2023*

These Meeting Procedures should be read in conjunction with:

- The meeting procedures contained within the *Planning, Development and Infrastructure (General) Regulations 2017 (Regulations)*; and
- The Council Assessment Panel's Policy for the Review of a Decision of an Assessment Manager.

All meetings of the Council Assessment Panel (CAP) will be held in public except for that portion of the meeting where the CAP resolves to exclude the public in accordance with the provisions of Regulation 13(2).

## 1. COUNCIL ASSESSMENT PANEL MEETINGS

### Ordinary Meetings

- 1.1 The business and meetings of the CAP will be coordinated by the Assessment Manager, in consultation with the Presiding Member.
- 1.2 Subject to clause 1.3, ordinary meetings of the City of Norwood Payneham & St Peters CAP will be held at such times and places as determined by the CAP.
- 1.3 The time and place of the first meeting of the CAP following its establishment will be determined by the Assessment Manager. The Assessment Manager must give notice of the first CAP meeting to the CAP and the public in accordance with clauses 1.5 and 1.6.
- 1.4 Notice of an ordinary meeting will be given to all CAP Members by the Assessment Manager not less than 3 clear days prior to the holding of the meeting in accordance with clause 1.5.
- 1.5 Notice of a meeting of the CAP must:
  - 1.5.1 be in writing;
  - 1.5.2 set out the date, time and place of the meeting;
  - 1.5.3 be signed by the Assessment Manager;
  - 1.5.4 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
  - 1.5.5 be given to a CAP Member personally, by post to a place authorised in writing by the Member or by other means authorised by the Member as being an available means of giving notice;
  - 1.5.6 where attendance at the meetings is able to occur by electronic means (in whole or in part), include details of how to connect to the meeting; and
  - 1.5.7 where the meeting is to be live streamed for viewing by members of the public, include details of how to access and/or connect to the live stream.

- 1.6 A notice that is not given in accordance with clause 1.5 is taken to have been validly given if the Assessment Manger 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.
- 1.7 A copy of the agenda (including the attachments to the reports) for all meetings of the CAP will be available for viewing by the public on the Council's website and at the Council's offices as soon as practicable after the time that notice of the meeting has been given to CAP Members.
- 1.8 The Assessment Manger 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 Manger 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.
- 1.9 Members are encouraged to provide any questions or requested amendments to recommendations to the Assessment Manager prior to the commencement of the meeting.
- 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 Meetings of the Panel shall conclude at 11.00pm. In the event that matters are outstanding the meeting will be adjourned to reconvene on the fourth Monday of the month or as determined by the Council's Assessment Manager in consultation with the Presiding Member. However, the Presiding Member may use his/her discretion to extend the meeting by 15 minutes, provided that all Panel Members are in agreement to extend the meeting and provided that, in the opinion of the Presiding Member, there is a reasonable chance that the Panel's business will be concluded by 11.15pm. Any decision to conclude the meeting is subject to consideration of the assessment timeframes that may be applicable and should be made in conjunction with the Assessment Manager.

## **Special Meetings**

- 1.12 The Presiding Member, or 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.
- 1.13 On receipt of a request pursuant to clause 1.12, the Assessment Manager must determine the date, time and place of the special meeting and give notice to all CAP members at least 4 hours before the commencement of the special meeting.
- 1.14 The Assessment Manager may, in consultation with the Presiding Member, require a special meeting of the CAP to be held to consider such urgent or important business that may warrant such a meeting.

## **2. DEPUTY MEMBERS**

- 2.1 If a CAP Member is unable or unwilling to attend a meeting or part of a meeting, he or she must use his or her best endeavours to notify the Presiding Member or Assessment Manager at his or her earliest opportunity.
- 2.2 If notification pursuant to clause 8.1 is given, the Assessment Manager/Presiding Member 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.

### **3. ELECTRONIC MEETINGS**

- 3.1 One or more CAP Members may attend a meeting via electronic means.
- 3.2 A CAP Member attending a meeting via electronic means is taken to be present at the meeting provided that the CAP Member:
  - 3.2.1 can hear all other CAP Members who are present at the meeting;
  - 3.2.2 can hear all representors (or their representatives) and applicants (or their representatives) who speak at the meeting;
  - 3.2.3 can be heard by all other CAP Member present at the meeting;
  - 3.2.4 can be heard by the person recording the minutes of the meeting.
- 3.3 Where an entire meeting occurs via electronic means, it will (to the extent that the public is not able to physically attend the meeting, and subject to technological capability) be live streamed.
- 3.4 Where a meeting is being live streamed, the live stream must be disconnected only during those parts of the meeting during which the public has been excluded from attendance pursuant to Regulation 13(2) of the Regulations.
- 3.5 Where the public has been excluded from attendance pursuant to Regulation 13(2) of the Regulations, the Assessment Manager or a person nominated by the Assessment Manager must ensure that all parties except for the CAP Member disconnect from, or are disconnected from, the meeting.

### **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. A quorum is three (3) members for a CAP of five (5) members.
- 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 thirty 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. ASSESSMENT OF DEVELOPMENT APPLICATIONS**

The procedures in Part 5 of these Meeting Procedures relate only to the CAP's assessment of development applications under Part 7 of the Act and Part 4 of the Development Act NB: The procedures for determining an application for review of an Assessment Manager's decision are contained in the Assessment Manager Review Policy.

- 5.1 The Assessment Manager/Presiding Member may in his or her discretion exclude:
  - 5.1.1 a representation or response to representation(s) which is received out of time;
  - 5.1.2 a representation in relation to Category 2 development from a person who was not entitled to be given notice of the application; or

- 5.1.3 a representation or response to representation(s) which is otherwise invalid.
- 5.2 The Assessment Manager/Presiding Member may in his or her discretion accept and allow to be considered by the CAP any new or additional material submitted by a representor or applicant. The CAP may defer consideration of the application to enable full and proper assessment of the further information.
- 5.3 Any material to be considered by the CAP pursuant to clause 5.2 must be provided to the applicant and/or representor(s) (as the case may be) in a manner directed by the Assessment Manager and those parties be provided with an opportunity to respond, either in writing or verbally, at the discretion of the Presiding Member.
- 5.4 In relation to each application it considers, the CAP must:
  - 5.4.1 determine whether the proposal is seriously at variance with the Development Plan or the Planning Rules (as relevant) and provide reasons for its determination; and
  - 5.4.2 provide reasons for refusing development authorisation (if relevant).
- 5.5 If the CAP determines that a proposal is seriously at variance with the Development Plan or the Planning Rules (as relevant), it must refuse Development Plan consent to the application.
- 5.6 In relation to each application to be considered and determined by the CAP:
  - 5.6.1 a person who has lodged a representation in relation to a Category 2 or 3 application under the Development Act or an application for which notice must be given under the Act, which has not been excluded pursuant to clause 5.1 and who has indicated that they wish to be heard on their representation is entitled to appear before the CAP and be heard in support of their representation, in person or by an agent;
  - 5.6.2 where one or more representors are heard by the CAP, the applicant is entitled to appear before the CAP to respond to any relevant matter raised by a representor, in person or by an agent;
  - 5.6.3 The CAP will hear representors in support of their representations first, and then the applicant's response to the representations;
  - 5.6.4 where no representors appear at the meeting, the Presiding Member may, in his or her discretion, allow an applicant to address the CAP, for the purpose of answering any questions that the CAP may have;
  - 5.6.5 representors and applicants will be allowed five minutes each to address the CAP. The Presiding Member may allow a party additional time at his or her discretion. Where a person is nominated to speak on behalf of a group of people, a maximum of 15 minutes will be granted. In such circumstances the applicant will be granted the same amount of time as the group to respond;
  - 5.6.6 all persons presenting to the CAP shall adhere to the *Guidelines and Protocols for Council Assessment Panel Meetings* and the *Presentation Procedures* as outlined in Attachments A and B;
  - 5.6.7 representors and applicants must avoid raising new material that has not been raised in their written submissions when appearing before the CAP. In rare circumstances where it is necessary for new information to be presented it should be forwarded to the Assessment Manager at least 5 business days prior to the meeting to allow distribution to relevant parties and CAP Members;
  - 5.6.8 at the discretion of the Presiding Member and in consultation with CAP Members and the Assessment Manager, any new information presented by any party at the CAP meeting may or may not be considered. The decision of the Presiding Member is final in this regard;

- 5.6.9 CAP members may question and seek clarification from a representor or applicant who has addressed the CAP at the conclusion of their address; and ask questions of planning staff;
- 5.6.10 representors will not be allowed a further opportunity to address the CAP once the applicant has concluded their response;
- 5.6.11 following addresses from representors and the applicant, the Presiding Member will invite all Members to speak on any matter relevant to the application;
- 5.6.12 at the conclusion of the CAP discussion, should the CAP defer a decision on the development, when the development is considered at a subsequent CAP meeting the applicant and representors will not be heard again by the CAP unless the application has been re-advertised and a new hearing of representations is to be held. However, the Presiding Member may allow CAP Members to ask questions of the applicant or representor, who must limit their response to the question raised;
- 5.6.13 Clause 5.6.1 to 5.6.4 are satisfied if a representor or applicant or their agent (as the case may be) appears via electronic means. The Presiding Member may require that such appearance be via electronic means.

## **6. DECISION MAKING**

- 6.1 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. 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.
- 6.2 Subject to a Member of the CAP having a direct or indirect personal or pecuniary interest, each Member present at a meeting of the CAP must vote on a question arising for decision.
- 6.3 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.
- 6.4 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.
- 6.5 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 he or she is, in the opinion of the Presiding Member:
  - 6.5.1 behaving in a disorderly manner; or
  - 6.5.2 causing an interruption or disruption to the meeting.
- 6.6 Where the Assessment Manager Review Policy so allows, and where a person is entitled or has been requested to appear before the CAP in relation to an application for review of an Assessment Manager's decision (including the Assessment Manager or delegate), the person may appear via electronic means. The Presiding Member may require that any such appearance be via electronic means.
- 6.7 Prior to calling for a motion, the Presiding Member in facilitating comment/discussion, will utilise his/her discretion, to allow discussion of any matter and to conclude the opportunity for discussion/comment only after each Panel Member present at the meeting, has been provided with the opportunity to speak.
- 6.8 An outcome to comment or discussion must be given effect by and shall only be valid when presented as a motion by a mover and seconder.

6.9 A motion will lapse if it not seconded at the appropriate time.

## 7. MINUTES AND REPORTING

- 7.1 The CAP must ensure that accurate minutes are kept of all meetings.
- 7.2 The Assessment Manager, or a person nominated by the Assessment Manager, will take minutes of all meetings.
- 7.3 The minutes will record:
- 7.3.1 the names of all Members present;
  - 7.3.2 the names of all Members from whom apologies have been received;
  - 7.3.3 the name and time that a Member enters or leaves the meeting;
  - 7.3.4 the name of every person who makes a representation in relation to a development application;
  - 7.3.5 methods of attendance by all Members present and by every person who makes or responds to a representation;
  - 7.3.6 the name of every person who appears in relation to an application for review of any Assessment Manager decision (including the Assessment Manager or delegate);
  - 7.3.7 in relation to each development application:
    - 7.3.7.1 the determination of the CAP as to whether the proposal is seriously at variance with the Development Plan or Planning Rules (as relevant); and
    - 7.3.7.2 the reasons for refusing development authorisation (if relevant); and
  - 7.3.8 in relation to each application for review of an Assessment Manager decision:
    - 7.3.8.1 the determination of the CAP as to whether the proposal is seriously at variance with the Development Plan or Planning Rules (as relevant); and
    - 7.3.8.2 the reasons for the CAP's decision under Section 203(4) of the Act; and
  - 7.3.9 where a decision is made by majority vote, the decision and its mover and seconder, but not each Member's vote;
  - 7.3.10 where a decision is by the casting vote of the Presiding Member, it shall be recorded as *Carried on the casting vote of the Presiding Member*;
  - 7.3.11 if an application is not determined by the CAP, the deferral of the application and the reasons for the deferral;
  - 7.3.12 a decision to exclude the public from attendance pursuant to the Regulations;
  - 7.3.13 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;
  - 7.3.14 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
  - 7.3.15 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.

- 7.4 All minutes must be confirmed by the Assessment Manager in conjunction with the Presiding Member as being accurate prior to, or at the commencement of, the following CAP meeting.

## **8. ADDITIONAL PROCEDURES**

- 8.1 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.
- 8.2 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.
- 8.3 Members of the media and public are not permitted to use a recording device to record any part of the meeting process unless authority is provided from the Assessment Manager and Presiding Member. A request to use a recording device to record deliberations of any part of a CAP meeting shall be made to the Assessment Manager and Presiding Member prior to or at the commencement of, the meeting. The Presiding Member may ask for a resolution or comments from CAP members to assist him or her in their decision.
- 8.4 An applicant may not defer a development application from the meeting agenda after the agenda has been sent to CAP Members, unless the deferral is agreed to by the Assessment Manager in consultation with the Presiding Member. The applicant must make this request in writing to the Assessment Manager with reason(s) for their request for deferral prior to the meeting.
- 8.5 Should a CAP Member receive by post, email, or other means information in relation to a development application being assessed by Council development assessment staff which may be referred for decision to CAP at a future time, then the CAP Member should immediately forward the information received to the Assessment Manager. The CAP Member should not acknowledge receipt of the information not enter into discussion with the sender about the information received.
- 8.6 A CAP Member may, where they feel circumstances warrant such, request a site inspection for the Panel of a particular site. The request should be made in writing to the Assessment Manager a minimum of 3 days prior to the meeting, and the decision to conduct a site inspection will be made by the Presiding Member in consultation with the Assessment Manager.

Nothing in these Procedures limits the opportunity for a CAP Member to inspect a site for a proposed development that forms part of an upcoming agenda in isolation ahead of a CAP Meeting, provided they do not engage in discussion with any person about the matter and they only view the site from the public realm.

- 8.7 By lodging a development application or submitting a representation, representors and/or applicants acknowledge that the documentation they submit may form part of the published CAP agenda and will be available for viewing by the general public.
- 8.8 The CAP has delegated many of the functions and powers associated with matters/applications for which it is the relevant authority. The CAP is entitled to make a decision on a matter/application before it on the presumption that the matter/application has been processed correctly. Any allegation of incorrect processing associated with a matter/application should be directed to the Assessment Manager. Nothing in this clause however prevents CAP from making a decision to defer a matter/application should the CAP deem that course of action appropriate.
- 8.9 The CAP will exclude the public from attendance and meet in camera when receiving, discussing or considering potential compromises in respect to appeals which are before the Environment Resources and Development Court.

- 8.10 Where the CAP excludes the public from attendance pursuant to clause 8.9, the Presiding Member may, in his or her discretion, allow an applicant to address the CAP prior to being excluded from attendance, for the purpose of answering any questions that the CAP may have.

## **9. AUTHORISATIONS**

- 9.1 The CAP authorises the Assessment Manager or his or her delegate to attend to the conduct of all administrative tasks associated with appeals to the Environment Resources and Development Court, including but not limited to appearing on behalf of the CAP at conferences and directions hearings in the Court and engaging legal representation and experts to represent the Panel.

## **10. DEFINITIONS**

The following definitions apply in relation to these Meeting Procedures:

- 10.1 *connect* means able to hear and/or see the meeting by electronic means, including via a live stream;
- 10.2 *disconnect* means to remove the connection so as to be unable to hear and see the meeting;
- 10.3 *electronic* means includes a telephone, computer or other electronic device used for communication;
- 10.4 *live stream* means the transmission of audio and/or video from a meeting at the time the meeting is occurring.



## 10. ATTACHMENT A

### Guidelines & Protocols for Council Assessment Panel Meetings

The Council, pursuant to Section 83 of Planning Development and Infrastructure Act 2016 has established a Council Assessment Panel known as the Norwood Payneham and St Peters Council Assessment Panel (hereafter referred to as "the CAP"). The CAP functions as a relevant authority.

Where the CAP hears representors and/or the applicant

- (1) This should not be a debate but an opportunity for persons to summarise and/or respond to representations and to answer any questions that the CAP may have. The purpose of such representations and submissions is to ensure that the CAP is informed about any relevant planning issues with respect to any particular matter. The Presiding Member will restrict submissions and questions to the planning/relevant issues related to a particular matter.
- (2) Representors to the CAP, or their nominated spokesperson, will speak first followed by the applicant who will be invited to respond to the points made by the representors. Either party may speak on their own behalf or seek assistance from other persons such as lawyers, planning consultants or other advisors/persons. Representations are to be limited to a maximum of 5 minutes per party but the Presiding Member has discretion to extend this.

Where a person is nominated to speak on behalf of a recognised group of people (e.g. a resident's association or community group), then the Presiding Member shall upon request from such a group, have the ability to grant such a person more time as deemed appropriate (a maximum of 15 minutes) to speak in support of their representation. In such an instance the applicant shall be granted the same amount of time as the group to respond to representations.

- (3) Members of the CAP may ask the representors or applicant questions to clarify points of a planning nature only. Members of the CAP acknowledge that they should not use 'leading questions'. Questions will only be initiated through the Presiding Member.
- (4) If all information is before the CAP, a decision will usually be made at the time the matter is considered. However, on occasions the CAP may defer the matter for whatever reason (e.g. to enable a site visit to occur or to seek further information to be obtained to fully address matters raised during consideration of the proposal). The development assessment staff may also require further time to complete the assessment where further information is sought. Assessment timeframes will be a relevant consideration.
- (5) The CAP will then deliberate on each item in public (unless it is a confidential matter pursuant to the provisions of Regulation 13(2) of the Planning Development and Infrastructure (General) Regulations 2017).
- (6) At the conclusion of the Hearing of Representations and the applicant's address, the CAP may either resolve to approve, refuse or for whatever reason, defer a decision on the application. When the application has been deferred and then brought back before the CAP for consideration, the applicant and representor(s) will not again be heard by the CAP unless the application has been readvertised and a new Hearing of Representations is to be held. However, the Presiding Member may allow CAP Members to ask questions of the applicant or the representor who must limit their response to the question raised.
- (7) Where notice is given to representors in accordance with the requirements of the PDI General Regulations 2017 and the representor is not present at the scheduled meeting when the matter is to be considered, the CAP will not defer consideration of the matter to enable the representor to be present. Further, in the event the matter is deferred as contemplated in point (6) above, then the representor shall not have a right to be heard at the meeting where the matter is further considered.
- (8) Each matter of development assessment, whether it be an application for consent or the imposition or variation of conditions should be considered and determined individually upon its own merits.

- (9) The role of the CAP is not one of mediator or arbitrator for parties expressing divergent views but is as a decision maker charged with the responsibility of assessing each proposal (as presented) against the relevant Planning Rules or Development Plan provisions. It is a role that is inquisitorial rather than adversarial and may explore reasonable solutions to issues related to the proposal that affect other interested parties or third parties. However, the does not extend to redesigning or redefining a proposal or, finding alternative locations for a development. The CAP does not therefore have a role as a mediator or arbitrator at its meetings or otherwise between an applicant and representors.
- (10) Where a representor/applicant has questions following a decision of the CAP, such questions should be directed to Council's administration the following business day.

## 11. ATTACHMENT B

### Presentation Procedures

**All persons presenting to the CAP shall adhere to the following Presentation Procedures when addressing the Council Assessment Panel (CAP):**

- (1) Persons addressing the CAP shall, upon request, give their full name, location of their property in relation to the applicant's property, and an indication as to whether they are speaking on their own behalf or for another person or a group. When responding to questions or providing information to the CAP, persons should address the Presiding Member and confine their response to the question.
- (2) The order of presentations will be as follows:
  - (a) The Presiding Member will introduce the item;
  - (b) The representors to the application or their nominee will make their submissions followed by questions from the CAP;
  - (c) The applicant or their nominee will make his/her submission, followed by questions from the CAP.
- (3) The representors and applicant are permitted a maximum of 5 minutes each for their presentations (although the Presiding Member may allow additional time at his or her absolute discretion), and should allow time for questions from the CAP. Persons presenting to the CAP shall be succinct, avoid repetition and focus on key points remembering the members of the CAP have a copy of their submission. The applicant will then be given an opportunity to respond to the representations made to the CAP. Where a person is nominated to speak on behalf of a recognised group of people (e.g. a resident's association or community group), then the Presiding Member shall upon request from such a group, have the ability to grant such a person more time as deemed appropriate (maximum of 15 minutes) to speak in support of their representations. In such an instance the applicant shall be granted the same amount of time as the group to respond to such representations.
- (4) The CAP will then deliberate on the matter and make its determination to approve, refuse or for whatever reason defer a decision on the application.
- (5) It should be noted that the CAP will not tolerate any inflammatory, derogatory or racist comments and persons presenting to the CAP are requested to restrict their submissions to planning matters only.
- (6) It should also be noted that a petition cannot be accepted by the CAP, and should be submitted to the Council for consideration at its next available ordinary meeting.
- (7) The use of slides, maps, videos, in addition to written and verbal submissions is permitted (subject to technological capability). It should be noted by persons presenting to the CAP that a copy of any information, photos, maps, plans, videos etc. presented to the CAP on the night is required for Council records. Persons requiring the use of audio-visual equipment shall advise staff at least three (3) days before the scheduled meeting of their audio-visual requirements in order to facilitate the provision of these resources (subject to technological capability).
- (8) Representors are provided with only one opportunity to address the CAP. If a decision on a proposal is deferred by the CAP after the hearing of representations, advice of the new meeting date will be provided in writing but no further opportunity to address the CAP is available.