

COUNCIL ASSESSMENT PANEL MEETING
10 June 2020
AGENDA
BUSINESS ITEM – 8.3

Originating Officer: Marc Salver, Director Development & Regulatory Services

Subject: Policy for Council Assessment Panel Review of Decisions of the Assessment Manager

For: Decision

SUMMARY

The South Australian planning and development system is undergoing the most significant change in the last 26 years. As part of these reforms, the State Government has reviewed the planning and development assessment system and rolled out new legislation, namely the *Planning, Development and Infrastructure Act 2016 (PDI Act)* which was assented to by the Governor on 21 April 2016.

The Council Assessment Panel (CAP) was established by the Council on 26 September 2017 pursuant to Section 83 of the PDI Act. Under the current planning and development assessment system, an applicant can apply to the Environment, Resources and Development (ERD) Court to review a decision of a relevant authority (e.g., CAP or the State Commission Assessment Panel (SCAP)). However, a proposed change to the planning and development assessment system is to allow an applicant to apply to CAP rather than the ERD Court in the first instance to review a decision of an Assessment Manager (including his or her delegate) in accord with Section 202 (Rights of Review & Appeal) of the **PDI Act**. Such decisions include any decision by the Assessment Manager in relation to a “prescribed matter”, namely any assessment, request, decision, refusal, direction or act that is relevant to any aspect of the determination of a development application.

Section 203(2)(a) of the **PDI Act** states that CAP may adopt a procedure for the consideration of such review requests as it thinks fit. The Local Government Association (LGA) has prepared a template document to assist councils in preparing such a policy (refer to **Appendix 1**). Staff have reviewed the template policy and made some suggested changes as are detailed in **Appendix 1** via tracked changes, noting that councils have some discretion in relation to certain aspects of the template policy. The draft Policy being presented to CAP for adoption has been formulated to accord with Section 203 of the **PDI Act** and is detailed in **Appendix 2**. The Policy outlines the process to be followed by an applicant when lodging such a request for review to CAP, and how the matter will be considered by the Panel.

Note that the draft Policy (refer to **Appendix 2**) applies in addition to the statutory requirements for the review by the CAP of a decision of an Assessment Manager as set out in Part 16, Division 1 of the **PDI Act**. Staff are recommending that the CAP adopt the draft Policy as detailed in **Appendix 2** of this report which outlines the procedure to be followed for review of decisions of the Assessment Manager, including his or her delegate.

RECOMMENDATION

1. That the Council Assessment Panel adopts the draft Policy for the Council Assessment Panel Review of Decisions of the Assessment Manager as detailed in *Appendix 2* of this report with a commencement date being the designated date of the Phase 3 of the Planning & Design Code to be announced by the Minister for Planning, in due course.
 2. That the Director Development & Regulatory Services be permitted to make any formatting, nomenclature or other minor changes to the Policy before the designated date.
-

1. GOVERNANCE

➤ Legal Implications

The *Planning, Development and Infrastructure Act 2016* (**PDI Act**) was assented to by the Governor on 21 April 2016 after the passage through Parliament. It is being implemented over 5 years with the Act being brought into operation in stages.

On 1 October 2017 the operation of Council Assessment Panel (CAP) pursuant to Sections 82 and 83 of the **PDI Act** commenced and the *Planning, Development and Infrastructure (General) Regulations 2017* [the **PDI (General) Regulations**] came into operation.

Section 202 (Rights of Review & Appeal) of the **PDI Act** allows an applicant who has received a determination from a relevant authority, including the CAP or Assessment Manager, regarding a Development Application, the right to seek a review of the decision.

Where such a decision has been made by the Assessment Manager (or his or her delegate), Section 202 (1)(b)(i)(A) permits the applicant to make application for review of a decision regarding a Prescribed Matter to the CAP.

Section 203(2)(a) of the **PDI Act** states that CAP may adopt a procedure for the consideration of such review requests as it thinks fit. A draft Policy (refer to **Appendix 2**) has been formulated to accord with Section 203 of the **PDI Act** and is being presented for CAP to adopt.

Note that the draft Policy outlines the process to be followed by an applicant when lodging such a request for review and how the matter will be considered by CAP.

The draft Policy applies in addition to the statutory requirements for the review by the Council Assessment Panel of a decision of an Assessment Manager as set out in Part 16, Division 1 of the PDI Act.

Customer Service and Community/Cultural Implications

The CAP has been established to consider and make determinations regarding certain types of Development Applications as detailed in the Council’s Instruments of Delegations and the Council’s Delegations Policy for the Determination of Development Applications by CAP. These include instances where a Development Application has been publicly notified and a representor wishes to be heard in support of their representation. This ensures that such members of the community have an opportunity to present their views about a specific development and its potential impacts to the CAP. The CAP involvement in the assessment process provides for a high level of independent scrutiny of applications and the determination of certain developments in public meeting forum, providing a transparent process.

A proposed change to the planning and development assessment system allows an applicant to apply to CAP rather than the ERD Court in the first instance to review a decision of an Assessment Manager (including his or her delegate) in accord with Section 202 (Rights of Review & Appeal) of the **PDI Act**. From a customer service point of view, such a process allows an applicant the option of an initial review by the CAP of a decision of the Planning Staff, without the need to apply to the ERD Court which may save time and money. However, Section 204 of the **PDI Act** still allows an applicant to apply to the Court for a further review if he or she is dissatisfied with the CAP’s review of the Planning Staff decision.

➤ **Engagement/Consultation**

Community consultation on the Planning Reforms has been undertaken by the State Planning Commission and Council. No community engagement or consultation is required for the implementation of this draft Policy (refer to **Appendix 2**) as it is a legislated option to have such a policy in place and the adoption process is of an administrative nature.

2. POLICY FOR COUNCIL ASSESSMENT PANEL REVIEW OF DECISIONS OF THE ASSESSMENT MANAGER

By way of background, it is noted that under the current planning and development assessment system, an applicant can apply to the Environment, Resources and Development (ERD) Court to review a decision of a relevant authority (e.g., CAP or the State Commission Assessment Panel (SCAP)). However, a proposed change to the planning and development assessment system is to allow an applicant to apply to CAP rather than the ERD Court in the first instance to review a decision of an Assessment Manager (including his or her delegate) in accord with Section 202 (Rights of Review & Appeal) of the **PDI Act**. Such decisions include any decision by the Assessment Manager in relation to a “prescribed matter”, namely any assessment, request, decision, refusal, direction or act that is relevant to any aspect of the determination of a development application.

Section 203(2)(a) of the **PDI Act** states that CAP may adopt a procedure for the consideration of such review requests as it thinks fit. The Local Government Association (LGA) has prepared a template document to assist councils in preparing such a policy (refer to **Appendix 1**). Staff have reviewed the template policy and made some suggested changes as are detailed in **Appendix 1** via tracked changes, noting that councils have some discretion in relation to certain aspects of the template policy. Some key suggested changes to the template policy are as follows:

1. Certain timeframes in the template policy have been increased to provide additional time for matters to be referred to the Assessment Manager (e.g., clause 2.6 of the template policy), and for the applicant to have more time to consider requests for further information (e.g., clause 5.12).
2. Clauses 3.5 to 3.13 of the template policy have been deleted as staff consider that allowing applicants the opportunity to provide additional information late in the piece may result in an iterative process and deferrals in the review process to enable the CAP and Assessment Manager to consider the additional information. Further, in some cases referrals to Agencies and other Departments may be required as a result of the additional information supplied and being considered by CAP. It is noted that there is no obligation for a CAP to consider or allow for new information to be submitted as part of the review process. Staff therefore recommend that this option not be included and hence these and other related clauses have been deleted from the draft Policy as detailed in **Appendix 2**.
3. Clauses 4.1.1 to 4.1.3 in the template policy in relation to the provision of information, reports, documents and materials by the Assessment Manager to CAP have been retained as it is considered necessary for these to be provided in order for a fair and comprehensive review process to occur. It is noted that these clauses are discretionary but staff recommend that they be included in the draft Policy.
4. In relation to clause 4.2 of the template policy, it is noted that to provide flexibility, the policy does not dictate that an application will be assigned to a CAP meeting after a prescribed period of time, but only once all necessary procedural steps have been completed. Further, in order to clarify expectations for applicants, staff have included interpretation of the term “next available meeting” which is that this may not necessarily be the next ‘in time’ CAP meeting (which could be a matter of days away from the date of lodgement of the application for review) and the agenda for the next meeting may have closed or is full, or if there may be insufficient time for the CAP members to consider the information provided to them. Therefore it is intended that the review would be assigned to and heard at the CAP meeting after the next ‘in time’ meeting.
5. Clauses 5.4 and 5.5 of the template policy refer to the amount of time that the applicant and Assessment Manager respectively will have to address the CAP or respond to any issues raised. Note that staff have recommended 5 minutes in both instances, noting that the Presiding Member has the discretion to allow for additional time where warranted.
6. In order to provide context for the draft Policy, an introductory section has been included. Further, for ease of reference, definitions and interpretations of certain key terms used in the draft Policy have been included (refer to section 2 of **Appendix 2**). For example, it was considered prudent to include clarification of who the ‘applicant’ is noting that in some cases it may not be the landowner. This is to ensure that where the applicant is not the landowner, only the applicant can make an application to CAP for the review of a decision of the Assessment Manager, and not the landowner.

The draft Policy has been formulated to accord with Section 203 of the **PDI Act** and is detailed in **Appendix 2**. The Policy outlines the process to be followed by an applicant when lodging such a request for review to CAP, and how the matter will be considered by the CAP.

Note that the draft Policy (refer to **Appendix 2**) applies in addition to the statutory requirements for the review by the CAP of a decision of an Assessment Manager as set out in Part 16, Division 1 of the PDI Act. Staff are therefore recommending that the CAP adopt the draft Policy as detailed in **Appendix 2** of this report.

3. APPENDICES

- (1) Template Policy for Council Assessment Panel Review of Decisions of Assessment Manager – Working Document with Tracked Changes
- (2) Policy for Council Assessment Panel Review of Decisions of Assessment Manager – For Adoption

Appendix 1

*Template Policy for Council Assessment Panel Review of
Decisions of Assessment Manager – Working
Document with Tracked Changes*

Appendix 2

*Policy for Council Assessment Panel Review of Decisions
of Assessment Manager – For Adoption*

Error! AutoText entry not defined.

ATTACHMENT 1

DRAFT POLICY FOR COUNCIL ASSESSMENT PANEL REVIEW OF DECISIONS OF THE ASSESSMENT MANAGER

1. LEGISLATIVE FRAMEWORK

- 1.1 This Policy applies in addition to the statutory requirements for the review by the Council Assessment Panel (**CAP**) of a decision of an Assessment Manager as set out in Part 16, Division 1 of the *Planning, Development and Infrastructure Act 2016 (Act)*.

2. COMMENCING A REVIEW

- 2.1 An application for review in relation to a development application or development authorisation may only be commenced by the applicant for the development authorisation.

- 2.2 An application for review must relate to a Prescribed Matter in relation to which the Assessment Manager was the relevant authority.

- 2.3 A “Prescribed Matter” means:

- 2.3.1 any assessment, request, decision, direction or act of the Assessment Manager under the Act that is relevant to any aspect of the determination of the development application; or
- 2.3.2 a decision to refuse to grant development authorisation to the application; or
- 2.3.3 the imposition of conditions in relation to a grant of development authorisation; or
- 2.3.4 subject to any exclusion prescribed by the *Planning, Development and Infrastructure (General) Regulations 2017*, any other assessment, request, decision, direction or act of the Assessment Manager under the Act in relation to the grant of development authorisation.

- 2.4 An application for review must be:

- 2.4.1 made using the [Application to Assessment Panel for Assessment Manager’s Decision Review \(MS Word Document, 63.4 KB\)](#) (**the Form** – refer to **Attachment 1**);
- 2.4.2 lodged in a manner identified on the Form; and
- 2.4.3 lodged within one month of the applicant receiving notice of the Prescribed Matter, unless the **Presiding Member**, in his or her discretion, grants an extension of time.

Comment [jfc1]: We have included information in this Part which is also contained in the Act (so that an applicant does not need to also consult the Act).

Comment [jfc2]: The Act identifies this as a decision of the Panel. We have recommended the Panel delegate this task to the Presiding Member for reasons of practical expediency, but it need not, and could remain a decision of the Panel. If this approach is adopted, subsequent amendments will need to be made to Clauses 2.5.

- 2.5 In determining whether to grant an extension of time, the Presiding Member may consider:
- 2.5.1 the reason for the delay;
 - 2.5.2 the length of the delay;
 - 2.5.3 whether any rights or interests of other parties would be affected by allowing the review to be commenced out of time;
 - 2.5.4 the interests of justice;
 - 2.5.5 whether the applicant has, or is within time to, appeal the Prescribed Matter to the ERD Court; and
 - 2.5.6 any other matters the Presiding Member considers relevant.

2.6 An application for review should, upon receipt by the Panel, be notified to the Assessment Manger within 5~~2~~ business days.

3. APPLICANT'S DOCUMENTS

Written submission

- 3.1 An applicant may provide a written submission in support of his or her application for review.
- 3.2 Such a submission must be received by the Presiding Member within one month~~5~~ business days of the lodgement of the application for review, or such longer period as is requested by the applicant and granted by the Presiding Member, in his or her discretion.
- 3.3 A written submission should be marked to the attention of the Presiding Member and lodged in a manner specified in Clause 7.
- 3.4 The Presiding Member should provide a copy of any written submission to the Assessment Manager within 2 business days of its receipt.

Additional information

- 3.5 An applicant may request the opportunity to place additional information and/or materials before the Panel, by application to the Presiding Member lodged in a manner specified in Clause 7.
- 3.6 Any such application must be received by the Presiding Member within one month of the lodgement of the application for review, or such longer period as is requested by the applicant and granted by the Presiding Member, in his or her discretion and either attach the additional information and/or materials, or set out the nature of the information and/or materials and by whom it has been or will be prepared.

Comment [jfc3]: This need not be the Assessment Manager if there are concerns about the Assessment Manager receiving applications to review his or her own decisions. However, each Panel will need to determine a mechanism by which Council staff are advised of the review in order to commence compiling the relevant documents for the Panel.

Comment [MS4]: As there are various ways available to the applicant for lodging an application for review, staff are recommending this be increased to 5 business days

Comment [jfc5]: We have nominated 2 business days for all notifications. However, 2 days is not prescribed, and these timeframes can be amended as each Panel sees fit, or removed altogether.

Comment [MS6]: Staff consider that the applicant should be given this option

Comment [jfc7]: The Act does not grant an applicant a right to provide a written submission. This option can be deleted if a Panel would prefer.

Comment [jfc8]: This timeframe can be amended at the discretion of each Panel. The ability to grant an extension of time can be deleted if a Panel does not wish to offer additional time

Comment [MS9]: Staff support the ability for an extension of time being applied for

Comment [MS10]: Staff are recommending 5 business days in order to allow the review process not to be delayed for a month whilst waiting for the written submission

Comment [jfc11]: There is no obligation for a Panel to consider new information. If a Panel determines that it will not consider additional information, Clauses 3.5 to 3.13, 4.1.5, 4.5.3 and 4.5.4 can be deleted

Comment [MS12]: Staff consider that allowing applicants to provide additional information late in the piece may result in an iterative process and deferrals to potentially result in referrals to Agencies and other Departments. It is therefore recommended that this option not be allowed

Comment [jfc13]: We have nominated the Presiding Member for this role, but it need not be. The application could be made to the Panel instead. If so, amendments will be required to reflect this change in Clauses 3.6 to 3.13).

Comment [jfc14]: This timeframe can be amended at the discretion of each Panel, but should be consistent with the timeframe to provide a written submission in Clause 3.2. The ability to grant an extension of time can be ... [1]

~~3.7 The Presiding Member will determine, in his or her discretion, whether to permit the additional information and/or materials to be put before the Panel within 5 business days.~~

~~3.8 In making this decision, the Presiding Member may consider:~~

~~3.8.1 the relevance of the information and/or materials to the review application;~~

~~3.8.2 the amount of time the Panel would need to consider the additional information and/or materials;~~

~~3.8.3 whether the information and/or materials relate to a matter which has been the subject of a referral to a referral agency;~~

~~3.8.4 the reasons the additional information and/or materials were not put before the Assessment Manager;~~

~~3.8.5 the interests of justice;~~

~~3.8.6 whether the information and/or materials would cause prejudice to any party; and~~

~~3.8.7 any other matters the Presiding Member considers relevant.~~

~~3.9 The Presiding Member should advise the applicant of his or her decision within 2 business days. If the decision is to allow the provision of additional information and/or materials, the Presiding Member should also advise the applicant of the time within which the information and/or materials is to be provided.~~

~~3.10 Additional information provided in accordance with Clause 3.7 should be marked to the attention of the Presiding Member and lodged in a manner specified in Clause 7.~~

~~3.11 Upon receipt of additional information and/or materials, the Presiding Member should provide a copy to the Assessment Manager within 2 business days.~~

~~3.12 Within 5 business days of the receipt of additional information, the Presiding Member should determine, in his or her discretion, whether to provide a referral agency which provided a response on the application with the opportunity to review and respond to the additional information and/or materials, in such manner and within such time as is determined by the Presiding Member.~~

~~3.13 Where a response is received from a referral agency, the Presiding Member should provide a copy to the applicant and Assessment Manager within 2 business days.~~

4. MATERIALS FOR REVIEW HEARING

4.1 Within the time prescribed in clause 4.5, the Assessment Manager should collate for the Panel:

Comment [jfc15]: We have nominated 5 business days for all decisions of the Presiding Member (or Panel). This is not prescribed, and can be amended as appropriate for each Panel, or deleted altogether.

Comment [jfc16]: Clauses 4.1.1 to 4.1.3 are discretionary. A Panel can choose to require all information in all cases (as this Policy does), or can delete or amend clauses 4.1.1 to 4.1.3 as it sees fit.

Error! AutoText entry not defined.- 4 -

- 4.1.1 all materials which were before the Assessment Manager (or delegate) at the time of the decision on the Prescribed Matter, including but not limited to:
 - 4.1.1.1 application documents, reports, submissions, plans, specifications or other documents submitted by the applicant;
 - 4.1.1.2 internal and/or external referral responses; and
 - 4.1.1.3 any report from Council staff or an external planning consultant written for the Assessment Manager;
- 4.1.2 any assessment checklist used by the Assessment Manager or delegate when making the decision on the Prescribed Matter;
- 4.1.3 a report prepared by the Assessment Manager (or delegate) setting out the details of the relevant development application; the Prescribed Matter; ~~an assessment of any additional information and/or materials provided by the applicant pursuant to clause 3.7;~~ and the reasons for the Assessment Manager (or delegate's) decision on the Prescribed Matter;
- 4.1.4 any written submission prepared by the applicant pursuant to clause 3.1;
- 4.1.5 ~~such additional information or materials as the Presiding Member has permitted to be placed before the Panel pursuant to clause 3.7; and~~
- 4.1.6 any further information requested by the Presiding Member ~~or CAP.~~
- 4.2 After the completion of the requirements in Clause 4.1, the Assessment Manager should assign the review application to the next available¹ Panel meeting.
- 4.3 The documents identified in Clause 4.1 will be included as ~~Annexure~~Attachments to the agenda item.
- 4.4 The Assessment Manager should advise the applicant in writing of the time and date of the Panel meeting at which the review application will be heard not less than 5 business days before the meeting.
- 4.5 The Assessment Manager should comply with Clause 4.1 within the following period of time:
 - 4.5.1 ~~one month~~ next available² CAP meeting from the date of lodgement of the application for review; plus

Comment [MS17]: The sentence has been deleted as a consequence of clause 3.7 being deleted

Comment [MS18]: Deleted as we deleted Clause 3.5

Comment [jfc19]: Or Panel

Comment [MS20]: Staff consider that for completeness, CAP should be included in this clause

Comment [jfc21]: To provide flexibility, the policy does not dictate that an application will be assigned to a Panel meeting after a prescribed period of time, but only once all necessary procedural steps have been completed.

Comment [jfc22]: It is not intended that a review application will always be heard at the next in time Panel meeting (which could be a matter of days away). If the agenda for the next meeting has closed or is full, or if there would be insufficient time for the Panel members to consider the information provided to them, it is intended that the review would be assigned to and heard at the meeting after the next in time meeting.

Comment [jfc23]: This timeframe can be amended as each Panel considers appropriate

¹ In this instance 'next available meeting' is not necessarily the next in time CAP meeting (which could be a matter of days away) as the agenda for the next meeting may have closed or is full, or if there would be insufficient time for the CAP members to consider the information provided to them, it is intended that the review would be assigned to and heard at the meeting after the next in time meeting.

² In this instance 'next available meeting' is not necessarily the next in time CAP meeting (which could be a matter of days away) as the agenda for the next meeting may have closed or is full, or if there would be insufficient time for the CAP members to consider the information provided to them, it is

Error! AutoText entry not defined.- 5 -

4.5.2 where the applicant is granted an extension of time to provide a written submission pursuant to clause 3.2, the period of time granted by the Presiding Members; plus

~~4.5.3 where the applicant requests the opportunity to put additional information and/or materials before the Panel, the time taken by the Presiding Member to determine that request and advise the applicant; plus~~

~~4.5.4 where the Presiding Member determines to allow an applicant to put additional information and/or materials before the Panel:~~

~~4.5.4.1 the time allowed by the Presiding Member for those materials to be provided; plus~~

~~4.5.4.2 the time taken to determine whether to provide those materials to a referral agency; plus~~

~~4.5.4.3 the time allowed for the referral agency to respond; plus~~

~~4.5.5~~ any additional period of time granted by the Presiding Member, in his or her discretion, upon the request of the Assessment Manager.

5. REVIEW HEARING

5.1 On review, the PanelCAP will consider the Prescribed Matter afresh.

5.2 The PanelCAP will not hear from any party other than the applicant and the Assessment Manager.

5.3 The PanelCAP will hear from the applicant (or his or her representative), where he or she requests to be heard.

5.4 An applicant and/or his/her representative will be allowed a combined time of five minutes to address the PanelCAP. The Presiding Member may allow additional time at his or her discretion.

5.5 Where an applicant is heard by the PanelCAP, the Assessment Manager and/or delegate will be allowed five minutes to respond to any issues raised by the applicant. The Presiding Member may allow additional time at his or her discretion.

5.6 PanelCAP members may ask questions and seek clarification from the applicant and/or Assessment Manager at the conclusion of their addresses.

5.7 Whether or not the applicant chooses to be heard by the CAPPanel, the Assessment Manager should be present at the PanelCAP meeting to respond to any questions or requests for clarification from the PanelCAP.

Comment [MS24]: Clauses 4.5.3 and 4.5.4 have been deleted as Clause 3.5 has been deleted

Comment [jfc25]: This can be deleted at the discretion of each Panel, in which case the Assessment Manager will simply respond to questions raised by the Panel in Clause 5.7 below. If so, also delete from Clause 5.6 the words "and/or Assessment manager"

intended that the review would be assigned to and heard at the meeting after the next in time meeting.

Error! AutoText entry not defined.- 6 -

- 5.8 Following any addresses from the applicant and/or Assessment Manager, the Presiding Member will invite all PanelCAP Members to speak on any matter relevant to the review.
- 5.9 The PanelCAP may resolve to defer its decision if it considers it requires additional information from the applicant or the Assessment Manager.
- 5.10 The deferral will be to the next ordinary meeting of the PanelCAP, or such longer period of time as is determined by the PanelCAP to enable the information sought to be obtained and considered.
- 5.11 Where an applicant is to provide further information to a PanelCAP pursuant to Clause 5.9, the information must be provided within the time specified by the Panel and in a manner specified in Clause 7.
- 5.12 Where an Assessment Manager is to provide further information to thea PanelCAP pursuant to Clause 5.9, a copy of the information must also be provided to the applicant not less than 105 business days before the meeting at which it will be considered by the Panel.

Comment [MS26]: Staff consider that the applicant be given more time to consider the further information

Comment [jfc27]: Or such other period of time as is preferred by the Panel

6. OUTCOME ON REVIEW HEARING

- 6.1 The Panel may, on a review:
- 6.1.1 affirm the Assessment Manager's decision on the Prescribed Matter;
 - 6.1.2 vary the Assessment Manager's decision on the Prescribed Matter; or
 - 6.1.3 set aside the Assessment Manager's decision on the Prescribed Matter and substitute its own decision.
- 6.2 An applicant should be advised in writing of the Panel's decision by the Assessment Manager (or delegate) within 2 business days of the Panel's decision.

7. LODGING WRITTEN MATERIALS & DOCUMENTS WITH THE PANEL

- 7.1 All documents and written communications with the Panel must be lodged via:
- 7.1.1 the SA Planning Portal (to the extent the Portal is able to receive such a submission);
 - 7.1.2 email to: insert relevant email addressmail@ahc.sa.gov.au; or
 - 7.1.3 hand-delivery or post to Adelaide Hills Council, 63 Mount Barker Road, Stirling SA 5152 insert address of principal office/address of CAP

8. DRAFT RESOLUTIONS

Draft resolutions 8.1 and Error! Reference source not found. below may be adopted by Panels in order to adopt this Policy and delegate to the Presiding Member administrative decisions regarding the manner in which reviews will proceed.

Comment [jfc28]: The wording of these resolutions are suggestions only, and can be amended as appropriate for each Panel.

Error! AutoText entry not defined.- 7 -

~~8.1 The Panel resolves to adopt the Policy for Assessment Panel Review of Decision of Assessment Manager dated January 2020 (the Policy).~~

The ~~D~~draft resolutions ~~8.2 to 8.5~~ below are intended to provide guidance to CAPPanels as to how ~~they~~it might word resolutions to give effect to the decisions ~~they~~it makes on review. CAPPanels may adopt this wording, or amend it as appropriate.

~~8.28.1~~ Resolution to affirm a decision of the Assessment Manager:

The Panel resolves to affirm the decision of the Assessment Manager [insert description of decision, for example:]

- *that the application is not seriously at variance with the Planning and Design Code (disregarding minor variations) and that planning consent be granted to DA No [insert] for [insert nature of development] subject to the [insert number] of conditions imposed by the Assessment Manager*
- *that DA No [insert] is classified as code assessed (performance assessed) development*
- *that the application is not seriously at variance with the Planning and Design Code (disregarding minor variations), but that DA No. [insert] does not warrant planning consent for the following reasons:*

~~8.38.2~~ Resolution to vary a decision of the Assessment Manager:

The Panel resolves to vary the decision of the Assessment Manager in relation to DA No [insert] by deleting condition [insert number] of planning consent and replacing it with the following condition:

[insert varied condition]

~~8.48.3~~ Resolution to set aside a decision of the Assessment Manager:

The Panel resolves to set aside the decision of the Assessment Manager to [insert description of decision being reversed, for example, refuse planning consent to DA No [insert]] and substitute the following decision:

- *DA No [insert] is not seriously at variance with the Planning and Design Code (disregarding minor variations) and that planning consent is granted to the application subject to the following conditions:*

~~8.58.4~~ Resolution to defer review hearing:

The Panel resolves to defer its decision in relation to its review of the decision of the Assessment Manager to [insert description of the decision] in relation to DA No [insert] until:

Error! AutoText entry not defined.- 8 -

- *the next ordinary meeting of the Panel;*
 - *the next ordinary meeting of the Panel after [insert additional information which has been requested by the Panel] is provided*
 - *until the next ordinary meeting of the Panel after [insert date (i.e. giving an applicant 2 months to provide information)]*
- (etc).*

Application to Assessment Panel³

a. DECISION REVIEW REQUEST

Review of a decision of an Assessment Manager pursuant to section 202(1)(b)(i)A) of the Planning, Development and Infrastructure Act 2016

Applicant details:	Name: Click here to enter text. Phone: Click here to enter text. Email: Click here to enter text. Postal address: Click here to enter text.
Development Application Number:	Click here to enter text.
Nature of Development:	Click here to enter text.
Subject Land:	Click here to enter text. <i>[street number, street name, suburb, postcode]</i> <i>[lot number, plan number, certificate of title number, volume and folio]</i>
Zone / Sub-zone / Overlay of subject land:	Click here to enter text.
Date development application lodged:	Click here to enter text.
Date of decision of the Assessment Manager:	Click here to enter text.
Nature of decision:	<input type="checkbox"/> Granted <input type="checkbox"/> Granted with conditions/reserved matters <input type="checkbox"/> Refused
Prescribed matter⁴ for review by Assessment Panel:	Click here to enter text.
Reason for review:	Click here to enter text. <i>[Briefly state the facts, circumstances and other relevant matters upon which this application is based. Attach additional pages as necessary]</i>
Date:	Click here to enter text.
Signature:	<input type="checkbox"/> <i>If being lodged electronically please tick to indicate agreement to this declaration.</i>

³ This application must be made through the relevant facility on the SA planning portal. To the extent that the SA planning portal does not have the necessary facilities to lodge this form, the application may be lodged—
(i) by email, using the main email address of the relevant assessment panel; or
(ii) by delivering the application to the principal office or address of the relevant assessment panel.

⁴ Prescribed matter, in relation to an application for a development authorisation, means—
(a) any assessment, request, decision, direction or act of a relevant authority under the Act that is relevant to any aspect of the determination of the application; or
(b) a decision to refuse to grant the authorisation; or
(c) the imposition of conditions in relation to the authorisation; or
(d) subject to any exclusion prescribed by the regulations, any other assessment, request, decision, direction or act of the assessment manager under the Act in relation to the authorisation.

Error! AutoText entry not defined.- 10 -

This timeframe can be amended at the discretion of each Panel, but should be consistent with the timeframe to provide a written submission in Clause 3.2. The ability to grant an extension of time can be deleted if a Panel does not wish to offer additional time.

COUNCIL POLICY



COUNCIL ASSESSMENT PANEL REVIEW OF DECISIONS OF THE ASSESSMENT MANAGER

Policy Number:	To be allocated by Governance & Performance Department
Responsible Department(s):	Development & Regulatory Services
Responsible Officer	Assessment Manager
Other Relevant Policies:	N/A
Relevant Procedure(s):	N/A
Relevant Legislation:	Planning, Development & Infrastructure Act, 2016 Planning, Development and Infrastructure (General) Regulations 2017
Policies and Procedures Superseded by this policy on its Adoption:	N/A
Approver:	Council Assessment Panel
Effective From:	The designated date of Phase 3 of the Planning & Design Code, as determined by the Minister for Planning
Next Review:	No later than 12 months after the designated date or as required by legislation or changed circumstances

Version Control

Version No.	Date of Effect	Description of Change(s)	Approval
<i>1.1</i>	<i>To be entered administratively</i>	<i>To be entered administratively</i>	<i>CAP resolution</i>

DRAFT

COUNCIL ASSESSMENT PANEL REVIEW OF DECISIONS OF THE ASSESSMENT MANAGER POLICY

1. INTRODUCTION

1.1 Section 202 (Rights of Review & Appeal) of the *Planning, Development & Infrastructure Act 2016 (PDI Act)* allows an applicant who has received a determination from a relevant authority, including the Council Assessment Panel or Assessment Manager, regarding a Development Application, the right to seek a review of the decision.

1.2 Where such a decision has been made by the Assessment Manager (or his or her delegate), Section 202 (1)(b)(i)(A) permits the applicant to apply to the Council Assessment Panel (CAP) to review the decision regarding a Prescribed Matter.

1.3 Section 203(2)(a) of the **PDI Act** states that CAP may adopt a procedure for the consideration of such review requests as it thinks fit. This Policy has been formulated to accord with Section 203 of the **PDI Act**.

1.4 This Policy outlines the process to be followed by an applicant when lodging such a request for review and how the matter will be considered by CAP.

1.5 This Policy applies in addition to the statutory requirements for the review by the Council Assessment Panel (CAP) of a decision of an Assessment Manager as set out in Part 16, Division 1 of the **PDI Act**.

2. DEFINITIONS & INTERPRETATION

2.1 “**applicant**” in this instance refers to the person or entity named as such on the Development Application form who sought the development authorisation in question and who may or may not be the owner of the land on which the development is to occur.

2.2 “**Assessment Manager**” in this instance includes his or her delegate

2.3 “**business day**” means any day except—
(a) Saturday, Sunday or a public holiday; or
(b) any other day which falls between 25 December in any year and 1 January in the following year;

2.4 “**next available meeting**” is not necessarily the next in time CAP meeting (which could be a matter of days away) as the agenda for the next meeting may have closed or is full, or there may be insufficient time for the CAP members to consider the information provided to them, it is intended that the review would be assigned to and heard at the meeting after the next in time CAP meeting.

2.5 A “**Prescribed Matter**” means:

2.5.1 any assessment, request, decision, direction or act of the Assessment Manager under the Act that is relevant to any aspect of the determination of the development application, or

- 2.5.2 a decision to refuse to grant development authorisation to the application, or
- 2.5.3 the imposition of conditions in relation to a grant of development authorisation, or
- 2.5.4 subject to any exclusion prescribed by the *Planning, Development and Infrastructure (General) Regulations 2017*, any other assessment, request, decision, direction or act of the Assessment Manager under the **PDI Act** in relation to the granting of a development authorisation.

3. COMMENCING A REVIEW

- 3.1 An application for review in relation to a development application or development authorisation may only be commenced by the applicant for the development authorisation.
- 3.2 An application for review must relate to a Prescribed Matter in relation to which the Assessment Manager was the relevant authority.
- 3.3 An application for review must be:
 - 3.3.1 made using the [Application to Assessment Panel for Assessment Manager's Decision Review \(MS Word Document, 63.4 KB\)](#) (the **Form** - for ease of reference, a copy of the current Application to CAP Form is attached to this Policy. However, note that it may be amended without notice by the Department of Planning, Transport and Infrastructure (DPTI))
 - 3.3.2 lodged in a manner identified on the Form, and
 - 3.3.3 lodged within one month of the applicant receiving notice of the Prescribed Matter, unless the Presiding Member, in his or her discretion, grants an extension of time.
- 3.4 In determining whether to grant an extension of time, the Presiding Member may consider:
 - 3.4.1 the reason for the delay
 - 3.4.2 the length of the delay
 - 3.4.3 whether any rights or interests of other parties would be affected by allowing the review to be commenced out of time
 - 3.4.4 the interests of justice
 - 3.4.5 whether the applicant has, or is within time to, appeal the Prescribed Matter to the ERD Court, and
 - 3.4.6 any other matters the Presiding Member considers relevant.

- 3.5 An application for review should, upon receipt by the CAP, be notified to the Assessment Manager within 5 business days.

4. APPLICANT'S DOCUMENTS

Written Submission

- 4.1 An applicant may provide a written submission in support of his or her application for review.
- 4.2 Such a submission must be received by the Presiding Member within 5 business days of the lodgement of the application for review, or such longer period as is requested by the applicant and granted by the Presiding Member, in his or her discretion.
- 4.3 A written submission should be marked to the attention of the Presiding Member and lodged in a manner specified in Clause 8.
- 4.4 The Presiding Member should provide a copy of any written submission to the Assessment Manager within 5 business days of its receipt.

5. MATERIALS FOR REVIEW HEARING

- 5.1 Within the time prescribed in Clause 5.5, the Assessment Manager should collate for the Panel:
- 5.1.1 all materials which were before the Assessment Manager (or delegate) at the time of the decision on the Prescribed Matter, including but not limited to:
 - 5.1.1.1 application documents, reports, submissions, plans, specifications or other documents submitted by the applicant
 - 5.1.1.2 internal and/or external referral responses, and
 - 5.1.1.3 any report from Council staff or an external planning consultant written for the Assessment Manager;
 - 5.1.2 any assessment checklist used by the Assessment Manager or delegate when making the decision on the Prescribed Matter;
 - 5.1.3 a report prepared by the Assessment Manager (or delegate) setting out the details of the relevant development application; the Prescribed Matter; and the reasons for the Assessment Manager (or delegate's) decision on the Prescribed Matter;
 - 5.1.4 any written submission prepared by the applicant pursuant to Clause 4.1, and
 - 5.1.5 any further information requested by the Presiding Member or CAP.
- 5.2 After the completion of the requirements in Clause 5.1, the Assessment Manager should assign the review application to the next available Panel meeting.

- 5.3 The documents identified in Clause 5.1 will be included as Attachments to the agenda item.
- 5.4 The Assessment Manager should advise the applicant in writing of the time and date of the Panel meeting at which the review application will be heard not less than 5 business days before the meeting.
- 5.5 The Assessment Manager should comply with Clause 5.1 within the following period of time:
- 5.5.1 next available CAP meeting from the date of lodgement of the application for review, plus
 - 5.5.2 where the applicant is granted an extension of time to provide a written submission pursuant to clause 4.2, the period of time granted by the Presiding Members, plus
 - 5.5.3 any additional period of time granted by the Presiding Member, in his or her discretion, upon the request of the Assessment Manager.

6. REVIEW HEARING

- 6.1 On review, the CAP will consider the Prescribed Matter afresh.
- 6.2 The CAP will not hear from any party other than the applicant and the Assessment Manager.
- 6.3 The CAP will hear from the applicant (or his or her representative), where he or she requests to be heard.
- 6.4 An applicant and/or his/her representative will be allowed a combined time of five minutes to address the CAP. The Presiding Member may allow additional time at his or her discretion.
- 6.5 Where an applicant is heard by the CAP, the Assessment Manager and/or delegate will be allowed five minutes to respond to any issues raised by the applicant. The Presiding Member may allow additional time at his or her discretion.
- 6.6 CAP members may ask questions and seek clarification from the applicant and/or Assessment Manager at the conclusion of their addresses.
- 6.7 Whether or not the applicant chooses to be heard by the CAP, the Assessment Manager should be present at the CAP meeting to respond to any questions or requests for clarification from the CAP.
- 6.8 Following any addresses from the applicant and/or Assessment Manager, the Presiding Member will invite all CAP Members to speak on any matter relevant to the review.
- 6.9 The CAP may resolve to defer its decision if it considers it requires additional information from the applicant or the Assessment Manager.

- 6.10 The deferral will be to the next ordinary meeting of the CAP, or such longer period of time as is determined by the CAP to enable the information sought to be obtained and considered.
- 6.11 Where an applicant is to provide further information to a CAP pursuant to Clause 6.9, the information must be provided within the time specified by the Panel and in a manner specified in Clause 8.
- 6.12 Where an Assessment Manager is to provide further information to the CAP pursuant to Clause 6.9, a copy of the information must also be provided to the applicant not less than 10 business days before the meeting at which it will be considered by the Panel.

7. OUTCOME ON REVIEW HEARING

- 7.1 The CAP may, on a review:
- 7.1.1 affirm the Assessment Manager's decision on the Prescribed Matter;
 - 7.1.2 vary the Assessment Manager's decision on the Prescribed Matter; or
 - 7.1.3 set aside the Assessment Manager's decision on the Prescribed Matter and substitute its own decision.
- 7.2 An applicant should be advised in writing of the CAP's decision by the Assessment Manager (or delegate) within 2 business days of the Panel's decision.

8. LODGING WRITTEN MATERIALS & DOCUMENTS WITH THE PANEL

- 8.1 All documents and written communications with the Panel must be lodged via:
- 8.1.1 the SA Planning Portal (to the extent the Portal is able to receive such a submission);
 - 8.1.2 e-mail to mail@ahc.sa.gov.au; or
 - 8.1.3 hand-delivery or post to Adelaide Hills Council, 63 Mount Barker Road, Stirling SA 5152

9. DRAFT RESOLUTIONS

The draft resolutions below are intended to provide guidance to the CAP as to how it might word resolutions to give effect to the decisions it makes on review. CAP may adopt this wording, or amend it as appropriate.

- 9.1 Resolution to affirm a decision of the Assessment Manager:

*The Council Assessment Panel resolves to affirm the decision of the Assessment Manager
[insert description of decision, for example:]*

- *that the application is not seriously at variance with the Planning and Design Code (disregarding minor variations) and that planning consent be granted to DA No [insert] for [insert nature of development] subject to the [insert number] of conditions imposed by the Assessment Manager*
- *that DA No [insert] is classified as code assessed (performance assessed) development*
- *that the application is not seriously at variance with the Planning and Design Code (disregarding minor variations), but that DA No. [insert] does not warrant planning consent for the following reasons:*

9.2 Resolution to vary a decision of the Assessment Manager:

The Council Assessment Panel resolves to vary the decision of the Assessment Manager in relation to DA No [insert] by deleting condition [insert number] of planning consent and replacing it with the following condition:

[insert varied condition]

9.3 Resolution to set aside a decision of the Assessment Manager:

The Council Assessment Panel resolves to set aside the decision of the Assessment Manager to [insert description of decision being reversed, for example, refuse planning consent to DA No [insert]] and substitute the following decision:

- *DA No [insert] is not seriously at variance with the Planning and Design Code (disregarding minor variations) and that planning consent is granted to the application subject to the following conditions:*

9.4 Resolution to defer review hearing:

The Council Assessment Panel resolves to defer its decision in relation to its review of the decision of the Assessment Manager to [insert description of the decision] in relation to DA No [insert] until:

- *the next ordinary meeting of the Panel;*
- *the next ordinary meeting of the Panel after [insert additional information which has been requested by the Panel] is provided*
- *until the next ordinary meeting of the Panel after [insert date (i.e. giving an applicant 2 months to provide information)]*

(etc).

10. DELEGATION

10.1 Governance and Performance has the delegation to:

- Make any formatting, nomenclature or other minor changes to the Policy during the period of its currency.

11. AVAILABILITY OF THE POLICY

11.1 This Policy is available on Council's website

<https://www.ahc.sa.gov.au/council/council-documents/council-policies>

DRAFT

Application to Assessment Panel¹

a. DECISION REVIEW REQUEST

Review of a decision of an Assessment Manager pursuant to section 202(1)(b)(iA) of the *Planning, Development and Infrastructure Act 2016*

Applicant details:	Name: Click here to enter text. Phone: Click here to enter text. Email: Click here to enter text. Postal address: Click here to enter text.
Development Application Number:	Click here to enter text.
Nature of Development:	Click here to enter text.
Subject Land:	Click here to enter text. <i>[street number, street name, suburb, postcode]</i> <i>[lot number, plan number, certificate of title number, volume and folio]</i>
Zone / Sub-zone / Overlay of subject land:	Click here to enter text.
Date development application lodged:	Click here to enter text.
Date of decision of the Assessment Manager:	Click here to enter text.
Nature of decision:	<input type="checkbox"/> Granted <input type="checkbox"/> Granted with conditions/reserved matters <input type="checkbox"/> Refused
Prescribed matter² for review by Assessment Panel:	Click here to enter text.
Reason for review:	Click here to enter text. <i>[Briefly state the facts, circumstances and other relevant matters upon which this application is based. Attach additional pages as necessary]</i>
Date:	Click here to enter text.
Signature:	<input type="checkbox"/> <i>If being lodged electronically please tick to indicate agreement to this declaration.</i>

¹ This application must be made through the relevant facility on the SA planning portal. To the extent that the SA planning portal does not have the necessary facilities to lodge this form, the application may be lodged—
(i) by email, using the main email address of the relevant assessment panel; or
(ii) by delivering the application to the principal office or address of the relevant assessment panel.

² Prescribed matter, in relation to an application for a development authorisation, means—
(a) any assessment, request, decision, direction or act of a relevant authority under the Act that is relevant to any aspect of the determination of the application; or
(b) a decision to refuse to grant the authorisation; or
(c) the imposition of conditions in relation to the authorisation; or
(d) subject to any exclusion prescribed by the regulations, any other assessment, request, decision, direction or act of the assessment manager under the Act in relation to the authorisation.