

POLICY FOR ASSESSMENT PANEL REVIEW OF DECISION OF ASSESSMENT MANAGER

(Prescriptive)

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, as defined in Section 201 of the Act, for 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* (**Regulations**), 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](#) (**the Form**);
 - 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.
- 2.5 For certainty, the Form is an approved form for the purposes of section 202(1)(b)(i)(A) of the Act and regulation 116 of the Regulations.
- 2.6 In determining whether to grant an extension of time, the Presiding Member

may consider:

- 2.6.1 the reason for the delay.
 - 2.6.2 the length of the delay.
 - 2.6.3 whether any rights or interests of other parties would be affected by allowing the review to be commenced out of time.
 - 2.6.4 the interests of justice.
 - 2.6.5 whether the applicant has, or is within time to, appeal the Prescribed Matter to the Environment, Resources and Development Court (**ERD Court**); and
 - 2.6.6 any other matters the Presiding Member considers relevant.
- 2.7 An application for review should, upon receipt by the CAP, be notified to the Assessment Manager within two (2) business days.

3. **APPLICANT'S DOCUMENTS**

Written submissions

- 3.1 An applicant must be given an opportunity to provide written submissions (which, for the avoidance of doubt, may include additional information and materials) in support of his or her application for review.
- 3.2 The Assessment Manager must inform the applicant of their right to provide written submissions to the CAP within two (2) business days of receipt of the application for review.
- 3.3 Such written submissions must be received by the Presiding Member within one (1) 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.
- 3.4 A written submission should be marked to the attention of the Presiding Member and lodged in a manner specified in Clause 7.
- 3.5 The Presiding Member should provide a copy of any written submission to the Assessment Manager within two (2) business days of its receipt.
- 3.6 Within 5 business days of the receipt of the applicant's written submissions, 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 any additional information and/or materials, in such manner and within such time as is determined by the Presiding Member.
- 3.7 Where a response is received from a referral agency, the Presiding Member should provide a copy to the applicant and Assessment Manager within two (2) business days.
- 3.8 If the Presiding Member considers that an applicant's written submissions are substantial, the Presiding Member may defer the date for a hearing for such reasonable period as the Presiding Member considers appropriate, in order to:

- 3.8.1 provide the Assessment Manager with an opportunity to review and respond to the written submissions; and
- 3.8.2 provide any relevant referral bodies with an opportunity to review and respond to the written submissions in accordance with clause 3.7.

and must provide written notice to the applicant as soon as reasonably practicable after determining to defer the hearing, and in any event, no less than 24 hours before the hearing was due to take place.

4. MATERIALS FOR REVIEW HEARING

- 4.1 Within the time prescribed in clause 4.4, the Assessment Manager should collate for the CAP:
 - 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; or CAP
 - 4.1.3 any written submission, including additional information or materials, prepared by the applicant pursuant to clause 3.1;
 - 4.1.4 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 3.1 (including, where appropriate, whether the additional information and/or materials changes the Assessment Manager's original decision on the Prescribed Matter); and the reasons for the Assessment Manager (or delegate's) decision on the Prescribed Matter; and
 - 4.1.5 any further information requested by the Presiding Member.
- 4.2 After the completion of the requirements in Clause 4.1, the Assessment Manager should assign the review application to the next available CAP meeting.
- 4.3 The documents identified in Clause 4.1 will be included as Annexures to the agenda item.
- 4.4 The Assessment Manager should comply with Clause 4.1 within the following period of time:
 - 4.4.1 one (1) month from the lodgement of the application for review; plus

- 4.4.2 where the applicant is granted an extension of time to provide a written submission pursuant to clause 3.3, the period of time granted by the Presiding Members; plus
- 4.4.3 where an applicant has put additional information and/or materials before the CAP in a written submission:
 - 4.4.3.1 the time allowed by the Presiding Member for those materials to be provided; plus
 - 4.4.3.2 the time taken to determine whether to provide those materials to a referral agency; plus
 - 4.4.3.3 the time allowed for the referral agency to respond; plus
- 4.4.4 any additional period of time granted by the Presiding Member, in his or her discretion, upon the request of the Assessment Manager.
- 4.5 The Assessment Manager must, by written notice to the applicant:
 - 4.5.1 advise the applicant of the time and date of the CAP meeting at which the review application will be heard; and
 - 4.5.2 inform the applicant of their right to appear and make submissions in person to the CAP at the hearing; and
 - 4.5.3 invite the applicant to confirm in writing at least two (2) business days prior to the hearing whether he or she wishes to be heard,not less than five (5) business days before the meeting.

5. REVIEW HEARING

- 5.1 The Assessment Manager must advise the applicant of the time and date of the CAP meeting at which the review application will be heard.
- 5.2 On review, the CAP will consider the Prescribed Matter afresh.
- 5.3 Information, materials and submissions which were not before the Assessment Manager at the time of the decision on the Prescribed Matter will not be considered by the CAP, other than any submission provided pursuant to clause 3.
- 5.4 The CAP will not hear from any party other than the applicant and the Assessment Manager.
- 5.5 The CAP will hear from the applicant (or his or her representative), where he or she requests to be heard.
- 5.6 An applicant will be allowed five minutes to address the CAP. The Presiding Member may allow additional time at his or her discretion.
- 5.7 Where an applicant is heard by the CAP, the Assessment Manager 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.
- 5.8 CAP Members may ask questions and seek clarification from the applicant

and/or Assessment Manager at the conclusion of their addresses.

- 5.9 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.
- 5.10 Where the decision was made by a delegate of the Assessment Manager, the delegate may appear in place of the Assessment Manager.
- 5.11 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.
- 5.12 The CAP may resolve to defer its decision if it considers it requires additional time, or additional information from the applicant or the Assessment Manager (including legal or other professional advice), to make its decision.
- 5.13 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.
- 5.14 Where an applicant is to provide further information to a CAP pursuant to Clause 5.10, the information must be provided within the time specified by the CAP and in a manner specified in Clause 7.
- 5.15 Where an Assessment Manager is to provide further information to a CAP pursuant to Clause 5.10, a copy of the information must also be provided to the applicant not less than five (5) business days before the meeting at which it will be considered by the CAP.
- 5.16 Pursuant to regulation 13(2)(b) of the Regulations, the CAP may exclude the public and staff involved in the Prescribed Matter from attendance during the deliberation of the matter under this policy.

6. OUTCOME ON REVIEW HEARING

- 6.1 The CAP 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 CAP's decision (including its reasons) by the Assessment Manager (or delegate) within two (2) business days of the CAP's decision.

7. LODGING WRITTEN MATERIALS & DOCUMENTS WITH THE CAP

- 7.1 All documents and written communications with the CAP must be lodged via:
 - 7.1.1 email to: coorong@coorong.sa.gov.au; or
 - 7.1.2 hand-delivery or post to Coorong Assessment Panel C/- Coorong District Council 95-101 Railway Terrace Tailem Bend 5260.

8. DRAFT RESOLUTIONS

Draft resolution 8.1 below may be adopted by the CAP in order to adopt this Policy and delegate to the Presiding Member administrative decisions regarding the manner in which reviews will proceed.

- 8.1 *The CAP resolves to adopt the Policy for Assessment Panel Review of Decision of Assessment Manager dated 12th December 2024 (**the Policy**).*

Draft resolutions 8.2 to 8.5 below are intended to provide guidance to CAPs as to how they might word resolutions to give effect to the decisions they make on review. CAPs may adopt this wording or amend it as appropriate.

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

The CAP 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:*

- 8.3 Resolution to vary a decision of the Assessment Manager:

The CAP 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]

- 8.4 Resolution to set aside a decision of the Assessment Manager:

The CAP 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:*

8.5 Resolution to defer review hearing:

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