



NAME OF POLICY: Council Assessment Panel Review of Decisions of the Assessment Manager

POLICY MANUAL: Governance

BACKGROUND

The *Planning Development and Infrastructure Act 2016* (the Act) provides that where an application for development is made to an Assessment Manager, a person who has applied for the development authorisation may apply to the Council Assessment Panel for a review of a prescribed matter.

DISCUSSION

The Council Assessment Panel (CAP) has endorsed the following Policy.

KEY PRINCIPLES

The Policy has been prepared to provide clear guidance on the procedures involved in the CAP's review of an Assessment Manager's decision.

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 be 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 form (the Form - for ease of reference, a copy of the current Application to CAP Form is attached to this Policy).
 - 3.3.2 lodged in a manner identified on the Form, and
 - 3.3.3 lodged within one (1) 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 five (5) business days.

4. Materials for review hearing

- 4.1 Within the time prescribed in Clause 4.2, the Assessment Manager shall collate for the Panel:
- 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; and the reasons for the Assessment Manager (or delegate's) decision on the Prescribed Matter; and
- 4.1.4 any further information requested by the Presiding Member or CAP.
- 4.2 The CAP will not consider any additional information that was not before the Assessment Manager at the time of the decision on the Prescribed Matter.
- 4.3 After the completion of the requirements in Clause 4.1, the Assessment Manager should assign the review application to the next available Panel meeting.
- 4.4 The documents identified in Clause 4.1 will be included as Attachments to the agenda item.
- 4.5 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 five (5) business days before the meeting.

5. Review hearing

- 5.1 On review, the CAP will consider the Prescribed Matter afresh.
- 5.2 The CAP will not receive submissions or hear addresses from any party.
- 5.3 The Assessment Manager should be present at the CAP meeting to respond to any questions or requests for clarification from the CAP.
- 5.4 The Presiding Member will invite all CAP Members to speak on any matter relevant to the review and ask questions of the applicant and/or Assessment Manager.
- 5.5 During the review hearing the Panel may ask questions of staff and the applicant in public, however the Panel's deliberation and final determination will be conducted in private, with the applicant and public gallery excluded.
- 5.6 The CAP may resolve to defer its decision if it considers it requires additional information from the applicant or the Assessment Manager (including legal or other professional advice), to make its decision.
- 5.7 The deferral will be to the next ordinary meeting of the CAP, or such longer period of time as is determined by the CAP and/or the Presiding Member in consultation with the Assessment Manager to enable the information sought to be obtained and considered.
- 5.8 Where an Assessment Manager is to provide further information to the CAP pursuant to Clause 5.6, 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 Panel.

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 by the Assessment Manager (or delegate) within two (2) business days of the Panel's decision.

7. 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.

7.1 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:*

7.2 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]

7.3 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:*

7.4 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).*

REVIEW PROCESS

The Council Assessment Panel will review this Policy within two (2) years of the adoption date of the Policy.

INFORMATION

The contact officer for further information at the City of Norwood Payneham & St Peters is the Council's General Manager, Urban Planning & Environment, telephone 8366 4501.

ADOPTION OF THE POLICY

This Policy was adopted by the Council Assessment Panel on 10 February 2021.

TO BE REVIEWED

This Policy will be reviewed in February 2023.