

LIMESTONE COAST SOUTHERN REGIONAL ASSESSMENT PANEL

POLICY FOR ASSESSMENT PANEL REVIEW OF DECISION OF ASSESSMENT MANAGER

1. LEGISLATIVE FRAMEWORK

- 1.1 This Policy applies in addition to the statutory requirements for the review by the Council Assessment Panel/Regional Assessment Panel (**Panel**) 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**);
 - 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 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 Manager within 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 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.
- 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:
 - 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 (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;
- 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.
- 4.2 After the completion of the requirements in Clause 4.1, the Assessment Manager should assign the review application to the next available Panel meeting.
- 4.3 The documents identified in Clause 4.1 will be included as Annexures 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 from the lodgement of the application for review; plus
 - 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:

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

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

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 Panel will consider the Prescribed Matter afresh.
- 5.2 The Panel will not hear from any party other than the applicant and the Assessment Manager.
- 5.3 The Panel will hear from the applicant (or his or her representative), where he or she requests to be heard.
- 5.4 An applicant will be allowed five minutes to address the Panel. The Presiding Member may allow additional time at his or her discretion.
- 5.5 Where an applicant is heard by the Panel, 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.
- 5.6 Panel 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 Panel, the Assessment Manager should be present at the Panel meeting to respond to any questions or requests for clarification from the Panel.
- 5.8 Where the Decision was made by a delegate of the Assessment Manager, the delegate may appear in place of the Assessment Manager.
- 5.9 Following any addresses from the applicant and/or Assessment Manager, the Presiding Member will invite all Panel Members to speak on any matter relevant to the review.
- 5.10 The Panel 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.
- 5.11 The deferral will be to the next ordinary meeting of the Panel, or such longer period of time as is determined by the Panel to enable the information sought to be obtained and considered.
- 5.12 Where an applicant is to provide further information to a Panel pursuant to Clause 5.10, the information must be provided within the time specified by the Panel and in a manner specified in Clause 7.
- 5.13 Where an Assessment Manager is to provide further information to a Panel pursuant to Clause 5.10, a copy of the information must also be provided to the

applicant not less than 5 business days before the meeting at which it will be considered 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 (including its reasons) 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: city@mountgambier.sa.gov.au; or
- 7.1.3 hand-delivery or post to City of Mount Gambier, P O Box 56, MOUNT GAMBIER SA 5290

8. DRAFT RESOLUTIONS

Draft resolution 8.1 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.

8.1 *The Panel resolves to adopt the Policy for Assessment Panel Review of Decision of Assessment Manager dated July 2022 (**the Policy**).*

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

8.2 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:*

8.3 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]

8.4 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:*

8.5 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:

- *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).