

Council Assessment Panel and Staff Delegations Policy

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Responsible Department:	Strategy & Development
Related Policy/Procedure:	Nil
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Current Review Date:	28 February 2023
Minute Reference:	OCM-2023/045
Version Number:	Amendment No. 3
Applicable Legislation:	Development Act, 1993 & Regulations 2008 (repealed) Community Titles Act, 1996 Planning, Development and Infrastructure Act, 2016 Planning, Development and Infrastructure (General) Regulations 2017
Next Review Date:	February 2025
Review Frequency:	In conjunction with legislative changes applicable to Delegations afforded to Council Assessment Panels

1. Background

This Policy outlines Council's delegations to its Council Assessment Panel and staff in accordance with the *Development Act, 1993* (with reference to section 34 (23) and (27) of that Act) and *Development Regulations 2008* (collectively hereafter the 'Development Act').

On 19 March 2021, the planning system created under the *Planning, Development and Infrastructure Act, 2016* (hereafter the 'PDI Act') became fully operational.

Development Applications lodged under the Development Act are processed under that legislation while those lodged after 19 March 2021 are processed via the new PDI Act system.

The Light Regional Council Assessment Panel (CAP) is appointed as a 'relevant authority' under Sections 82 and 83 of the PDI Act by resolution of the Council.

The CAP also continues to act as a delegate of the Council for the purposes of the Development Act.

Section 100 of the PDI Act allows a relevant authority, such as the CAP or the 'Assessment Manager' (appointed under the PDI Act as both a 'relevant authority' and separately to advise the CAP), to delegate functions and powers under that Act. However, a policy is not required under that legislation for this purpose.

Instead, the *Planning, Development and Infrastructure (General) Regulations 2017* assigns assessment responsibilities (to the CAP, Assessment Manager and Accredited Professionals) under Part 5, Regulations 22, 24 and 25).

Accordingly, this Policy relates to:

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- delegations continuing under the Development Act to enable the assessment of applications lodged under that legislation to be completed; and
- applications to be considered by the CAP under the new planning system.

2. General Principles

- 2.1 This Policy will come into effect from the date of Council resolution.
- 2.2 Council seeks to undertake its affairs in a way that contributes to open, transparent and informed decision-making.

3. Decisions under the *Development Act, 1993* Requiring a Determination from the Council Assessment Panel

- 3.1 In accordance with the resolution of Council, the CAP is charged with responsibility for all matters arising under the Development Act, which are of a development control nature including but not limited to:

- applications for development consent;
- variations of development consent and conditions;
- providing comment on projects declared to be major pursuant to Section 46 of the Development Act;
- providing comment on applications pursuant to the Crown development provisions of Section 49 of the Development Act;
- providing comment in relation to decisions by the State Commission Assessment Panel (SCAP) pursuant to the Development Regulations, other than where the matter is deemed to be minor.

- 3.2 The specific nature of development applications to be presented to and determined by the CAP are:

Development Act

- 3.2.1 Resolving to grant development plan consent to a non-complying development application, subject to the receipt of SCAP concurrence;
- 3.2.2 Resolving to concur with a decision of the SCAP to issue development plan consent to a non-complying development application;
- 3.2.3 Category 2 or 3 development applications where representors wish to be heard on their representation;
- 3.2.4 recommendations for refusal of development plan consent except for administrative refusals pursuant to Section 39 (3)(b) of the Development Act;
- 3.2.5 At the discretion of the Assessment Manager (or delegate):
- 3.2.5.1 Category 2 or 3 development applications with no representors who wish to be heard;

- 3.2.5.2 Providing comment on projects declared to be major pursuant to Section 46 of the Development Act;
- 3.2.5.3 Providing comment on applications pursuant to the Crown development provisions of Section 49 of the Development Act where the nature of the development is deemed to be minor by Council's Assessment Manager (or delegate);
- 3.2.5.4 any other instances in which are considered to warrant a decision of the CAP.

Development Act or PDI Act

- 3.2.6 Applications for development plan consent which are performance assessed, which require public notification and where a representor wishes to appear before the CAP in support of their submission;
- 3.2.7 Where an application has been publicly notified and no representors wish to be heard on their representations, the CAP delegates the assessment of the application to the Council Assessment Manager (or delegate);
- 3.2.8 Variations of development consent and/or conditions where the original application was determined by the CAP and whereby the Planning and Design Code requires the variation to undergo public notification; and where a representor objects or wishes to appear in support of their submission;
- 3.2.9 Any application where the Council is a party to an application or the Applicant in its own right, where the development exceeds a cost of \$100,000;
- 3.2.10 To resolve on whether Council should or should not be party to an appeal in the Environment Resource and Development Court and further, to resolve on compromise proposals, where the CAP was the relevant authority.

4. Development Application Decisions made by Staff of Light Regional Council

- 4.1 Any development application which falls outside the criteria listed in Clause 3.2 of this Policy will be assessed and determined by Council staff in accordance with the relevant delegated powers, functions and duties entailed within the Development Act or otherwise as assigned and/ or delegated (via the Assessment Manager) under the PDI Act and associated regulations.

5. Rationale for the Council Assessment Panel (CAP) in Presiding Over Forms of Development Specified in Clause 3.2

- 5.1 Council staff possess the qualifications and experience to make decisions in relation to non-complying development applications, however given that such proposals are generally at variance with the Development Plan, it is deemed appropriate that the matter be referred to the CAP for consideration.
- 5.2 Under both the Development Act and the PDI Act, it is necessary for a body other than an individual Council staff member, that is, the CAP, to hear verbal submissions from third party representors.

- 5.3 In the case of Category 3 development applications, as both applicants and representors to Category 3 development applications can possess a right of appeal with respect to a decision of Council in certain circumstances, it is deemed appropriate that a collective body such as the CAP not only is responsible for determining the merits of the proposal, but also is responsible for hearing verbal submissions.
- 5.4 When an application is assessed as being seriously at variance with the Development Plan provisions, the proposal must be refused. Given applicants have a right to appeal against any such assessment, other than where the development is non-complying, it is appropriate that the matter be assessed upon by the CAP given the likelihood of the subsequent Environment and Resources Development Court litigation.
- 5.5 Given the financial ramifications borne by Council in the pursuit of an appeal to the Environment Resources and Development Court, it is deemed appropriate that this decision does not rest with Council staff, but rather lies solely in the hands of the CAP.

6. Policy Review

- 6.1 This Policy shall be reviewed as required by Council or as required by the Development Act or PDI Act.

7. Delegations

- 7.1 The Development Act powers delegated by the Council to its Council Assessment Panel, are contained in its Delegation Register. Delegation of PDI Act powers is also contained in the Delegation Register.

8. History

- Policy adopted as Development Assessment Panel and Staff Delegations at Council meeting held 12 December 2006, Item 2006/277.
- Amendment No. 1 adopted as Council Assessment Panel and Staff Delegations at Council meeting held 23 January 2018 Item 12.3.2, 2018/6
- Amendment No. 2 adopted by Council on 23 February 2021, refer to Council Minute 12.2.1, Page 2021/47
- Amendment No. 3 adopted by Council on 28 February 2023, refer to Council Minute (OCM-2023/045), Page (15).