

Light Regional Council Assessment Panel (CAP)

Operating and Meeting Procedures

These Operating and Meeting Procedures (OMPs) are to be read in conjunction with:

- The meeting procedures contained within Part 3 of the Planning, Development and Infrastructure (General) Regulations 2017 (Regulations); and
- The Council Assessment Panel's Policy for Assessment Panel Review of Decisions of Assessment Manager (Assessment Manager Review Policy)

1. Purpose

- (1) These OMPs have been determined by the Light Regional Council Assessment Panel (the Panel) pursuant to Section 83 of the *Planning, Development and Infrastructure Act 2016* (the Act), and having regard to the Terms of Reference for the Panel as adopted by the Light Regional Council (the Council).
- (2) The OMPs are intended to:
 - a) Outline the procedures by which the Panel will conduct its business at meetings and elsewhere; and
 - b) Facilitate the conduct of the Panel's business in a transparent, timely, efficient and appropriate manner to ensure compliance with the requirements of the Act.

Except insofar as a procedure is not prescribed by the Act or its associated Regulations, the procedures of the Panel in relation to the conduct of its business will be as determined by the Panel.

2. Meeting Notice, Times and Venue

- (1) Scheduled meetings of the Panel will be held on the first Thursday of each month (excluding the first Thursday in January) at 5.00pm at the Council Chambers, 93 Main Street, Kapunda unless there are no matters to be considered. The Presiding Member has the discretion to nominate an alternative meeting venue and/or time prior to the issue of the agenda should circumstances warrant.
- (2) The ability exists for the Panel to hold its scheduled meeting(s) electronically in order to meet its legislative obligations under certain circumstances as outlined in (a), (b) or (c) below:
 - a) Where an emergency is declared under Division 3 of the *Emergency Management Act, 2004* and indoor public gatherings are not permitted; or

- b) where an Act of Parliament is passed that provides wholesale powers to the Minister responsible to vary or suspend the operation of the Act as it relates to the duties of the Panel.
 - c) The Presiding Member in conjunction with the Assessment Manager have absolute discretion to allow a Panel Member to attend the Council Assessment Panel (CAP) meeting by electronic means in unforeseen circumstances subject to at least 5 hours' notice prior to the start of the CAP meeting.
- (3) A minimum of five (5) clear business days' notice of a scheduled meeting will be given to Panel Members by the Assessment Manager. The notice may be given to a Member of the Panel:
- a) personally; or
 - b) by delivering the notice (whether by post or otherwise) to the usual place of residence of the Member or to another place authorised in writing by the Member; or
 - c) by leaving the notice for the Member at an appropriate place at the principal office of the Council, if authorised in writing by the Member to do so; or
 - d) by a means authorised in writing by the Member as being an available means of giving notice (e.g. email or facsimile transmission).
- (4) A notice that is not given in accordance with sub-section (3) is taken to have been validly given if the Assessment Manager considers it impracticable to give the notice in accordance with that sub-section and takes action the Assessment Manager considers reasonably practicable in the circumstances to bring the notice to the attention of the Member.
- (5) Special meetings (being additional meetings or alternative meetings dates, times or venues) of the Panel may be required in special circumstances to expedite decisions on applications before the Panel and will be called at the discretion of the Presiding Member in consultation with the Assessment Manager. Members of the Panel, Applicants, representors and the public shall be given five (5) clear business days' notice of a special meeting of the Panel.
- (6) Public notice of a scheduled meeting will be provided at the Council offices and on the Council's website.
- (7) Meetings of the Panel shall be conducted in public except where the Panel may exclude the public pursuant to Clause 13 of the Regulations.

3. Public Access to Meetings (Clause 15 of the Regulations)

- (1) In connection with the conduct of the proceedings of the Panel, members of the public are entitled to attend a meeting of the Panel other than as set out in sub-section (2).
- (2) The Panel may exclude the public from attendance at a meeting:
 - a) during so much of the meeting as is necessary to receive, discuss or consider in confidence any of the following matters:

- (i) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
- (ii) information the disclosure of which:
 - (A) could unreasonably be expected to confer a commercial advantage on a person, or to prejudice the commercial position of a person; and
 - (B) would, on balance, be contrary to the public interest;
- (iii) information the disclosure of which would reveal a trade secret;
- (iv) commercial information of a confidential nature (not being a trade secret) the disclosure of which:
 - (A) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
 - (B) would, on balance, be contrary to the public interest;
- (v) matters affecting the safety or security of any person or property;
- (vi) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;
- (vii) matters that should be considered in confidence in order to ensure that the Panel, or any other entity, does not breach any law, or any order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
- (viii) legal advice;
- (ix) information relating to actual litigation, or litigation that the Panel believes on reasonable grounds will take place; and
- (x) information the disclosure of which:
 - (A) would divulge information provided on a confidential basis by or to a Minister of the Crown, the State Planning Commission, or another public authority or official; and
 - (B) would, on balance, be contrary to the public interest;
- b) during so much of the meeting that consists of its discussion or determination of any application or other matter that falls to be determined by the Panel.

4. Applicants to Address the Panel

- (1) An Applicant has the right to address the Panel at a Hearing of Representations in accordance with the provisions of Section 38 (10) of the *Development Act 1993* and Section 107 (3) (b) of the Act (as relevant).

- (2) Except as provided in Section 38 (10) of the *Development Act 1993* or Section 107 of the Act (as relevant) or otherwise provided in these OMPs an Applicant for a Development Application before the Panel may not address the Panel but the Presiding Member may allow Panel Members to address questions to the Applicant or their representatives. The Applicant or their representatives must limit their response to the questions raised.
- (3) Where a meeting is required to be held electronically as outlined in Clause 2 Meeting Notice, Times and Venue, of these Operating and Meeting Procedures, the Applicant has the right to appear via electronic means and appear before the Panel. This will be referred to as a 'remote meeting appearance'.
- (4) Where a 'remote meeting appearance' occurs, the same rights apply to be heard by the Applicant consistent with Clause 1 and 2 outlined above. The right to appear personally or by a representative will also exist by 'remote meeting appearance'.
- (5) The Applicant or their representative will be provided with login details and the ability to connect to the meeting.

5. Hearing of Representations

- (1) The Panel shall conduct a Hearing of Representations in accordance with Section 38 (10) of the *Development Act 1993* for Category 2 and 3 developments or for a Development Application for which public notice must be given under the *Planning, Development and Infrastructure Act 2016* for a Performance Based Development Application where the representor elects to be heard. Where required, the Hearing of Representations will take place at the commencement of the consideration of the relevant agenda item. For the avoidance of doubt, all representors who comply with the following will be given an opportunity to address the Panel:
 - 1.1 Where a representation or response to representation(s) is received within the prescribed legislative timeframes;
 - 1.2 Where a representation in relation to Category 2 development from a person who is entitled to be given notice of the application;
 - 1.3 Where a representation in response to a representation(s) is deemed valid and consistent with the applicable Act.
- (2) The Hearing of Representations will hear representors in support of their representations first, and then hear the Applicant's response to the representations. At a Hearing of Representations the persons making representations will be allocated 5 minutes to address the Panel. The Applicant is allocated 10 minutes to respond to the representations made to the Panel, unless otherwise determined by the Presiding Member. Where a number of representations have been received and those representors have nominated the same representative to speak on behalf of 3 or more representors, the nominated representative is permitted to address the Panel for a period of time of up to 15 minutes. An Applicant is permitted 15 minutes to respond to representations made, where a representor appears on behalf of 3 or more representors. Discretion can be exercised by the Presiding Member to allow additional time to a Representor or Applicant.

- (3) Where a meeting is required to be held electronically as outlined in Clause 2 'Meeting Notice, Times and Venue', of these OMPs, the representor has the right to appear via electronic means and appear before the Panel in support of their representation. This will be referred to as a 'remote meeting appearance'.
- (4) Where a 'remote meeting appearance' occurs, the same rights apply to be heard by a representor, consistent with Clause 5 (1) and 5 (2) outlined above. The right to appear personally or by a representative will also exist by 'remote meeting appearance'.
- (5) Consistent with Clause 5 (2) above, a person in relation to an application for review of an Assessment Manager decision (including the Assessment Manager or delegate), the person may attend by 'remote meeting appearance' and be heard or observe proceedings and answer any questions from the Panel.
- (6) Where a 'remote meeting appearance' is to occur, the Assessment Manager will provide login details to the Applicant or their representative and will facilitate their ability to connect to the meeting.
- (7) Where a representor has submitted a representation, but has elected not to be heard, they will be afforded the opportunity to observe the meeting electronically and shall also be provided the appropriate login details. This Clause only applies in a situation where a Pandemic has been declared.
- (8) Where representors are addressing the Panel on a common issue or issues, the Presiding Member may request such representors to address the Panel in a group, rather than individually.
- (9) Only representors (or their nominated representative) who have lodged a valid representation pursuant to Section 38 of the *Development Act 1993* or Section 107 of the Act and are entitled to be heard by the Panel in accordance with the relevant Act and these OMPs.
- (10) Panel Members may question and seek clarification from representors and the Applicant at the conclusion of their address to the Panel during the Hearing of Representations.
- (11) Representors will not be allowed a further opportunity to address the Panel once Applicants have concluded their response.
- (12) Representors or the Applicant will not be allowed a further opportunity to address the Panel at any subsequent meeting of the Panel to consider the matter, except at the discretion of the Presiding Member.
- (13) Where no representors appear at the Hearing of Representations an Applicant may only be heard (at the discretion of the Presiding Member) where their written response to representations requires explanation or where the Panel will otherwise benefit from hearing them.
- (14) When an application has been deferred and is brought before the Panel again for consideration the Applicant and representor will not again be heard by the Panel unless the application has been readvertised and a new Hearing of Representations is to be held. However, the Presiding Member may allow Panel Members to address questions to the Applicant or the representor who must limit their responses to the questions raised.

- (15) Individual elected members of the Council do not have a right to be heard by the Panel unless they are a representor as a private citizen or have been appointed by a representor to speak on their behalf.

6. Site Inspections and Locality Visits

- (1) Formal site visits of the Panel Members may be arranged on request from any Member of the Panel. Requests must be made to the Assessment Manager three (3) days prior to the relevant meeting. The Panel may request attendance of the Assessment Manager to provide relevant information. The Panel will not hear deputations at a formal site visit. The Assessment Manager may also request that Panel Members attend a site where deemed necessary.
- (2) Locality visits by one or more Panel Members will be undertaken in accordance with the [Assessment Panel Members – Code of Conduct](#).

7. Information provided following preparation of the Meeting Agenda

- (1) Representors and Applicants must avoid raising new material that has not been raised in their written submissions when they appear before the Panel.
- (2) Full disclosure of all relevant information prior to the Panel meeting is necessary for adequate assessment and appropriate decision making. In circumstances where new information is discovered as a result of the Hearing of Representations the Panel may, in its discretion and subject to compliance with assessment timeframes prescribed in the Regulations, agree to defer the application, conduct a further hearing, or undertake other investigations to determine the relevance of new information if it believes it will assist reaching a decision.
- (3) After hearing an Applicant and /or representor, the Panel may discuss an application and any new information to determine its relevance and may seek clarification from Council's planning staff and Assessment Manager in attendance.
- (4) At the discretion of the Presiding Member (in consultation with Members of the Panel), any new information presented by any person appearing before the Panel, may not be considered. The Presiding Member's determination in this regard is final.

8. Variation of an Application

- (1) Where an Applicant has requested a variation of an application it may be permitted, providing that the essential nature of the development does not change. The test for determining whether the essential nature of a development has changed is to ask whether the amended proposal is essentially the same as the original proposal. It should be that it is a privilege of the Applicant, and that the Panel is not empowered to request or compel an Applicant to vary a Development Application.

9. Form of Debate

- (1) In order to ensure informed decision making and to facilitate comprehensive consideration of issues, debate and discussion by the Panel of matters before it shall be, as far as practicable,

informal within the bounds of professional meeting procedures and the principles of natural justice and procedural fairness.

- (2) In the interests of informality, during hearings of representations the Presiding Member will be referred to as 'Presiding Member', and Panel Members will be referred to by their first name (not by title or position). In subsequent discussion of items in the meeting of the Panel Members (including the Presiding Member) may refer to each other by their first names and address Council staff by their first names.

10. Quorum and Voting (Clause 15 of The Regulations)

- (1) A quorum at a meeting of the Panel is a number ascertained by dividing the total number of Members of the Panel for the time being in office by two (2), ignoring any fraction resulting from the division, and adding one (1). The Panel comprises five (5) Members and therefore a quorum at a meeting is three (3) Members.
- (2) If the number of apologies received by the Presiding Member or the Assessment Manager, indicate that a quorum will not be present at a meeting, the Presiding Member, may adjourn the meeting to a specified day and time.
- (3) Should a quorum not be reached within 30 minutes of the scheduled commencement time of the meeting and there is no apparent prospect of achieving a quorum within a reasonable time thereafter, the meeting will be cancelled and the business on the agenda will be considered at the next meeting of the Panel.
- (4) In the absence of the Presiding Member, the Acting Presiding Member shall preside. The Panel shall appoint one of its Members as the Acting Presiding Member in the absence of the Presiding Member.
- (5) Each Member of the Panel present at a meeting of the Panel is entitled to one (1) vote on a matter arising for decision and, if the votes are equal, the Member presiding at the meeting is entitled to a second or casting vote.
- (6) Clause (1) (above) does not apply to a person who is appointed as an 'additional Member' of the Panel under section 85 of the Act.
- (7) All Members (other than additional Members) of the Panel will participate in the decision of the Panel by a vote.
- (8) All decisions of the Panel shall be made on the basis of a majority consensus decision of the Members present.
- (9) Minutes shall record the decision of the Panel on each Development Application and record a mover and seconder for items decided by vote.
- (10) A majority vote of the Panel shall be recorded as the decision of the Panel and the vote or views of individual Members shall not be recorded in the minutes.
- (11) Members of the Panel cannot submit any notice of motion to revoke or amend previous decisions of the Panel.

11. Agendas and Minutes

- (1) The Agenda, Council Officer reports and attachments to those reports shall be available for viewing on the Council's website (with 'read-only' access) at least four (4) business days before the meeting. 'Read-only' access is applied to preserve copyright applicable to attachments to the Council Officer reports.
- (2) A hard copy of the Agenda and Council Officer reports (excluding attachments) will also be available for viewing at the Kapunda Principal Office, Freeling Branch Office, Greenock, and Kapunda Libraries.
- (3) A copy of a Council Officer report (excluding attachments) will be made available to any person prior to the meeting on request.
- (4) The Panel must ensure that accurate minutes are kept of its proceedings. The decisions of the Panel will be recorded in the Minutes of the meeting.
- (5) The Minutes of the proceedings of a meeting will record:
 - a) the names of the Panel Members present;
 - b) the names of all Members from whom apologies have been received;
 - c) the name and time of a Panel Member entering or leaving the meeting;
 - d) the name of every person who has made a verbal representation to the Panel at the meeting;
 - e) the name of every person who appears in relation to an application for review of an Assessment Manager decision (including the Assessment Manager or delegate);
 - f) the decision of the Panel;
 - g) in relation to each application for review of an Assessment Manager decision;
 - h) the determination of the Council Assessment Panel as to whether the proposal is seriously at variance with the Development Plan or Planning Rules (as relevant); and
 - i) the reasons for the Panel's decision under Section 33 of the *Development Act 1993* or Section 203(4) of the Act (as relevant), including the reasons for the imposition of any new or varied conditions; and
 - j) any disclosure of interest made by a Panel Member and the nature of the interest; and
 - k) the decision of the Panel to exclude public attendance including reasons.
- (6) The Panel may, before it releases a copy of any minutes to the public, exclude from the Minutes information about any matter dealt with on a confidential basis by Members of the Panel.
- (7) Minutes are not formal Minutes until adopted by the Panel at the next meeting of the Panel. However, this does not preclude the issue of Decision Notification under the *Development Act 1993*

or the Act advising of the determination of the Panel immediately after a meeting at which the Panel made its determination.

- (8) All minutes must be confirmed by the Assessment Manager in conjunction with the Presiding Member as being accurate prior to, or at the commencement of, the following Council Assessment Panel meeting.
- (9) Upon adoption of the Minutes, the Presiding Member shall authorise the Minutes by signature and date of adoption on the last page of the Minutes.
- (10) Copies of the draft Minutes will be available to the public at Council office at least five (5) working days after the date of the meeting.

12. Decision-Making/Assessment of Development Applications and review of an Assessment Manager's decision

The procedures in Clause 12 of these OMPs relate only to the Panel's assessment of Development Applications under Part 7 of the Act and Part 4 of the *Development Act 1993*. The procedures for determining an application for review of an Assessment Manager's decision are contained in the separate document entitled 'Policy for Assessment Panel Review of Decision of Assessment Manager' which is contained as an Annexure 1 to the OMPs.

- (1) The Panel must have regard to the relevant Development Plan of the Council or Planning and Design Code, whichever is applicable as the basis for its decisions, and also have regard to any written and verbal representations made in accordance with the provisions of the Act.
- (2) In making a decision, the Panel:
 - a) must state whether the proposal is seriously at variance with the provisions of the relevant Development Plan of the Council /Planning and Design Code, in doing so must refuse to grant Planning Consent and provide reasons for the decision.
 - b) If the proposal is not seriously at variance with the provisions of the relevant Development Plan of the Council /Planning and Design Code, must state whether Development Plan Consent/Planning Consent is granted or refused.
 - c) Alternatively, where Development Plan Consent/Planning Consent is refused, the reasons for refusal must be provided.
- (3) A review of the Assessment Manager's decision must be instigated by the Applicant (or Representative) with the following:
 - a) completion and submission of 'Application to Assessment Panel Decision Review Request'; and
 - b) with payment of the relevant fee as prescribed by the *Planning, Development and Infrastructure Act 2016*.
- (4) A request of a review of the Assessment Manager's decision shall be presented to the Council Assessment Panel for a decision within 6 weeks of the date of the request.

(NB) This application for a review of the Assessment Manager's decision is contained within the 'Policy for Assessment Panel Review of Decision of Assessment Manager' as amended from time to time by the Planning, Development and Infrastructure (General) Regulations 2017. Annexure 3 contains the Application to Assessment Panel. This template may be subject to change from time to time by the Commission. The most current application form shall be utilised and must be submitted by the SA Plan Portal.

13. Deferral Provisions

- (1) The Panel may defer a decision on a Development Application where the Panel requires further information from the Applicant in order to make a decision and other matters pursuant to Section 39 of the *Development Act 1993* or section 119 of the Act (as relevant).

14. Conflict of Interest

- (1) If a Panel Member is of the view that they have a conflict of interest in relation to a matter before the Panel they are required to make a disclosure clearly stating the nature of that interest to the Panel, in accordance with clause 7 of the [Assessment Panel Members – Code of Conduct](#) and then in the meeting when the relevant agenda item is reached, must remove themselves from the meeting.
- (2) If a Panel Member does declare a conflict of interest, then the attached form in Annexure 2 shall be completed and submitted to the Presiding Member which will then be attached to the minutes.

15. Conduct

- (1) Members of the Panel must act at all times in accordance with Section 15 (2) of the Act and the [Assessment Panel Members – Code of Conduct](#) and professional standards adopted pursuant to Schedule 3 of the Act.
- (2) The Presiding Member may adjourn a meeting in the event of a disruption or disturbance by a Panel Member, an Applicant, a representor or any person or person's presence at the meeting of the Panel until such time as the disruption or disturbance ceases, or failing that, order a person or persons to leave the meeting.
- (3) The Panel whenever possible will conduct its meetings in public, however, should the discussion determination of a Development Application be inhibited by the presence of the public at the meeting the Panel may exclude the public from attendance pursuant to regulation 13 of the Regulations.
- (4) Panel Members must not initiate individual discussions with Applicants, representors or government agencies regarding a matter that is or is likely to be before the Panel for determination, and, if placed in a situation where such discussion is unavoidable, should not express an opinion that could be constructed as having made a decision in relation to the proposal before the Panel has collectively assessed and determined the Development Application.

16. Compliance with Code of Conduct

- (1) A person may make a complaint to the State Planning Commission (the Commission) if the person believes that a Member of the Panel has acted in contravention of the code of conduct.
- (2) A complaint must:
 - a) be in writing; and
 - b) contain particulars of the allegation on the complaint is based; and
 - c) be verified by statutory declaration.

17. Planning Policy

- (1) The Panel may upon request from the Council comment on draft planning policy and proposed Code amendments.
- (2) Elected Members on the Panel are able to participate as Elected Members in the ordinary business of Council planning policy formulation (i.e. they may sit on planning policy committees and undertake other activities associated with the formation of planning policy) providing they are not acting in their capacity as a Member of the Panel.
- (3) Independent Members of the Panel may continue to exercise their rights as private citizens with respect to any activity related to the development of planning policy under the Act, providing they are not acting in their capacity as a Member of the Panel or do not have a conflict of interest with any business before the Panel.

18. Planning Appeals

- (1) Should an appeal be lodged with the Environment, Resources and Development Court in the relation to a decision of the Panel the Panel will determine whether any 'compromise proposal' is acceptable or the matter will proceed to a Hearing of the Environment, Resources and Development Court.
- (2) The Assessment Manager or its Delegate upon receipt of a notice of appeal from the Environment Resources and Development Court, will prepare any documentation required by the Court for its refence and the Appellant, engage legal representation at their discretion and attend preliminary conferences, conciliation hearings or direction hearings.

19. Delegations

- (1) The Panel recognises that the good administration of the Act requires adequate delegations to be made to the Assessment Manager and that the Assessment Manager be permitted to sub-delegate functions and powers to Council staff.
- (2) The Panel will delegate its powers and functions as a relevant authority for planning consents from lodgement, verification, conducting public notification, referrals and other administrative matters to the Assessment Manager. The Assessment Manager is responsible for ensuring that

development applications are provided to the Panel with an appropriate assessment report, information and recommendations for the Panel to make its determination of the application.

- (3) Pursuant to Section 99(1)(c) of the Act, the Panel will, through its delegations, refer the assessment of the development in respect of the Building Rules to the Council, where the Applicant requests to have the Building Rules assessment undertaken by the Council. Where the Applicant requests that Building Rules assessment be undertaken by a building certifier, this may occur and may be undertaken by a building certifier of the Applicant's choice.

20. Other Matters

- (1) An Applicant may not defer matters from the meeting agenda after the agenda has been sent to Panel Members.
- (2) Should a Panel Member receive by direct post, fax, e-mail or other means, information in relation to a Development Application being assessed by Council development assessment officers which may be referred for decision by the Panel at a future time, then the Panel Member should immediately forward the information received to the Assessment Manager. The Panel Members should not acknowledge receipt of the information nor enter into discussion with the sender in relation to any matters contained within the information received. If a Panel Member receives such information, he or she must disclose this fact to the meeting and confirm that the information will not be taken into account for the purposes of making a decision on the relevant application.
- (3) Should a request be made for public comment on the operations or decisions made by the Panel then the matter should be referred to the Presiding Member. Comment may be made at the discretion of the Presiding Member.
- (4) The Panel at a meeting may request independent expert advice on any relevant matter before the Panel. The request being referred to the Assessment Manager. If the Assessment Manager decides not to engage such advice, then the Panel must be advised of the decision and the reason as soon as reasonably possible.
- (5) The role of the Panel is not one of mediator or arbitrator for parties expressing divergent views but is a decision maker charged with the responsibility of assessing each proposal against the relevant Development Plan provisions or Planning and Design Code and Planning Rules. It is a role that is inquisitorial rather than adversarial. The Panel does not therefore have a role as a mediator or arbitrator at its meetings or otherwise between an Applicant and representors.
- (6) Except insofar as a procedure is not prescribed by the Act or Regulations, the procedures of the Panel in relation to the conduct of its business will be as determined by the Panel.
- (7) A proceeding of the Assessment Panel (any decision made by the Panel) is not invalid by reason of a vacancy in its membership or a defect in the appointment of a Member.
- (8) Except insofar as a procedure is not prescribed by the Act or the Regulations, the procedures of an Assessment Panel in relation to the conduct of its business will be determined by the Panel.
- (9) Insofar as any procedure to be followed by the Panel is not prescribed by the Regulations or in these OMPs the Panel may call for and consider such professional assistance from the

Assessment Manager and, in consultation with the Assessment Manager, other professional advisors as it deems necessary and appropriate from time to time.

Adopted by the Council Development Assessment Panel on 6 May 2009 (Item 6.3)

Amended by the Development Assessment Panel on 9 February 2011 (Item 6.1)

Amended by the Development Assessment Panel on 6 February 2013 (Item 6.3)

Adopted by the Council Assessment Panel on 4 October 2017 (Item 7.1)

Adopted by the Council Assessment Panel on 1 April 2020 (Item 9.1)

Adopted by the Council Assessment Panel on 4 November 2020 (Item 9.1)

Adopted by the Council Assessment Panel on 6 April 2022 (Item 12.1)

Adopted by the Council Assessment Panel on 4 May 2022 (Item 12.1)

Reviewed and amended by the Council Assessment Panel on 1 November 2023 (Item 12.1)

Adopted by the Council Assessment Panel on 18 January 2024 (Item 12.1)

Annexure 1

**Assessment Manager Review
Policy**

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 (the Panel) of a decision of an Assessment Manager as set out in section 203 of the *Planning, Development and Infrastructure Act 2016* (the Act).

2. Commencing a Review

- 2.1 An application for review of a decision made by the Assessment Manager on a development application or development authorisation may only be commenced by the applicant.
- 2.2 An application for review must relate to a Prescribed Matter, being:
- 2.2.1 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
 - 2.2.2 a decision to refuse to grant development authorisation to the application; or the imposition of conditions in relation to a grant of development authorisation; or
 - 2.2.3 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.
- 2.3 An application for review must be:
- 2.3.1 made using the Application to Assessment Panel for Assessment Manager's Decision Review located on Plan SA (the Form);
 - 2.3.2 lodged via Plan SA **and** via email to the Light Regional Council at light@light.sa.gov.au; and
 - 2.3.3 lodged within one month of the applicant receiving notice of the Prescribed Matter unless an extension of time has been granted by the Panel.
- 2.4 In determining whether to grant an extension of time, the Panel may consider:
- 2.4.1 the reason for the delay;
 - 2.4.2 the length of the delay;
 - 2.4.3 whether any rights or interests of other parties would be affected by allowing the review to be commenced out of time;
 - 2.4.4 the interests of justice;

2.4.5 any other matters the Presiding Member considers relevant.

3. Applicant's Documents

Written submission

- 3.1 Applicants are encouraged to provide a written submission in support of his or her application for review so that the reasons for the review and the Applicant's position on the review can be properly understood by the Panel.
- 3.2 Such a submission must be submitted at the time of the lodgement of the Review of the Assessment Manager's decision.
- 3.3 A written submission should be marked to the attention of the Panel and lodged in a manner specified in Clause 7.

Additional Information

- 3.4 No additional information will be considered by the Panel to that provided in the written submission in support of the application for review as outlined in Clause 3.1.

4. Materials for Review Hearing

- 4.1 Within the time prescribed in clause 4.5 the Assessment Manager must 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 a summary of any report from Council staff or an external planning consultant written for the Assessment Manager;
 - 4.1.2 a report prepared by the Assessment Manager (or delegate) setting out the details of the relevant development application; and the reasons for the Assessment Manager (or delegate's) decision on the Prescribed Matter;
 - 4.1.3 any written submission prepared by the applicant pursuant to clause 0; and
 - 4.1.4 any further information requested by the Panel.
- 4.2 After the completion of the requirements in Clause 4.1, the Assessment Manager should assign the review application within 6 weeks or to the next available Panel meeting (within 6 weeks).
- 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 6 weeks from the lodgement of the application for review;

4.5.2 any additional period of time granted by the Panel, in their discretion, upon the request of the Assessment Manager.

5. Review Hearing

5.1 On review, the Panel will consider the Prescribed Matter afresh. This means that they will not only consider the written submission provided in accordance with clause 3.1 and the reasons for the Assessment Manager's decision, but they will also consider the application against the relevant provisions of the Planning and Design Code.

5.2 The Panel will not hear from any party other than the applicant and the Assessment Manager (or delegate).

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.

5.5 Where an applicant is heard by the Panel, the Assessment Manager or delegate will be allowed the opportunity to respond to any issues raised by the applicant.

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 or delegate, 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 5 business days of the Panel's decision.

7. Lodging Written Materials and Documents with the Panel

- 7.1 All documents and written communications with the Panel must be lodged via: the SA Plan Portal (to the extent the Portal is able to receive such a submission);
- 7.2 email to: development@light.sa.gov.au; or
- 7.3 hand-delivery or post to 93 Main Street, Kapunda SA 5373; and
- 7.4 upon payment of the applicable fee for the review of an Assessment Manager's Decision as outlined within the Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019.

8. Draft Resolutions

Draft resolutions 8.1 to 8.4 below are intended to provide guidance to the Panel as to how they might word resolutions to give effect to the decisions they make on review. Panels may adopt this wording or amend as appropriate.

8.1 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:*

8.2 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]

8.3 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:*

[insert condition]

8.4 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:

- *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 1 month to provide information)];*

(etc).

Annexure 2

**CAP Member Conflict of Interest
Declaration**

Declarations of Interest Form

Direct or Indirect or Personal or Pecuniary Interest

This declaration shall be completed by a Council Assessment Panel (CAP) member in accordance with the *Planning, Development and Infrastructure (General) (Assessment Panels) Variation Regulations 2017*. A disclosure by a member of an assessment panel of a direct or indirect personal or pecuniary interest in any aspect of a development or any body associated with any aspect of a development required under the Act must be recorded in the minutes of the assessment panel. The information contained within this declaration will be included in the CAP meeting minutes.

A member of an assessment panel will be taken to have an interest in a matter, if an associate of the member (within the meaning of section 3 (7) of the Act) has an interest in the matter. (See reverse).

Council Assessment Panel Member Name: _____

Date of Meeting: _____ **Agenda item number:** _____

Tick the relevant box of relevant conflict of interest provision:

☐ Direct

☐ Indirect

☐ Personal

☐ Pecuniary

Nature and details of the Conflict of Interest:

Signature of Panel Member

Date of Declaration

This conflict of interest has been identified using Section 3 (7) of the Planning Development and Infrastructure Act.

For the purposes of this Act, a person is an associate of another person if—

- (a) the other person is a relative of the person or of the person's spouse or domestic partner; or*
- (b) the other person—*
 - (i) is a body corporate; and*
 - (ii) the person or a relative of the person or of the person's spouse or domestic partner has, or 2 or more such persons together have, a relevant interest or relevant interests in shares of the body corporate the nominal value of which is not less than 10% of the nominal value of the issued share capital of the body corporate; or*
- (c) the other person is a trustee of a trust of which the person, a relative of the person or of the person's spouse or domestic partner or a body corporate referred to in paragraph (b) is a beneficiary; or*
- (d) the person is an associate of the other person within the meaning of the regulations.*

| Staff Use Only | |
|--|--|
| Panel member left the meeting at: | |
| Panel member returned to the meeting at: | |
| Recording staff member's name: | |
| Date | |

Postal Address: PO Box 72 Kapunda SA 5373 ▪ Telephone: (08) 8525 3200

Email: light@light.sa.gov.au ▪ Website: www.light.sa.gov.au

Annexure 3

**Application to Assessment Panel -
Decision Review Request**

Application to Assessment Panel¹

DECISION REVIEW REQUEST

Prescribed form pursuant to section 203(1) for review of a decision of an Assessment Manager under section 202(1)(b)(i)A of the *Planning, Development and Infrastructure Act 2016 (Act)*

| | |
|---|--|
| 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. |
| 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> |
| Date of decision of the Assessment Manager: | Click here to enter text. |
| Decision (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> |
| Do you wish to be heard by the Assessment Panel? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 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—

- (a) by email, using the main email address of the relevant assessment panel; or
- (b) 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 the Assessment Manager 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.

