

# Review of Decision of Assessment Manager Policy



REFERENCE NUMBER:	DOC/21/59925
RESPONSIBLE OFFICER/ DEPARTMENT	Andy Humphries, Manager City Development, Planning and Development
APPLICABLE LEGISLATION:	<p>Planning, Development and Infrastructure Act 2016 and associated Regulations</p> <p><b>Instrument A</b> – Instrument of Delegation under the Planning, Development and Infrastructure Act 2016 or Powers of Council as:</p> <ul style="list-style-type: none"> <li>• A Council</li> <li>• A Designated Authority</li> <li>• A Designated Entity</li> </ul> <p><b>Instrument B</b> – Instrument of Delegation under the Planning, Development and Infrastructure Act 2016, Development and Infrastructure (General) Regulations 2017 and Planning, Development and Infrastructure (Fees, Charges Contributions) Regulations 2019 or powers of a Council as a Relevant Authority</p> <p><b>Instrument C</b> – Instrument of Delegation under the Planning, Development and Infrastructure Act 2016, Development and Infrastructure (General) Regulations 2017 and Planning, Development and Infrastructure (Fees, Charges Contributions) Regulations 2019 or powers of an Assessment Panel</p> <p><b>Instrument D</b> - Instrument of Delegation under the Planning, Development and Infrastructure Act 2016, Development and Infrastructure (General) Regulations 2017 and Planning, Development and Infrastructure (Fees, Charges Contributions) Regulations 2019 or powers of an Assessment Manager</p>

MOUNT BARKER DISTRICT COUNCIL 2020 -2035 COMMUNITY PLAN:	Economic Prosperity EP Objective 3.4 Support and facilitate quality, sustainable residential and commercial development including iconic public and private building developments in town centres.
RELATED POLICIES:	N/A
SUPPORTING PROCEDURES:	Council Assessment Panel Meeting Procedures
PREVIOUS REVIEW DATE:	N/A
ENDORSED BY CAP:	17 March 2021
MINUTE RESOLUTION NUMBER:	CAP20210317.06
NEXT REVIEW DATE:	12 Months

## 1. PURPOSE

The *Planning, Development and Infrastructure Act 2016* requires the Mount Barker District Council to have a Review of Decision of Assessment Manager Policy.

The Policy provides clear direction on a review of a decision of an Assessment Manager for the Council Assessment Panel, Assessment Manager, Staff Members and Applicants.

## 2. SCOPE

This Policy is applicable to the Mount Barker Council Assessment Panel and Assessment Manager.

## 3. DEFINITIONS

Refer to Policy Statement.

## 4. ROLES & RESPONSIBILITIES

### Council:

- N/A

### Chief Executive Officer:

- N/A

### General Managers:

- Planning and Development

**Others:**

- Council Assessment Panel
- Assessment Manager

## **5. POLICY STATEMENT**

### **1. LEGISLATIVE FRAMEWORK**

- 1.1 This Policy applies in addition to the statutory requirements for the review by the Council 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 <https://www.mountbarker.sa.gov.au/build/plan-and-develop/council-assessment-panel> (**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 5 business days.

### **3. APPLICANT'S DOCUMENTS**

#### Additional information

- 3.1 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.
- 3.2 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.
- 3.3 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.
- 3.4 In making this decision, the Presiding Member may consider:
  - 3.4.1 the relevance of the information and/or materials to the review application;
  - 3.4.2 if the information and/or materials is consistent with the original application or seeks to amend;
  - 3.4.3 the amount of time the Panel would need to consider the additional information and/or materials;
  - 3.4.4 whether the information and/or materials relate to a matter which has been the subject of a referral to a referral agency;
  - 3.4.5 the reasons the additional information and/or materials were not put before the Assessment Manager;
  - 3.4.6 the interests of justice;
  - 3.4.7 whether the information and/or materials would cause prejudice to any party; and
  - 3.4.8 any other matters the Presiding Member considers relevant.
- 3.5 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.
- 3.6 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.

- 3.7 Upon receipt of additional information and/or materials, the Presiding Member should provide a copy to the Assessment Manager within 2 business days.
- 3.8 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.
- 3.9 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 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;
  - 4.1.3 such additional information or materials as the Presiding Member has permitted to be placed before the Panel pursuant to clause 3.7; and
  - 4.1.4 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 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
  - 4.5.3 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
  - 4.5.4 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 and/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. 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 addition to or 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); or
  - 7.1.2 email to: [lodgement@mountbarker.sa.gov.au](mailto:lodgement@mountbarker.sa.gov.au); or
  - 7.1.3 hand-delivery or post to: Level 1, 6 Dutton Road, Mount Barker | PO Box 54 Mount Barker SA 5251

## **6. TRAINING / EDUCATION**

As required.

**7. REVIEW**

This Procedure will be reviewed (if a new Procedure in 12 months and then) every three years; or

- if aligned with a Policy at the time the policy is reviewed, or
- earlier in the event of changes to legislation earlier in the event of changes to legislation or related Policies and Procedures; or
- if deemed necessary by the Assessment Manager.

**8. ACCESS TO THE PROCEDURE**

The Procedure is available to staff via the Policies section of the Intranet.

**9. FURTHER INFORMATION**

For further information on this Procedure, please contact:

Title: Manager City Development

Extension: 08 8391 7200

Email: [lodgement@mountbarker.sa.gov.au](mailto:lodgement@mountbarker.sa.gov.au)