


COUNCIL POLICY

 <p>Adelaide Hills COUNCIL</p>	COUNCIL ASSESSMENT PANEL REVIEW OF DECISIONS OF THE ASSESSMENT MANAGER
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Policy Number:	CAP-01
Responsible Department(s):	Community & Development
Responsible Officer	Assessment Manager
Other Relevant Policies:	N/A
Relevant Procedure(s):	N/A
Relevant Legislation:	<i>Planning, Development & Infrastructure Act, 2016 Planning, Development and Infrastructure (General) Regulations 2017</i>
Policies and Procedures Superseded by this policy on its Adoption:	N/A
Approver:	Council Assessment Panel
Effective From:	28 August 2024
Next Review:	No later than 2 years or as required by legislation or changed circumstances

Version Control

Version No.	Date of Effect	Description of Change(s)	Approval
<i>1.0</i>	<i>10 June 2020</i>	<i>New Policy</i>	<i>CAP</i>
<i>2.0</i>	<i>28 August 2024</i>	<i>Updated Policy Adopted 14 August 2024</i>	<i>CAP</i>

COUNCIL ASSESSMENT PANEL REVIEW OF DECISIONS OF THE ASSESSMENT MANAGER POLICY

1. INTRODUCTION

- 1.1 Section 202 (Rights of Review & Appeal) of the *Planning, Development & Infrastructure Act 2016* (the 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 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 Act.
- 1.4 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 Act.

2 OBJECTIVES

This Policy outlines the process to be followed when an applicant lodges a request for review of a decision made by the Assessment Manager and his or her delegate.

3 DEFINITIONS & INTERPRETATION

“**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.

“**Assessment Manager**” in this instance includes his or her delegate

“**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;

“**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 heard at the meeting after the next in time CAP meeting.

A “**Prescribed Matter**” means:

- 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
- 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
- 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 granting of a development authorisation.

4. POLICY STATEMENT

- 4.1 An application for review in relation to a development application or development authorisation may only be commenced by the applicant for the development authorisation.
- 4.2 An application for review must relate to a Prescribed Matter in relation to which the Assessment Manager was the relevant authority.
- 4.3 An application for review must be:
- 4.3.1 made using the [Application for assessment panel review of assessment manager's decision](#) (the **Form**) -
 - 4.3.2 lodged in a manner identified on the Form, and
 - 4.3.3 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.
- 4.4 In determining whether to grant an extension of time, the Presiding Member may consider:
- 4.4.1 the reason for the delay
 - 4.4.2 the length of the delay
 - 4.4.3 whether any rights or interests of other parties would be affected by allowing the review to be commenced out of time
 - 4.4.4 the interests of justice
 - 4.4.5 whether the applicant has, or is within time to, appeal the Prescribed Matter to the ERD Court, and
 - 4.4.6 any other matters the Presiding Member considers relevant.

- 4.5 An application for review should, upon receipt by the CAP, be notified to the Assessment Manager within 5 business days.

5. APPLICANT'S DOCUMENTS

Written Submission

- 5.1 An applicant may provide a written submission in support of his or her application for review.
- 5.2 Such a submission must be received by the Presiding Member within 5 business days of the lodgement of the application for review, or such longer period as requested by the applicant and granted by the Presiding Member, in his or her discretion.
- 5.3 A written submission should be marked to the attention of the Presiding Member and lodged in a manner specified in Clause 8.
- 5.4 The Presiding Member should provide a copy of any written submission to the Assessment Manager within 5 business days of its receipt.

6. MATERIALS FOR REVIEW HEARING

- 6.1 Within the time prescribed in Clause 6.5, the Assessment Manager should collate for the Panel:
- 6.1.1 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:
 - 6.1.1.1 application documents, reports, submissions, plans, specifications or other documents submitted by the applicant
 - 6.1.1.2 internal and/or external referral responses, and
 - 6.1.1.3 any report from Council staff or an external planning consultant written for the Assessment Manager;
 - 6.1.2 any assessment checklist used by the Assessment Manager or delegate when making the decision on the Prescribed Matter;
 - 6.1.3 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;
 - 6.1.4 any written submission prepared by the applicant pursuant to Clause 5.1, and
 - 6.1.5 any further information requested by the Presiding Member or CAP.
- 6.2 After the completion of the requirements in Clause 6.1, the Assessment Manager should assign the review application to the next available CAP meeting.

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- 6.3 The documents identified in Clause 6.1 will be included as Attachments to the agenda item.
- 6.4 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.
- 6.5 The Assessment Manager should comply with Clause 6.1 within the following period of time:
- 6.5.1 next available CAP meeting from the date of lodgement of the application for review, plus
- 6.5.2 where the applicant is granted an extension of time to provide a written submission pursuant to clause 5.2, the period of time granted by the Presiding Member, plus
- 6.5.3 any additional period of time granted by the Presiding Member, in his or her discretion, upon the request of the Assessment Manager.

7. REVIEW HEARING

- 7.1 On review, the CAP will consider the Prescribed Matter afresh.
- 7.2 The CAP will not hear from any party other than the applicant and the Assessment Manager.
- 7.3 The CAP will provide opportunity for the applicant (or his or her representative), to appear and make submissions at the hearing in person or, electronically.
- 7.4 An applicant and/or his/her representative will be allowed a combined time of five minutes to address the CAP. The Presiding Member may allow additional time at his or her discretion.
- 7.5 Where an applicant is heard by the CAP, the Assessment Manager and/or delegate 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.
- 7.6 CAP members may ask questions and seek clarification from the applicant and/or Assessment Manager at the conclusion of their addresses.
- 7.7 Whether or not the applicant chooses to be heard by the CAP, the Assessment Manager should be present at the CAP meeting to respond to any questions or requests for clarification from the CAP.
- 7.8 Following any addresses from the applicant and/or Assessment Manager, the Presiding Member will invite all CAP Members to speak on any matter relevant to the review.
- 7.9 The CAP may resolve to defer its decision if it considers it requires additional information from the applicant or the Assessment Manager.

- 7.10 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.
- 7.11 Where an applicant is to provide further information to CAP pursuant to Clause 7.9, the information must be provided within the time specified by the Panel and in a manner specified in Clause 9.
- 7.12 Where an Assessment Manager is to provide further information to the CAP pursuant to Clause 7.9, a copy of the information must also be provided to the applicant not less than 10 business days before the meeting at which it will be considered by the CAP.

8. OUTCOME ON REVIEW HEARING

- 8.1 The CAP may, on a review:
- 8.1.1 affirm the Assessment Manager's decision on the Prescribed Matter;
 - 8.1.2 vary the Assessment Manager's decision on the Prescribed Matter; or
 - 8.1.3 set aside the Assessment Manager's decision on the Prescribed Matter and substitute its own decision.
- 8.2 An applicant should be advised in writing of the CAP's decision by the Assessment Manager (or delegate) within 2 business days of the CAP's decision.

9. LODGING WRITTEN MATERIALS & DOCUMENTS WITH THE CAP

- 9.1 All documents and written communications with the CAP must be lodged via:
- 9.1.1 the SA Planning Portal (to the extent the Portal is able to receive such a submission);
 - 9.1.2 e-mail to mail@ahc.sa.gov.au; or
 - 9.1.3 hand-delivery or post to Adelaide Hills Council, 63 Mount Barker Road, Stirling SA 5152

10. 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.

- 10.1 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 [insert] for [insert nature of development] subject to the [insert number] of conditions imposed by the Assessment Manager*
- *that DA [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:*

10.2 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 [insert] by deleting condition [insert number] of planning consent and replacing it with the following condition:

[insert varied condition]

10.3 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 [insert]] and substitute the following decision:

- *DA [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:*

10.4 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)]*

11. DELEGATION

11.1 The Assessment Manager has the delegation to make any legislative, formatting, nomenclature or other minor changes to the Policy during the period of its currency.

12. AVAILABILITY OF THE POLICY

12.1 This Policy is available on Council's website
<https://www.ahc.sa.gov.au/council/council-documents/council-policies>