

MARION COUNCIL 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 must relate to a prescribed matter, as defined in Section 201 of the Act, for which an Assessment Manager was the relevant authority.
- 2.2 An application for review must be:
- 2.2.1 made using the Application to Assessment Panel for Assessment Manager's Decision Review (the Form);
 - 2.2.2 lodged in a manner identified on the Form; and
 - 2.2.3 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.
- 2.3 In determining whether to grant an extension of time, the Presiding Member may consider:
- the reason for the delay;
- 2.3.1 the length of the delay;
 - 2.3.2 whether any rights or interests of other parties would be affected by allowing the review to be commenced out of time;
 - 2.3.3 the interests of justice;
 - 2.3.4 whether the applicant has, or is within time to, appeal the prescribed matter to the ERD Court; and
 - 2.3.5 any other matters the Presiding Member considers relevant.

3. MATERIALS FOR REVIEW HEARING

- 3.1 The Assessment Manager shall collate for the Panel:
- 3.1.1 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:

- 3.1.1.1 application documents, reports, submissions, plans, specifications or other documents submitted by the applicant;
 - 3.1.1.2 internal and/or external referral responses; and
 - 3.1.1.3 any report from Council staff or an external planning consultant written for the Assessment Manager;
- 3.1.2 any assessment checklist used by the Assessment Manager or delegate when making the decision on the Prescribed Matter;
- 3.1.3 any other information requested by the Presiding Member.
- 3.2 The Assessment Manager (or delegate) must prepare a report to the Panel setting out the details of the relevant development application, the prescribed matter the subject of the review and the reasons for the Assessment Manager (or delegate's) decision on the Prescribed Matter.
- 3.3 An applicant may provide a written submission in support of his or her application for review.
- 3.4 The written submission must relate solely to the prescribed matter the subject of the review and the reasons for the Assessment Manager (or delegate's) decision on the Prescribed Matter.
- 3.5 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.
- 3.6 A written submission should be marked to the attention of the Presiding Member and lodged in a manner specified in Clause 7.
- 3.7 The Presiding Member should provide a copy of any written submission to the Assessment Manager within 2 business days of its receipt.

4. **REVIEW HEARING**

- 4.1 The Assessment Manager must advise the applicant of the time and date of the Panel meeting at which the review application will be heard.
- 4.2 On review, the Panel will consider the Prescribed Matter afresh..
- 4.3 Information, materials and submissions which were not before the Assessment Manager at the time of the decision on the Prescribed Matter will not be considered by the Panel, other than any submission provided pursuant to clause 3.3.
- 4.4 The Panel will not receive submissions or addresses from any party.
- 4.5 The Presiding Member may permit Panel members to ask questions or seek clarification from the applicant and/or the Assessment Manager, in his or her discretion.

- 4.6 The Assessment Manager must be present at the Panel meeting to respond to any questions or requests for clarification from the Panel.
- 4.7 Where the decision on the Prescribed Matter was made by a delegate of the Assessment Manager, the delegate may appear in place of the Assessment Manager.
- 4.8 The Presiding Member will invite all Panel Members to speak on any matter relevant to the review.
- 4.9 The Panel may resolve to defer its decision if it considers it requires additional time or information to make its decision.

5. OUTCOME ON REVIEW HEARING

- 5.1 The Panel may, on a review:
 - 5.1.1 affirm the Assessment Manager’s decision on the Prescribed Matter;
 - 5.1.2 vary the Assessment Manager’s decision on the Prescribed Matter; or
 - 5.1.3 set aside the Assessment Manager’s decision on the Prescribed Matter and substitute its own decision.
- 5.2 An applicant should be advised in writing of the Panel’s decision by the Assessment Manager.

6. DRAFT RESOLUTIONS

Draft resolution 6.1 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.

- 6.1 *The Panel resolves to adopt the Policy for Assessment Panel Review of Decision of Assessment Manager dated January 2020 (the Policy).*

Draft resolutions 6.2 to 6.5 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.

- 6.2 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:

6.3 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]

6.4 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:*

6.5 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).

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: **planning@marion.sa.gov.au**

7.1.3 hand-delivery or post to

Attention: Marion Council Assessment Panel
PO Box 21
Oakland Park SA 5046

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