



Riverland Regional Assessment Panel

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 Regional Assessment Panel (**RAP**) 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), available from the SA Planning Portal;
 - 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. **APPLICANT'S DOCUMENTS**

- 3.1 An applicant for review must be given an opportunity to provide written submissions (which includes, for the avoidance of doubt, additional information or materials) to the Panel in support of his or her application for review.
- 3.2 The Assessment Manager must inform the applicant in writing of their right to provide written submissions to the Panel within 5 business days of the application for review being received by the Panel.
- 3.3 Such written submissions must be received by the Presiding Member within 1 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 the Presiding Member's discretion.
- 3.4 Within 5 business days of the receipt of the applicant's written submissions, 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 any additional information and/or materials, in such manner and within such time as is determined by the Presiding Member.
- 3.5 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.
- 3.6 If the Presiding Member considers that an applicant's written submissions are substantial, the Presiding Member may defer the date for a hearing for such reasonable period as the Presiding Member considers appropriate, in order to:
 - 3.6.1 provide the Assessment Manager with an opportunity to review and respond to the written submissions; and
 - 3.6.2 provide any relevant referral bodies with an opportunity to review and respond to the written submissions in accordance with clause 3.5.

and must provide written notice to the applicant as soon as reasonably practicable after determining to defer the hearing, and in any event, no less than 24 hours before the hearing was due to take place.

4. **MATERIALS FOR REVIEW HEARING**

- 4.1 The Assessment Manager shall collate for the RAP:
 - 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 any assessment checklist used by the Assessment Manager or delegate when making the decision on the Prescribed Matter;
- 4.1.3 any other information requested by the Presiding Member.
- 4.2 The Assessment Manager (or delegate) must prepare a report to the RAP 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.
- 4.3 The Assessment Manager must, by written notice to the applicant:
 - 4.3.1 advise the applicant of the time and date of the Panel meeting at which the review application will be heard; and
 - 4.3.2 inform the applicant of their right to appear and make submissions in person to the Panel at the hearing; and
 - 4.3.3 invite the applicant to confirm in writing at least 2 business days prior to the hearing whether he or she wishes to be heard,not less than 5 business days before the meeting.

5. REVIEW HEARING

- 5.1 On review, the RAP will consider the Prescribed Matter afresh.
- 5.2 The Panel will hear from the applicant (or the applicant's representative) where he or she has elected to be heard.
- 5.3 The applicant or their representative will be allowed a maximum of five minutes in which to make oral submissions to the Panel unless the Presiding Member, in his or her discretion, allows additional time.
- 5.4 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. The Presiding Member may permit RAP members to ask questions or seek clarification from the applicant and/or the Assessment Manager, in his or her discretion.
- 5.5 The Assessment Manager must be present at the RAP meeting to respond to any questions or requests for clarification from the RAP.
- 5.6 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.
- 5.7 The Presiding Member will invite all RAP Members to speak on any matter relevant to the review.

5.8 The RAP may resolve to defer its decision if it considers it requires additional time or information to make its decision.

6. OUTCOME ON REVIEW HEARING

6.1 The RAP 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 RAP's decision by the Assessment Manager within 2 business days of the Panel's decision.

7. DRAFT RESOLUTIONS

Draft resolutions 7.1 to 7.4 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.

7.1 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:*

7.2 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]

7.3 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:*

7.4 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 2 months to provide information)]*

(etc).