



I hereby give notice that the Council Assessment Panel Meeting will be held on:

Date: Tuesday, 30 June 2020
Time: 9.30am
Location: Council Chambers
Minlaton Town Hall
57 Main Street
Minlaton

AGENDA

Council Assessment Panel Meeting

30 June 2020

A handwritten signature in blue ink, appearing to read "Roger Brooks", is positioned above the name and title.

Roger Brooks
ASSESSMENT MANAGER

Yorke Peninsula Council
Assessment Panel Membership

Debra Agnew – Presiding Member

Ben Green

Peter Allen

Elinor Walker

John Rich

Richard Carruthers

CONFLICT OF INTEREST

Council Assessment Panel Members are reminded of the requirements for disclosure by Members of direct or indirect personal or pecuniary interest in an item listed for consideration on the Agenda. Section 56A of the Development Act 1993 requires that Members declare any interest and provide full and accurate details of the relevant interest to the Council Assessment Panel prior to consideration of that item on the Agenda.

Each Member of a Council Assessment Panel has a duty to vote at all meetings unless excepted by legislation.

The major exception being where a Member has a conflict of interest.

Agenda

1	Welcome by Presiding Member	5
2	Present	5
3	Gallery	5
4	Apologies	5
5	Leave of Absence	5
6	Minutes of Previous Meeting – for Confirmation	5
7	Conflict of Interest	5
8	Visitors to the Meeting.....	5
	REPORTS	7
9	Development Applications	8
9.1	544/1184/2020 - Outhred English & Associates (Goss) - Port Victoria.....	8
10	Matters Deferred	75
	Nil	
11	ERD Court Matters	75
12	Concurrence Approvals	75
13	Procedural Matters	76
13.1	Instrument of Delegation	76
13.2	Adoption of PO179 Council Assessment Panel Review of Decision of Assessment Manager.....	104
14	Next Meeting	112
15	Closure	112

1 WELCOME BY PRESIDING MEMBER

Meeting declared opened

2 PRESENT

3 GALLERY

4 APOLOGIES

Nil

5 LEAVE OF ABSENCE

Nil

6 MINUTES OF PREVIOUS MEETING – FOR CONFIRMATION

Council Assessment Panel Meeting - 26 May 2020

7 CONFLICT OF INTEREST

8 VISITORS TO THE MEETING

REPORTS

REPORTS

9 DEVELOPMENT APPLICATIONS**9.1 544/1184/2020 - OUTHRED ENGLISH & ASSOCIATES (GOSS) - PORT VICTORIA****Document #:** 20/55161**Department:** Development Services**PROPOSAL OUTLINE****Author:** Susan Hadley – Planning Officer, Development Services**Application No.:** 544/1184/2020**Applicant:** Outhred English & Associates Pty Ltd**Owner:** SM & VM Goss**Development Proposal:** Dwelling, Garage (UMR), Alfresco Area and Verandah**Lodgement Date:** 15/06/2020**Subject Land:** Lot 19 Pebble Beach Road, Hd Wauraltee**Zone:** Primary Production**Nature of Development:** Non-complying**Public Notification:** Category 3**Representations:** N/A**Referrals:** Nil**Development Plan Version:** 29 November 2018**RECOMMENDATION**

- A. That the Council Assessment Panel resolves that Development Application 544/1184/2020 for a Dwelling, Garage (UMR), Alfresco Area and Verandah at Lot 19 Pebble Beach Road, Port Victoria is not seriously at variance with the provisions of the Yorke Peninsula Council Development Plan, consolidated 29 November 2018.**
- B. That following consideration and having regard to all relevant matters concerning the construction of a Dwelling, Garage (UMR), Alfresco Area and Verandah at Lot 19 Pebble Beach Road, Port Victoria (Development Application 544/1184/2020) the Council Assessment Panel to resolve to proceed with the assessment of the non-complying application.**

NATURE OF THE DEVELOPMENT

New dwellings are non-complying in the Primary Production Zone unless they are meet a number of requirements as outlined below:

- Dwelling Except for a dwelling that satisfies one of the following:
- (a) it is located on land held at Point Pearce by the Aboriginal Lands Trust and the dwelling will meet the needs of the local aboriginal population, provided it is restricted to the existing or planned expansion areas of the Point Pearce settlement
 - (b) it is in the form of workers accommodation
 - (c) it is for the replacement of an existing freehold dwelling.

The proposal is not covered by any of the exceptions listed above therefore the application is determined to be non-complying.

DESCRIPTION OF THE PROPOSAL

The application is for a dwelling, garage (umr), alfresco area and verandah on a parcel of land outside of the township of Port Victoria being Lot 19 Pebble Beach Road, Port Victoria. A garage with a footprint of 200 square metres was approved for farming use on the allotment in 2011. The land is currently leased annually for cropping wheat however the applicant advises the landowners intend to take over management of crop production with a contract for seed and harvest carried out by local farmers Greg & Dylan Schulz of Thiepvale Pty Ltd. The land is 43.58 hectares in size.

The proposal consists of a new dwelling including an alfresco area, verandah and a garage under the main roof. The total footprint of the proposal is 331.8 square metres and uses a variety of materials including weatherboard cladding, corrugated iron, texture coating and a Colorbond Shale Grey roof.

SUBJECT LAND AND LOCALITY

The subject land is within the Primary Production Zone located approximately 2 kilometres south east of the Port Victoria Township and approximately 800 metres from the Residential Zone south of the township. The dwelling is proposed to be sited 282.5 metres from Pebble Beach Road and 40 metres from the western side boundary. Improvements to the allotment comprise extensive planting of native species and an existing farm building located approximately 240 metres setback from Pebble Beach Road and approximately 10 metres from the western boundary.

Land in the locality has a variety of allotment sizes ranging from 1.55ha to 79.57ha with a median size of 43.58ha. Land is generally undeveloped and used for cereal cropping and grazing activities occurring in the main. The adjacent allotment to the west comprises an older style dwelling with outbuildings, whilst approximately 230 metres north-west of the subject land on the northern side of Pebble Beach Road, a dwelling and outbuilding has been developed on a similar sized allotment. It is understood that an application for this particular dwelling was lodged in 2012 prior to a dwelling being classified as non-complying.

The north eastern corner of the subject land is adjacent land zoned Rural Living which extends north from Wauraltee Road.

PUBLIC NOTIFICATION

The Development Plan makes no reference to dwellings within the public notification table of the Primary Production Zone and refers to Schedule 9 of the Development Regulations. Schedule 9 of the Development Regulations provides the schedule for Category 1 and Category 2 public notification and this proposal does not fall within either Category 1 or Category 2 of this schedule.

Section 38(2)(c) states that where an application fails to be assigned as either a Category 1 or Category 2 then it shall be processed as a Category 3 development.

Hence, if it is resolved to proceed with the assessment of the application, the application shall be required to undergo the public notification process prescribed in the Act and Regulations.

CONSULTATION

No Schedule 8 referrals to other authorities or agencies are required as part of the assessment of the proposal. Due to the COVID19 Emergency Response Amendment Bill 2020, where Council is the relevant authority, the requirement to obtain concurrence of SCAP for a non-complying application has been removed.

As the land is considered to be 'sensitive land' as defined under the Indigenous Land Use Agreement (ILUA), the recipient of development authorisation would be notified of its obligations under the Aboriginal Heritage Act 1988 as per that agreement.

ASSESSMENT

The applicant has provided a Statement of Effect with lodgement documents for the application, which Council is also prepared to accept as the Brief Statement of Support. The Statement of Effect outlines the background history the owners have with the allotment since its purchase in 2008. A similar application approved by Council's Assessment Panel in 2017 was, however, declined the concurrence of the SCAP and therefore refused.

Information held by Council assured Mr and Mrs Goss that a dwelling on this particular sized parcel of land, being over 40 hectares, would be "consent development". Unfortunately with the conversion of the Development Plan to the Better Development Plan (BDP) and the General Development Plan Amendment in 2012 the subject land was re-zoned from a General Farming Zone to the Primary Production Zone whereby dwellings became non-complying forms of development.

The owners have spent the past 12 years revegetating the site by planting approximately 4000 native shrubs and trees and erecting a farm building. The intention is to continue cropping on a contract basis for the majority of the allotment with an area of 1.1 hectares to be set aside for other purposes which includes a 10 metre fire break and spray-drift buffer.

The development has been proposed with the dwelling designed to suit the location, with materials and colours selected to blend in with the changing seasonal landscape. The dwelling will be oriented to take advantage of the northern winter sun and views and will be self-sufficient, harvesting their own water and powering with an off-grid system.

The owners are interested in living on the land to enable better land management practices that enable them to take over management of the crop production with the assistance of contract services for seeding and harvesting.

The owners bought the land at a time when a dwelling would have been a merit form of development. Considerable time, money, and effort has been invested in making the property attractive and functional along with lodging two previous applications for a new dwelling; notwithstanding, it is listed as a non-complying form of development in the current Development Plan for the Yorke Peninsula Council.

CONCLUSION

It is acknowledged that a new dwelling in the Primary Production Zone is listed as a non-complying form of development. The intent of the listing as a non-complying form of development should be further examined. Non-complying development is generally inappropriate in the zone as objectives for the zone seek to protect primary production from encroachment by incompatible land uses. Despite the continuation of over 40 hectares of the land for cropping, a dwelling, which is considered to be a sensitive land use, conflicts with the existing land use and has the potential to jeopardise the continuance of adjoining authorised land use in to the future, which may seek to expand or intensify their activities. However, Zone PDC 5 contemplates a dwelling as an envisaged form of development, particularly where there is a demonstrated connection with farming or primary production and the location of a dwelling will not inhibit the continuation of farming and primary production activities in keeping with the zone.

Information provided with the application demonstrates appropriate setbacks, existing access from an all-weather public road, open space and fire protection measures can be achieved in accordance with the Development Plan. The site comprises ample area for the disposal of wastewater on site without harm to human health or the environment.

The applicant has considerably demonstrated that the locality is marginal farm land and that the proposed dwelling will have negligible impact on productivity of the land. Furthermore, the applicant

has provided a substantive argument with reasonable justification for proposing a subsequent application to construct dwelling on the subject land.

In consideration of the information provided with the Brief Statement of Support, Statement of Effect, supporting information and plans, Council's Assessment Panel is asked to consider whether or not to proceed with assessment of this application.

ATTACHMENTS

- 1. Locality plan - site photos 544/1184/2020 - Goss**
- 2. Application documents - 544/1184/2020 - Goss**

10 MATTERS DEFERRED

Nil

11 ERD COURT MATTERS

544/1096/2018 WR Mc Farlane (Lot 9) Black Point Drive, Black Point

12 CONCURRENCE APPROVALS

544/1135/2019 Stuart Palecek 254 Reo Road, The Pines (Demolish Existing Two Storey Dwelling, Deck and Verandah)

13 PROCEDURAL MATTERS

13.1 INSTRUMENT OF DELEGATION

Document #: 20/50026

Department: Development Services

PURPOSE

For the Yorke Peninsula Council Assessment Panel (CAP) to consider delegation of the powers and functions to be vested or conferred in or on the Yorke Peninsula Council's Assessment Manager with the implementation of the Planning, Development and Infrastructure Act 2016.

RECOMMENDATION

That the Yorke Peninsula Council Assessment Panel:

1. in exercise of the power contained in Section 100 of the Planning, Development and Infrastructure Act 2016 the powers and functions under the Planning, Development and Infrastructure Act 2016 and regulations made thereunder contained in the proposed Instrument of Delegation (attached to this report – Attachment 1) are hereby delegated this 30th day of June 2020 to the Yorke Peninsula Council's Assessment Manager subject to the conditions and/or limitations, if any, specified herein or in the Schedule of Conditions in the proposed Instrument of Delegation;
2. grant that such powers and functions may be further delegated by the Yorke Peninsula Council's Assessment Manager in accordance with Section 100(2)(c) of the Planning, Development and Infrastructure Act 2016 as the Yorke Peninsula Council's Assessment Manager sees fit, unless otherwise indicated herein or in the Schedule of Conditions contained in the proposed Instrument of Delegation.

LINK TO STRATEGIC PLAN

Goal: 5 Responsible Governance

Strategy: 5.3 Meet all legislative requirements and compliance with Council's internal controls

BACKGROUND

The Planning, Development and Infrastructure Act 2016 (Act) will be implemented in regional South Australia on 31 July 2020 and will bring about significant change.

In the past, Council has been the relevant authority and delegated its responsibilities to a Council Assessment Panel or the Chief Executive Officer. The Act establishes the (CAP) as a relevant authority in its own right and along with the supporting regulations, provides the CAP with certain powers and functions.

DISCUSSION

Significant powers and functions will be vested or conferred in or on the CAP with the implementation of the Act. Section 100 of the Act provides that the CAP may then delegate those powers and functions.

Accordingly, to ensure that these powers and functions are effectively carried out, it is appropriate for the CAP to consider delegating the powers and functions, as set out in the attached Instrument of Delegation (Attachment 1), to Council's Assessment Manager. Delegations may be made subject to conditions or limitations as the CAP sees fit. Any conditions or limitations are documented via the Instrument of Delegation.

In accordance with Section 100(2)(c) of the Act, the Assessment Manager may further Sub-delegate a power or function to relevant authorised officers. Sub-delegation ensures that persons with responsibilities are able to carry out those responsibilities without hindrance.

A Sub-delegation may also be made by the Assessment Manager to a particular person or body or a person occupying a particular office or position as may be required. Sub-delegations may also be made subject to conditions or limitations as specified in an instrument of Sub-delegation.

The Local Government Association delegation templates have been utilised to develop the attached (Attachment 1) Instrument of Delegation.

COMMUNITY ENGAGEMENT PLAN

Level 1 - Inform

CONSULTATION PROCESS

In preparing this report, the following Yorke Peninsula Council officers were consulted:

- Governance Officer

In preparing this report, the following external parties were consulted:

- Norman Waterhouse Lawyers
- Local Government Association

POLICY IMPLICATIONS

It is to be noted that Council is in the transition phase from the Development Act 1993 to the Planning, Development and Infrastructure Act 2016. Therefore, the Council Policy PO127 Council Assessment Panel Delegations, will remain in place for the duration of time that is required for Council to finalise Development Applications that commenced under the Development Act 1993.

PO09 Building Inspections Policy.

BUDGET AND RESOURCE IMPLICATIONS

Nil.

RISKS/LEGAL/LEGISLATIVE/ IMPLICATIONS

Planning, Development and Infrastructure Act 2016

Local Government Act 1999

It is essential that appropriate delegations are in place to ensure legislative compliance and that appropriate persons with appropriate qualifications are able to carry out CAP powers and functions.

ATTACHMENTS

1. **Council Assessment Panel Instrument of Delegation - Planning Development and Infrastructure Act 2016 PDI (General) Regulations 2017 PDI (Fees, Charges And Contributions) Regulations 2019 - Powers of an Assessment Panel**

**INSTRUMENT OF DELEGATION UNDER THE
PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016, PLANNING,
DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017 AND
PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND
CONTRIBUTIONS) REGULATIONS 2019
OF POWERS OF AN ASSESSMENT PANEL**

NOTES

1. Conditions or Limitations: conditions or limitations may apply to the delegations contained in this Instrument. Refer to the Schedule of Conditions at the end of this document.
2. Refer to the relevant Assessment Panel resolution(s) to identify when these delegations were made, reviewed and or amended.

POWERS AND FUNCTIONS DELEGATED IN THIS INSTRUMENT

1.	Environment and Food Production Areas – Greater Adelaide
1.1	The power pursuant to Section 7(5)(a) of the Planning, Development and Infrastructure Act 2016 (the PDI Act), in relation to a proposed development in an environment and food production area that involves a division of land that would create 1 or more additional allotments to seek the concurrence of the Commission in the granting of the development authorisation to the development.
1.2	The power pursuant to Section 7(5)(d) of the PDI Act in relation to a proposed development in an environment and food production area that involves a division of land that would create one or more additional allotments, to, if the proposed development will create additional allotments to be used for residential development, refuse to grant development authorisation in relation to the proposed development.
2.	Appointment of Additional Members
2.1	The power pursuant to Section 85(1) of the PDI Act to appoint 1 or 2 members to act as additional members of the assessment panel for the purposes of dealing with a matter that the assessment panel must assess as a relevant authority under the PDI Act.
3.	Relevant Authority – Commission
3.1	The power pursuant to Section 94(3)(a) of the PDI Act, if the Minister acts under Section 94(1)(h) of the PDI Act to, at the request of the Commission, provide the Commission with a report relating to any application for development authorisation that has been under consideration by the relevant

- 2 -

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE
ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017
AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS)
REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

	authority.
4.	Relevant Provisions
4.1	The power pursuant to Section 99(1) of the PDI Act, if a proposed development involves the performance of building work to determine to act under Section 99(1) of the PDI Act to:
4.1.1	refer the assessment of the development in respect of the Building Rules to the council for the area in which the proposed development is to be undertaken; or
4.1.2	require that the assessment of the development in respect of the Building Rules be undertaken by a building certifier.
5.	Matters Against Which Development Must Be Assessed
5.1	The power pursuant to Section 102(1) of the PDI Act to assess a development against, and grant or refuse a consent in respect of, each of the following matters (insofar as they are relevant to the particular development):
5.1.1	-
5.1.1.1	the relevant provisions of the Planning Rules; and
5.1.1.2	to the extent provided by Part 7 Division 2 of the PDI Act – the impacts of the development, (planning consent);
5.1.2	the relevant provisions of the Building Rules (building consent);
5.1.3	in relation to a proposed division of land (otherwise than under the Community Titles Act 1996 or the Strata Titles Act 1988) - the requirement that the following conditions be satisfied (or will be satisfied by the imposition of conditions under the PDI Act):
5.1.3.1	requirements set out in the Planning and Design Code made for the purposes of this provision are satisfied;
5.1.3.2	any relevant requirements set out in a design standard has been satisfied;
5.1.3.3	the requirements of a water industry entity under the Water Industry Act 2012 identified under the regulations relating

- 3 -

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE
ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017
AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS)
REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

	to the provision of water supply and sewerage services are satisfied;
5.1.3.4	where land is to be vested in a council or other authority - the council or authority consents to the vesting;
5.1.3.5	requirements set out in regulations made for the purposes of Section 102(1)(c) of the PDI Act are satisfied;
5.1.4	in relation to a division of land under the Community Titles Act 1996 or the Strata Titles Act 1988 - the requirement that the following conditions be satisfied (or will be satisfied by the imposition of conditions under the PDI Act):
5.1.4.1	requirements set out in the Planning and Design Code made for the purposes of this provision are satisfied;
5.1.4.2	any relevant requirements set out in a design standard has been satisfied;
5.1.4.3	any encroachment of a lot or unit over other land is acceptable having regard to any provision made by the Planning and Design Code or a design standard;
5.1.4.4	where land is to be vested in a council or other authority - the council or authority consents to the vesting;
5.1.4.5	a building or item intended to establish a boundary (or part of a boundary) of a lot or lots or a unit or units is appropriate for that purpose;
5.1.4.6	the division of land under the Community Titles Act 1996 or the Strata Titles Act 1988 is appropriate having regard to the nature and extent of the common property that would be established by the relevant scheme;
5.1.4.7	the requirements of a water industry entity under the Water Industry Act 2012 identified under the regulations relating to the provision of water supply and sewerage services are satisfied;
5.1.4.8	any building situated on the land complies with the Building Rules;
5.1.4.9	requirements set out in the regulations made for the

FXD\20 54758 COUNCIL ASSESSMENT PANEL INSTRUMENT OF DELEGATION - PLANNING DEVELOPMENT AND INFRASTRUCTURE ACT 2016 PDI - POWERS OF AN ASSESSMENT PANEL(3) 18 May 2020

- 4 -

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE
ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017
AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS)
REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

	purposes of Section 102(d) of the PDI Act are satisfied;
5.1.5	any encroachment of a building over, under, across or on a public place (and not otherwise dealt with above) is acceptable having regard to any provision made by the Planning and Design Code or a design standard;
5.1.6	if relevant - requirements applying under Part 15 Division 2 of the PDI Act are satisfied;
5.1.7	such other matters as may be prescribed.
5.2	The power pursuant to Section 102(3) of the PDI Act to, in relation to granting a planning consent, on the delegate's own initiative or on application, reserve the delegate's decision on a specified matter or reserve the delegate's decision to grant a planning consent:
5.2.1	until further assessment of the relevant development under the PDI Act; or
5.2.2	until further assessment or consideration of the proposed development under another Act; or
5.2.3	until a licence, permission, consent, approval, authorisation, certificate or other authority is granted, or not granted (by the decision of another authority), under another Act.
5.3	The power pursuant to Section 102(4) of the PDI Act to allow any matter specified by the Planning and Design Code for the purposes of Section 102(4) of the PDI Act to be reserved on the application of the applicant.
6.	Performance Assessed Development
6.1	The power pursuant to Section 107(2)(c) of the PDI Act to form the opinion that the development is seriously at variance with the Planning and Design Code (disregarding minor variations).
6.2	The power pursuant to Section 107(3) of the PDI Act, if a proposed development is to be assessed under Section 107 of the PDI Act to make a decision in accordance with a practice direction.
6.3	The power pursuant to Section 107(4) of the PDI Act to limit the matters that the delegate will take into account to what should be the decision of the relevant authority as to planning consent in relation to the performance based

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE
ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017
AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS)
REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

elements of the development as assessed on its merits.	
7.	Building Consent
7.1	The power pursuant to Section 118(1) of the PDI Act, if the Regulations provide that a form of building work complies with the Building Rules, to grant any such building work a building consent (subject to such conditions or exceptions as may be prescribed by the regulations).
7.2	The power pursuant to Section 118(2)(a) of the PDI Act to seek the concurrence of the Commission to grant a building consent in respect of a development that is at variance with the performance requirements of the Building Code or a Ministerial building standard.
7.3	The power pursuant to Section 118(2) of the PDI Act, subject to Section 118(6) of the PDI Act, to grant a building consent to a development that is at variance with the Building Rules if:
7.3.1	the variance is with a part of the Building Rules other than the Building Code or a Ministerial building standard and the delegate determines that it is appropriate to grant the consent despite the variance on the basis that the delegate is satisfied:
	7.3.1.1 that:
	(a) the provisions of the Building Rules are inappropriate to the particular building or building work, or the proposed building work fails to conform with the Building Rules only in minor respects; and
	(b) the variance is justifiable having regard to the objects of the Planning and Design Code or the performance requirements of the Building Code or a Ministerial building standard (as the case may be) and would achieve the objects of this Act as effectively, or more effectively, than if the variance were not to be allowed; or
	7.3.1.2 in a case where the consent is being sought after the development has occurred - that the variance is justifiable in the circumstances of the particular case.
7.4	The power pursuant to Section 118(4) of the PDI Act, to at the request or with the agreement of the applicant, refer proposed building work to the Commission for an opinion on whether or not it complies with the

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017 AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS) REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

	performance requirements of the Building Code or a Ministerial building standard.
7.5	The power pursuant to Section 118(6) of the PDI Act if an inconsistency exists between the Building Rules and the Planning Rules in relation to a State heritage place or a local heritage place, to, in determining an application for building rules consent, ensure, so far as is reasonably practicable, that standards of building soundness, occupant safety and amenity are achieved in respect of the development that are as good as can reasonably be achieved in the circumstances.
7.6	The power pursuant to Section 118(7) of the PDI Act to seek and consider the advice of the Commission before imposing or agreeing to a requirement under Section 18(6) of the PDI Act that would be at variance with the performance requirements of the Building Code or a Ministerial building standard.
7.7	The power pursuant to Section 118(8) of the PDI Act, to, subject to the PDI Act, accept that proposed building work complies with the Building Rules to the extent that:
7.7.1	such compliance is certified by the provision of technical details, particulars, plans, drawings or specifications prepared and certified in accordance with the regulations; or
7.7.2	such compliance is certified by a building certifier.
7.8	The power pursuant to Section 118(10) of the PDI Act to refuse to grant a consent in relation to any development if, as a result of that development, the type or standard of construction of a building of a particular classification would cease to conform with the requirements of the Building Rules for a building of that classification
7.9	The power pursuant to Section 118(11) of the PDI Act, if a relevant authority decides to grant building consent in relation to a development that is at variance with the Building Rules, to, subject to the regulations, in giving notice of the relevant authority's decision on the application for that consent, specify (in the notice or in an accompanying document):
7.9.1	the variance; and
7.9.2	the grounds on which the decision is being made.
8.	Application and Provision of Information

- 7 -

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE
ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017
AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS)
REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

8.1	The power pursuant to Section 119(1)(b) of the PDI Act to require an application to the relevant authority for the purposes of Part 7 of the PDI Act, to include any information as the delegate may reasonably require.
8.2	The power pursuant to Section 119(3) of the PDI Act to request an applicant:
8.2.1	to provide such additional documents, assessments or information (including calculations and technical details) as the delegate may reasonably require to assess the application;
8.2.2	to remedy any defect or deficiency in any application or accompanying document or information required by or under the PDI Act;
8.2.3	to consult with an authority or body prescribed by the regulations;
8.2.4	to comply with any other requirement prescribed by the regulations.
8.3	The power pursuant to Section 119(6) of the PDI Act if a request is made under Section 119(3) of the PDI Act, and the request is not complied with within the time specified by the regulations, to
8.3.1	subject to Section 119(6)(b)(ii) of the PDI Act, refuse the application; and
8.3.2	refuse the application in prescribed circumstances (including, if the regulations so provide, in a case involving development that is deemed-to-satisfy development).
8.4	The power pursuant to Section 119(7) of the PDI Act to, in dealing with an application that relates to a regulated tree, consider that special circumstances apply.
8.5	The power pursuant to Section 119(9) of the PDI Act to:
8.5.1	permit an applicant:
8.5.1.1	to vary an application;
8.5.1.2	to vary any plans, drawings, specifications or other documents that accompanied an application,
	(provided that the essential nature of the proposed development is not changed);

FXD\20 54758 COUNCIL ASSESSMENT PANEL INSTRUMENT OF DELEGATION - PLANNING DEVELOPMENT
AND INFRASTRUCTURE ACT 2016 PDI - POWERS OF AN ASSESSMENT PANEL(3) 18 May 2020

- 8 -

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE
ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017
AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS)
REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

8.5.2	permit an applicant to lodge an application without the provision of any information or document required by the regulations;
8.5.3	to the extent that the fee is payable to the relevant authority waive payment of whole or part of the application fee, or refund an application fee (in whole or in part);
8.5.4	if there is an inconsistency between any documents lodged with the relevant authority for the purposes of Part 7 of the PDI Act (whether by an applicant or any other person), or between any such document and a development authorisation that has already been given that is relevant in the circumstances, return or forward any document to the applicant or to any other person and determine not to finalise the matter until any specified matter is resolved, rectified or addressed.
8.6	The power pursuant to Section 119(10) of the PDI Act to grant a permission under Section 119(9) of the PDI Act unconditionally or subject to such conditions as the delegate thinks fit.
8.7	The power pursuant to Section 119(12) of the PDI Act to, in a consent, provide for, or envisage, the undertaking of development in stages, with separate consents or approvals for the various stages.
8.8	The power pursuant to Section 119(14) of the PDI Act to if an applicant withdraws an application to determine to refund the application fee.
9. Outline Consent	
9.1	The power pursuant to Section 120(1) of the PDI Act and subject to Section 120 of the PDI Act, to on application, grant a consent in the nature of an outline consent.
9.2	The power pursuant to Section 120(3) of the PDI Act if an outline consent is granted and a subsequent application is made with respect to the same development (subject to any variations allowed by a practice direction) to:
9.2.1	grant any consent contemplated by the outline consent; and
9.2.2	not impose a requirement that is inconsistent with the outline consent.
10. Design Review	
10.1	The power pursuant to Section 121(7) of the PDI Act, to in acting under the PDI Act, take into account any advice provided by a design panel (insofar as

FXD\20 54758 COUNCIL ASSESSMENT PANEL INSTRUMENT OF DELEGATION - PLANNING DEVELOPMENT
AND INFRASTRUCTURE ACT 2016 PDI - POWERS OF AN ASSESSMENT PANEL(3) 18 May 2020

- 9 -

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE
ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017
AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS)
REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

	may be relevant to the assessment of proposed development by the delegate).
11. Referrals to Other Authorities or Agencies	
11.1	The power pursuant to Section 122(1) of the PDI Act, where an application for consent to, or approval of, a proposed development of a prescribed class is to be assessed by a relevant authority, to:
11.1.1	refer the application, together with a copy of any relevant information provided by the applicant, to a body prescribed by the regulations (including, if so prescribed, the Commission); and
11.1.2	not make a decision until the relevant authority has received a response from that prescribed body in relation to the matter or matters for which the referral was made
	where the regulations so provide, subject to Section 122 of the PDI Act.
11.2	The power pursuant to Section 122(5)(b) of the PDI Act, acting by direction of a prescribed body:
11.2.1	to refuse the application; or
11.2.2	consent to or approve the development and impose such conditions as the prescribed body thinks fit, (subject to any specific limitation under another Act as to the conditions that may be imposed by the prescribed body)
	where the regulations so provide.
11.3	The power pursuant to Section 122(7) of the PDI Act, if the relevant authority is directed by a prescribed body to refuse an application and the refusal is the subject of an appeal under the PDI Act, to apply for the relevant authority to be joined as a party to the proceedings.
11.4	The power pursuant to Section 122(10) of the PDI Act to, if requested by an applicant, defer a referral under Section 122 of the PDI Act to a particular stage in the process of assessment.
12. Preliminary Advice and Agreement	
12.1	The power pursuant to Section 123(2) of the PDI Act, if:
12.1.1	a proposed development is referred to a prescribed body under

FXD\20 54758 COUNCIL ASSESSMENT PANEL INSTRUMENT OF DELEGATION - PLANNING DEVELOPMENT AND INFRASTRUCTURE ACT 2016 PDI - POWERS OF AN ASSESSMENT PANEL(3) 18 May 2020

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE
ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017
AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS)
REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

	Section 123(1) of the PDI Act; and
12.1.2	the prescribed body agrees to consider the matter under Section 123 of the PDI Act after taking into account any matter prescribed by the regulations; and
12.1.3	the prescribed body agrees, in the manner prescribed by the regulations, that the development meets the requirements (if any) of the prescribed body (including on the basis of the imposition of conditions),
	to, subject to Section 123(4) of the PDI Act if an application for planning consent with respect to the development is lodged with the relevant authority within the prescribed period after the prescribed body has indicated its agreement under Section 123(2)(c) of the PDI Act, form the opinion and be satisfied that the application accords with the agreement indicated by the prescribed body (taking into account the terms or elements of that agreement and any relevant plans and other documentation).
12.2	The power pursuant to Section 123(4) of the PDI Act to determine an agreement under Section 123 of the PDI Act is no longer appropriate due to the operation of Section 132 of the PDI Act.
13. Proposed Development Involving Creation of Fortifications	
13.1	The power pursuant to Section 124(1) of the PDI Act, if the delegate has reason to believe that a proposed development may involve the creation of fortifications, to refer the application for consent to, or approval of, the proposed development to the Commissioner of Police (the Commissioner).
13.2	The power pursuant to Section 124(5) of the PDI Act, if the Commissioner determines that the proposed development involves the creation of fortification, to:
13.2.1	if the proposed development consists only of the creation fortifications - refuse the application; or
13.2.2	in any other case - impose conditions in respect of any consent to or approval of the proposed development prohibiting the creation of the fortifications
13.3	The power pursuant to Section 124(6) of the PDI Act, if the relevant authority acting on the basis of a determination of the Commissioner under Section 124(2) of the PDI Act refuses an application or imposes conditions in respect of a development authorisation, to notify the applicant that the application was

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017 AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS) REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

	refused, or the conditions imposed, on the basis of a determination of the Commissioner under Section 124 of the PDI Act.
13.4	The power pursuant to Section 124(7) of the PDI Act, if a refusal or condition referred to in Section 124(5) of the PDI Act is the subject of an appeal under the PDI Act to apply to the Court to be joined as a party to the appeal.
14.	Time Within Which Decision Must be Made
14.1	The power pursuant to Section 125(6) of the PDI Act to form the opinion and consider that the relevant application for planning consent should have been refused and apply to the Court for an order quashing the consent.
14.2	The power pursuant to Section 125(7) of the Act to apply to the Court for an extension of time to make an application under Section 125(6) of the Act.
15.	Determination of Application
15.1	The power pursuant to Section 126(1) of the PDI Act to, on making a decision on an application under Part 7 of the PDI Act, give notice of the decision in accordance with the regulations (and, in the case of a refusal, to include in the notice the reasons for the refusal and any appeal rights that exist under the PDI Act).
15.2	The power pursuant to Section 126(3) of the PDI Act to, on the delegate's own initiative or on the application of a person who has the benefit of any relevant development authorisation, extend a period prescribed under Section 126(2) of the PDI Act.
16.	Conditions
16.1	The power pursuant to Section 127(1) of the PDI Act to make a decision subject to such conditions (if any) as the delegate thinks fit to impose in relation to the development.
16.2	The power pursuant to Section 127(2)(c) of the PDI Act to vary or revoke a condition in accordance with an application under Part 7 of the PDI Act.
16.3	The power pursuant to Section 127(4) of the PDI Act, subject to Sections 127(6) and (8) of the PDI Act, if a development authorisation provides for the killing, destruction or removal of a regulated tree or a significant tree, to apply the principle that the development authorisation be subject to a condition that the prescribed number of trees (of a kind determined by the delegate) must be planted and maintained to replace the tree (with the cost of planting to be the responsibility of the applicant or any person who acquires the benefit of

- 12 -

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017 AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS) REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

	the consent and the cost of maintenance to be the responsibility of the owner of the land).
16.4	The power pursuant to Section 127(6) of the PDI Act to, on the application of the applicant, determine that a payment of an amount calculated in accordance with the regulations be made into the relevant fund in lieu of planting 1 or more replacement trees under Section 127(4) of the PDI Act.
16.5	The power pursuant to Section 127(8)(b) of the PDI Act to:
16.5.1	determine that it is appropriate to grant an exemption under Section 127(8)(b) of the PDI Act in a particular case after taking into account any criteria prescribed by the regulations and provided the Minister concurs in the granting of the exemption;
16.5.2	to seek the Minister's concurrence to grant an exemption under Section 127(8)(b) of the PDI Act.
17.	Variation of Authorisation
17.1	The power pursuant to Section 128(2)(d) of the PDI Act to approve an application for a variation to a development authorisation previously given under the PDI Act, which seeks to extend the period for which the relevant authorisation remains operative.
18.	Requirement to Up-grade
18.1	The power pursuant to Section 134(1) of the PDI Act to form the opinion that the building is unsafe, structurally unsound or in an unhealthy condition.
18.2	The power pursuant to Section 134(1) of the PDI Act, if:
18.2.1	an application for a building consent relates to:
18.2.1.1	building work in the nature of an alteration to a building constructed before the date prescribed by regulation for the purposes of Section 134(1) of the PDI Act; or
18.2.1.2	a change of classification of a building; and
18.2.2	the building is, in the opinion of the delegate, unsafe, structurally unsound or in an unhealthy condition,
	to require that building work that conforms with the requirements of the Building Rules be carried out to the extent reasonably necessary to ensure

FXD\20 54758 COUNCIL ASSESSMENT PANEL INSTRUMENT OF DELEGATION - PLANNING DEVELOPMENT AND INFRASTRUCTURE ACT 2016 PDI - POWERS OF AN ASSESSMENT PANEL(3) 18 May 2020

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017 AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS) REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

	that the building is safe and conforms to proper structural and health standards.
18.3	The power pursuant to Section 134(2) of the PDI Act, when imposing a requirement under Section 134(1) of the PDI Act, to specify (in reasonable detail) the matters under Section 134(1)(b) of the PDI Act that must, in the opinion of the delegate, be addressed.
18.4	The power pursuant to Section 134(3) of the PDI Act to impose a requirement under Section 134(1) of the PDI Act:
18.4.1	subject to Section 134(3)(b) of the PDI Act - on the basis that the relevant matters must be addressed as part of the application before the relevant authority will grant building consent; and
18.4.2	in cases prescribed by the regulations - as a condition of the building consent that must be complied with within a prescribed period after the building work to which the application for consent relates is completed
18.5	The power pursuant to Section 134(4) of the PDI Act if:
18.5.1	an application is made for building consent for building work in the nature of an alteration of a class prescribed by the regulations; and
18.5.2	the delegate is of the opinion that the affected part of the building does not comply with the performance requirements of the Building Code or a Ministerial building standard in relation to access to buildings, and facilities and services within buildings, for people with disabilities,
	to require that building work or other measures be carried out to the extent necessary to ensure that the affected part of the building will comply with those performance requirements of the Building Code or the Ministerial building standard (as the case may be).
18.6	The power pursuant to Section 134(5) of the PDI Act to impose a requirement under Section 134(4) of the PDI Act:
18.6.1	subject to Section 134(5)(b) of the PDI Act - on the basis that the building work or other measures to achieve compliance with the relevant performance requirements must be addressed before the relevant authority will grant building consent; and
18.6.2	in cases prescribed by the regulations - as a condition of the building

- 14 -

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE
ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017
AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS)
REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

	consent that must be complied with within a prescribed period after the building work to which the application for consent relates is completed.
19.	Cancellation of Development Authorisation
19.1	The power pursuant to Section 143(1) of the PDI Act to, on the application of a person who has the benefit of the authorisation, cancel a development authorisation previously given by the relevant authority.
19.2	The power pursuant to Section 143(2) of the PDI Act to make a cancellation under Section 143(1) of the PDI Act subject to such conditions (if any) as the delegate thinks fit to impose.
20.	Professional Advice to be Obtained in Relation to Certain Matters
20.1	The power pursuant to Section 235(1) of the PDI Act, to, in the exercise of a prescribed function, rely on a certificate of a person with prescribed qualifications.
20.2	The power pursuant to Section 235(2) of the PDI Act to seek and consider the advice of a person with prescribed qualifications, or a person approved by the Minister for that purpose, in relation to a matter arising under the PDI Act that is declared by regulation to be a matter on which such advice should be sought.
21.	General Transitional Schemes for Panels
21.1	The power pursuant to Clause 12(7) of Schedule 8 of the PDI Act, to
21.1.1	adopt any findings or determinations of a council development assessment panel under the repealed Act that may be relevant to an application made before the relevant day under the repealed Act; and
21.1.2	adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to an application made before the relevant day under the repealed Act; and
21.1.3	deal with any matter that is subject to a reserved decision under the repealed Act before the relevant day; and
21.1.4	deal with any requirement or grant any variation imposed or proposed in connection with an application made before the relevant

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017 AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS) REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

	day under the repealed Act; and
21.1.5	deal with any requirement or grant any variation imposed or proposed in connection with an application made before the relevant day under the repealed Act.
	<u>(Only applicable to assessment panels appointed by a council or a joint planning board)</u>
22.	Regional Assessment Panels
22.1	The power pursuant to Clause 13(5) of Schedule 8 of the PDI Act to:
22.1.1	adopt any findings or determinations of a council development assessment panel or a regional development assessment panel under the repealed Act that may be relevant to an application made before the relevant day under the repealed Act; and
22.1.2	adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to an application made before the relevant day under the repealed Act; and
22.1.3	deal with any matter that is subject to a reserved decision under the repealed Act before the relevant day; and
22.1.4	deal with any requirement or grant any variation imposed or proposed in connection with an application made before the relevant day under the repealed Act; and
22.1.5	deal with any requirement or grant any variation imposed or proposed in connection with an application made before the relevant day under the repealed Act.
	<u>(Relevant to regional assessment panels only)</u>
23.	Continuation of Processes
23.1	The power pursuant to Clause 18(2) of Schedule 8 of the PDI Act, to:
23.1.1	adopt any findings or determinations of a relevant authority under the repealed Act that may be relevant to an application to which Clause 18(1) of Schedule 8 of the PDI Act applies; and
23.1.2	adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to an application to

- 16 -

INSTRUMENT C
INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE
ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017
AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS)
REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

	which Clause 18(1) of Schedule 8 of the PDI Act applies; and
23.1.3	deal with any matter that is subject to a reserved decision under the repealed Act before the designated day; and
23.1.4	deal with any requirement or grant any variation imposed or proposed in connection with an application to which Clause 18(1) of Schedule 8 of the PDI Act applies; and
23.1.5	take any other step or make any other determination authorised by the regulations, or that is reasonably necessary to promote or ensure a smooth transition on account of the transfer of functions, powers or duties under Clause 18 of Schedule 8 of the PDI Act.

PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL)
REGULATIONS 2017

24. Accredited Professionals	
24.1	The power pursuant to Regulation 25(7)(c) of the Planning, Development and Infrastructure (General) Regulations 2017 (the General Regulations) to form the opinion and be satisfied, on the basis of advice received from the accreditation authority under the Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019, a relevant professional association, or other relevant registration or accreditation authority, that a person has engineering or other qualifications that qualify the person to act as a technical expert under Regulation 25 of the General Regulations.
25. Verification of Application	
25.1	The power pursuant to Regulation 31(1) of the General Regulations, on the receipt of an application under Section 119 of the PDI Act, and in addition to any other requirement under the General Regulations, to, in order to ensure that an application has been correctly lodged and can be assessed in accordance with the PDI Act:
25.1.1	determine the nature of the development; and
25.1.2	if the application is for planning consent - determine:
25.1.2.1	whether the development involves 2 or more elements and, if so, identify each of those elements for the purposes of assessment against the provisions of the Planning and

FXD\20 54758 COUNCIL ASSESSMENT PANEL INSTRUMENT OF DELEGATION - PLANNING DEVELOPMENT AND INFRASTRUCTURE ACT 2016 PDI - POWERS OF AN ASSESSMENT PANEL(3) 18 May 2020

- 17 -

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE
ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017
AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS)
REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

	Design Code; and
25.1.2.2	the category or categories of development that apply for the purposes of development assessment; and
25.1.3	determine whether the relevant authority is the correct entity to assess the application under the PDI Act; and
25.1.4	if the relevant authority is the correct entity to assess the application (or any part of the application):
25.1.4.1	check that the appropriate documents and information have been lodged with the application; and
25.1.4.2	confirm the fees required to be paid at that point under the <i>Planning, Development and Infrastructure (Fees, Charges and Contributions) Regulations 2019</i> ; and
25.1.4.3	provide an appropriate notice via the SA planning portal; and
25.1.5	if the relevant authority is not the correct entity to assess the application (or any part of the application):
25.1.5.1	provide the application (or any relevant part of the application), and any relevant plans, drawings, specifications and other documents and information in its possession, to the entity that the delegate considers to be the correct relevant authority in accordance with any practice direction; and
25.1.5.2	provide an appropriate notice via the SA planning portal.
26. Application and Further Information	
26.1	The power pursuant to Regulation 33(4) of the General Regulations to seek clarification about any document or information that has been provided by the applicant.
27. Amended Applications	
27.1	The power pursuant to Regulation 35(3) of the General Regulations if an application is varied following referral under Division 2 or giving of notice under Division 3, to, if the variations are not substantial, consider the application without the need to repeat an action otherwise required under

FXD\20 54758 COUNCIL ASSESSMENT PANEL INSTRUMENT OF DELEGATION - PLANNING DEVELOPMENT AND INFRASTRUCTURE ACT 2016 PDI - POWERS OF AN ASSESSMENT PANEL(3) 18 May 2020

- 18 -

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE
ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017
AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS)
REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL**

Division 2 or Division 3.	
27.2	The power pursuant to Regulation 35(4) of the General Regulations if a variation would change the essential nature of a proposed development (as referred to in Section 119(9)(a) of the PDI Act), to agree with the applicant to proceed with the variation on the basis that the application (as so varied) will be treated as a new application under the General Regulations.
28. Withdrawing/Lapsing Applications	
28.1	The power pursuant to Regulation 38(1) of the General Regulations if an application is withdrawn by the applicant under Section 119(14) of the PDI Act, to notify:
28.1.1	any agency to which the application has been referred under Division 2 of the General Regulations; and
28.1.2	any person who has made a representation in relation to the application under Division 3 of the General Regulations,
of the withdrawal.	
28.2	The power pursuant to Regulation 38(3) of the General Regulations before taking action to lapse an application under Regulation 38(2) of the General Regulations, to:
28.2.1	take reasonable steps to notify the applicant of the action under consideration; and
28.2.2	allow the applicant a reasonable opportunity to make submissions to the delegate (in a manner and form determined by the delegate) about the proposed course of action.
29. Court Proceedings	
29.1	The power pursuant to Regulation 40 of the General Regulations to, subject to Section 214(14) of the PDI Act, by notice in writing to the applicant, decline to deal with the application until any proceedings under the PDI Act have been concluded.
30. Additional Information or Amended Plans	
30.1	The power pursuant to Regulation 42(1) of the General Regulations if a delegate has referred an application to a prescribed body under Division 1 of the General Regulations and the relevant authority subsequently receives

FXD\20 54758 COUNCIL ASSESSMENT PANEL INSTRUMENT OF DELEGATION - PLANNING DEVELOPMENT AND INFRASTRUCTURE ACT 2016 PDI - POWERS OF AN ASSESSMENT PANEL(3) 18 May 2020

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE
ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017
AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS)
REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

	additional information, or an amended plan, drawing or specification, which is materially relevant to the referral, or to any report obtained as part of the referral process, to repeat the referral process.
31. Building Matters	
31.1	The power pursuant to Regulation 45(1) of the General Regulations to, if in assessing an application for building consent, the delegate considers that:
31.1.1	a proposed performance solution within the meaning of the Building Code requires assessment against a performance requirement of the Building Code which provides for the intervention of a fire authority; or
31.1.2	the proposed development is at variance with a performance requirement of the Building Code which provides for the intervention of a fire authority; or
31.1.3	special problems for fire fighting could arise due to hazardous conditions of a kind described in Section E of the Building Code,
	refer the application to the relevant fire authority for comment and report unless the fire authority indicates to the delegate that a referral is not required.
31.2	The power pursuant to Regulation 45(2) of the General Regulations, if a report is not received from the fire authority on a referral under Regulation 45(1) of the General Regulations within 20 business days, to presume that the fire authority does not desire to make a report.
31.3	The power pursuant to Regulation 45(3) of the General Regulations to have regard to any report received from a fire authority under Regulation 45 of the General Regulations.
31.4	The power pursuant to Regulation 45(4) of the General Regulations, if, in respect of an application referred to a fire authority under Regulation 45 of the General Regulations, the fire authority:
31.4.1	recommends against the granting of building consent; or
31.4.2	concurs in the granting of consent on conditions specified in its report,
	but the delegate:

- 20 -

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE
ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017
AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS)
REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

31.4.3	proposes to grant building consent despite a recommendation referred to in Regulation 45(4)(a) of the General Regulations; or
31.4.4	does not propose to impose the conditions referred to in Regulation 45(b) of the General Regulations, or proposes to impose the conditions in varied form, on the grant of consent,
	to:
31.4.5	refer the application to the Commission; and
31.4.6	not grant consent unless the Commission concurs in the granting of the consent.
31.5	The power pursuant to Regulation 45(5) of the General Regulations to provide to the Commission a copy of any report received from a fire authority under Regulation 45(1) of the General Regulations that relates to an application that is referred to the Commission under the PDI Act.
32. Preliminary Advice and Agreement (Section 123)	
32.1	The power pursuant to Regulation 46(6) of the General Regulations, if:
32.1.1	the delegate permits an applicant to vary an application under Section 119(9) of the PDI Act; and
32.1.2	the delegate determines that the application no longer accords with the agreement indicated by the prescribed body,
	to refer the application (unless withdrawn) to the prescribed body:
32.1.3	to obtain a variation to the agreement under Section 123 of the PDI Act; or
32.1.4	to obtain a response from the prescribed body for the purposes of Section 122 of the PDI Act.
32.2	The power pursuant to Regulation 46(7) of the General Regulations if:
32.2.1	an application is withdrawn by the applicant; and
32.2.2	the applicant sought to rely on an agreement under Section 123 of the PDI Act in connection with the application,

- 21 -

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE
ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017
AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS)
REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

	to notify relevant prescribed body of the withdrawal.
32.3	The power pursuant to Regulation 46(8) of the General Regulations, if:
32.3.1	an application is lapsed by a relevant authority under Regulation 38 of the General Regulations; and
32.3.2	the applicant sought to rely on an agreement under Section 123 of the PDI Act in connection with the application,
	to notify the relevant prescribed body of the lapsing.
32.4	The power pursuant to Regulation 46(9) of the General Regulations, if:
32.4.1	an applicant seeks to rely on an agreement under Section 123 of the PDI Act in connection with the application; and
32.4.2	a notice of a decision on the application is issued by the delegate under Regulation 57 of the General Regulations,
	to provide a copy of the notice to the prescribed body within 5 business days after the notice is given to the applicant under Regulation 57 of the General Regulations.
33.	Notification of Application of Tree-damaging Activity to Owner of Land
33.1	The power pursuant to Regulation 48 of the General Regulations, if an owner of land to which an application for a tree-damaging activity in relation to a regulated tree relates is not a party to the application, to:
33.1.1	give the owner notice of the application within 5 business days after the application is made; and
33.1.2	give due consideration in the delegate's assessment of the application to any submission made by the owner within 10 business days after the giving of notice under Regulation 48 of the General Regulations.
34.	Public Inspection of Applications
34.1	The power pursuant to Regulation 49(3) of the General Regulations to request a person verify information in such manner as the delegate thinks fit.
35.	Representations

- 22 -

INSTRUMENT C

**INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE
ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017
AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS)
REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL**

35.1	The power pursuant to Regulation 50(5) of the General Regulations to, if the delegate considers that it would assist the delegate in making a decision on the application, allow a person:
35.1.1	who has made a representation under Regulation 50(1) of the General Regulations in relation to development being assessed under Section 107 of the PDI Act; and
35.1.2	who has indicated an interest in appearing before the delegate,
	an opportunity (at a time determined by the delegate) to appear personally or by representative before the delegate to be heard in support of the representation that has been made under Regulation 50(1) of the General Regulations.
36. Response by Applicant	
36.1	The power pursuant to Regulation 51(1) of the General Regulations to allow a response to a representation by the applicant to be made within such longer period as the delegate may allow.
37. Notice of Decision (Section 126(1))	
37.1	The power pursuant to Regulation 57(4) of the General Regulations to endorse a set of any approved plans and other relevant documentation with an appropriate form of authentication.
38. Consideration of Other Development Authorisations	
38.1	The power pursuant to Regulation 60 of the General Regulations, to, in deciding whether to grant a development authorisation, take into account any prior development authorisation that relates to the same proposed development under the PDI Act, and any conditions that apply in relation to that prior development authorisation.
39. Certificate of Independent Technical Expert in Certain Cases	
39.1	The power pursuant to Regulation 61(4)(c) of the General Regulations to form the opinion and be satisfied on the basis of advice received from the accreditation authority under the Planning, Development and Infrastructure (Accredited Professionals) Regulations 2019, a relevant professional association, or another relevant registration or accreditation authority, that a person has engineering or other qualifications, qualify the person to act as a technical expert under this regulation.

- 23 -

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017 AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS) REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

40. Urgent Work
40.1 The power pursuant to Regulation 63(1) of the General Regulations to,
40.1.1 determine a telephone number determined for the purposes of Regulation 63(1)(a) of the General Regulations; and
40.1.2 determine the email address for the purposes of Regulation 63(1)(b) of the General Regulations.
40.2 The power pursuant to Regulation 63(2) of the General Regulations to, for the purposes of Section 135(2)(c) of the PDI Act, allow a longer period.
40.3 The power pursuant to Regulation 63(3) of the General Regulations to, for the purposes of Section 135(2)(c) of the PDI Act, allow a longer period.
41. Variation of Authorisation (Section 128)
41.1 The power pursuant to Regulation 65(1) of the General Regulations to, for the purposes of Section 128(2)(b) of the PDI Act, if a person requests the variation of a development authorisation previously given under the Act (including by seeking the variation of a condition imposed with respect to the development authorisation) to form the opinion and be satisfied that the variation is minor in nature, and approve the variation.
42. Advice from Commission
42.1 The power pursuant to Regulation 44(2) of the General Regulations, if a report is not received from the Commission within 20 business days from the day on which the application is lodged under Regulation 29 of the General Regulations or within such longer period as the Commission may require by notice to the relevant authority, to presume that the Commission does not desire to make a report.
43. Underground Mains Area
43.1 The power pursuant to Regulation 78(3) of the General Regulations, if an application relates to a proposed development that involves the division of land within, or partly within, an underground mains area (even if the area is declared as such after the application is lodged with the relevant authority), to require, as a condition on its decision on the application, that any electricity mains be placed underground.
44. Plans for Residential Alterations, Additions and New Dwellings

FXD\20 54758 COUNCIL ASSESSMENT PANEL INSTRUMENT OF DELEGATION - PLANNING DEVELOPMENT AND INFRASTRUCTURE ACT 2016 PDI - POWERS OF AN ASSESSMENT PANEL(3) 18 May 2020

- 24 -

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017 AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS) REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

44.1	The power pursuant to Clause 2(d)(ii)(B) of Schedule 8 of the General Regulations to form the belief that the allotment is, or may have been, subject to site contamination as a result of a previous use of the land or a previous activity on the land or in the vicinity of the land.
44.2	The power pursuant to Clause 2(d)(ii)(D) of Schedule 8 of the General Regulations to be satisfied a site contamination audit report (within the meaning of the Environment Protection Act 1993) is not required.
45. Plans for Building Work	
45.1	The power pursuant to Clause 4(3) of Schedule 8 of the General Regulations, in relation to an application for building consent for development consisting of or involving an alteration to a building, if:
45.1.1	the applicant is applying for a change in the classification of the building to a classification other than Class 10 under the Building Code; or
45.1.2	the building was erected before 1 January 1974 and the applicant is applying for a classification other than Class 10 under the Building Code to be assigned to the building,
	to require the application to be accompanied by such details, particulars, plans, drawings, specifications and other documents (in addition to the other documents required to accompany the application) as the delegate reasonably requires to show that the entire building will, on completion of the building work, comply with the requirements of the PDI Act and the General Regulations for a building of the classification applied for or with so many of those requirements as will ensure that the building is safe and conforms to a proper structural standard.

PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS) REGULATIONS 2019

46. Calculation or Assessment of Fees	
46.1	The power pursuant to Regulation 5(1) of the PDI (Fees, Charges and Contributions) Regulations 2019 (the Fees Regulations) in relation to an application which is duly lodged with the council under a related set of regulations (including via the SA planning portal):
46.1.1	to require the applicant to provide such information as the delegate

FXD\20 54758 COUNCIL ASSESSMENT PANEL INSTRUMENT OF DELEGATION - PLANNING DEVELOPMENT AND INFRASTRUCTURE ACT 2016 PDI - POWERS OF AN ASSESSMENT PANEL(3) 18 May 2020

- 25 -

INSTRUMENT C

INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE
ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017
AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS)
REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

	may reasonably require to calculate any fee payable under the Fees Regulations or a related set of regulations; and
46.1.2	to make any other determination for the purposes of the Fees Regulations or a related set of regulations (even if the assessment panel is not a relevant authority).
46.2	The power pursuant to Regulation 5(2) of the Fees Regulations, if the delegate is acting under Regulation 5(1) of the Fees Regulations, or as the delegate of a relevant authority, believes that any information provided by an applicant is incomplete or inaccurate, to calculate any fee on the basis of estimates made by the delegate.
46.3	The power pursuant to Regulation 5(3) of the Fees Regulations to, at any time, and despite an earlier calculation or acceptance of an amount in respect of the fee, reassess a fee payable under the Fees Regulations or a related set of regulations.
47.	Waiver or Refund of Fee
47.1	The power pursuant to Regulation 7 of the Fees Regulations to, as the delegate considers appropriate to do so:
47.1.1	waive the payment of the fee, or the payment of part of the fee; or
47.1.2	refund the whole or a part of the fee.

- 26 -

INSTRUMENT C
INSTRUMENT OF DELEGATION UNDER THE PLANNING, DEVELOPMENT AND INFRASTRUCTURE
ACT 2016, PLANNING, DEVELOPMENT AND INFRASTRUCTURE (GENERAL) REGULATIONS 2017
AND PLANNING, DEVELOPMENT AND INFRASTRUCTURE (FEES, CHARGES AND CONTRIBUTIONS)
REGULATIONS 2019 OF POWERS OF AN ASSESSMENT PANEL

SCHEDULE OF CONDITIONS

CONDITIONS OR LIMITATIONS
APPLICABLE TO DELEGATIONS
CONTAINED IN THIS INSTRUMENT

Paragraph(s) in instrument to which conditions/limitations apply	Conditions / Limitations
Paragraph 22	Not applicable.

FXD\20 54758 COUNCIL ASSESSMENT PANEL INSTRUMENT OF DELEGATION - PLANNING DEVELOPMENT AND INFRASTRUCTURE ACT 2016 PDI - POWERS OF AN ASSESSMENT PANEL(3) 18 May 2020

13.2 ADOPTION OF PO179 COUNCIL ASSESSMENT PANEL REVIEW OF DECISION OF ASSESSMENT MANAGER**Document #:** 20/52141**Department:** Development Services**PURPOSE**

To seek endorsement and approval from the Council Assessment Panel for the new, draft Council Assessment Panel Review of Decision of Assessment Manager Policy PO179.

RECOMMENDATION

That the Council Assessment Panel endorse and adopt the new, draft Council Assessment Panel Review of Decision of Assessment Manager Policy PO179.

LINK TO STRATEGIC PLAN**Goal:** 5 Responsible Governance**Strategy:** 5.3 Meet all legislative requirements and compliance with Council's internal controls**BACKGROUND**

The Planning, Development and Infrastructure Act 2016 (Act) has brought about significant change, with further changes to be implemented in regional South Australia on 31 July 2020.

Up until the introduction of the Act the Council has been the relevant authority. Now the Council Assessment Panel (CAP) is established as a relevant authority in its own right, in addition to an Assessment Manager also being introduced as a relevant authority. As a relevant authority the Assessment Manager has significant powers and is not subject to direction by the CAP or any other person.

The new, draft Council Assessment Panel Review of Decision of Assessment Manager Policy PO179 has been developed to provide a structured and consistent system for reviewing Development Authorisation decisions where the Assessment Manager was the relevant authority (for a Prescribed Matter under the Act).

DISCUSSION

Not only is it best practice to ensure that there are fair, consistent and structured complaints processes in place, it is a legislative requirement that persons who may be dissatisfied with a Development Authorisation decision (of a Prescribed Matter under the Act) made by the Assessment Manager can apply to the CAP for a review.

The new, draft Council Assessment Panel Review of Decision of Assessment Manager Policy PO179 has been developed to ensure that the CAP meet its legislative obligations, whilst providing persons who may be dissatisfied with a Development Authorisation decision, made by the Assessment Manager as a relevant authority (for a Prescribed Matter under the Act), has access to a fair, consistent and independent system of review.

This Policy has been developed utilising the Local Government Association templates and applies in addition to the statutory requirements for the Council Assessment Panel (CAP) to review a decision of the Assessment Manager, as set out in Section 202 of the Act.

COMMUNITY ENGAGEMENT PLAN

Level 1 - Inform

CONSULTATION PROCESS

In preparing this report, the following Yorke Peninsula Council officers were consulted:

- Manager Development Services
- Governance Officer

In preparing this report, the following external parties were consulted:

- Nil

POLICY IMPLICATIONS

Council Assessment Panel Terms of Reference

PO147 Complaints Policy

PO037 Internal Review of a Council Decision Policy

BUDGET AND RESOURCE IMPLICATIONS

Nil

RISKS/LEGAL/LEGISLATIVE/ IMPLICATIONS

Planning, Development and Infrastructure Act 2016

Development Act 1993

Local Government Act 1999

It is essential to ensure appropriate complaint and review processes are in place to provide for best practice customer service and legislative compliance.

ATTACHMENTS

1. **PO179 Council Assessment Panel Review of Decision of Assessment Manager**



COUNCIL ASSESSMENT PANEL POLICY

Council Assessment Panel Review of Decision of Assessment Manager

Policy Number:	PO179		
Strategic Plan Objective	Goal 5 - Responsible Governance		
Policy Owner:	Director Development Services	Record Number:	20/50024
Responsible Officer:	Manager Development Services	Minute Reference:	
Date Adopted:		Next Review Date:	June 2024

1. POLICY OBJECTIVES

This policy sets out how a person who is dissatisfied with a decision (Applicant) made by the Yorke Peninsula Council's Assessment Manager (Assessment Manager), where the Assessment Manager was the relevant authority under the Planning, Development and Infrastructure Act 2016 (Act), can go about making an application for a review of the decision.

This Policy applies in addition to the statutory requirements for the Council Assessment Panel (CAP) to review a decision of an Assessment Manager, as set out in Section 202 of the Act.

2. DEFINITIONS

Assessment Manager	A person appointed by the Chief Executive Officer of the Yorke Peninsula Council to act as a relevant authority pursuant to Sections 82 and 87 of the Act.
Development Authorisation	Any assessment, decision, permission, consent, approval, authorisation or certificate required by or under the Act or by or under any other act prescribed by regulation for the purposes of the definition contained within the Act.
Prescribed Body	As listed in Schedule 9 under the Planning, Development and Infrastructure (General) Regulations 2017.
Prescribed Matter	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

*Printed copies are considered uncontrolled.
Before using a printed copy, verify that it is the current version.*

Updated 17/06/20

PO179 – Council Assessment Panel Review of Decision of Assessment Manager

	<p>The imposition of conditions in relation to a grant of development authorisation; or</p> <p>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.</p>
--	---

3. POLICY STATEMENT**3.1 Making an Application for Review**

An Applicant may apply for a review of a Development Authorisation decision. An application for review must relate to:

- a) A matter where the Assessment Manager was the relevant authority; and
- b) A Prescribed Matter.

An application for review must be:

- a) Made using the [Application to Assessment Panel for Assessment Manager's Decision Review](#) (the Form) via the SA Planning Portal;
- b) Lodged in a manner identified on the Form; and
- c) Lodged within one month of the Applicant receiving notice of the Prescribed Matter, unless an extension of time is granted at the discretion of the Presiding Member of the CAP.

The Presiding Member of the CAP will notify the Assessment Manager within three business days of having received an application for review.

3.2 Written submission

An Applicant may provide a written submission in support of the application for review. This must be received by the Presiding Member of the CAP within one month of the lodgement of the application for review, unless a longer period is granted at the discretion of the Presiding Member of the CAP.

The written submission may include additional information and/or materials or set out the nature of information and/or materials to be provided and by whom it will be prepared.

The Presiding Member of the CAP will notify the Assessment Manager within three business days of having received a written submission, additional information and/or materials.

All written submissions, additional information and/or materials must be lodged via:

- The SA Planning Portal (to the extent the Portal is able to receive such a submission);
- Email to: admin@yorke.sa.gov.au; or
- Hand-delivery or post to 8 Elizabeth Street, MAITLAND, SA, 5573.

PO179 – Council Assessment Panel Review of Decision of Assessment Manager**3.3 Prescribed Body Referral**

Where the Prescribed Matter required the Assessment Manager to refer the Prescribed Matter to a Prescribed Body, the Presiding Member of the CAP will determine whether to request that the Prescribed Body consider the application for review.

Where a Prescribed Body is requested to consider the application for review, the Presiding Member of the CAP will notify the Applicant and the Assessment Manager within three business days of having received a response from the Prescribed Body.

3.4 Application for Review Documentation

The Assessment Manager is responsible for compiling all relevant documents relating to the application for review, including those which were before the Assessment Manager (or delegate) at the time of the decision on the Prescribed Matter, any written submission/additional information and/or materials from the Applicant and any requested response from a Prescribed Body (Documents).

The Assessment Manager will refer the application for review to the CAP for consideration within one month of the Documents having been received. The Documents will be attached to the agenda item.

3.5 CAP Review

The Assessment Manager will advise the Applicant in writing of the time and date of the CAP meeting at which the application for review will be considered, not less than five business days before the meeting.

The Assessment Manager (or delegate) will be present at the CAP meeting to respond to any questions or requests for clarification from the CAP.

The CAP will:

- Consider the Prescribed Matter afresh;
- Not hear from any party other than the Applicant (or their representative) and the Assessment Manager (or delegate);
- Allow the Applicant (or their representative) five minutes to address the CAP, where the Applicant requests to be heard. The Presiding Member of the CAP may exercise discretion and allow additional time;
- Where an Applicant (or their representative) is heard, allow the Assessment Manager (or delegate) five minutes to respond. The Presiding Member of the CAP may exercise discretion and allow additional time.

CAP members may ask questions and seek clarification from the Applicant (or their representative) and/or Assessment Manager (or delegate) at the conclusion of any addresses.

The CAP may resolve to defer any decision about the application for review to the next ordinary meeting of the CAP, or such longer period of time as is determined by the CAP if it considers that additional information is required from the Applicant or the Assessment Manager.

Where an Applicant is to provide additional information to the CAP, the information must be provided to the Assessment Manager within any timeframe that may be determined by the CAP and in a manner specified in Clause 3.2.

PO179 – Council Assessment Panel Review of Decision of Assessment Manager

Where the Assessment Manager is to provide further information, a copy of the information must also be provided to the Applicant not less than five business days before the meeting at which it will be considered by the CAP.

3.6 CAP Review Outcomes

The CAP may:

- Affirm the Assessment Manager's decision on the Prescribed Matter;
- Vary the Assessment Manager's decision on the Prescribed Matter;
- Set aside the Assessment Manager's decision on the Prescribed Matter and substitute its own decision.

The Assessment Manager will provide the Applicant with written confirmation of the CAP's decision within five business days of the Panel's decision.

3.7 Right of Appeal

A person who, after having an application review considered by the CAP, is dissatisfied with the outcome of the review, may be able to appeal to the Environment, Resources and Development Court against the decision of the CAP.

4. COMPLAINTS

Complaints about the failure to comply with requirements of this policy, must be made in writing to the Yorke Peninsula Council's Chief Executive Officer and will be managed in accordance with Council's Complaints Policy PO147.

5. REVIEW

This Policy will be reviewed every four years or in line with legislative changes, relevant standards, codes, guidelines and audit findings.

6. TRAINING

Council is committed to supporting members of the CAP and the Assessment Manager (and/or delegates) in complying with this policy and will provide appropriate training to ensure they can effectively carry out their duties.

Training needs will be identified through recruitment processes, performance reviews, audit results and training needs analysis.

Training needs will be reviewed as necessary in consideration of any changes to legislation and relevant standards, codes, and guidelines and audit findings.

7. RELATED COUNCIL POLICIES AND DOCUMENTS

Council Assessment Panel Terms of Reference
PO147 Complaints Policy
PO037 Internal Review of a Council Decision Policy
PO011 Training and Development Policy

8. REFERENCES AND LEGISLATION

Planning, Development and Infrastructure Act 2016
Development Act 1993
Local Government Act 1999

PO179 – Council Assessment Panel Review of Decision of Assessment Manager**9. COUNCIL DELEGATION**

Details of Delegation:	Chief Executive Officer
Delegate:	Director Development Services

DRAFT

PO179 – Council Assessment Panel Review of Decision of Assessment Manager

11. VERSION HISTORY

Archived Policy Name	Policy Number	Date Adopted	Last Reviewed
New policy			

DRAFT

14 NEXT MEETING

28 July 2020

15 CLOSURE