

Relevant Authority: Relationship between Assessment Panels and Assessment Manager

Assessment Panels

Section 93(1)(a) of the *Planning, Development and Infrastructure Act 2016* (the Act) provides that, subject to any other provision of the Act, an Assessment Panel **will be** a relevant authority in relation to a proposed development to be undertaken within the area of the relevant council.

Section 93(2) of the Act prescribes that an Assessment Panel **will not be** the relevant authority in cases where an Assessment Manager may act as the relevant authority under a scheme prescribed in the *Planning, Development and Infrastructure Regulations 2017* (the Regulations) for the purposes of section 93(2). Regulation 22 provides that an Assessment Manager may act as a relevant authority for the purposes of:

- giving planning consent in relation to development that is classified as deemed-to-satisfy development under section 106 of the Act (including where there may be 1 or more minor variations under section 106(2) of the Act);
- giving planning consent in relation to development that is to be assessed under section 107 of the Act, other than where notice of the application must be given under section 107(3) of the Act; and
- for the purposes of giving consent under section 102(1)(c) or (d) of the Act.

Further to this, under section 93(3) of the Act, Assessment Panels **will not be** the relevant authority in cases where the State Planning Commission or the Minister are the relevant authority under sections 94 and 95 respectively.

Assessment Managers

As outlined above, an Assessment Manager **may** act as the relevant authority (in cases where no private certifier is acting) for the purposes outlined in Regulation 22. If an Assessment Manager chooses not to act as the relevant authority in these cases, they may delegate their functions or powers as a relevant authority under section 100 of the Act (see below).

Under section 96 of the Act, an Assessment Manager **may** act as a relevant authority in cases contemplated by the Act and in cases prescribed or authorised by the Regulations. Regulation 24 then provides (for the purposes of section 96 of the Act) that an Assessment Manager **may** act as a relevant authority in giving consents in relation to encroachments and off-set scheme contributions. If an Assessment Manager chooses not to act as the relevant authority for the issuing of these consents, the Assessment Panel will become the relevant authority without a need to delegate.

Delegation by Assessment Manager

Section 100 of the Act provides that a relevant authority (other than an accredited professional) may delegate any functions or powers it has as a relevant authority under the Act. Such a delegation may be made to a particular person or body, or to a person occupying a particular office or position. An Assessment Manager could delegate its powers or functions as a relevant authority to an Assessment Panel.

In circumstances where an Assessment Manager does delegate to an Assessment Panel, the Assessment Manager remains the relevant authority for the purpose of issuing or refusing the relevant consent. The Assessment Panel must also make its decision within the same timeframe that the Assessment Manager had to make the decision under the Regulations, meaning no additional time is provided.

Rights of Review

Under section 202(1)(b)(i) of the Act, an applicant may apply to have an Assessment Manager's decision in relation to the following matters reviewed by an Assessment Panel:

- any assessment, request, decision, direction or act of the Assessment Manager that is relevant to any aspect of the determination of the application; or
- a decision to refuse to grant the authorisation; or
- the imposition of conditions in relation to the authorisation; or
- subject to any exclusion prescribed by the Regulations, any other assessment, request, decision, direction or act of a relevant authority under the Act in relation to the authorisation.

Where an Assessment Manager has delegated its powers or functions to an Assessment Panel and the applicant subsequently seeks a review of the decision, the Assessment Panel must appropriately manage any conflicts of interest that may arise in considering the review. Any conflicts that do arise may be managed through the appointment of deputy members to the panel as envisaged by section 83(1)(b) of the Act, or through the appointment of additional members as provided for in section 85 of the Act.