



Sydney District & Regional Planning Panels Operational Procedures

July 2022

These procedures are provided for general guidance and information only and are made available on the understanding that the NSW Department of Planning and Environment (Department) is not providing legal advice.

The Department has compiled the procedures in good faith, exercising all due care and attention.

The procedures do not affect or replace relevant statutory requirements.

Where an inconsistency arises between the provisions of the procedures and relevant statutory provisions, the statutory requirements prevail.

While every reasonable effort has been made to ensure that this document is correct at the time of printing, the State of New South Wales, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

The procedures are not intended to give rise to any rights, claims, benefits, privileges, liabilities, or obligations with respect to matters the subject of the procedures.

It should be noted that the procedures may be affected by changes to legislation at any time and/or be subject to revision without notice.

It is recommended that independent advice be sought in respect of the operation of the procedures and the statutory requirements applying to Sydney District and Regional Planning Panels under the *Environmental Planning and Assessment Act 1979*.

Sydney District and Regional Planning Panels Operational Procedures
© State of New South Wales through the NSW Department of Planning and Environment
July 2022
NSW Department of Planning and Environment
Four Parramatta Square, 12 Darcy Street, Parramatta, NSW 2150.
www.planning.nsw.gov.au

ISBN 978-0-7313-3590-9

Contents

1.	Introduction	1
2.	Defining the regions and districts	2
3.	Functions of Planning Panels	3
4.	Membership of Planning Panels	5
5.	Code of Conduct considerations	7
6.	Administration	8
7.	Government information, privacy and complaints	9
8.	Monitoring, review and reporting	10
9.	Liability and indemnification	11
10.	Roles of councils and other panels	12
11.	Development application and assessment	14
12.	Determination of development applications	19
13.	Reviews and appeals	21
14.	Planning proposals - Strategic Planning Panel	24
15.	Site compatibility certificates	27
	Schedule 1: Procedures for briefings, meetings and decisions.	28

Definitions

Capital Investment Value or *CIV* has the same meaning as 'capital investment value' defined in the Dictionary in Schedule 7 of the *Environmental Planning and Assessment Regulation 2021*.

Commission means the Greater Cities Commission.

Council means the council for the local government area in which the land the subject of a panel matter is located.

Days means calendar days unless otherwise stated.

Department means the Department of Planning and Environment.

Development Application or *DA* means an application for consent under Part 4 of the *Environmental Planning & Assessment Act 1979* to carry out development but does not include an application for a complying development certificate.

District means any part of the Greater Sydney Region, or other region of the State, declared to be a district by the Minister.

EP&A Act means the *Environmental Planning & Assessment Act 1979*.

EP&A Regulation means the *Environmental Planning & Assessment Regulation 2021*.

Greater Sydney Region means the region comprising the local government areas as described in Schedule 1 of the *Greater Cities Commission Act 2022*.

GCC Act means the *Greater Cities Commission Act 2022*.

LALC means Local Aboriginal Land Council.

LEP means local environmental plan.

LGA means local government area.

LGNSW means Local Government NSW.

LG Act means the *Local Government Act 1993*.

LPP means local planning panel.

Minister means the Minister for Planning.

Panel or *Planning Panel* means a Sydney District Planning Panel or Regional Planning Panel constituted under Schedule 2 of the *Environmental Planning & Assessment Act 1979*.

Planning Panel meeting means a public briefing meeting or a public determination meeting.

Planning proposal has the same meaning as a 'planning proposal' under section 3.33 of the *Environmental Planning & Assessment Act 1979*.

Planning Systems SEPP or *PS SEPP* means the *State Environmental Planning Policy (Planning Systems) 2021*.

Regional Planning Panel means a regional planning panel constituted under clause 10 of Schedule 2 of the *Environmental Planning & Assessment Act 1979*.

Regionally significant development means development that meets criteria set out under Part 2.4, Part 3.3 and Schedule 6 of the *State Environmental Planning Policy (Planning Systems) 2021*.

Planning proposal authority or *PPA* means the public authorities identified under section 3.32 of the *Environmental Planning & Assessment Act 1979*.

SCC means a Site Compatibility Certificate issued under the *State Environmental Planning Policy (Transport and Infrastructure) 2021*.

Secretariat means the Planning Panels Secretariat of the Department which provides technical and administrative support to Planning Panels.

Secretary means the Secretary of the Department of Planning and Environment.

Strategic Planning Panel means a Sydney District or Regional Planning Panel convened for the specific function of considering a strategic or Aboriginal land planning matter.

Sydney District Planning Panel means a Sydney district planning panel constituted under clause 9 of Schedule 2 of the *Environmental Planning & Assessment Act 1979*.

Transport and Infrastructure SEPP means the *State Environmental Planning Policy (Transport and Infrastructure) 2021*

Unique submission means a submission which is in substance unique, distinctive or unlike any other submission. It does not mean a petition or any submission that contains the same or substantially the same text. Separate unique submissions may be made in relation to the same issue. One individual, or one household, could potentially submit multiple unique submissions.

1. Introduction

The Planning Panels were introduced in NSW on 1 July 2009 to strengthen decision making for regionally significant development and certain other planning functions under the EP&A Act.

These procedures relate to the operation of the Sydney District Planning Panels and Regional Planning Panels.

The Planning Panels are independent bodies representing the Crown and are not subject to the direction of the Minister, except on matters relating to Planning Panel procedures or where the Minister issues a formal direction under the EP&A Act.

These procedures are the Planning Panels charter and have been developed to explain the objectives, powers, and authorities of the Planning Panels. They also detail the means of operating the Planning Panels and clarify the roles of various parties in the work of the Planning Panels.

The procedures should be read in conjunction with the Local Environmental Plan Making Guidelines, relevant Planning Circulars and the Planning Panels Code of Conduct which explains the standard of conduct expected of Planning Panel members.

These procedures will be kept under review and may be amended periodically.

2. Defining the regions and districts

Planning Panels are constituted for each region of the State (other than the Greater Sydney Region), and each district of the Greater Sydney Region (see sections 2.12, 3.2 and Part 3 of Schedule 2 of the EP&A Act).

The nine Planning Panels are the:

- Hunter and Central Coast Regional Planning Panel,
- Northern Regional Planning Panel,
- Southern Regional Planning Panel,
- Western Regional Planning Panel,
- Sydney Eastern City Planning Panel,
- Sydney North Planning Panel,
- Sydney South Planning Panel,
- Sydney Central City Planning Panel, and
- Sydney Western City Planning Panel.

3. Functions of Planning Panels

3.1 Functions

The principal functions of Planning Panels are to determine regionally significant DAs and undertake rezoning reviews of planning proposals. Other functions of Planning Panels include:

- determining Crown DAs,
- determining modification applications for regionally significant development,
- determining DA reviews,
- determining SCCs,
- undertaking independent reviews for specific Local Aboriginal Land Council lands,
- advising the Minister or the Secretary upon request, and
- preparing planning proposals if they are directed to be a planning proposal authority.

Note: Section 2.15 of the EP&A Act contains the functions that may be exercised by Planning Panels.

Note: In relation to preparing planning proposals, see Chapter 14 of this Operational Procedures.

3.2 Legislation

Legislation governing Planning Panels includes:

- the EP&A Act for the constitution and functions of Planning Panels and obligations in respect to councils, with the following key provisions:
 - Division 2.4 and Schedule 2 provides for the constitution of Planning Panels, member appointments, functions and general procedures,
 - Division 3.4 allows for a Planning Panel to act as the planning proposal authority and undertake planning proposal reviews,
 - Section 4.5 specifies that a Planning Panel is the consent authority for regionally significant development, and
 - Section 4.7 sets out the consent functions of a Planning Panel which are to be exercised by the relevant council.
- the EP&A Regulation contains provisions for where a Planning Panel is exercising consent authority functions,
- the Planning System SEPP sets out in Parts 2.4, 3.3 and Schedule 6 development declared to be regionally significant,
- the Transport and Infrastructure SEPP sets out the process for consideration and determination of relevant applications for Site Compatibility Certificates.

3.3 Classes of regionally significant development

The Planning System SEPP identifies the types of development classified as regionally significant (see Parts 2.4, 3.3 and Schedule 6 of the SEPP). The relevant Planning Panel will be the consent authority for regionally significant development.

Note State significant development or development within the City of Sydney cannot be declared as regionally significant development (see section 4.7 of the EP&A Act).

On lodgement of a DA, the council will decide if a DA is regionally significant development.

The capital investment value (CIV) is relevant for some regionally significant development and should be calculated at the time of lodgement. Councils should request a quantity surveyor's certificate or another relevant expert assessment to confirm the CIV from the applicant. The CIV is to be calculated in accordance the Planning Circular PS 21-020 (or as updated).

The Planning Panels determine applications to modify consent for regionally significant development under section 4.55(2) of the EP&A Act which seek to modify:

- new or amended conditions of consent imposed by the Panel;
- development for which the applicant or landowner is:

- the council,
- a councillor,
- a member of council staff who is principally involved in the exercise of council's functions under the Act,
- a member of the NSW or Commonwealth Parliament, or
- a relative (within the meaning of the *Local Government Act 1993*) of a person referred to above;
- development that is subject to 10 or more unique submissions by way of an objection; or
- development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

All other modification applications under sections 4.55(2), 4.55(1) or 4.55(1A) to development consents granted by a Panel are to be determined by the relevant council. A court granted consent may be modified by a Panel under section 4.56 if it is in relation to regionally significant development.

4. Membership of Planning Panels

(Part 4, Schedule 2 of the EP&A Act)

4.1 Chairs and Members

Each Panel consists of 5 members:

- 3 members, including the chair, appointed by the Minister (State members), and
- 2 members appointed by the relevant council (council members).

Property developers and real estate agents are not eligible to be members of a Panel.

The agenda of a Panel meeting may include consideration of multiple matters, each located in different council areas. The council members may change from time to time, depending on the LGA in which the matter under consideration is located.

Panel members can be appointed to more than one Panel, either as a Panel member and/or as an alternate member.

When there is a vacancy on a Panel, the Minister in the case of a State member, and the relevant council in the case of a council member, will appoint another member to that vacancy.

Terms of appointment for Panel members (both State and council members), must not exceed 3 years. Members are eligible for re-appointment. A State member of a Sydney Planning Panel must not be a member for more than 9 years in total.

The Secretariat is responsible for maintaining a register of all Panel members.

The chair (or, in the absence of the chair, a deputy chair, or a person elected by the members) presides at Panel meetings. The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Note: In relation to the membership of a Planning Panel responsible for preparing planning proposals, see further Chapter 14 of this Operational Procedures.

4.3 Expertise requirements for members appointed by the Minister

All Panel members appointed by the Minister, including alternates, must have expertise in one or more of the following areas: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration.

4.4 Council members

Two council members are appointed by each council. At least one council member must have expertise in one or more of the following areas: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, or tourism.

4.5 Selection of council members

Each council determines how their members are selected. In selecting members, councils should have regard to any conflict of duties that would be created for a person nominated to the Panel if they are in any way responsible or involved in the assessment of matters to be determined by the Panel or involved in voting or deliberating on matters that come before the Panel.

Councils are not restricted to nominating people from the council's local area. They can appoint, terminate, and reappoint members at any time, and can determine the duration of each appointment. Generally, so as to ensure the greatest degree of continuity for the Panels, councils should consider appointing members for the maximum term of 3 years. However, councils should reconsider if the nominations to the Panels are appropriate within 12 months following a council election.

Following a change to its nominees, council is to forward the new member's contact details to the Secretariat as soon as possible and this must be a minimum of 14 days before any meeting at which they will act as a Panel member.

If a council fails to nominate 1 or more council members, a Panel may still exercise its functions in relation to the area of the council concerned.

4.6 Payment of council members

Councils determine the fees they pay their Panel members. The Minister has provided guidance to all councils on appropriate rates of remuneration for travel and subsistence allowances for their members.

Each council is responsible for making any payments to its Panel members when they attend Panel meetings.

4.7 Alternate members

The Minister may at any time appoint a person to be the alternate of another member appointed by the Minister and may revoke any such appointment.

A council may also at any time appoint a person to be the alternate of a member nominated by the council and may revoke any such appointment.

Any changes are to be notified in writing to the Secretariat as soon as possible and at least 14 days before undertaking any Panel business.

The alternate will act in the place of the member with all the powers of the member. Although a member may be appointed as an alternate for two or more members, they will only have one vote on any Panel decision.

4.8 Rotation of members

All chairs and members are required to periodically rotate with alternate members. The chair is to determine the frequency of rotation.

Following a matter being deferred, where possible the same members should reconvene to finalise the determination.

5. Code of Conduct considerations

5.1 Planning Panels Code of Conduct

All Panel members must comply with the Planning Panels Code of Conduct when exercising their functions as a Panel member and make impartial merit-based decisions in accordance with their statutory obligations. The latest version of the Planning Panels Code of Conduct is available online at www.planningpanels.nsw.gov.au. On appointment each Panel member must acknowledge in writing that they will abide by the Planning Panels Code of Conduct.

5.2 Declaration of interests

On being informed of a matter to come before the Panel members should consider if they have an actual, potential or reasonably perceived conflict and, if so, declare the conflict and take any appropriate action, such as allowing an alternate member to take their place.

Panel members are required to complete and sign a declaration of interest form in relation to each matter which is considered by the Panel, either before, or at the commencement of, the Panel's determination proceedings. Any verbal declarations are to be recorded in writing.

To avoid any perceptions of bias, and to meet requirements of the Code of Conduct, councillors who have previously deliberated or voted on a matter that is to come before the Panel (such as a submission from the council on a DA for regionally significant development, a related voluntary planning agreement or a planning proposal) must stand aside from their place on the Panel and allow council's nominated alternative member to take their place. Alternatively, the member may choose to not participate in the deliberations or voting on the matter at the council (or council committee) meeting. They should also not remain in the council chamber during the council's deliberations.

5.3 Representations to Planning Panel members

If a Panel member is approached by any person about a matter to come before the Panel, the Panel member must not discuss the matter.

Any person that approaches a Panel member should be encouraged to make a written submission to the council planning staff for DAs during the exhibition period, or if the matter relates to a planning proposal for which the Panel is the PPA, to the Secretariat. Issues raised in submissions will be addressed in the assessment report to be provided to the Panel.

5.4 Interactions with third parties about matters before the Planning Panel

Panel members are not to discuss any matter that is to be considered by the Panel with councillors, the applicant, their consultants, parties who have made a submission, or any other person with an interest in the matter outside of a Panel briefing, meeting or site visit.

5.5 Public meetings organised by the council or community about the proposed development

To avoid any perception of bias, Panel members should avoid attending public meetings about a proposed development organised by members of the community or council, unless the meeting has been organised at the request of the Panel.

6. Administration

Administration and support for the Panels is provided by the Planning Panels Secretariat. Support includes:

- scheduling of meetings, briefings, and site visits,
- preparing and issuing agendas,
- notification of meetings,
- arranging for travel and accommodation for State appointed Panel members,
- preparing records of decision (with assistance from council),
- arranging for the audio recording of public Panel meetings,
- record keeping for the Panels, and
- being the first point of contact for councils to notify a Panel of any decision made by the Panel which is the subject of a merit appeal in the Land and Environment Court.

The Secretariat is the first point of contact for all Panel matters and publishes a wide range of information on its website:

www.planningportal.nsw.gov.au/planningpanels

The contact details for the Secretariat are:

phone: (02) 8217 2060

email: enquiry@planningpanels.nsw.gov.au

7. Government information, privacy and complaints

7.1 Right to information and privacy management

The Department assists Planning Panels in managing applications made under the *Government Information (Public Access) Act 2009* and the *Privacy and Personal Information Protection Act 1998*.

For applications of this nature visit the Department's website at:

<http://www.planning.nsw.gov.au/About-Us/Right-to-Information/How-Can-I-Access-Information>

7.2 Complaints

The Department assists Planning Panels in managing complaints. Complaints are investigated and managed in accordance with the Department's Management of Complaints Policy.

Dissatisfaction with determinations of the Planning Panels will not be regarded as a complaint.

If you wish to make a complaint visit the Department's website at: telephone, write or email the Department at:

<https://www.planning.nsw.gov.au/Contact-Us?>

Complaints made in this way will be recorded in the Department's Complaints Register and will be allocated to the appropriate level for investigation and response.

If you are not satisfied with a response, you can ask for the issue to be considered by a more senior officer.

Code of conduct complaints will be dealt with under the Planning Panels Code of Conduct.

At any time, a person can complain to external bodies such as the Independent Commission Against Corruption (ICAC), the Ombudsman, or the Audit Office of NSW. Allegations of corrupt conduct, misconduct, or serious waste of resources are encouraged to be made directly to these organisations.

Complaints about council, councillors, council staff or local planning panels should be directed to the relevant council.

8. Monitoring, review, and reporting

The Secretariat monitors the progress of DAs referred to the Panels. It is expected that council will complete its assessment report within 60 days after the close of the public exhibition period.

The performance of the Panels is monitored and reported in the Department's Annual Report.

Once a planning assessment is completed by the council and referred to the Panel, the Panel will be expected to:

- a. determine the matter within 2 weeks (14 calendar days) for development and modification of consent applications; and
- b. provide its advice within 2 weeks (14 calendar days) on planning proposals.

To ensure assessment and determination times are not subject to delay:

- a. Panel chairs are obliged to work with senior council staff to ensure that key issues are addressed during assessment, in order to minimise the number of deferrals by the panel at determination stage.
- b. Should an application experience unreasonable delays in excess of 180 calendar days from lodgement the Panel chair may require the council to report the matter to the Panel within 4 weeks for determination.

Note: The requirements relating to the timeframes for assessing development applications under the *Environmental Planning and Assessment Regulation 2021* must be considered by Panels.

8.1 Availability of information

The Secretariat makes a range of information publicly available on its website, including:

- Panel notices with dates, locations and times (at least 7 days before the Planning Panel meeting),
- the relevant council's assessment report and recommendation (at least 7 days before the Panel meeting),
- records of briefings and Panel meetings, Determinations and Statements of Reasons, decisions on rezoning reviews and Site Compatibility Certificates, resolutions of the Planning Panels and any advice provided by the Panels to the Minister, Secretary or GCC, as relevant,
- audio recordings of Panel meetings, and
- a schedule of meeting dates reserved for Panel business.

Councils remain responsible for receiving, notifying and exhibiting DAs and supporting documents in accordance with statutory provisions and council's own notification and exhibition requirements set out in its community participation plan.

9. Liability and indemnification

Panel members are excluded from personal liability as long as the act or omission was done in good faith for the purpose of carrying out their duties under the EP&A Act (see s 2.28 of the EP&A Act).

The NSW Government extends insurance indemnity cover to Panel members. For indemnification provisions to apply Panel members must act honestly and in accordance with the Panel Code of Conduct in the performance of their responsibilities.

For further information please contact the NSW Self Insurance Corporation (icare) at:

<https://www.icare.nsw.gov.au>

10. Roles of councils and other panels

10.1 Role of councillors and council staff

The elected council and council staff have different roles in the assessment of DAs. Under the *Local Government Act 1993*, the independence of council staff is protected in the preparation of advice and recommendations. Staff members are not subject to direction by the council or by a councillor as to the content of any advice or recommendation made by the staff member. Equally, a council or councillor is not bound by the advice or recommendation made by a member of staff.

10.2 Assessment role

Council staff undertake the assessment of a DA. The assessment of a DA includes accepting the DA, consultation, concurrence and obtaining general terms of approval from an agency if required, carrying out community participation requirements and assessment of the matters set out in 4.15 of the EP&A Act. The assessment is documented in a report with recommendations. The report is then considered by the person or body that is the consent authority.

Council is responsible for carrying out community participation requirements on behalf of the Panels (see section 4.7(2)(d) and Division 2.6 of the EP&A Act).

The Department undertakes the assessment of planning proposals and applications for site compatibility certificates referred to the Panels.

10.3 Determination role

Historically, one of the roles of an elected council has been to determine or make decisions on DAs in their capacity as a consent authority. There are occasions, however, where the determination role is performed by other people or bodies, either because the council has delegated that function, or because it has been conferred upon another person or body. For example, where local planning panels have been introduced, elected councils no longer determine DAs (see section 2.17 of the EP&A Act).

The Panel for the area in which the development is to be carried out is the consent authority for regionally significant development (see section 4.5 of the EP&A Act).

10.4 Post-determination role

Council staff are responsible for post-determination functions including:

- notifying Panel determinations on DAs (see sections 4.7(2)(e), 4.18 and 4.59 of the EP&A Act),
- registering Panel development consents on the NSW Planning Portal (see sections 4.7(2)(e) and 4.20 of the EP&A Act), and
- monitoring and enforcing compliance with conditions of the development consent.

The notice of determination should be issued once council receives a copy of the endorsed and final determination from the Panel. The notice of determination must include all conditions imposed by the Panel, including any additional or amended conditions.

The council has no power to amend conditions or include additional conditions following the Panel's determination.

Council will advise any person who made a submission on the DA of the determination.

The council continues to be responsible for the monitoring of, and enforcing compliance with, any conditions of the development consent.

Where an application has been approved subject to a 'deferred commencement' condition council is responsible for determining whether the requirements of the condition have been met (see section 4.16(3) of the EP&A Act). Council advises the chair of the Panel in writing when the matter specified in the condition has been satisfied (see section 277(2) of the EP&A Regulation).

10.5 Support provided to Planning Panels by councils

Planning Panels are entitled on request to the general manager of a council, to use the staff and facilities of the relevant council, have access to council records, and any other assistance or action for the purpose of carrying out their functions (see section 2.27 of the EP&A Act).

It is expected that use of council facilities such as meeting rooms would be arranged prior to Panel meetings.

Support, such as recording the written decisions of the Panel, audio recording of Panel meetings, copying of documents and the provision of professional advice, may also be required.

Generally, the relevant council bears the administrative and council staffing costs associated with Panel meetings. Administrative costs may include those associated with the meeting venue and set up, the attendance of council staff, as well as administrative support.

The chair and members of a Panel will need to be mindful of the regular duties and responsibilities of council staff when requests for assistance are made. Requests by members of Panels for support and assistance from councils should be made through the chair to the general manager (or other person nominated by the general manager) of the council concerned.

10.6 Role of design review panels

Design review panels are established by councils either formally under *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* with the approval of the Minister, or informally to bring special design expertise to the assessment of certain types of DAs.

Design review panels that are properly integrated in the assessment process are an effective tool which helps to improve the quality of design outcomes. The quality of design has a bearing on many, but not all, of the matters considered in the assessment of a DA.

The role of design review panels in the assessment of applications is not changed by the fact that the application is to be determined by a Panel. However, it is generally more effective in terms of design quality outcomes and timeliness if the design review panel is convened at the pre-DA stage or early in the assessment phase.

10.7 Role of local planning panels

Although similar in operation, the roles of local planning panels and the Sydney district and Regional Planning Panels do not overlap. Local planning panels determine all DAs that meet criteria set by the Minister.

11. Development application and assessment

11.1 Pre-development application meetings

Pre-DA meetings between applicants and assessment officers are commonly used to inform lodgement requirements and likely assessment pathways before applications are submitted to the consent authority.

Applicants are encouraged to meet with council before lodging a DA, and to respond to the advice of council when preparing the DA.

To avoid any apprehension of bias, it is not appropriate for determining bodies, such as Panels or their members to participate in pre-DA meetings.

11.2 Making of development applications

DAs for regionally significant development are made to the relevant local council.

In the case of development located in two or more LGAs, a separate DA must be lodged with the councils of each LGA. Additionally:

- each DA should only address that part of the development located on land in the relevant LGA,
- neighbouring councils may wish to consider setting up joint assessment procedures, if appropriate, and
- the Panel will determine each DA separately (although the determinations may be made concurrently).

11.3 Notification to the Secretariat

Within 7 days of receiving a DA for regionally significant development, the council registers the DA with the Secretariat.

The registration is made via the Panels website or the NSW Planning Portal. The registration includes all information required on the website registration page. The DA documents are electronically transmitted to the Secretariat at the same time.

The Secretariat advises relevant Panel members of the DA once the registration is accepted. The DA documents, including the application form are generally sent to Panel members electronically.

These documents allow Panel members to become familiar with the development and to identify if they have any potential conflicts of interest prior to their review of the assessment report and before determining the application.

11.4 Public exhibition of development applications by council

Public exhibition of the DA is undertaken by council staff in accordance with the requirements of the EP&A Act, EP&A Regulation and Council's Community Participation Plan or any relevant development control plan or policy of council.

Notification of exhibition, including letters and advertisements, should contain appropriate statements to advise:

- that the {name of relevant} Panel is the consent authority for the application,
- that submissions made in respect of the application should be made to {name of relevant} Council, but will be provided to the Panel and may be viewed by other persons with an interest in the application,
- names and addresses of submitters will be provided to the Panel for notification purposes, and
- other information required by the EP&A Act or EP&A Regulation.

11.5 Requests for additional information

It is the applicant's responsibility to provide adequate information and technical reports on potential impacts of the proposed development.

Holding a pre-DA meeting with council staff will often clarify council requirements for the lodgement of an application. However, the applicant may be requested by council staff to provide further information or reports to properly address all relevant aspects of the development, or to enable an assessment report to be completed.

During the assessment process the Panel may identify issues at a briefing that must be addressed or clarified in council's assessment report, and for which council may request further information.

Amended plans or additional information for a DA must be lodged with council.

11.6 Status reports

Councils must advise the Secretariat if it is evident that there are difficulties in assessing the DA or the assessment report will not be completed within the timeframe indicated in the referral notification.

The Secretariat tracks the progress of DAs registered with it and requests status updates from council for DAs lodged for 70 days or more.

Where a response or concurrence from public agencies delays the assessment of a DA, a council can ask the Secretariat for assistance to ensure the agency responds to council in a timely manner.

Where there is an ongoing and unreasonable delay in the processing of a DA, council may be requested by the Panel to complete its assessment without further delay.

11.7 Assessment of the development application

The council that received the DA is responsible, through its staff, for the assessment of the application.

It is council's responsibility to prepare an assessment report addressing all statutory requirements and properly considering all issues. Usually councils will rely on their own professional staff, however where they do not have the technical expertise required in-house, they may engage external expertise. All costs associated with the preparation of the assessment report are to be covered from application fees, which are retained by council.

The assessment report must clearly identify how the proposal meets the relevant requirements for regionally significant development, and that the Panel is responsible for determining the application.

The assessment report must include a recommendation on the proposed development:

- if the recommendation is for approval of the application, the report must include recommended conditions of consent, and
- if the recommendation is for refusal, the report must include reasons for refusal based on the assessment in the report.

The chair of the Panel may request without prejudice draft conditions of consent where council's report recommends refusal.

In considering an application, a Panel may request additional information to assist in its determination of the application.

11.8 Varying development standards

Where a DA includes a variation to a development standard, an application under clause 4.6 of the relevant LEP is required. Council's assessment report includes an assessment of the application against the relevant statutory provisions.

The function of obtaining concurrence from the Secretary under clause 4.6 is a matter for the council. However, where concurrence is assumed, the council does not need to obtain concurrence. The Panel will determine whether a clause 4.6 application is well founded on the basis of the applicant's justification.

11.9 Local infrastructure contributions

The assessment report should address contributions required in accordance with the council's relevant contributions plan (see section 7.11 and 7.12 of the EP&A Act). The Panel is able to impose additional or different contributions than those set out in the contributions plan. For Crown developments, councils should address contributions in accordance with the relevant planning circular (Circular No. D6, issued September 1995 or as updated).

11.10 Special infrastructure contributions and certification requirements

If the development falls within a special contributions area the council should address the relevant requirements in its assessment report and recommend appropriate conditions in accordance with the Ministerial direction (see section 7.24 of the EP&A Act).

The council must address any "Satisfactory Arrangements" clause in the applicable LEP in its assessment report. These clauses usually state that development consent must not be granted by a consent authority until arrangements to the satisfaction of the Secretary have been made to contribute to regional or State infrastructure. A Panel cannot provide consent to the DA until the Secretary (or delegate) of the Department has certified in writing that satisfactory arrangements have been made.

11.11 Development subject to delays in determination

An applicant with a DA that has a CIV between \$10 million and \$30 million can refer the DA to the relevant Panel for determination if it remains undetermined for 120 days after being lodged with council (see Schedule 6 of the Planning Systems SEPP). The referral process is outlined below:

- when making a referral, applicants must use the Regional Development Request form available on the Panels website,
- the applicant is to complete the relevant part of the form and submit it to **both** the relevant council and the Secretariat,
- once the council receives the referral form it cannot determine the DA until a decision has been made regarding whether the Panel will have the function of determining the DA, however council can continue to assess the DA,
- the council sends the completed referral form and copies of all DA documents, to the Secretariat within seven days. Council should also send its explanation for the delay in completing its assessment,
- the chair will consider the information in the referral form and advise the Secretariat if the referral is accepted (i.e. the applicant is not responsible for a delay in the application), generally within 14 days of the applicant making the referral. The chair will consider a number of matters in making this decision, including:
 - permissibility and zoning, including whether the determination is dependent on a rezoning,
 - whether the determination is dependent on a voluntary planning agreement or the approval of a masterplan or DCP,
 - whether the landowner's consent has been provided,
 - whether the required referrals and concurrences have been obtained,
 - whether there have been requests for further information, and what the responses were to those requests, and
 - if council has considered the DA and the outcome of that consideration,
- once the chair decides, the Secretariat will notify the council and the applicant as to whether the development is regionally significant development,
- if the referral is not accepted the chair must advise the reason(s) for not accepting the referral,
- if the referral is accepted, council completes the assessment of the application and prepares an assessment report for submission to the Secretariat, and
- a briefing with council may be held prior to determination.

11.12 Council representation to the Planning Panel

An elected council may make a submission on a DA within their LGA that is to be determined by a Panel up to seven days before the Panel meeting.

After the assessment report is sent to the Secretariat, it may be given to the elected council to assist in its decision as to whether it will be making a submission to the Panel. The elected council's submission should not be prepared by persons involved in the assessment of the application but could be prepared by another council officer, or a consultant.

A council submission should not be specifically referenced in the assessment report or recommendations prepared by the council staff. If council makes a submission, a staff representative or individual Councillors may register to address the Panel at the meeting to express the views of council.

Councillors who are also Panel members have an independent role because they have been nominated by their council as its nominee to the Panel.

11.13 Submission of assessment report to the Secretariat

The completed assessment report and recommendation is to be immediately sent via electronic means to the Secretariat.

The assessment report is not to be endorsed or presented to the elected council before being sent to the Secretariat.

The following items are to be sent in a digital format to the Secretariat:

- assessment report and any attachments and recommendations (including conditions),
- the Council Assessment Report cover sheet (available on the Planning Panels website),
- final architectural drawings and plans and other reports that the assessing officer considers that the Panel may require in order to make an informed decision,
- copies of each submission received in respect of the DA
- a completed List of Submitters (available on the Planning Panels website) containing the names, postal addresses and email addresses (if provided) of every person or body who made a submission to allow the Secretariat to notify submitters of the details of the Panel meeting,
- in the case of petitions, only the name and address of the head petitioner should be provided, if that person can be identified, and
- the final number of unique submissions received.

Note: Council's assessment report must include a summary and assessment of all submissions so that the Planning Panel can consider the submissions as part of the assessment of the DA. Based on the details provided by council, the Secretariat will notify persons who made submissions of the time, date and venue of the Panel meeting at which the relevant application will be considered. Councils should also give the Secretariat copies of any late submissions and, where necessary, provide further assessment if the issues are not already covered in council's assessment report.

11.14 Written submissions to the Planning Panel

All written submissions must be sent directly to council to be considered as part of the assessment of the DA.

Submissions sent to the Panel will be given to council for assessment. Panels will not normally accept information "in confidence" that is not also given to council. However, if confidentiality is requested, the reason must be clearly stated as to why it is confidential and relevant to the assessment matter before the Panel and the chair will consider the request.

11.15 Rezoning, development control plans and planning agreements

Where a DA is lodged concurrently with a planning proposal seeking the rezoning of land under the LEP Council's assessment report must address the DA against the proposed zoning. Council is responsible for progressing the planning proposal. The Panel cannot determine a DA to approve such development until the land is rezoned to permit that development.

Where the provisions of an environmental planning instrument require a development control plan (DCP), (previously known as a master plan) to be adopted by the council before granting development consent, it is the responsibility of council to prepare and adopt the DCP prior to sending

the assessment report to the Panel. In such circumstances, the Panel will not determine the application until the DCP is adopted by the council.

If a planning agreement is proposed, it should be negotiated by council staff. Council's assessment report for the Panel would normally make reference to any planning agreement and its relationship to the DA.

The Panel may only impose a condition of consent requiring a planning agreement be entered into if the condition reflects the terms of any offer made by the applicant to enter into a planning agreement (see section 7.4 of the EP&A Act).

11.16 Referral of Crown development applications with a CIV less than \$5 million

Crown DAs with a CIV greater than \$5 million are regionally significant development. Crown DAs with a CIV under \$5 million can be referred to the relevant Panel (see section 4.33 of the EP&A Act) by either:

- the applicant where council (or LPP, if relevant) has not determined in the prescribed period, or
- the council at any time including before the end of the prescribed period.

Before the end of the prescribed period, only a council (not the applicant) can refer an application to the Panel.

For Crown DAs with a CIV of less than \$5 million where a council or LPP seeks to refuse consent or impose a condition to which the applicant has not provided their agreement, the application is also to be referred by council to the relevant Panel (see section 4.33(2) of the EP&A Act).

The referral to the Panel must be in writing. Additional procedures for the referral, including the requirement to notify the other party in writing of the referral are set out at sections 4.33(6) and section 4.33(7) of the EP&A Act.

Once the application is referred to a Panel, the council registers DA on the Planning Panels website and gives its assessment report to the Planning Panel to consider.

12. Determination of development applications

12.1 Determining regionally significant development applications

Planning Panels determine regionally significant development as the consent authority.

For contentious matters, where the DA has attracted 10 or more unique submissions by way of objection, the Panels will generally hold a public determination meeting to consider the DA. Refer to **Schedule 1** for more information on the detailed procedures for Panel meetings.

The purpose of the public determination meeting is for the Panel to hear views of the community and other interested parties, such as the applicant and the council, on the DA before the Panel makes a decision.

After reviewing written submissions on a DA, considering the recommendation in council's assessment report and hearing from those wishing to address the Panel, the Panel may determine the application or defer its decision for reasons that will be stated in the meeting record.

In circumstances where the DA is the subject of less than 10 unique submissions by way of objection a Panel is able to determine the application by an electronic circulation of papers.

12.2 Obligation to consult council – if adverse financial impacts

A Panel must not make a decision that will have, or that might reasonably be expected to have, a significantly adverse financial impact on a council without first consulting the council (see section 2.26 of the EP&A Act).

The consultation must be in writing, with the council being given a specified time to respond in writing. Where a briefing with the general manager (or nominee) is to be held to discuss the matter, all relevant Panel members should be present, and a meeting record and outcomes should be sent to the Secretariat.

12.3 Determining Crown development applications

A consent authority for Crown development cannot refuse consent to a Crown DA except with the approval of the Minister, nor can it impose a condition on a development consent for Crown development except with the approval of the applicant or the Minister.

This requirement applies to Crown development that is to be considered by a Panel, where the application is for regionally significant development, or where the DA is referred to the Panel under Division 4.6 of the EP&A Act.

Where the Panel wishes to either refuse an application or impose conditions not agreed by the applicant, or where a Panel fails to determine the DA within the prescribed period, the applicant or the Panel may refer the DA to the Minister. The Minister may then direct the Panel to approve or refuse the Crown DA within a specified time.

12.4 Determining DAs for coastal protection works

Certain coastal protection works are classified as regionally significant development. Where a Panel is to determine a DA for coastal protection works the chair and the council nominated members will remain on the panel, however the State members will be replaced by members appointed by the Minister who have expertise in coastal engineering or coastal geomorphology (see clause 8A, Schedule 6 of the Planning System SEPP).

12.5 Delegation to council to determine applications

If the Minister agrees, Panels may delegate the determination of applications to councils, a local planning panel of a council or the general manager or other staff of council (see section 2.16(2) of the EP&A Act). Delegation may be for development in a specified area, for a class of application, or be made on a case-by-case basis.

In situations where the determination is delegated, councils must:

- register the application on the Planning Panels website,

- inform and update the Secretariat on the processing of the application as requested, and
- provide a copy to the Secretariat of all determination documents, including the assessment report and Notice of Determination.

The chair of the relevant Planning Panel may request the council to not exercise the delegated function in certain circumstances.

Any determination made by council under delegation is a decision of the Panel.

13. Reviews and appeals

13.1 Decision reviews

Planning Panels also review decisions made on DAs by the Panels (see Division 8.2 of the EP&A Act). The Council notifies the Panel when a request to review a decision has been lodged. The Panel reviewing the decision will be comprised of different members to those members that made the original decision and will be called the Decision Review Panel of the [relevant] Planning Panel.

Note that decision reviews cannot be requested where the following applies:

- the time to lodge a legal appeal has passed,
- a merit appeal has been determined regarding the DA, or
- it is an application for complying development, a Crown DA or a designated development DA.

The Decision Review Panel may ask to be briefed on the decision review request, either by the applicant, Council staff undertaking the assessment, or other experts engaged to assess the application.

The circumstances where this may be needed include where the applicant for the DA has amended the development the subject of the original DA since the original determination.

If needed, the Decision Review Panel may also hold a site visit or public briefing meeting.

Council must prepare an additional assessment report to the Decision Review Panel if the DA or application to modify a development consent has been amended after its initial determination, or if submissions have been made following any further notification.

A Decision Review Panel will only need to hold a public determination meeting if the application was exhibited and 10 or more unique submissions by way of objection were received.

Council must give written notice to the applicant of the result of the review within 7 days of the completion of the review.

13.2 Appeals against a Planning Panel determination

Merit appeals

An applicant who is dissatisfied with a determination or deemed refusal of an application may lodge a merit appeal to the Land and Environment Court within six months against the decision as provided for in the EP&A Act.

Note: An application is deemed to have been refused if it is not determined within 40 days, or 60 days if the application is for designated or integrated development, requires concurrence of a concurrence authority or is accompanied by a biodiversity development assessment report and that proposes a discount in the biodiversity credits required under the report to be retired.

If the development is designated development, then an objector to the development who is dissatisfied with a determination may also lodge a merit appeal in the Land and Environment Court within 28 days as provided for in the EP&A Act.

The council for the area will be the respondent for any merit appeal against a determination made by a Panel on a development application. The council is subject to the control and direction of the Panel in connection with the conduct of the appeal.

The council is to give notice of the appeal to the Planning Panel. It must do this by notifying the Secretariat. Notification to the Panel must be made no more than seven days after the council receives notice of the appeal and must advise whether the council will be actively defending the appeal.

Note: Each Planning Panel chair has delegated authority to act as the Planning Panel's representative to provide instructions and seek legal advice in relation to appeals. Planning Panel delegations are published on the Planning Panels website.

The Panel will determine its level of involvement in an appeal, and what directions (if any) it wishes to issue to the council, on a case-by-case basis. While a Panel has the power to direct and control the council, it may choose not to exercise the power. If a Panel wishes to take a more active role in a council's conduct of the appeal, the Panel can exercise its powers to control and direct council. In

some circumstances the Panel may seek to join proceedings and act as the respondent in the place of the council.

Council is to:

- 1) provide the Panel with a copy of the application commencing the appeal within 7 days of the council being served with it,
- 2) provide the council's proposed statement of facts and contentions to the Panel at least 7 days before the earlier of:
 - a) the day of the first directions hearing for the appeal or
 - b) the day the statement is proposed to be filed,
- 3) identify in the council's statement of facts and contentions the steps taken by the council to notify the Panel of the appeal, and any response received by the council, and
- 4) provide the Panel, within 3 days, with:
 - a) a copy of any directions or orders made by the Court in relation to the appeal,
 - b) the dates on which the Court has arranged a conciliation conference under section 34 or section 34AA of the *Land and Environment Court Act 1979*,
 - c) the dates on which the appeal will be heard,
 - d) a copy of any judgment of the Court in relation to the appeal.
- 5) Request instructions if a conciliation conference has been arranged:
 - a) as to any agreement that might be reached between the parties as to the terms of a decision in the proceedings that would be acceptable to the parties, at least 14 days before the conciliation conference is held, and
 - b) as to any proposed in principle agreement that is reached between the parties at or after the conciliation conference, at the time of or no later than 2 days after an in-principle agreement is reached and before any written agreement is executed.

The Panel is to respond to requests from council for instructions within 7 days of the request.

Deemed Refusals

A Panel may determine a DA even though it is subject to a deemed refusal appeal. When a deemed refusal appeal has been filed with the Court, the usual practice is for council's assessment officer to complete their assessment report.

Applications may be deemed to have been refused before a Panel has been briefed on the application. Where a Panel has not been briefed on an application that is subject to an appeal, the Panel may request a briefing from the council.

Judicial review and civil enforcement proceedings

Any person may commence judicial review or civil enforcement proceedings in the Land and Environment Court against a Panel determination. Unlike merit appeals, in these types of proceedings the Panel will be named as a respondent.

A submitting appearance may be filed by the Panel if the grounds of challenge are not related to the powers or procedures of the Panel in determining the application.

Appeals against determinations where council is the applicant

The Panel will be the respondent in merit appeal and judicial review proceedings in the Land & Environment Court where council is the applicant.

14. Planning proposals - Strategic Planning Panels

Planning Panels also undertake LEP making functions, including:

- acting as the planning proposal authority in relation to LEP making if directed by the Minister and in certain circumstances,
- undertaking administrative reviews in relation to LEP making,
- overseeing Aboriginal land planning proposals, and
- providing advice to the Minister or the Secretary on matters relevant to LEP making.

Note: The Independent Planning Commission undertakes these functions if directed by the Minister in relation to LEP making for the City of Sydney LGA.

14.1 Strategic Planning Panels

When convened for specific strategic and Aboriginal land planning functions a Planning Panel will be known as the Strategic Planning Panel of the [relevant] Planning Panel.

14.2 Strategic Planning Panel members

The constitution of a Strategic Planning Panel is to comply with the EP&A Act and this Chapter 14 of the Operational Procedures.

A Strategic Planning Panel will consist of 5 members:

- 3 members, including the chair, appointed by the Minister (State members), and
- 2 members appointed by the relevant council (council members).

At least 2 of the State members appointed by the Minister must have expertise in strategic planning (district or regional strategic planning). The State members may be members or alternate members, so long as they have relevant strategic or Aboriginal land planning expertise.

For matters relating to Aboriginal land planning, specifically land in a development delivery plan made under the Planning Systems SEPP, at least 1 of the State members with strategic planning expertise should also identify as being Aboriginal or Torres Strait Islander or have expertise in Aboriginal land planning.

Note: This Chapter should be read together with Chapter 4 of this Operational Procedures.

14.1 Reviews

A Strategic Planning Panel may conduct certain LEP related reviews, including:

- Rezoning reviews — that may be requested by a proponent before a planning proposal has been submitted to the Department for a Gateway determination,
- Independent reviews — that may be requested by a LALC before a planning proposal for land subject to a development delivery plan made under the Planning Systems SEPP has been submitted to the Department for a Gateway determination.

The Department's LEP Making Guidelines sets out how to apply for a rezoning review, fees and costs, eligibility requirements and information the council or proponent must provide for reviews to be undertaken.

14.2 Rezoning reviews

The Department will provide the Strategic Planning Panel with the rezoning planning proposal, council's comments on the proposal and a summary briefing report for review.

The Strategic Planning Panel will be briefed by the proponent and council and may request a site visit to assist in its consideration of any matter relevant to the planning proposal. All briefings or site visits should follow the procedures set out in Schedule 1 of this Operational Procedures.

Assessment and Determination

The Strategic Planning Panel's review and determination are to be in accordance with the LEP Making Guidelines.

The Strategic Planning Panel will assess the rezoning planning proposal, having regard to the matters outlined in the LEP Making Guidelines and determine whether the planning proposal has:

- strategic merit, and
- site-specific merit.

Planning proposals that do not reasonably meet the strategic and site-specific merit tests are unlikely to proceed to a Gateway determination.

The Department will monitor the progress of the rezoning review to achieve an outcome within a target of 100 days of receiving the initial rezoning review request.

Recommendation

If the Strategic Planning Panel recommends that the planning proposal should proceed to a Gateway determination, it will:

- notify the relevant council that the Strategic Planning Panel will assume the PPA role, if the council has refused to support the planning proposal, or
- identify the PPA (either council or itself) where council has not made a determination on a planning proposal but has informed the panel in writing prior to the Strategic Planning Panel meeting of its nomination.

Planning Proposal Authority

The Strategic Planning Panel may be directed to be the PPA for a planning proposal by the Minister.

The Strategic Planning Panel has delegated authority to direct itself to be the PPA in the following cases:

- a. in a case where the recommendation relates to a proposed instrument relating to land owned by a Local Aboriginal Land Council and to which Chapter 3 of the State Environmental Planning Policy (Planning Systems) 2021 applies:
 - i. before the recommendation was made, a written request to prepare a planning proposal has been submitted to the Department of Planning and Environment by the Local Aboriginal Land Council, or
- b. in any other case:
 - i. before the recommendation was made, a written request to prepare a planning proposal has been submitted to the council, and
 - ii. after the recommendation was made, the council has been given an opportunity to be the planning proposal authority, unless the council has previously refused to support the request to prepare a planning proposal.

Note: The appointment function under s 3.32(2)(c) of the EP&A Act has been delegated by the Minister to the Planning Panels and the Independent Planning Commission under an instrument of delegation.

14.3 Independent reviews

An independent review is an administrative review process closely aligned with rezoning reviews. Independent proposal reviews give LALCs an opportunity for an independent body to give advice on planning proposals for land subject to a development delivery plan made under the Planning Systems SEPP.

Assessment and Determination

When a Strategic Planning Panel is undertaking an independent review, it must consider the:

- strategic merit - consideration must be given to the consistency of the planning proposal with the relevant development delivery plan for the land, and
- site-specific merit - consideration must be given to the social and economic benefit to the Aboriginal community facilitated by the proposal.

The Strategic Planning Panel must determine whether or not to recommend that a planning proposal be submitted for a Gateway determination under section 3.34 of the EP&A Act.

Further detail on the independent review process can be found in Planning Circular PS 22-001 Independent review of planning proposals for identified Aboriginal land, or as updated.

14.4 Planning Proposal Authority

As the PPA, the Strategic Planning Panel performs functions that a council normally would in preparing a LEP. This includes:

- submitting a planning proposal that satisfies the requirements of section 3.33 of the EP&A Act including any requirements issued by the Secretary for a Gateway determination,
- undertaking any necessary agency consultation prior to public exhibition of the planning proposal,
- exhibiting the planning proposal in accordance with the terms of the Gateway determination (if all relevant Gateway conditions have been met Panel endorsement to proceed to exhibition is not necessary),
- considering a recommendation report, addressing submissions received during public exhibition,
- holding a public meeting if the planning proposal is the subject of 10 or more unique submissions by way of objection following public exhibition,
- if required by the Minister, conducting a review of the planning proposal if there has been any delay in the matter being finalised, or if for any other reason the Minister considers it appropriate to do so,
- providing a revised planning proposal to the Minister following consideration of any submission or report during community consultation or for any other reason,
- submitting a request to the Department, as delegate of the Minister, that the LEP be legally drafted and made.

The Minister (or delegate) remains responsible for determining the planning proposal.

The Secretary is responsible for making arrangements for the drafting of any required LEP to give effect to the final proposals of the PPA.

14.5 Support provided to the Planning Panel in its role as PPA

The Secretariat are to provide any necessary support for agency and community consultation (public exhibition) and can facilitate the provision of technical support from other parts of the Department and briefings to the Strategic Planning Panel.

14.6 Strategic Planning Panel decisions and advice to be made publicly available

A Strategic Planning Panel will need to make decisions throughout the LEP making process when undertaking reviews or acting as PPA. Decisions of the Strategic Planning Panel must be made publicly available on the relevant Planning Panels website within 7 business days of any decision.

14.7 Community consultation

There is no requirement for a Strategic Planning Panel meeting to be held prior to determining a rezoning review. The Gateway determination details requirements, if any, for community consultation on planning proposals. The Strategic Planning Panel may hold Panel meetings at any time, at the discretion of the chair.

Submissions received as part of the public exhibition of a planning proposal for which the Strategic Planning Panel is the PPA must be made publicly available on the Panels' website.

15. Site compatibility certificates

Panels determine applications for SCCs made under section 3.14 of the Transport and Infrastructure SEPP.

Written applications are to be lodged with the Department. The Department prepares an assessment of the application and a recommendation for the relevant Panel. The Panel considers the application and the Department's assessment report and those matters set out at section 3.14(6) of the SEPP. The Panel may determine an application by issuing a SCC or refusing to do so.

The Panel may request a briefing and/or a site visit to assist in its considerations.

A briefing or site visit will be attended by the Panel and Department staff and follow the procedures set out in Schedule 1.

Decisions on SCCs will generally be made by a resolution following a circulation of papers in accordance with the procedures set out in Schedule 1.

Schedule 1: Procedures for briefings, meetings and decisions.

1 Briefings and site visits

The chair may agree to a site visit or a briefing prior to a Planning Panel making a decision or providing advice on a matter.

A site visit or briefing is solely to identify and clarify issues with the proposal. Panel members will not offer opinions on the merits of the proposal or ask those involved with the assessment of the proposal for their opinion or recommendations at site visits or briefings.

However, the Panel may identify issues that it expects to be addressed or clarified in any assessment report.

A site visit or briefing will be attended by the Panel and relevant council or Department assessment staff or other persons engaged in the assessment of the DA or matter to be determined by the Panel. In some circumstances, other parties, including the applicant or people who made submissions on an application or matter may also be invited to attend a site visit or briefing. The invitation of parties is at the discretion of the chair.

Briefings on DAs may include a presentation by council assessment staff on key elements of the proposal and the planning controls that affect it (such as zoning), and an overview of issues of concern arising through the Council's assessment or raised in submissions. The timing of the submission of the assessment report and tentative date for a determination may also be discussed.

The assessment officer briefing the Panel should have available a set of large-scale plans at the briefing.

Only Panel members who will sit on the Panel to determine the matter should attend the briefing.

Briefings and site visits on planning proposals and site compatibility certificates follow the same format, with Departmental staff briefing the Panel.

It is not mandatory that the Panel be briefed prior to considering a matter. Where there is a briefing, it should take place within four weeks of the close of any public exhibition period, and before council makes any major request for further information from the applicant (although council can request further information before the exhibition). The assessment of a DA should not be delayed for a briefing to occur.

Panel members may identify further issues where they need clarification or more information. A Panel may request briefings with council or Department staff to clarify any element of the proposal and the assessment report prior to the Panel making its decision.

Briefings are not determination meetings and Panel members should not make any comment that would indicate pre-determination of the matter.

The chair should take into consideration the availability of all members of the Panel and any other necessary persons when deciding to conduct a site visit.

Entry to any private land may only take place with the express permission of the owner of the land, and it is the responsibility of council staff, in relation to a DA, or Department staff in relation to a planning proposal, to seek owner's consent when required.

A written record of the briefing or site visit is made including time, date, attendees, any declarations and key issues discussed and is published on the Planning Panels website within 7 days. Site visits or briefings are not recorded by audio/ video record, an audio record or a transcription record.

It may be appropriate to invite the applicant or proponent to attend the briefing when:

- the Panel could benefit from additional technical explanation on a complex matter,
- the development or other options are still being considered (e.g. if a major re-design has been requested by the council), or if
- material to be presented may be commercially sensitive or confidential.

Site inspections and briefings are not public meetings of the Panel.

2 Meetings

The Panel may meet on-line, in-person or a combination of both. The Panel will generally conduct its business on-line.

Public briefing meetings

If the matter before the Panel attracts significant community interest, the Panel may consider calling a public briefing meeting.

Public briefing meetings are held to hear submissions in a public forum and to meet with key stakeholders to discuss unresolved issues. Community groups and individuals may register to speak to the Panel at the public briefing meeting. Public briefing meetings are held at the discretion of the Panel.

Panel members should not make any comment that would indicate pre-determination of the application at a public meeting.

Determination meetings

For contentious matters, where a DA has attracted 10 or more unique submissions by way of objection, the Panels will generally hold a public determination meeting to consider the DA.

Notice of a public determination meeting is given at least 7 days before the meeting. Notice of the meeting (including the time, date and venue for the meeting) are:

- notified on the Panels website, and
- given to every person who made a submission to the council (in the case of petitions, only the head petitioner).

The meeting agenda, any business papers, assessment reports and attachments (including any representations made by council) are distributed to members of the Panel and uploaded on the Planning Panels website in advance of the meeting.

People wishing to address the Panel must register prior to the meeting.

The chair determines the order of presentations to the Panel and the amount of time given to each speaker. At the meeting, it is acceptable to provide the Panel with written material which summarises the matters to be presented to the panel by the speaker. However, written material must be kept to a minimum.

3 Procedures for public meetings

Planning Panel meetings are to be conducted in public.

Meeting dates and agendas

A regular schedule of proposed meeting dates is determined at the beginning of each year by the Secretariat in consultation with the chair. The meeting dates are listed on the Planning Panels website and are reserved for public briefing meetings, Panel briefings and site visits, or Panel meetings. Panel public determination meetings are generally arranged within 14 days of receiving council's assessment report.

Additional meetings of a Panel may be organised at the discretion of the chair. These additional dates are posted on the website as soon as they become available.

The chair may consult with the general managers (or their nominee) of the relevant councils when approving the agenda for each meeting.

The council notifies the Secretariat of any revised date for completion of the assessment report as soon as it is aware of any delay and advises of the reasons for the delay.

The meeting time and venue

The meeting time and venue is determined by the chair in consultation with relevant councils, and taking into account:

- the location of the proposed developments to be considered at the Panel meeting,
- the number of persons who have expressed an interest in the different matters to be considered at the Panel meeting,
- the availability of a suitable venue and the accessibility of the proposed venue for those persons, and
- local considerations and logistics.

The meeting time and venue should:

- maximise accessibility to people who have expressed an interest in the matters to be considered at the meeting, and
- facilitate the open exchange of information between the Panel members and other parties.

Items from a number of different LGAs might be considered at one meeting provided the venue is reasonably accessible to most interested parties.

In regional areas, the chair may need to convene meetings in a number of locations to ensure they are accessible to the greatest number of people with an interest in the application being considered.

Notice of meeting

Notice of a Panel meeting is to be given by the Secretariat at least 7 days before the meeting. Notice is given to Panel members, the general managers (or their nominee) of the councils in that region or district, every person who made a submission to the council (in the case of petitions, only the head petitioner) in respect of an item to be considered at the meeting and the applicants for those items. A notice is placed on the Panels website and may be placed in the local newspaper.

The notice is to include details of:

- the time and date of the meeting,
- the venue for the meeting,
- the matter under consideration (DA/s or planning proposal),
- the availability of agenda and business papers, which will include the assessment report and recommendations, and
- other matters to be considered at the meeting.

Distribution of meeting agenda and business papers

The meeting agenda, business papers/assessment reports and attachments, including any representations made by councils, are to be distributed to members of the Panel and uploaded on the Panels website by the Secretariat no less than 7 days prior to the meeting.

Opening and closing meetings

The chair will open the meeting with an Acknowledgement of Country followed by introducing the Panel and its members, state the purpose of the meeting, read out any apologies and call for declarations of interest following the declarations of interest procedures.

The chair will note any site visits or briefings the panel has had the benefit of and describe the order of proceedings and time limits for speakers.

The chair may also request council staff to briefly summarise the key issues that have arisen in the assessment report.

The panel will then listen to those wishing to address the panel. After the presentations the panel will make its determination and the chair will read out the decision of the panel before closing the meeting.

Declarations of interest procedures

The declarations of interest procedures set out below follow the requirements of the Panels Code of Conduct (Code):

1. The chair calls on Panel members to complete and sign written declarations of interest forms prior to the meeting for each panel matter (under clause 4.1 of the Code). Any verbal declarations must be recorded in writing.

Note: Under the Code, a panel member should declare the following interests:

- a. an actual, potential or reasonably perceived conflict of interest (see clause 3.1 of the Code),
 - b. a pecuniary interest listed under clauses 3.10 – 3.12 of the Code,
 - c. a non-pecuniary interest (see clause 3.14 of the Code),
 - d. a conflict of duties listed under clauses 3.18 – 3.25 of the Code,
 - e. a pecuniary interest or non-pecuniary interest arising from a political contribution or donation (see clause 3.26 of the Code),
 - f. a position and pecuniary interest in corporations, partnerships or other businesses that may be relevant to the activities of the Panel in accordance with the Department of Premier and Cabinet's Guidelines 'Conduct Guidelines for Members of NSW Government Boards and Committees' (see clause 4.3 of the Code),
 - g. a personal dealing with council (see clause 5.1 of the Code), and
 - h. a gift or benefit listed under clauses 5.2 – 5.6 of the Code.
2. The chair reviews the written and signed declarations and the management measures put in place for any declared interests.
 3. If the chair is satisfied that reasonable and appropriate management measures are consistent with those set out in the Code, then a note to this effect is to be made on the meeting record.
 4. Should the chair have concerns, the chair is to raise these concerns with the member and suggest additional reasonable and appropriate management measures including, if warranted, that the member not take part in the determination for the matter (see clause 3.8 of the Code).
 5. The chair is to provide the member an opportunity to respond.
 6. The chair is to consider any response prior to making a final decision on the reasonable and appropriate management measures and note the response, the decision, and the chair's reasons for the decision in the meeting record.

Presentations at a Panel meeting

The chair determines the order of presentations to the Panel. Panel members may ask questions of those making presentations. The amount of time given to each speaker is at the discretion of the chair.

At the Panel meeting, it is at the chair's discretion whether to accept written material which summarises the matters to be presented to the Panel by the speaker. Any allowed written material must be kept to a minimum.

By registering to speak at a meeting, speakers agree to being audio recorded and to the publication of that recording on the Panels website.

- a) Presentation by the assessment officer

The chair may request that the assessing officer responsible for preparing the assessment report (or a representative) presents a summary of the DA or planning proposal, as the case may be, and outline any relevant assessment issues at the start of the presentations. The assessment officer should have available at the Panel meeting a set of large-scale plans (including any amended plans).

Generally, it is council's professional planning and assessment staff that prepare DA assessment reports for the Panel's consideration.

Where a Panel is acting in the role of the PPA for a planning proposal matter the Department provides technical assistance, which may include the provision of an assessment report for the Panel.

The assessment officer (or representative) should inform the chair of any late submissions received, and of any issues raised which may not have been addressed in the assessment report.

The assessment officer (or representative) should be present throughout the Panel meeting, so that the chair can seek clarification where necessary of assessment issues that may arise during the course of the meeting. Other technical experts from the council/Department may also be present (such as traffic engineers) and the chair may ask for clarification of specific issues. Any questions to council/Department staff can only be made by Panel members and are to be directed through the chair.

b) Presentation by the applicant or proponent

The applicant, in the case of a DA, or the proponent, in the case of a planning proposal, will be given the opportunity to outline the proposal and respond to the assessment report. The applicant/proponent may also be required to respond to submissions made at the meeting. The time allocated to the applicant/proponent, including their consultant(s), is at the discretion of the chair, but is generally 15 minutes. Additional time may be allocated where professional consultants have been engaged by the applicant/proponent to present at the meeting.

c) Presentation by people or groups who made submissions

Panel meetings enable people or groups to make a presentation to the Panel meeting. People who wish to address the Panel must register with the Secretariat prior to the meeting by contacting the Secretariat by telephone or email within the timeframe specified in the notification letter (generally two days before the Panel meeting).

For those people who are of the view that they would not be appropriately or adequately represented by any groups, they may register to speak to the Panel as individuals.

The chair will advise on the time allocated for verbal submissions which will vary from meeting to meeting depending on a number of considerations such as the number of registered speakers.

As a guide:

- individual submitters will have 3 minutes to speak,
- a speaker for a community organisation/group will have 10 minutes to present. Additional time may be allocated where professional consultants have been engaged by community groups to present at the meeting.

In addition, where a large group of people have common issues to raise at the meeting, the chair may ask that a spokesperson be appointed to speak on behalf of the group. In such cases, the spokesperson will generally be allocated more time than individual speakers.

The chair seeks to ensure that all groups or individuals who request to address the Panel are heard. Any requests for extending time limits should be made to the Panel at the meeting and may be granted at the discretion of the chair.

Speakers should focus their oral presentations on the assessment report and its recommendation rather than re-stating information outlined in their earlier written submissions. The Panel has been provided with all submissions and associated documents before the Panel meeting.

d) Presentation by people or groups that have not made a submission

The chair has the discretion to allow any member of the public to address the Panel, even if they have not made a submission or registered to speak by the relevant deadline. Considerations may include the number of persons that made submissions and have requested to address the meeting and the available time.

e) Presentation by an expert engaged by the Panel

For the purpose of making a decision on a matter, such as a DA or a planning proposal, a Panel may obtain independent assessment reports, advice and assistance that the Panel may require, particularly in relation to complex technical matters. This would be in addition to any assessment report or other information provided by the relevant council/Department in assessing the application.

Selection of such experts is to be determined by the chair in consultation with the other Panel members.

Depending on the circumstances, the expert may submit a report with recommendations directly to the Panel. In addition, the expert may be invited to present the outcomes of their report at the Panel meeting.

The independent assessment report should be made available on the Planning Panels website prior to the meeting, except where this information includes legal advice provided to the Panel and is subject to legal professional privilege.

Adjourning during a Planning Panel meeting

A Panel may adjourn a meeting where:

- a briefing is required to hear confidential or sensitive information, and/or
- the panel wishes to confer amongst itself before reconvening the meeting for voting and determination.

Before the adjournment the panel chair publicly states the reasons for the adjournment which are recorded in the audio and written record of the meeting.

If the meeting is adjourned so that the panel may confer amongst themselves prior to making a decision, the chair briefly summarises the matters discussed in the adjournment after reconvening the meeting. The panel may discuss the matter further in the meeting and/or make its determination.

Panel discussions during adjournments are not recorded.

4 Decisions and determinations

The Panel will strive to make its decisions unanimously. Where a decision cannot be made by unanimously, the decision will be made by majority vote. The chair will have a second or casting vote if required because of an equality of votes.

Quorum for a Planning Panel decisions

A quorum is a majority of the Panel's members, including the chair, i.e. a total of three members. The decision of the Panel will be deferred if a quorum is not present.

Where conflicts of interest are known before a decision is to be made, alternate members will be used to make a quorum.

The Planning Panel's consideration

In addition to the assessment report, the Panel is to take into account all written submissions, as well as the views expressed by those addressing the Panel should a public meeting be required.

Deferring the decision

A decision may be deferred for any reason including to obtain additional information or advice.

Should the Panel determine to defer a decision on an application, it must provide a written record of the reasons for deferral.

Where the determination of a proposal is deferred pending the provision of additional information, the panel must specify the timeframe in which the information is to be provided to the council for assessment.

It is the council's responsibility to follow up on any requests for additional information or amendments from the applicant, to determine whether re-exhibition is required, and to provide a supplementary assessment report to the Panel.

The Panel's reasons

The Panel must provide reasons for its decisions, which are to be recorded in the 'Determination and Statement of Reasons' template provided by the Secretariat.

The Panel may rely on the conclusions and recommendations within the assessment report, however, the Panel must identify where it has its own reasons for making the decision and where it adopts the reasons from any assessment report of Council or the Department. As part of setting out its reasons the Panel is to:

- provide a summary of the main issues raised in submissions,
- demonstrate how the Panel considered the community's concerns, and
- demonstrate how the Panel dealt with the issues raised, should they have been found to have merit i.e. requested further studies, applied appropriate conditions or, agreed with council recommendation that the applicant had satisfactorily addressed the concerns.

Determinations on DAs

The determination must clearly state whether a DA is unconditionally approved, approved with conditions, or refused.

Any new conditions of consent or changes to the recommended conditions of consent must be recorded.

If the Panel resolves to approve an application that is recommended for refusal, the Panel may seek a further report from the council's planning officer providing recommended conditions of consent. The Panel may request without prejudice conditions of consent before a Panel meeting if council's report recommends refusal.

The determination and statement of reasons must include the following:

- the decision of the Panel,
- the date of the decision,
- the reasons for the decision (having regard to any statutory requirements applying to the decision), and
- how community views were considered in making the decision.

DA determinations must be publicly notified in accordance with clause 20 Schedule 1 of the EP&A Act.

The decision of the Panel is not subject to a 'Rescission Motion' as in local government.

Decisions of Decision Review Panels are called a 'Review of Decision' Determination and Statement of Reasons.

Determinations on matters other than DAs

Decisions made by the Panels on SCCs, Rezoning Reviews and where the Panel is the PPA will include the following:

- the decision of the Panel,
- the date of the decision, and
- the reasons for the decision (having regard to any statutory requirements applying to the decision).

Resolutions of the Panels

The Panels may from time to time make resolutions on certain matters, e.g. to authorise the chair to provide instruction in relation to legal appeals on behalf of the Panel.

Resolutions of the Panel will be published on the Panels website.

Dissenting views

If the decision (and reasons for the decision) is not unanimous, all members of the Panel (i.e. including the minority) still need to give reasons.

Timing of Determination and Statement of Reasons

It is preferable that the Panel record both its decision and its reasons at the time of the determination.

Signatures

All members of the Panel must sign the Determination and Statement of Reasons. Where one or two members are in dissent, they must still sign, as the reasons will set out their dissenting views.

5 Transactions of business outside meetings

A Panel can transact its business by the circulation of papers, (including the electronic transmission of the information in the papers) (known as an electronic determination) (see Schedule 2, Clause 26 of the EP&A Act). The chair and each Panel member have the same voting rights as they have at a public meeting.

The chair may decide that the Panel can complete its business through an electronic determination. These circumstances may arise when:

- there are less than 10 unique submissions by way of objection,
- the Panel has held a public meeting and deferred its decision to request specific additional information from an applicant or council (such as amended drawings) and if council, after having accepted the amended drawings, has decided that re-exhibition of is not required,
- the Panel is voting on a procedural matter, or
- the Panel is voting on a decision following a briefing in relation to a Rezoning Review, Planning Proposal or site compatibility certificate.

Prior to an electronic determination the council report and recommendation is made available on the Planning Panels website for 7 days.

Following consideration of the assessment report, the Panel advises the Secretariat of its decision and a record of decision is completed and endorsed by all members.

Resolutions approved by circulation of papers are recorded in writing and made publicly available on the Panels website within 7 days. The circulation of papers is generally done electronically and are not recorded by audio/ video record, an audio record or a transcription record.

6 Records of proceedings

The chair is responsible for ensuring that full and accurate records are kept of the proceedings of Panel meetings, briefings and other business.

An audio recording will be made for all public briefing meetings and determination meetings and will be published on the Panels website. By registering to speak at a meeting, speakers agree to being recorded and to the publication of that recording. Where a speaker has not registered to speak but wants to make a submission at the meeting it is at the chair's discretion and the speaker is asked to agree to being recorded and that recording being published.

Document templates for written records of proceedings are provided by the Secretariat.

Secretariat or council staff will assist in the preparation of draft written records. A copy of the unconfirmed written record is provided to all Panel members who participated in the proceedings. Panel members may submit any proposed corrections to the unconfirmed record to the Secretariat for confirmation by the chair.

Alternatively, a Panel may choose to complete and endorse the final record immediately after completing the meeting or briefing. In this case, draft records are not circulated.

When the written records have been confirmed and endorsed by the chair the written record is placed on the Panels website.

The confirmed written record is available within 7 days of the Panel meeting or briefing.

Record details are to include:

- the opening and closing times of the meeting,
- the details of the matter considered by the Panel,
- the names of all members of the Panel, including the chair,
- any disclosure of interest made by a member, the reason for that disclosure of interest and whether the member making the disclosure participated in the discussion or determination of the matter,
- any adjournments and reasons for the adjournment,
- the names of each person heard by the Panel in respect of a matter,
- any decision of the Panel,
- reasons for the decision,
- the names of each member who voted for or against the decision, and reasons for dissent, where the decision is not unanimous, and
- the signatures of all the members making the decision.

A written record of briefings or site visits are made including time, date, attendees, any declarations and key issues discussed and are published on the Panels website within 7 days. Site visits or briefings are not recorded by audio/ video record, an audio record or a transcription record.

The Secretariat, with assistance from the relevant council, is responsible for recording decisions for Panel meetings.

Panel members are required to provide any notes made during a meeting, briefing or site inspection to the Secretariat for registration as a record. This includes hand written or electronic notations.