

Planning Panels Operational Procedures

September 2016



Planning
Panels

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.

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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 Joint Regional Planning Panels under the Environmental Planning and Assessment Act 1979 and the Sydney Planning Panels under the Greater Sydney Commission Act 2015.

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Definitions

Commission means the Greater Sydney Commission

Council means the council for the local government area in which the development the subject of an application is located

Department means the Department of Planning & Environment

Development Application (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 2000*

Greater Sydney Region means the region comprising the local government areas within the boundary shown on the map in Schedule 1 of the *Greater Sydney Commission Act 2015*

GSC Act means the *Greater Sydney Commission Act 2015*

LGA means local government area

LGNSW means Local Government NSW

Minister means the Minister for Planning

Panel or **planning panel** means Joint Regional Planning Panel and/or Sydney Planning Panel

Planning proposal means a document prepared to explain the intended effect of, and justification for, making a proposed environmental planning instrument

Regional development or **regionally significant development** means development that meets criteria set out under Schedule 4A of the *EP&A Act*

Relevant planning authority (RPA) means the consent authorities identified under section 54 of the *EP&A Act*

Secretariat means the Planning Panels Secretariat which provides technical and administrative support to the planning panels

Secretary means the Secretary of the Department of Planning and Environment

State and Regional Development SEPP means the *State Environmental Planning Policy (State and Regional Development) 2011*

1 Introduction

The Joint Regional Planning Panels were introduced in NSW on 1 July 2009 to strengthen decision making on regionally significant development applications (DAs) and certain other planning matters.

With the establishment of the Greater Sydney Commission (Commission) and by Ministerial declaration, the Sydney Planning Panels will replace the Sydney East and Sydney West Joint Regional Planning Panels.

The Joint Regional Planning Panels and the Sydney Planning Panels (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.

These procedures are the planning panel's 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 process.

The procedures should be read in conjunction with the planning panels Code of Conduct which explains the standard of conduct expected of panel members.

These procedures relate to the operation of both the Joint Regional Planning Panels under the *Environmental Planning and Assessment Act 1979* (EP&A Act), and the Sydney Planning Panels under the *Greater Sydney Commission Act 2015* (GSC Act), and extend to planning panels if they are undertaking any functions conferred on them under the EP&A Act or any other Act.

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

2 Defining the regions and districts

Planning panels are constituted by the Minister by order published in the Government Gazette. The local government areas (LGAs) covered by each panel are also identified in the order. The Minister may revoke an order and make new orders at any time.

Except for the Greater Sydney Region, any area of the State may be declared as a region by the Minister under the EP&A Act. The Minister may also declare any part of the Greater Sydney Region or another region as a district.

Joint Regional Planning Panels operate in the following four regions of the State: Hunter & Central Coast, Southern, Northern, and Western.

Six Sydney Planning Panels operate across the six Greater Sydney Region districts.

The planning panel provisions do not apply in the City of Sydney, where the Central Sydney Planning Committee operates.

3 Functions of planning panels

3.1 Functions

The principal functions of planning panels are to determine regionally significant DAs and undertake rezoning reviews. Additional functions of planning panels include:

- acting as the relevant planning authority (RPA) for the purpose of preparing and processing a planning proposal when directed to do so by the Minister or, in the Greater Sydney Region, when directed to do so by the Commission,
- determining Crown DAs that have been referred to the planning panel by the council or the applicant which have not been determined by the council within the time prescribed in the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation),
- determining applications to modify a consent for regionally significant development under section 96(2) of the EP&A Act, and
- providing advice on planning or development matters when requested to do so by the Minister, or Commission, as relevant.

The EP&A Act provides that if a planning panel has not been appointed for a particular part of the State, any function that is conferred on a planning panel is to be undertaken by the Planning Assessment Commission.

3.2 Legislation

Legislation governing planning panels is set out in a number of separate areas:

- the EP&A Act provides for the constitution and functions of planning panels and obligations in respect to councils; in particular:
 - Schedule 4 of the EP&A Act provides for Joint Regional Planning Panel member appointments; and
 - Schedule 4A of the EP&A Act describes classes of development to be determined by the planning panels;
- the GSC Act provides for Sydney Planning Panel member appointments;
- the EP&A Regulation contains provisions for where a planning panel is exercising consent authority functions; and
- the *State Environmental Planning Policy (State and Regional Development) 2011* (SRD SEPP) sets out the council consent functions exercised by planning panels.

3.3 Classes of regional development

Schedule 4A of the EP&A Act identifies the types of development for which planning panels exercise consent authority functions of councils. It is council's role to determine, on lodgement, which DAs meet criteria to be considered regionally significant development.

The capital investment value (CIV) is relevant for some development which is determined by a planning panel and should be calculated at the time of lodgement. CIV is defined in clause 3 of the EP&A Regulation. The Department of Planning and Environment (Department) has issued Planning Circular 10-008 to assist applicants and councils in the calculation of CIV. If there is doubt about the CIV of an application, councils should consider requesting the applicant to provide a quantity surveyor's certificate or similar expert assessment that addresses the definition of CIV.

The State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP) sets out the functions to be exercised by planning panels, including determination of specified:

- classes of development applications,
- staged development applications, and
- section 96(2) modification applications where the planning panel granted consent to the original development, except where the development is no longer a class of regional development.

Section 96(1) and section 96(1A) modification applications to development consents granted by the planning panel are to be determined by the relevant council.

4 Membership of planning panels

Each planning panel consists of five members, with three of the members, including the chair, appointed by the Minister (State members) and two members nominated by the relevant council (council members).

A planning panel meeting may require consideration of a number of matters, each located in different council areas. The council members joining the State members to form a planning panel will change, depending on the council area 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 a vacancy in office of a planning panel member occurs, the Minister in the case of a State member, and the relevant council in the case of a council member, would fill such a vacancy in accordance with the EP&A Act or the GSC Act, as relevant.

Terms of appointment for Joint Regional Planning Panel members, both State and council, are not to exceed three years. Members are eligible for re-appointment.

Terms of appointment for Sydney Planning Panel members, both State and council, are not to exceed four years. Members are eligible for re-appointment. State members may not hold office for more than eight years in total.

The Planning Panels Secretariat (secretariat) is responsible for the maintenance of a register of all panel members.

Chair and deputy chair

Chairs of Joint Regional Planning Panels are appointed by the Minister. The Minister is required to obtain the concurrence of Local Government NSW (LGNSW) to the appointment unless LGNSW:

- do not notify their concurrence or refusal within 21 days of being requested to do so, or
- has previously refused to give concurrence for two different persons nominated by the Minister for the appointment.

Chairs of the Sydney Planning Panels are the District Commissioners appointed by the Minister to represent the district in which the land to which the matter relates is situated. The concurrence of LGNSW is not required for the appointment of District Commissioners.

At any time, the members may determine to elect a member appointed by the Minister to be deputy chair for any term. The role of a deputy chair is to act as the chair at any time the chair is absent from the meeting.

The chair (or, in the absence of the chair, 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.

Expertise requirements for members appointed by the Minister

All panel members, including alternates, appointed by the Minister are required to 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.

Two members are appointed by the Minister, each having expertise in one or more of the areas mentioned above.

Council members

Two council members are appointed by each council. At least one council member is required to 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.

Selection of council members

Each council identifies how their members are selected. In selecting members, councils should have regard to the conflict of duties that would be created for a person nominated to the planning panel if they were in any way responsible or involved in the assessment and recommendation of a DA or a rezoning review to be determined by 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 three years provided for under the EP&A Act. 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 personal 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 one or more council members, a panel may still exercise its functions in relation to the area of the council concerned.

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 payments to its panel members when they attend planning panel meetings.

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 any panel meeting at which they will act as a panel member.

A person may be appointed as the alternate of more than one panel member and to more than one panel.

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 at any panel meeting.

5 Administration

Administration and support for the planning panels is provided by the secretariat. Such support is in relation to:

- Scheduling of meetings,
- preparing and issuing meeting agendas and business papers,
- notification of meetings,
- arranging for travel and accommodation for panel members,
- taking meeting minutes, or preparing records of decision (with assistance from council), and
- record keeping for the planning panels.

Councils remain responsible for receiving, notifying and exhibiting DAs, preparing the assessment reports (including consideration of submissions) and the post-determination functions including notification of determinations to the applicant and any person who made a submission.

Councils may be requested to assist planning panels with the provision of meeting venues, arrangements for site visits and briefings, and the provision of a minute taker for meetings.

The secretariat is the first point of contact for all planning panel matters and publishes a wide range of information on its website: **www.planningpanels.nsw.gov.au**.

The contact details for the secretariat are:

Phone: (02) 8217 2060

Email: enquiry@planningpanels.nsw.gov.au

6 Government information and privacy

The Department will manage any applications under the *Government Information (Public Access) Act 2009* and any requests and complaints under the *Privacy and Personal Information Protection Act 1998* for the planning panels. However, councils may also be required to respond to applications and requests in relation to information it may have, in accordance with the legislation.

7 Monitoring, review and reporting

The secretariat will monitor the progress of DAs referred to the planning panels to ensure panel meetings are scheduled as soon as practicable following the submission of the assessment report by the relevant council.

The progress of rezoning reviews and those matters for which a planning panel is acting as the relevant planning authority will also be monitored.

Councils should actively monitor regional applications they have received to ensure they meet expected timeframes for processing and determination. It is expected that council will complete its assessment report within 60 days after the close of the public exhibition period. The secretariat will also monitor the progress and reporting of applications to ensure timeframes are met.

The performance of the Joint Regional Planning Panels will be monitored and reported in the Department's Annual Report, while the performance of the Sydney Planning Panels will be monitored and reported in the Commission's Annual Report.

7.1 Planning panel users group

A planning panel users group has been established to act as a reference group to advise on planning panel operations. The user group meets as required and consists of all panel chairs, plus representatives from industry and stakeholder groups.

7.2 Availability of information

The secretariat will make a range of information publicly available on its website, including:

- planning panel meeting agendas with dates, locations and times (at least 7 days before the panel meeting),
- the relevant council's assessment report and recommendation (at least 7 days before the panel meeting),
- any amended or supplementary information submitted by council,
- records of public briefing meetings, Determinations and Statements of Reasons for DAs, decisions on rezoning reviews, and any advice provided by the planning panels to the Minister, Secretary or GSC, as relevant, and
- a schedule of meeting dates reserved for panel business, including briefing meetings, site visits or panel meetings.

Councils remain responsible for receiving, notifying and exhibiting DAs and supporting documents in accordance with statutory provisions and council's own notification and exhibition policy.

8 Liability and indemnification

Section 158 of the EP&A Act provides that 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 as panel members under the EP&A Act.

The NSW Government extends insurance indemnity cover to panel members. The usual provisions for indemnification apply i.e. that persons subject to that cover must, at all times, act honestly and in accordance with the planning panels Code of Conduct in the performance of their responsibilities. For information on the NSW Treasury Management Fund (TMF) – Statement of Cover please contact the NSW Self Insurance Corporation (icare) at:

https://riskinsite.nsw.gov.au/portal/server.pt/community/contact_us/317

9 Roles of councils and other panels

9.1 Role of councillors and council staff

The elected council and council staff have distinctly different roles in the handling of DAs. Section 352 of the *Local Government Act 1993* (LG Act) provides for the independence of council staff in the preparation of advice and recommendations. The LG Act provides that a member of staff is 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.

Assessment role

The role of council staff is to undertake the assessment of the DA. The assessment of a DA requires undertaking various statutory functions such as accepting the DA, public notification, advertising, consultation, concurrence and obtaining general terms of approval from an agency if required, and consideration of the matters set out in the EP&A Act including section 79C. The assessment is documented in an assessment report with recommendations. The report is subsequently considered by the person or body whose role it is to determine the application.

Determination role

The role of the elected council is 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. Section 23G of the EP&A Act has conferred upon planning panels the function of elected councils to determine regionally significant DAs and certain other types of DAs.

The elected council is able to make a submission to the planning panel on a DA within their LGA that is to be determined by that planning panel (refer to 10.11).

Post-determination role

Council staff are responsible for post-determination functions including issuing the notice of determination, advising any person who made a submission on the DA of the determination, and the monitoring and enforcement of compliance with conditions of the development consent.

9.2 Support provided to planning panels by councils

The EP&A Act and the GSC Act provide that planning panels are entitled to use the staff and facilities of the relevant council for the purpose of carrying out their functions. The EP&A Act also provides that a general manager of a council must carry out any reasonable direction of a panel when it is carrying out any of the functions of that council.

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

Support such as the taking of minutes for panel meetings, copying of documents and the provision of professional advice may also be required.

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

The chair and members of a planning 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.

9.3 Role of design review panels

Design review panels are established by councils either formally, under the provisions of *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* (SEPP 65) 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. 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.

9.4 Role of Independent Hearing and Assessment Panels

A number of councils have voluntarily established Independent Hearing and Assessment Panels (IHAPs). The purpose of IHAP's is to provide an independent review of DAs referred to the IHAP as well as an opportunity for people with an interest in DAs to raise and discuss issues in a public forum before a decision is made on the application.

The roles of IHAPs and the role of planning panels overlap in so much as they both bring independent expertise to the assessment process and provide the opportunity for people with an expressed interest in a DA to be properly heard.

Applications determined by a planning panel are not referred to IHAPs or any other similar type of public review of the DA or assessment report. The only exception to this is IHAPs which are established under section 23 I(2) of the EP&A Act, where the applicable environmental planning instrument requires assessment by an IHAP.

Note: Section 23 I(2) of the EP&A Act requires councils to constitute IHAPS if an assessment by a panel is required by an environmental planning instrument.

10 Development Assessment

10.1 Pre-development application meetings

Pre-DA meetings between applicants and assessment officers are commonly used to agree on assessment requirements 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 planning panels or their members to participate in pre-DA meetings.

10.2 Representations to planning panel members

If a panel member is approached by any person about a DA that is to be determined by the panel, the panel member must not discuss the development.

Any person that approaches a panel member should be encouraged to make a written submission about the DA to the council planning staff during the notification period. Issues raised in submissions will be addressed in the assessment report to be provided to the planning panel and there will be an

opportunity for the applicant and any person who made a submission to address the panel at its meeting.

10.3 Making of development applications

Development applications, including staged DAs, are made in the ordinary manner to the relevant local council.

Note: This requirement does not apply to DAs between \$10 million and \$20 million unless a referral is accepted by the Chair (see 4.8).

The State and Regional Development SEPP provides that a planning panel is to determine the separate DAs that form part of a staged DA if the whole of the development meets the specified regional development thresholds. This information on staged development must be included with the Stage 1 DA. 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,
- the planning panel will determine each DA separately (although the determinations may be made concurrently), and
- councils are able to make a submission and register to address the panel at its meeting.

10.4 Notification to the secretariat

Within 7 days of receiving a DA for regional development, for which a planning panel is the determining body, the council is to register the DA with the secretariat.

The registration is to be made via the planning panels' website (www.jrpp.nsw.gov.au). The registration is to include all the information required on the website registration page. The DA documents should be electronically transmitted to the secretariat at the same time.

The secretariat will advise planning panel members of the DA once the registration is accepted. The DA documents, including the application will generally be sent to panel members electronically. These documents are provided to allow panel members to become familiar with the development and background information, prior to their review of the assessment report and before attending the panel meeting to consider the application in public.

No decision about the proposed development is made until the planning panel meeting is held to consider the application.

10.5 Public notification of development applications by council

Public notification of the DA, and re-notification if required, is undertaken by council staff in accordance with the requirements of the EP&A Act and EP&A Regulation, including the provisions of any development control plan or policy the council has for the notification or advertising of DAs.

Public notification, including letters and advertisements, should contain appropriate statements to advise:

- that the {name of relevant} Council is the consent authority, and the {name of relevant} Joint Regional Planning Panel/ Sydney Planning Panel has the function of determining the application,
- that submissions made in respect of the application should be made to {name of relevant} Council, but will be provided to the planning panel and may be viewed by other persons with an interest in the application, and
- such other information as may be required for the particular application by the EP&A Act or EP&A Regulation.

10.6 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.

The planning panel may identify issues at a briefing meeting that must be addressed or clarified in council's assessment report, and for which council may request further information.

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

Status reports

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

The secretariat will track the progress of DAs registered with it and will request status updates from council for DAs lodged for 70 days or more.

Where a response or concurrence from public agencies is delaying 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 planning panel to complete its assessment without further delay.

10.7 Assessment of the development application

The council that received the DA (including applications for staged development, and to modify a consent) is responsible, through its staff, for undertaking the assessment of the application in accordance with the provisions of the EP&A Act.

It is council's responsibility to prepare an assessment report addressing all statutory requirements and properly considering all issues. Usually councils would rely on their own professional staff, however where they do not have the technical expertise required in-house, they may engage external expertise in the assessment of aspects of, or the whole, DA. 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 regional development under the EP&A Act, and that the planning 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.

- If the recommendation is for refusal, the report must include reasons for refusal based on the assessment in the report.

The chair, following consultation with the planning panel, may also request without prejudice draft conditions of consent, where council's report recommends refusal.

The panel may do this before or at the planning panel meeting where the DA is being considered.

The assessment report should clearly identify if there are any outstanding issues and steps to be taken to address such issues.

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

Varying development standards

Where a DA includes a variation to a development standard as defined in the EP&A Act, an objection under *State Environmental Planning Policy No 1—Development Standards* (SEPP 1), or application under clause 4.6 of the Standard Instrument, is required. Council's assessment report is to include an assessment of the objection or application against the relevant statutory provisions.

The function of obtaining concurrence from the Secretary is a matter for the council. However where concurrence is assumed, the council does not need to obtain concurrence. The function of determining that a SEPP 1 objection or clause 4.6 application is well founded is a matter for the planning panel.

Local infrastructure contributions

The assessment report should address contributions required under section 94 and section 94A of the EP&A Act in accordance with the council's adopted contributions plan applicable to the DA. The planning panel cannot impose any additional contributions that are inconsistent with council's contributions plan. For Crown developments, councils should address contributions in accordance with the relevant planning circular (Circular No. D6, issued September 1995 or as amended).

Special infrastructure contributions and certification requirements

If the development falls within a special contributions area (section 94EF of the EP&A Act) the council should address the relevant requirements in its assessment report and recommend appropriate conditions in accordance with the Ministerial direction.

If the development is subject to a "Satisfactory Arrangements" clause within a Local Environmental Plan (LEP) which states 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, the council must address this provision in its assessment report. A planning 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.

10.8 Development subject to delays in determination

Schedule 4A, Clause 10 of the EP&A Act provides that an applicant with a DA that has a capital investment value (CIV) between \$10 million and \$20 million can refer the DA to the relevant planning panel for determination if it remains undetermined for 120 days after being lodged with council. The referral process is outlined below:

- when making a referral, applicants must use the referral form available on the planning panels' website,
- the applicant is required 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 planning panel will have the function of determining the DA, however council can continue to assess the DA,
- once a referral is made the council must provide the completed referral form and copies of all DA documents such as the Statement of Environmental Effects, to the secretariat within 7 days. Council should also provide 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. In making this decision, the chair will consider a number of matters, 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,
 - 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 makes a decision, the secretariat will notify the council and the applicant,
- 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 meeting with council may be held prior to determination.

10.9 Panel briefings and site visits

Prior to an assessment report for a DA being submitted to a planning panel, the chair may agree to a site visit or a briefing meeting on the matter by council staff, by other persons undertaking the assessment, or by other persons providing advice to the planning panel.

At site visits or briefing meetings, the planning panel is not able to offer an opinion on the overall merits of the proposal or to direct the person undertaking the assessment in relation to the content of any advice or recommendation provided in their report. However, the panel may identify issues that they expect to be addressed or clarified in the assessment report.

Briefings with council staff

The purpose of a briefing with council staff is to inform the planning panel about the DA and its key issues. Briefings may include a presentation by council staff on the DA, its key elements and the planning controls that affect it (such as zoning), and an overview of issues of concern arising through the assessment process or raised in submissions. In addition, the timing of the submission of the assessment report and tentative date for a planning panel meeting to consider the application may also be discussed. Council's assessment officer should have available a set of large scale DA plans (including amended plans) at the briefing meeting.

Only panel members who will sit on the planning panel to determine the DA should attend the briefing meeting.

It is not mandatory that the planning panel be briefed prior to considering the matter. Where there is a briefing, it should take place within four weeks of the close of the public notification 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 the application should not be delayed in order to conduct a briefing.

Panel members may identify further issues for which they require clarification or further information. A planning panel may request a further briefing with council staff to clarify any element of the DA and assessment report prior to the public planning panel meeting.

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

At the discretion of the chair, there may be some circumstances where it would be appropriate to invite the applicant to attend the briefing meeting, including where:

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

A record of the briefing meeting will be made including time, date, attendees and key issues discussed and will be published on the planning panels' website within 7 days.

Public briefing meetings

If the DA attracts significant community interest, the planning panel may consider holding a public briefing meeting prior to the finalisation of council's assessment report. The public briefing meeting is held to hear submitters in a public forum and to meet with key stakeholders to discuss unresolved issues. These public meetings are held at the discretion of the panel chair.

The applicant and all persons who have made a submission are invited to attend the public briefing meeting. The council assessment officer is expected to attend, and record any issues raised which need to be addressed in the council assessment report.

Representatives of community groups interested in the proposal can register to speak to the planning panel at the public briefing 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 planning panel as individuals.

A record of each public briefing meeting held will be published on the planning panels website. Panel members should not make any comment that would indicate pre-determination of the application at a public meeting.

Site visits

A planning panel may visit the site of a DA prior to a briefing or planning panel meeting (see 11.1 below), at the discretion of the chair. The chair will also invite the council assessment officer and other persons engaged in the assessment of the matter to attend a site visit. The planning panel may conduct the site visit on the same day as the planning panel meeting or at some other time, determined on a case-by-case basis with regard to circumstances such as location and available time.

In some circumstances, other parties including the applicant and people who made submissions on the DA, may also be invited to attend a site visit. Whether other parties are invited is at the discretion of the chair.

In deciding to conduct a site visit, the chair should take into consideration the availability of all members of the planning panel and any other persons also invited to attend the 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 to seek owner's consent when required.

10.10 Other public meetings 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 planning panel.

In order for all panel members to hear the concerns of the public as part of the consideration of the application, panel members should decline the invitation and advise the meeting organisers to make a submission to council and register to address the planning panel at its meeting.

All members of the planning panel are required to observe the planning panels Code of Conduct which requires determinations to be made impartially and based on merit.

10.11 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 planning panel up to seven days before the planning panel meeting. The applicant may consider it appropriate to provide a briefing to council prior to the council framing its submission to the panel.

After the assessment report has been forwarded to the secretariat, it may be provided to the elected council to assist in its decision as to whether it will be making a submission to the planning panel. The elected council's submission should not be prepared by persons involved in the assessment of the application, and should be prepared by another council officer, or a consultant.

A council submission should not be specifically addressed 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 planning 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 planning panel.

10.12 Code of Conduct considerations

All planning panel members are required to comply with the Planning Panels Code of Conduct when exercising their functions as a panel member and make merit-based decisions in accordance with statutory obligations.

To avoid any perceptions of bias, and to meet requirements of the Code of Conduct (section 3.22), councillors who have deliberated or voted on a matter that is to come before the panel (such as a submission from the council on a DA for regional 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.

10.13 Submission of assessment report to the secretariat

The completed assessment report and recommendation is to be immediately forwarded, via electronic means, to the secretariat.

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

The following items are to be forwarded in a digital format to the secretariat:

- assessment report and any attachments and recommendations (including conditions),
- the planning panel assessment report cover sheet (available on the planning panels website),
- final architectural drawings, 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 along with a table 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, and
- in the case of petitions, only the name and address of the head petitioner should be provided, if that person can be identified.

Note: Council's assessment report must include a summary and assessment of all submissions to enable the planning panel to consider the submissions for the purposes of section 79C of the EP&A Act. Based on the details provided by council, the secretariat will notify persons who made submissions of the time, date and venue of the planning panel meeting at which the relevant application will be considered. Councils should also provide the secretariat with copies of any late submissions and, where necessary, provide further assessment if the issues are not already covered in council's assessment report.

10.14 Written submissions to the planning panel

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

Any material submitted to the secretariat for the planning panel to consider in making a determination will be provided to council for assessment. Planning panels will not normally accept information provided in confidence that is not also provided to council. However, if confidentiality is requested, the reason must be clearly stated.

At the planning panel 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, this written material must be kept to a minimum.

10.15 Rezoning, master plans and voluntary planning agreements

If a proposed development requires approval of a rezoning application, it is the responsibility of the council to consider and process any such rezoning proposal. Where a DA has been lodged concurrently with a rezoning proposal, the planning panel requires council's assessment report to address the DA against the proposed zoning, and cannot make a determination to approve any DA until the rezoning process has been completed (gazetted).

Where the provisions of an environmental planning instrument require a master plan to be adopted by the council before granting development consent, it is the responsibility of council to adopt the master plan prior to providing the assessment report to the planning panel. In such circumstances, the planning panel will not determine the application until the master plan is adopted by the council.

If a Voluntary Planning Agreement (VPA) is proposed, it should be negotiated by council staff. VPAs may only be entered into by the council, and the assessment report would normally make reference to any VPA and its relationship to the DA.

The planning panel may only impose a condition of consent requiring a VPA be entered into if the condition reflects the terms of any offer made by the applicant to enter into a VPA.

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

Crown DAs with a CIV greater than \$5 million are regional development. Crown DAs with a CIV under \$5 million can be referred to the planning panel under section 89(2) of the EP&A Act by either:

- the applicant where council 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 planning panel.

For Crown DAs with a CIV less than \$5 million where a council 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 planning panel under section 89(2) of the EP&A Act. Planning Circular PS 09-017 outlines the Crown DA provisions.

The referral to the secretariat should take the form of a letter, with a request that under section 89(2) of the EP&A Act the matter be referred to the planning panel for determination. Sections 89(6) and section 89(7) then set out additional procedures for the referral, including the requirement to notify the council in writing that the application has been referred.

Following receipt of the letter, the secretariat will review the documentation. If accepted, the council will be requested to lodge the referral on the planning panels' website.

The council is to provide an assessment report to the planning panel for consideration. Section 11.7 below discusses the determination of Crown DAs.

11 Determination

11.1 Planning panel meeting

Planning panels exercise the consent authority functions of elected councils to determine regionally significant development in accordance with section 23G of the EP&A Act.

A planning panel meeting is where the planning panel meets in public to consider DAs. Refer to Schedule 1 for more information on the detailed procedures for panel determination meetings.

The purpose of the meeting is for the planning panel to hear those who wish to express their view on the DA before the panel makes a decision.

Following public submissions being heard and after considering the recommendation in council's assessment report and hearing the views of the public, the panel may determine the application or defer its decision for reasons that will be stated in the meeting record.

11.2 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, briefings with council staff, site visits, or planning panel meetings.

A planning panel meeting will generally be arranged within 14 days of receiving council's assessment report.

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

The agenda for each meeting is approved by the chair who may consult with the general managers (or their nominee) of the relevant councils as necessary.

The council is to notify the secretariat of any revised date for completion of the assessment report as soon as it is aware of any delay and advise reasons for the delay.

11.3 The meeting venue

The meeting 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 planning panel meeting,
- the number of persons who have expressed an interest in the different matters to be considered at the planning 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 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.

11.4 Notice of meeting

Notice of a planning panel meeting is to be given by the secretariat at least 7 days before the meeting. Notice is provided 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 planning panel 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 development application/s,

- the availability of agenda and business papers, which will include the assessment report and recommendations, and
- other matters to be considered at the meeting.

11.5 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 planning panel and uploaded on the planning panels' website by the secretariat no less than 7 days prior to the meeting.

A hard copy of the agenda and business papers will be posted via overnight express post to those panel members who will have a decision-making role on the DA.

11.6 Obligation to consult council – if adverse financial impacts

A planning 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 until after it has consulted with the council.

The consultation may be in writing, with the council being given a specified time to respond in writing. Where a meeting with the general manager (or nominee) is to be held to discuss the matter, all panel members should

be present and minutes kept of the meeting and its outcomes, which shall be forwarded to the secretariat.

11.7 Determining Crown development applications

A consent authority for Crown development cannot refuse consent to a Crown DA except with the approval of the Minister, or impose a condition on its consent to a Crown DA except with the approval of the applicant or the Minister.

This requirement applies to Crown development that is to be considered by a planning panel, whether the application is for 'Regional Development' in terms of Schedule 4A of the EP&A Act, or where it is an application referred to the panel by an applicant or the council under section 89(2) of the EP&A Act. Refer to section 10.16 for more information.

Where the planning panel wishes to either refuse an application or impose conditions not agreed to by the applicant, or where a planning panel fails to determine the DA within the prescribed period, the applicant or the planning panel may refer the DA to the Minister. In these instances, a further report will be prepared by the Department for the Minister's consideration.

The Planning Assessment Commission may function as a planning panel to determine Crown DAs within the City of Sydney (where the planning panels do not operate) which are not determined by council within the time prescribed in the EP&A Regulation.

11.8 Delegation to council to determine applications

If the Minister agrees, Joint Regional Planning Panels may delegate the determination of applications to councils. In the Greater Sydney Region, if the Commission agrees the Sydney Planning Panels may delegate the determination of applications to councils. Delegation may be for development in a specified area, for a class of application, or be made on a case-by-case basis.

The *Local Government Act 1993* provides that the planning panels can only delegate to the elected council, and it is then at the discretion of the council to delegate to the general manager, and in turn to senior staff.

In situations where the determination is delegated, councils are still required to:

- 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.

A council may be requested by the chair of the relevant planning panel not to exercise delegation in certain circumstances.

Any determination made by council under delegation remains a decision of the planning panel.

12 Post determination

12.1 Issuing the notice of determination

The notice of determination is issued by the council that received the DA, following the decision of the planning panel and in accordance with the EP&A Act and EP&A Regulation, and the council's normal procedures.

The notice should not be issued until a copy of the endorsed and final panel determination has been received by council. The notice of determination must include all conditions imposed by the planning panel, including any additional or amended conditions.

Enquiries about the determination should be directed to the council planning officer responsible for the assessment report. Council is also responsible for advising any person who made a submission on the DA of the determination.

12.2 Monitoring of and compliance with conditions of approval

The council as the consent authority will continue 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 under section 80(3) of the EP&A Act, the council is responsible for determining whether the requirements of the condition have been met. Under clause 123E(2) of the EP&A Regulation, council is required to advise the chair of the planning panel in writing when the matter specified in the condition has been satisfied.

12.3 Appeals against a planning panel determination

Merit appeals

An applicant who is dissatisfied with an actual or deemed determination 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.

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.

A merit appeal against a panel determination is brought against the relevant council. This is because council legally remains the consent authority for the development in the EP&A Act. Merit appeals against the determination of a planning panel are generally defended and managed by the council that received the DA.

Council must notify the secretariat of any merit appeals lodged in the Land and Environment Court against a determination made by a planning panel, as soon as possible. Details about the council's proposed defence of such an appeal, including how it proposes to deal with a deemed refusal appeal, should also be provided to the secretariat.

The panel will determine its level of involvement in an appeal on a case-by-case basis.

A planning panel can still determine a DA even though it is subject to a deemed refusal appeal. In these cases, council's assessment officer

is encouraged to complete their assessment report so that the planning panel can determine the DA.

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.

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

12.4 Appeals against determination where council is applicant

The EP&A Regulation provides that, where a council is the applicant and makes an appeal or otherwise commences Land and Environment Court proceedings concerning a planning panel determination in respect of the council's application, the planning panel will be the relevant respondent in such proceedings.

13 Planning Proposals

In addition to determining applications for regionally significant development, planning panels also undertake rezoning reviews.

Planning panels can also:

- act as the relevant planning authority (RPA) for the purpose of preparing a planning proposal following a rezoning review, if council has declined the role;
- act as the relevant planning authority (RPA) in certain other circumstances;
- provide advice to the Minister, the Secretary or the Commission on any planning or development matters or environmental planning instrument referred to them; and
- undertake Gateway reviews as required.

Note: the Planning Assessment Commission undertakes these functions in the City of Sydney local government area.

13.1 Key elements of the plan making process

There are a number of key elements to the plan-making process under Part 3 of the EP&A Act. These include:

- 1. Planning Proposal** – the RPA (usually council) is responsible for the preparation of a planning proposal, which explains the effect of, and justification for, an amendment to a Local Environment Plan (LEP). A planning panel may act as the RPA under delegation or direction from the Minister, or the Commission within the Greater Sydney Region;
- 2. Gateway** – the Minister, or Commission, as relevant (or respective delegates) determines whether the planning proposal is to proceed with or without variation or be refused. This determination, under section 56 of the Act (Gateway determination), acts as a checkpoint to ensure that the proposal is justified before further studies are done and resources allocated to developing the proposed LEP amendment. The process for community consultation is also determined at this time. Consultation occurs with relevant public authorities and, if necessary, the proposal is varied.

3. **Community consultation** – if required, 13.3 the proposal is publicly exhibited (generally between 14 – 28 days) in accordance with the conditions of the Gateway determination. A public briefing meeting (public hearing) may be held if directed by the Gateway determination, at the discretion of the RPA, or if reclassification of public land from ‘community’ to ‘operational’ under the *Local Government Act 1993* is involved.
4. **Assessment** – the RPA considers public submissions and the proposal is varied as necessary. Parliamentary Counsel then prepares a draft LEP (the legal instrument) to implement the desired outcome.
5. **Decision** – the LEP is made and is published on the NSW Legislation website by the Minister, or Commission, as relevant (or respective delegates).

13.2 Code of Conduct considerations

All planning panel members are required to comply with the Planning Panels Code of Conduct when exercising their functions as a panel member and make merit-based decisions in accordance with statutory obligations.

It is a requirement of the Code of Conduct (section 3.22) that, to avoid any perceptions of bias, councillors who have deliberated on a planning proposal that is to come before the panel, must stand aside from their place on the panel, and allow council’s nominated alternative member to take their place.

Reviews

The Minister or Commission, as relevant (or respective delegates) may request a planning panel to undertake a review of certain plan-making decisions made by councils or the Department. In particular:

- **Rezoning reviews** – a rezoning review may be requested by a proponent if a council has notified the proponent that the request to prepare a planning proposal is not supported, or not indicated its support 90 days after the proponent submitted a request accompanied by the required information, or has failed to submit a planning proposal for a Gateway determination within a reasonable time after the council has indicated its support. The review will be undertaken by the relevant planning panel and be informed by information from the proponent, and advice from the council.
- **Gateway reviews** – a Gateway review may be requested by a council or a proponent in certain circumstances following a Gateway determination. Timeframes for lodging a Gateway review are outlined in the Department’s ‘A guide to preparing local environmental plans’.

These review processes allow councils and applicants to have decisions about the strategic merits of proposed amendments to LEPs reconsidered.

A detailed explanation of the Gateway process can be found at <http://www.planning.nsw.gov.au/LocalPlanning/GatewayProcess/tabid/291/language/en-US/Default.aspx>

Rezoning reviews

Applications for rezoning reviews are made to the Department.

On receipt of an application the Department will notify the secretariat and the relevant council within 3 business days.

The secretariat will upload the application to the planning panels' website and notify the planning panel within 3 business days.

The planning panel is required to review the planning proposal initially considered by council, rather than an amended or updated version. Council will be requested to confirm that the proposal is consistent with that initially considered by council, and to provide any additional comments or information directly to the secretariat within 21 days.

Following council's confirmation, the secretariat will provide the application, planning proposal and any material provided by council to the planning panel for its review. The panel may request briefing meetings with the Department, council and the proponent to assist in its considerations.

Determination

The planning panel's determination is to be based on the strategic and site specific merits of the proposal that was considered by council.

The panel's determination should provide a clear decision on whether the planning proposal before it should proceed, or not proceed, for a Gateway determination rather than recommending improvements.

Strategic merit

The planning panel will undertake a review of the proposal to determine if it is:

- consistent with the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment; or
- consistent with a relevant local strategy that has been endorsed by the Department; or
- responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognized by existing planning controls.

A proposal that seeks to amend controls that are less than 5 years old will only be considered where it clearly meets the Strategic Merit Test.

Note: A draft regional plan outside of the Greater Sydney Region, draft district plan within the Greater Sydney Region or draft corridor/precinct plan that has been released for public comment by the Minister for Planning, Greater Sydney Commission or Department of Planning and Environment does not form the basis for the Strategic Merit Test where the Minister for Planning, Greater Sydney Commission or Department of Planning and Environment announces the re-exhibition of that draft regional, district or corridor/precinct plan.

Rezoning proposals that do not meet this initial test will not be eligible to be submitted for a Gateway Determination.

Site-specific merit

For those proposals with strategic merit the panel is required to determine if the proposal also has site-specific merit, and is compatible with surrounding land uses having regard to the following:

- the natural environment (including known significant environmental values, resources or hazards);
- the existing uses, approved uses and likely future uses of land in the vicinity of the proposal;
- the services and infrastructure that are, or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

Planning proposals that do not reasonably meet the above criteria will not be able to proceed to the Gateway.

The panel may meet with the Department, council and proponent to clarify any issues before completing the review.

The panel will determine whether the proposal has merit and should be submitted for a Gateway determination.

Communication of the panel's determination will be made to the proponent and the council within 90 days of the Department receiving the initial rezoning review request.

Relevant planning authority

If the panel determines that a proposal should proceed to the Gateway the relevant council will be asked if it will continue in the role of relevant planning authority (RPA) to take the proposal to the Gateway and then finalise the proposal. If council has not made a decision to remain as the RPA within six weeks (42 days) of notification, the planning panel will assume the role.

Gateway reviews

Gateway review requests are to be lodged with the Department.

A formal request for a review will be made to the relevant planning panel by the Department.

In preparing its advice on whether the original Gateway determination requires alteration, the planning panel will consider an assessment report and recommendation provided by the Department and any advice provided by the council and/or the proponent. The panel may request briefing meetings with the Department, council and the proponent to assist in its considerations.

The Minister or Commission, as relevant (or respective delegate) will make the final decision on whether the Gateway determination for the proposal was appropriate and if any alteration is required.

13.4 Relevant Planning Authority (RPA)

A planning panel may be directed to be the RPA for a matter at any time by the Minister or Commission, as relevant. Generally a planning panel has delegation from the Minister or, in the Greater Sydney Region, from the Commission to act as RPA if it has recommended that a planning proposal proceed to Gateway and the council has declined to remain as the RPA.

As RPA, the planning panel performs all the functions that a council normally would in preparing LEPs. This includes:

- submitting a planning proposal to Gateway;
- undertaking any necessary agency consultation prior to public exhibition of the proposal;
- endorsing the public exhibition of a planning proposal that has received a Gateway determination and met all of the Gateway conditions;
- exhibiting the planning proposal in accordance with the terms of the Gateway determination;
- considering a recommendation report, addressing submissions received during public exhibition;
- holding a public briefing meeting (at the panel Chair's discretion) following public exhibition, to listen to any person wishing to speak;
- Submitting a request to the Department, as delegate of the Minister or Commission, that the LEP be legally drafted and made.

The Minister or Commission (or their delegate) remains responsible for determining and making the LEP.

Support provided to the planning panel in its role as RPA

When a planning panel is acting as RPA the Secretariat will arrange any necessary agency and community consultation (public exhibition) and the Department will provide technical support and briefings to the planning panel as required.

13.5 Availability of planning panel decisions and advice

The planning panel will need to make a number of decisions throughout the plan-making process when undertaking reviews or acting as RPA. Decisions of the planning panels will be made publicly available within 3 business days of the decision being made.

13.6 Community consultation

There is no requirement for a planning panel to hold a public meeting prior to determining a rezoning or Gateway review. The Gateway determination will detail requirements, if any, for community consultation on planning proposals. The planning panel may hold public meetings at any time, at the discretion of the panel chair. Submissions received as part of the public exhibition of a planning proposal for which a planning panel is the RPA will be made publically available on the planning panels' website.

Schedule 1: Planning panel meetings

1. General

Planning panel meetings are to be conducted in public, unless otherwise directed by the Minister, or unless the chair is of the opinion there are justifiable reasons to conduct any part of the meeting in closed session.

At the meeting, the chair will introduce the members, and make any relevant announcements such as changes to the agenda or apologies. The chair will also ask for any declarations of interest on the matter being considered.

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

2. Quorum for a planning panel meeting

A quorum for a determination meeting of a planning panel is a majority of its members, including the chair, i.e. a total of three members. The determination meeting is to be deferred if a quorum is not present.

Where conflicts of interest are known before the meeting, alternate members will be used to ensure there is a quorum.

3. Presentations at a planning panel meeting

The chair will determine the order of presentations to the panel. Panel members may ask questions of those making presentations. The amount of time given to each speaker will be at the discretion of the chair.

At the planning panel 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, this written material must be kept to a minimum.

(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 planning and assessment professional staff that prepare DA assessment reports for the panel's consideration.

Where a planning panel is acting in the role of the relevant planning authority (RPA) for a planning proposal matter the Department will provide 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 panel 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 panel 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 panel 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), will be at the discretion of the chair, but will generally be 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

Planning panel meetings enable people or groups to make a presentation to the panel meeting. People who wish to address the planning 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).

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 will seek to ensure that all groups or individuals who request to address the panel will be 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 panel 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 planning panel will have read all submissions and associated documents before the planning 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 planning 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 a panel appointed expert

For the purpose of making a decision on a matter, such as a DA or a planning proposal, a planning 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 planning panel. In addition, the expert may be invited to present the outcomes of their report at the planning 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 planning panel and is subject to legal professional privilege.

4. Closed sessions

A planning panel may decide to conduct any part of the meeting in closed session if it considers that the matter to be discussed includes:

- commercial information of a confidential nature that would, if disclosed:
 - prejudice the commercial position of the person who supplied it, or
 - reveal a trade secret,
- advice concerning litigation or planning panel advice that would otherwise be privileged from production in legal proceedings or for other purposes on the ground of legal professional privilege,
- information concerning the nature and location of a place or item of Aboriginal significance on community land,
- a potential conflict of interest of a member, or
- any other reason deemed appropriate by the planning panel.

Only the planning panel members should be present during the closed session. However, the chair may request council assessment staff to attend if they require any issues to be clarified. The chair may also request that the minute taker is present during the closed session.

Before the chair decides to conduct any part of a planning panel meeting in closed session, the chair may allow members of the public to make representations as to whether that part of the meeting should be closed.

Where a chair decides to close any part of a planning panel meeting, the reasons for closing that part of the meeting must be recorded in the meeting record.

5. Adjourning during a planning panel meeting

After hearing from registered speakers, the planning panel may adjourn the meeting to confer amongst themselves, before reconvening the public meeting to make their decision. Before the adjournment, the panel chair must publicly state the reasons for adjournment which should be recorded in the meeting minutes.

Only the planning panel members should be present during the adjournment. However, the chair may request assessment staff to attend the adjournment if they require any issues to be clarified.

During the adjournment, the panel members may deliberate on their decision and formulate a resolution.

The chair may request that the minute taker is present during the adjournment to assist in recording a resolution, where necessary. However, minutes of the adjournment will not be recorded because this is not part of the meeting.

After reconvening, the panel chair should briefly summarise the matters discussed in the adjournment, including any questions asked of the assessment officer (and any responses

given). The planning panel may then discuss the matter in the public meeting and/or make their determination in the public meeting.

6. Deferring a decision at a planning panel meeting

A panel may decide to defer its determination of the matter for a subsequent meeting. A decision may be deferred for any reason including to obtain additional information or advice.

The chair will inform the meeting of the reasons for the deferral of a decision and will advise of the procedures to be followed for the determination of the DA. This may include the decision to conduct any further meetings via electronic means following the conclusion of business transacted substantially in a public meeting. Refer to section 9.

If there are matters raised in the planning panel meeting that were not addressed in the assessment report, these will be noted in the records of the panel meeting, and the panel may refer the matter to the council's officer for a supplementary report.

The planning panel may engage experts to obtain independent advice and assistance as the panel thinks fit, to ensure adequate and appropriate information is available for consideration in making a subsequent determination.

Council must address all issues raised by the planning panel in its supplementary report. The planning panel may also request a supplementary assessment report to be provided within a specified timeframe.

A record of the panel meeting, including the reasons for deferral, will be placed on the planning panels' website, and a copy will be provided to the council.

It is the council's responsibility to follow up on any requests for additional information or amendments from the applicant, and to report these to the planning panel in a supplementary report.

7. Making the determination on development applications

Where possible the planning panel will make its decision in an open forum and by consensus. Where a decision cannot be made by consensus, 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.

The planning panel's consideration

The planning panel must take into account considerations under section 79C of the EP&A Act in making its determination. These considerations will be set out in council's assessment report, and include:

- the planning controls for the site;
- any environmental, social or economic impacts;
- the suitability of the site for the proposal;
- any submissions made on the proposal; and
- the public interest.

The planning panel should satisfy itself that in making its determination it has identified (and taken into consideration) all of the mandatory considerations.

In addition to council's assessment report, the planning panel is to take into account all written submissions made on the application, as well as the views expressed by those addressing the planning panel at the public determination meeting.

The planning panel's reasons

The planning panel is required to provide reasons for its decisions, which are to be recorded in the 'Determination and Statement of Reasons' template provided by the secretariat for each meeting.

The planning panel may rely on the conclusions and recommendations within council's assessment report, however, the panel must identify the reasons why it made the decision.

The planning panel's determination

The planning panel must clearly state whether the application 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 a matter is deferred for any reason, the reasons for deferral should be recorded using the Record of Deferral template provided by the secretariat.

If the planning 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. As outlined in section 10.7, the planning panel

may also request without prejudice conditions of consent before a planning panel meeting if council's report recommends refusal.

The decision of the planning panel is not subject to a 'Rescission Motion' as in local government. Reviews under section 82A of the EP&A Act are not available in respect of determinations by planning panels.

Dissenting views

If the decision (and reasons for the decision) is not unanimous, all members of the planning panel (ie. including the minority) still need to give reasons.

Timing of Determination and Statement of Reasons

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

Signatures

All members of the planning 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.

8. Recording meeting proceedings

The chair is responsible for ensuring that full and accurate records are kept of the proceedings of public briefing meetings and other planning panel meetings.

Templates for this purpose are provided by the secretariat for Determinations and Statements of Reasons for DAs, Rezoning Reviews, Records of Deferral and meeting minutes for all other matters.

A copy of the unconfirmed meeting record will be provided to all panel members who participated in the panel meeting. Panel members may submit any proposed corrections to the unconfirmed meeting record to the secretariat for confirmation by the chair.

Alternatively, a planning panel may choose to complete and endorse the final meeting records immediately after completing the meeting. In this case, draft meeting records will not be circulated.

When the meeting records have been confirmed and endorsed by the chair of that meeting, the meeting record will be placed on the planning panels' website.

The confirmed meeting records must be available within 7 days of the planning panel meeting.

Any meeting record must detail:

- 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 planning panel in respect of a matter,
- any decision of the planning panel, or other outcomes of the meeting,
- 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.

The secretariat, with assistance from the relevant council, is responsible for recording decisions and taking meeting minutes for planning panel meetings.

9. Transaction of business outside planning panel meetings

Clause 268I of the EP&A Regulation provides that a planning panel can transact its business at a meeting at which members participate by electronic means including telephone, email, and videoconference.

Following consultation with council's General Manager and the applicant, the Chair may determine that is unnecessary to hold a meeting in public to consider a DA.

Circumstances where a public determination meeting may not be required includes:

- where the assessment report recommends approval and there are no submissions by way of objection, or
- where the planning panel has held a public meeting and deferred its decision to request specific additional information from

an applicant or council (such as amended drawings). In this case, an electronic meeting should only occur if council, after having accepted the amended drawings, has decided that re-exhibition of the amended drawings is not required.

When an electronic meeting is proposed, the council report and recommendation must be made available on the planning panels' website seven days prior to the DA being determined.

The secretariat will distribute business papers (including the assessment report and attachments) to planning panel members for consideration and advise that the determination will be made via electronic means.

Following consideration of the business papers, the planning panel will advise the secretariat of its decision on the DA and a record of decision will be completed and endorsed by all members.

The chair and each panel member will have the same voting rights as they have at public determination meetings.

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