

## LOCAL PLANNING PANELS DIRECTION – OPERATIONAL PROCEDURES

I, the Minister for Planning, give the following direction under section 9.1 of the *Environmental Planning and Assessment Act 1979*.



Minister for Planning

Dated: 18/10/22

### Objective

The objective of this direction is to set procedures for how local planning panels are to operate.

### Application

This direction applies to a council that has constituted a local planning panel under the *Environmental Planning and Assessment Act 1979* (Act).

**Note:** Local planning panels are independent committees appointed by councils to determine certain development applications and to provide advice on planning proposals. A local planning panel is not subject to the direction or control of the council, except on matters relating to panel procedures or the time within which the panel is to deal with a matter that is not inconsistent with this direction.

Subject to these procedures, any direction by council and the requirements of the Act, the panel is to determine how to call meetings and conduct its business.

### Direction

Local planning panels are directed to comply with the operational procedures set out in Schedule 1 to this direction.

In this direction, any reference to 'development applications' includes applications to modify development consents.

This direction takes effect on 1 February 2023.

## **SCHEDULE 1 – OPERATIONAL PROCEDURES**

### **PART 1 – Panel composition**

#### **1.1 Chair selection and rotation**

1. The chair and any alternate chairs are to rotate presiding over panel meetings, or other business, as practicable, unless the chair or alternative chair is unavailable for any reason.
2. Where possible, deferred matters should be considered by the chair that presided over the original deferment.

#### **1.2 Independent expert members and alternates**

1. The independent expert members and alternate members must be interchanged by the chair or alternate chairs for reasons including:
  - a. a member has a conflict of interest,
  - b. a member is unavailable, or
  - c. to ensure there is a level of randomisation involved in which expert members and alternates hear a matter, through regular rotation of the members, to reduce opportunities to improperly influence members.

#### **1.3 Community representatives for wards and use of alternates**

1. A community representative member must be interchanged by the chair or alternate chairs for reasons including:
  - a. a member has a conflict of interest,
  - b. a member is unavailable, or
  - c. to ensure there is a level of randomisation involved in which community representatives and alternates hear a matter, through regular rotation of the representatives, to reduce opportunities to improperly influence representatives.

### **PART 2 – Reviews of panel decisions**

#### **2.1 Reviews**

1. The determination of a review application from a panel decision shall be determined by different members (including the chair) of the panel to those who made the original determination.

### **PART 3 – Meeting and other business procedures**

#### **3.1 Role of chair**

1. The chair is responsible for the management of the panel's functions and operations, including managing conflicts of interest.
2. The chair is to preside over panel meetings and other business.
3. The chair is to ensure the panel fully discharges its responsibilities under the Act, these operational procedures, any other directions from council, and the code of conduct for local panel members in a timely manner.

4. The chair is responsible for the good and orderly conduct of the panel meetings and may do all things and take all steps necessary to control the good and orderly conduct of any meeting of the panel or site inspection carried out by the panel in the performance of its functions.
5. The chair is to determine which alternative chair, independent expert members or alternates, and which community representative or alternates are to hear a matter prior to consideration of the matter commencing. The chair may make arrangements with the general manager (or delegate) to determine independent expert members or alternates, and which community representatives or alternates are to hear a matter.
6. The chair must regularly rotate the independent expert members and the community representatives from the pool of appointed members to reduce opportunities to improperly influence panel members.

### **3.2 Role of alternate chairs**

1. Alternate chairs have the same role as the chair when presiding over a panel meeting or any other business.

### **3.3 Meeting and other business procedures**

1. The panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection.
2. A **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.
3. The panel may determine detailed procedures for the execution of efficient and effective meetings and any other business.
4. The panel is not bound by the rules of evidence and may inquire into and inform itself on any matter, in such manner as it thinks fit, subject to the rules of natural justice and procedural fairness.
5. The panel is to act with as little formality as the circumstances of the case permit and according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.
6. The panel must give reasonable notice to the public of the times and places of its meetings. This must be through the website used by the panel and may include other mechanisms as appropriate.
7. The panel may:
  - a. adjourn the public meeting where a panel briefing is required to hear confidential or sensitive information or to deliberate before reconvening for voting and determination; or
  - b. close the public meeting for deliberation and/or voting and determination.
8. With a view to discharging its responsibilities in a timely manner, the panel may, in its absolute discretion, but otherwise fairly and consistently, impose time limits on presentations by persons other than members of the panel. Where, there are a large number of objectors with a common interest at any public meeting, the panel may, in its absolute discretion, hear a representative of those persons.
9. The panel shall hold meetings or transact its business as required to meet panel demands and workloads.

10. Where a quorum for a meeting or other business is not present, the meeting or other business is to be deferred.

### **3.4 Site inspections and panel briefings**

1. The chair may elect for the panel to attend site inspections or panel briefings for development applications and planning proposals prior to the panel's consideration
2. Site visits should be conducted on the same day as a public meeting, if practicable.
3. Site visits and panel briefings are solely to be used to identify and clarify issues with a proposal.
4. At a site visit or panel briefing, a panel member must not offer an opinion on the merit of the proposal or ask those involved with the assessment of the proposal for their opinion or recommendation.
5. The panel may be briefed by council staff and any other person engaged in the assessment of the matter about the proposal.
6. On request, and at the chair's discretion, the applicant for a development application or planning proposal which is to be considered by the panel may brief the panel prior to its decision. Council staff are to be in attendance and ensure a written record is made of attendees and key issues discussed.
7. A written record of the site visit or briefing must be made publicly available on the panel's website.

### **3.5 Transaction of business outside meetings**

1. Where a development application is the subject of less than 10 unique submissions by way of objection, the panel is able to determine the application by an electronic circulation of papers.
2. Planning proposals are able to be considered by an electronic circulation of papers.
3. Decisions made by electronic circulation of papers are to be recorded in the panel's minutes and made publicly available on the panel's website.

## **PART 4 – Other matters**

### **4.1 Obligation to consult with council if adverse financial impacts**

1. A panel must not exercise a function that will result in the making of a decision that would 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.
2. 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 delegate) is to be held to discuss the matter, all relevant panel members should be present, and minutes kept of the meeting and its outcomes.

### **4.2 Interactions with third parties about matters before the panel**

1. 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 the local planning panel meeting.
2. This does not apply to persons employed by the council to assess the matters to be considered by the panel, nor to panel briefings as specified in Part 3.4.

#### 4.3 Deferring determinations

1. Where the panel determines to defer its determination of an application, it must record the reasons for the deferral in its minutes.
2. Where the determination of an application 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.

#### 4.4 Panel performance

1. 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.
2. 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.
3. 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.

#### 4.5 Consideration of advice from Design Review Panel

1. Council assessment officers and the panel should consider the advice of any design review report in its assessment reports and in making a determination. The design review report may be used in the following ways:
  - a. to support the application of relevant planning controls in a flexible manner where the design review panel has identified this will achieve better outcomes;
  - b. to establish if the reasonable recommendations of the design review panel have been followed;
  - c. as evidence for refusing development consent where the advice of the design review panel has not been adopted.
2. In some instances, the panel may require additional design quality advice or clarification of design quality matters to finalise their recommendations or to make a determination. In this instance, they may refer the project back to the design review panel. The following criteria can be used to establish when to re-engage with the design review panel:
  - a. The application is poor and has not considered the advice of the design review panel – refusal.  
**No return to design review panel**
  - b. Application will require minor modifications – to be managed via conditions of consent.  
**No return to design review panel**
  - c. The application will require significant modification, the extent and nature of which requires advice from the design review panel.  
**Return to design review panel**