



Local Planning Panels overview

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1 Introduction

1.1 About the overview

This overview provides information on local planning panels (LPPs). This overview provides information on:

- Role of members
 - chairs
 - independent experts
 - community representatives
- Panel functions
 - determining development applications
 - providing advice on planning proposals
 - reviews
- Operations
 - code of conduct
 - operational procedures
 - evaluation

This overview should be read in conjunction with relevant provisions of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the directions issued by the Minister for Planning and Public Spaces, which set the criteria for what matters are referred to the panels for determination and advice, the operational procedures, and the code of conduct the Minister has approved for panel members.

1.2 Requirements for a panel

All councils in the Greater Sydney region, Wollongong City Council and the Central Coast Council are required to have a local planning panel in place. The panels will enable councils to focus on longer-term, higher-level strategic planning and setting the rules for the local area within which the experts, either council staff or the panel, will make technical decisions about development applications.

The panels will also help councillors to provide leadership on the economic, environmental and social sustainable future of their local area. Councils will retain a strong role in relation to the panels, including:

- setting the strategic planning framework and development controls within which the panel makes decisions;
- selecting most of the panel members – two expert members and community representatives for the panel; and
- remaining the authority to which the panels are accountable.

Councils that have not been required to establish a panel will have the option to set one up. If a council wishes to do this, it must adopt the panel model established in the EP&A Act. Councils may also establish a shared panel if this suits their operational requirements.

Councils should contact the Department of Planning, Industry and Environment if they wish to establish a panel.

1.3 Planning Panels Secretariat

The Planning Panels Secretariat provides administrative support to Sydney district and regional planning panels. The Secretariat is also available to provide advice and information on matters relating to the setting up, function and operation of local planning panels. The Secretariat's contact details are below:

Planning Panels Secretariat

Email: enquiry@planningpanels.nsw.gov.au

Phone: (02) 8217 2060

2 Role of members

2.1 Membership

Each panel should be composed of members with a diverse range of expertise who are independent, capable and able to deliver merit-based decision-making on planning matters.

Each panel consists of the following members:

- a chair
- two independent experts, and
- a community representative.

Panel members are appointed for a maximum of three years, with an opportunity for reappointment to serve for a maximum of six years.

Chairs are approved by the Minister. The independent experts are appointed by councils from a pool of independent experts approved by the Minister. Councils recruit and appoint community representatives.

Each panel should have several alternates to allow for the rotation of members and to ensure a quorum can be formed for each public meeting.

In late 2017, the department recruited chairs and independent experts. The department is responsible for ensuring that a pool of experts with a suitable range of expertise and capabilities is maintained.

2.2 Chair

The Minister has approved a chair and two alternate chairs for each panel.

Chairs must have expertise in either the law or government and public administration. Chairs must be able to demonstrate relevant professional experience, personal capabilities and competencies to ensure the efficient and effective operation of the panel and its public meetings.

Chair's role on a panel

Chairs:

- are to provide leadership on the panel and promote inclusion of all relevant opinions of the panel
- apply their expertise in decision-making within a broader understanding of local land use and the planning system
- cannot approach, solicit or canvass views from anyone in relation to a matter before the panel
- should be open about availability with councils and alternate chairs, and not overcommit themselves
- must rotate presiding over panel meetings between the panel's other chairs
- are responsible for ensuring the panel's operational procedures are followed
- must declare and disclose in writing all known or potential conflicts of interest, and
- must limit and disclose work carried out in their panel's local government area (LGA) to minimise the number of actual and potential conflicts of interests.

The chair is responsible for the management of the panel's functions and operations, including managing conflicts of interest. Alternate chairs have the same role as the chair when presiding over a panel meeting or any other business.

Chairs may preside over several councils' panels.

2.3 Independent experts

Independent experts are required to demonstrate expertise in at least one of the following fields: planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, tourism, or government and public administration. An independent expert may sit on multiple panels if selected to do so by more than one council.

Independent expert's role on a panel

Independent experts:

- apply their expertise in decision-making within a broader understanding of local land use and the planning system
- cannot approach, solicit or canvass views from anyone in relation to a matter before the panel
- should be open about availability with councils and chairs, and not overcommit themselves
- must declare and disclose in writing all known or potential conflicts of interest, and
- must limit and disclose work carried out in their panel's local government area (LGA) to minimise the number of actual and potential conflicts of interests.

2.4 Community representative

Each panel is to include a member of the local community. This member must not be a councillor, mayor, property developer or real estate agent.

Community representative's role on a panel

Community representatives:

- apply their local knowledge and awareness of the LGA and issues of concern to the local community
- cannot approach, solicit or canvass views from anyone in relation to a matter before the panel
- should be open about availability with councils and chairs, and not overcommit themselves
- must declare and disclose in writing all known or potential conflicts of interest, and
- determine matters on merit and not as an advocate for any group in the community.

Ward representatives

Where a council area has wards, council must appoint a community representative for each ward. Community representatives can represent one or more wards.

For operational purposes, the chair must choose a single ward representative for each meeting to be part of the quorum of the panel to deliberate and vote on the matters before the panel. Other community representatives may attend the panel meeting as observers but are not permitted to be part of the deliberation or voting.

The rotation of ward representatives at panel meetings, and their alternates, is to be managed by the chair in accordance with the operational procedures.

2.5 Alternate members

To ensure the smooth operation of panels, councils should identify sufficient alternate members for each panel member.

Alternates can be used by the chair in place of a panel member if, for example:

- a member has a conflict of interest
- a member is unable to attend a meeting, for example, due to illness, and
- to periodically rotate the members.

The chair indicates which alternate chair, independent expert members or alternates, and which community representative or alternates will participate in panel business prior to panel meetings.

To reduce the risks of undue approaches to panel members about matters being determined by the panel, the names of the presiding chair, sitting independent expert members and sitting community representative should not be made publicly available until the public meeting is held.

2.6 Remuneration

On 23 February 2018, the Minister approved the remuneration rates for panel members. These are a set rate for each meeting. Panel members can also claim reasonable travel and out-of-pocket expenses.

Remuneration includes an hourly rate, which ensures panel members can be compensated for business that is undertaken outside of meetings, such as making electronic determinations.

The approved remuneration rate allows for a member to retain their existing rate if they were a member of a council's LPP prior to 1 March 2018.

A link to the approved remuneration rates is available in section 5 of this overview.

2.6 Probity Checks

Key objectives of the LPPs are to:

- minimise corruption risks, and
- ensure independence, accountability and transparency in decision-making.

To support these objectives integrity measures, such as the verification of the bona fides of all members appointed to the panels, are considered best practice.

The department undertook probity checks for each chair and independent expert approved by the Minister. The chairs and experts were also required to provide a statutory declaration that they had not been bankrupt, did not have a criminal record, and were not developers or real estate agents.

Councils are responsible for recruiting community members for their local planning panel. Prior to council appointing its community members it should ensure that relevant criminal and financial checks have been undertaken.

2.7 Eligibility

The EP&A Act excludes the following persons from being on a panel:

- councillors
- property developers (within the meaning of section 96GB of the *Election Funding, Expenditure and Disclosures Act 1981*), and
- real estate agents (within the meaning of the *Property, Stock and Business Agents Act 2002*).

Independent experts with professional experience, such as planners or architects, may or may not be eligible. The examples below indicate circumstances that may determine if a person would be eligible or not. The Panels Secretariat will provide advice on specific circumstances at council's request.

Table 1. Example of eligibility

Situation	Eligibility
<p>Ruth—Planning director in a major planning consultancy</p> <p>Ruth is the planning director of a well-known planning consultancy, acting on behalf of a range of clients in the property development industry. She leads the preparation of development applications and coordinates other consultants' reports before lodging applications on behalf of her clients.</p>	<p>✓ Although Ruth prepares and lodges development applications, she is doing this in the context of providing professional services to clients. Ruth is eligible to be a panel member. However, if the panel discusses applications relating to her clients' sites or interests, Ruth would have to declare a conflict of interest and excuse herself from participating in those discussions.</p>
<p>Ruth's partner becomes a company director of a multinational company specialising in the development of residential flat buildings.</p>	<p>✗ Ruth is not eligible to be a panel member as her partner is a director of a property development company.</p>
<p>David—Sole practitioner</p> <p>David runs his own planning practice. He is a sole practitioner who prepares statements of environmental effects and lodges development applications on behalf of property developers.</p>	<p>✓ David is eligible to be a panel member as her partner is a director of a property development company.</p>
<p>David applies for a real estate licence to sell some of these properties on behalf of the builder.</p>	<p>✗ David is no longer eligible to be a panel member if he is granted a real estate licence.</p>
<p>Gavin—Director for a major property developer</p> <p>Gavin is a director sitting on the board of a property development company that specialises in residential subdivisions and residential flat buildings. Gavin holds 21 percent voting power in the property development company.</p>	<p>✗ Gavin is not eligible to be a panel member as he is a director with a substantial financial interest in the property development company.</p>
<p>Sophia—Policy advocate</p> <p>Sophia is a qualified planner working for a policy group advocating on behalf of the development industry. Sophia makes submissions to government and council policy proposals on behalf of her industry members, but is not involved in preparing or lodging development applications</p>	<p>✓ Sophia is eligible to be a panel member but would have to declare a conflict of interest in applications relating to her members' sites or interests and remove herself from participating in those discussions and voting.</p>
<p>Liz—Community activist</p> <p>Liz is an active member of a local rate payers' association and has a good understanding of local issues and working knowledge of the planning system.</p>	<p>✓ Liz is eligible to be a panel member, but she would have to declare all conflicts of interest and apply her local knowledge in determining panel business based on its merits within the planning rules and standards.</p>

3 Panel functions

Panels assume specified consent authority functions on behalf of councils. Panels determine certain types of development applications referred to them and those development applications not delegated by council to council staff. Panels provide advice on planning proposals prepared by councils and may also provide advice on any other planning or development matters referred to them by councils.

3.1 Referral groups

Not all councils experience the same rate of growth, development types or number of development applications. To help ensure the appropriate type and number of applications are referred to each panel, the referral criteria distributes councils into the following groups:

Table 2. Referral groups

Group A		Group B	Group C
Bayside	Lane Cove	Blacktown	City of Sydney
Blue Mountains	Mosman	Canterbury-Bankstown	
Burwood	North Sydney	Central Coast	
Camden	Randwick	Cumberland	
Campbelltown	Ryde	Fairfield	
Canada Bay	Strathfield	Inner West	
Georges River	Waverley	Liverpool	
Hawkesbury	Willoughby	Northern Beaches	
Hornsby	Wollondilly	Parramatta	
Hunters Hill	Woollahra	Penrith	
Ku-ring-gai		Sutherland	
		The Hills	
		Wollongong	

Group A is the default group for all LGAs.

Group B includes councils that experience a high rate of growth and assess a larger number of development applications.

Group C is a standalone group for the City of Sydney Council. This is to align panel operations with the requirements of the *City of Sydney Act 1988* and to recognise the higher value of development applications in the City of Sydney, which far exceeds that of other LGAs.

3.2 Referral criteria

Only certain classes of development applications or modification of consent applications will be referred to the panels for determination. The Minister's Local Planning Panels Direction – Development Applications provides criteria which specify which development applications or modification of consent applications are to be determined by the panels instead of council staff.

The referral criteria for Groups A–C are available on the department's website.

3.3 Submissions policy

The referral criteria for contentious development sets out the number of unique submissions required to refer a development application to the panel for determination. The criteria also provide councils the opportunity to develop a submissions policy to specify a different number of unique objections required before referral is required. The Secretary of the Department of Planning, Industry and Environment must approve the policy. The submissions policy approval guide sets out the form in which policies are to be provided for approval.

For the Secretary to approve a new submissions policy, council must provide reasonable justification and evidence that the contentious criterion should be amended. This must include details on the following:

- evidence of a 28-day public exhibition of the submissions policy
- a statement outlining the number of submissions received and issues raised
- a statement on how council has addressed the feedback received
- copies of submissions, if requested by DPE
- a statement on what the expected implications of the proposed submissions policy are, such as how it will affect the number of development applications being referred to the panel
- evidence that the submissions policy will maintain the policy intent of the referral criteria, for example, that controversial and sensitive developments are being determined by the panel
- evidence that the submissions policy will not place an undue workload on the panel
- how the submissions policy may contribute to better planning outcomes for the community
- if unresolved objections are to be a criterion of the submissions policy, a clear justification is required, and
- data for the previous six months (or other time frame as required by DPE) must detail the following:
 - the number of applications determined under each delegation
 - the number of applications that would be captured by the 10 unique objections referral criteria, and
 - the number of applications captured by the amended referral criteria within the proposed submissions policy.

3.5 Determination role

Most development applications will not be considered by the panels and will continue to be determined by council staff under delegation.

Applications identified as regionally significant under State Environmental Planning Policy (State and Regional Development) 2011 will be determined by the relevant Sydney district or regional planning panel.

Council planning staff will carry out the assessment of development applications to be considered by the panels and provide a recommendation to the panel for consideration and determination.

Development applications lodged with councils cannot be determined by councillors.

3.6 Review of determinations

Applicants may request a review of a determination or decision made by a panel. This review is determined by the panel. The panel is to be named the Decision Review Panel of the [relevant LPP name]. To ensure fairness, the review of a panel decision must be carried out by different panel

members than those who made the original determination. After conducting its review, the Decision Review Panel may confirm, or change the original decision.

Panels are also able to perform a review function for decisions made by council staff under delegation, including:

- Applications that were determined by a senior council planner. As the senior planner is the highest consent authority in the council, any review of these decisions would go to the LPP
- Applications for review that were initially considered by the council and which (as part of the requested review) were amended and now trigger the LPP delegations

The reviewing panel may confirm or change the original determination or decision.

A review must be determined within six months of the original refusal. This is consistent with the period that an appeal may be made to the Land and Environment Court under section 8.3(2) of the EP&A Act. An applicants' right to an appeal to the Court against a determination by the LPP remains unaffected by an application for a review.

3.7 Planning proposals

As of 1 June 2018, panels will advise councils on planning proposals that have been, or will be, prepared by councils under section 3.33 of the EP&A Act. Panels will make a recommendation on whether the proposal should be submitted to the department for Gateway determination.

To satisfy the Minister's directions, the advice must be sought prior to the proposal being forwarded to the Minister under section 3.34 of the EP&A Act.

This direction does not apply to the City of Sydney Council, or if a council's general manager determines that the planning proposal meets one of the following criteria:

- a) the correction of an obvious error in a local environmental plan
- b) matters that are of a consequential, transitional, machinery or other minor nature, or
- c) matters that council's general manager considers will not have any significant adverse impact on the environment or adjoining land.

4 Operations

The panels are governed by a code of conduct and operational procedures to ensure the proper conduct of members, procedural fairness and effective meeting practices.

4.1 Code of Conduct

The behavioural standards and expectations of panel member behaviour are governed by a code of conduct

The code of conduct outlines expectations for matters such as managing conflicts of interest, privacy, and interactions with councils and applicants.

Panel members are expected to conduct themselves in a proper manner, and act lawfully and honestly in their panel duties. Members may not approach or discuss applications with anyone, including councillors, property developers and real estate agents, except during a panel's public meeting where the application is on the agenda and the person has a right to be heard by the panel at the meeting.

The code of conduct is based on the Office of Local Government's *Model Code of Conduct for Local Councils in NSW*. Provisions that are not relevant to panel members have been removed, and additional provisions consistent with the legislative framework for panels have been included.

The panel chair is responsible for managing conflicts of interest. Council general managers are responsible for addressing breaches of the code by a panel member. In the case of a serious breach, such as an inappropriate relationship with an applicant, council may remove a panel member from office.

The code of conduct is a key tool to minimise corruption risks in the determination of development applications..

4.2 Conflicts of Interest

The code of conduct sets expectations for the disclosure and management of conflicts of interests. The overriding approach is to always err on the side caution and prioritise the public interest in the proper exercise of public functions.

It is important that panel members always manage conflicts of interest appropriately to protect the integrity and reputation of their panel. Even in situations where there is not technically a conflict of interest, panel members are still expected as a matter of policy, to disclose the facts for the purposes of transparency in the exercise of the panel's functions and may still need to step aside from the panel for a matter to appropriately manage the situation.

Below are some scenarios intended to provide some high-level guidance in relation to the identification, disclosure and management of conflicts of interest and similar situations. Please keep in mind these are guidance only and each situation should be dealt with based on the relevant facts.

Table 3. Conflict of interest scenarios

Member's situation	Management
<p>Nathan—Community representative Nathan is a former councillor. A development application is referred to the panel to develop a vacant block of land into apartments.</p> <p>Nathan in his role as a councillor made strong public statements 10 years ago to keep the vacant block of land for public recreation. Nathan has not made any comments since and is no longer a councillor.</p>	<p>Although there is no private interest that might reasonably be perceived to conflict with Nathan's exercise of his functions as a panel member given the strong statements he made, Nathan should still disclose what he can remember of the situation.</p> <p>The panel chair should take a cautious approach and interchange Nathan for an alternative member for this determination to avoid any perception of bias.</p>
<p>Phillipa—Planning expert Phillipa runs her own planning consultancy practice. Phillipa lodged a development application on behalf of a property developer in another local government area. Around the same time, another planning consultancy lodged a development application on behalf of the same property developer, and Phillipa is on the panel to determine the application.</p>	<p>Although Phillipa is not engaged by the property developer in relation to the application before the panel, it might reasonably be perceived that Phillipa has a conflict of interest because of her other work for the developer. Phillipa must notify the panel chair in writing as soon as possible. The chair should put an alternative member in Phillipa's place for this determination.</p>
<p>Steve—Heritage expert Steve was a Director of a planning consultancy that specialised in heritage-related development. He retired seven years ago when the company was sold. His former company has lodged a development application for a childcare centre that is before the panel for determination. Steve has no connections to the current company however it still has the same name.</p>	<p>Steve has no connections with the current company and therefore does not have a private interest that conflicts with his functions as a panel member.</p> <p>However, as a matter of caution, Steve should record the details of his previous association with the company, the date of his retirement and that he has no connections to the current company, in the minutes of the panel meeting.</p>
<p>Cassandra—Engineering expert Cassandra works in an engineering firm. An old colleague of hers, who she has not worked with or seen for several years, has lodged a written submission on a development application that is before Cassandra's panel for determination. The colleague has also registered to speak at the panel meeting.</p>	<p>Cassandra does not have a private interest that conflicts with her functions as a panel member.</p> <p>However, as a matter of caution, Cassandra should record the details of her association with the submitter in the minutes of the panel meeting.</p>
<p>Scott—Community representative Scott works as a teacher at a local primary school. His wife works in finance and has shares in a company called Belief. A development application has been lodged on behalf of Belief to change part of a heritage building to a café.</p>	<p>This is an actual conflict of interest as Scott may benefit financially from the panel's determination of the application. Scott must notify the panel chair in writing as soon as possible and step aside from the panel for this determination. The panel chair can arrange for an alternative member to take Scott's place.</p>

Member's situation	Management
<p>Maria—Chair Maria is the chair of the panel. Her dentist that she has been going to for the past 10 years has made a submission in relation to a development application to be determined by the panel.</p>	<p>Maria does not have a private interest that conflicts with her functions as the panel chair.</p> <p>However, as a matter of caution, Maria should record the details of her association with the submitter in the minutes of the panel meeting.</p>
<p>Aydan—Community representative Aydan is a community representative of the panel. His best mate Karma is the applicant for a development before the panel.</p>	<p>As Aydan has a close relationship with the applicant, Karma, he has a private interest that conflicts with his function as a panel member.</p> <p>Ayden must notify the panel chair in writing as soon as possible and step aside from the panel for this determination. The panel chair should put an alternative member in Aydan's place.</p>

4.3 Operational procedures

The operational procedures are designed to ensure that panels meet their obligations in the most efficient and effective manner.

Panels are not subject to the direction or control of council, except on matters relating to panel procedures or the time within which the panel is to determine the matter. Council's operational directions cannot be inconsistent with the operational procedures directed by the Minister under section 9.1 of the EP&A Act.

Panels can also set more detailed operational procedures with their council to improve the functioning of the panel determination process.

Meeting and other business procedures

The operational procedures provide information on how panel meetings should be run and voting and procedural matters.

When panels meet in public the panels must advertise their meeting times and venue via the website used by the panel and other means where appropriate, for example, on council's website or in a local newspaper. The panel must give reasonable notice to the public of the times and places of its meetings.

Panel meetings will be scheduled as required dependent on the number of applications. The chair should work with council's general manager to determine the appropriate workload for each meeting and the number of meetings required to handle the workload.

Meetings will be held in public and recorded. The recording must be published on the website used by the panel. To provide operational flexibility, the panel chair may choose how to manage the deliberation process. Options include:

- deliberate, vote and make a determination in the public meeting
- adjourn the public meeting to deliberate and reconvene the meeting for voting and determination, and
- close the public meeting, deliberate, vote and then notify the public of the outcomes outside the public meeting.

The chair may impose time limits on presentations to the panel, including presentations from the public or councillors. Where there are many objectors with a common interest, the panel may select a single representative to hear about that common interest.

Where a three-member quorum is not present, the meeting or other business is to be deferred to another meeting.

Following its determination of a development application or advice on a planning proposal, the panel will provide a written statement of reasons for the decision that is to be published on the website used by the panel.

Rotation

To minimise risks of influence, and to build experience, the chairs should rotate presiding over public meetings and other business. The chair should manage the rotation of other members in accordance with the operational procedures.

Role of Councillors

Councillors have the same rights to make a submission on a development application as any member of the community, including councillors who are directly affected by a proposal and/or who wish to express a community interest about a proposed development. This submission could be in writing or made verbally at the panel meeting where the development application is being considered. The submission will be considered on merit like any other submission.

4.4 Panel performance evaluation

Councils are required to monitor the performance of panels and provide a quarterly report to the department Secretary on their performance.

Data collection reports are simple and accessible online forms that are designed to minimise reporting requirements while ensuring the effective monitoring of panel operations and performance.

The department will use this data to identify and assess the early performance and impacts of panels. To assist with this, the department has established an evaluation framework that is designed to:

- inform, after a reasonable period of panel operation, decisions about whether policy settings and referral criteria should be changed or adapted to better meet the objectives of the reforms, and
- evaluate, after a longer period of operation, whether the panel reforms have met the policy objectives.

The evaluation framework includes:

- a program logic setting out evaluation questions, performance indicators (including baselines and benchmarks where possible), data sources and measurements, and
- an evaluation plan, including identifying which data should be collected by the department and councils, how frequently this should occur and how councils should report.

4.5 Complaints handling

Complaints in relation to the procedure of an LPP meeting or the conduct of panel members are to be made to the relevant council.

Code of conduct complaints are to be dealt with under the Code of Conduct for Local Planning Panel Members, all other complaints are to be dealt with under council's routine complaints management process. The NSW Ombudsman can also accept complaints.

The Department of Planning, Industry and Environment can direct enquiries or complaints to the relevant authority for response and resolution.

Contact details:

Phone: 1300 305 695

Email: information@planning.nsw.gov.au.

Complaints made in this way will be registered by the department.

If you are dissatisfied with the way in which council has handled your complaint you can request the department to review the matter.

At any time, a complaint may be made to agencies such as the Independent Commission Against Corruption (ICAC), the Ombudsman, or the Audit Office of NSW.

If you have allegations of corrupt conduct, misconduct, or serious waste of resources, you are encouraged to approach these organisations directly.

Any comments or complaints in relation to the policies or procedures that govern the operations of IHAPs across the state may be made to the department.

Further information on the department's complaint management process can be found under the About Us section of the department's website.

5 Website link

Please visit the LPP website pages at:

<https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Local-Planning-Panels>