

Terms of Reference

These Terms of Reference set out the objectives, powers, authorities and responsibilities of the Housing Delivery Authority (HDA). It defines the roles and responsibilities of key participants, meeting and briefing procedures, membership requirements and other relevant factors to exercise the functions designated onto it by the NSW Government.

Establishment

The HDA is constituted under s2.3 of the *Environmental Planning & Assessment Act 1979* (EP&A Act).

The HDA has been introduced to create and oversee a new state-led approval pathway for major residential housing projects and a new process for state-led rezonings to stimulate additional proposals and speed up the delivery of new homes across NSW.

In August 2023, National Cabinet set a target of 1.2 million new well-located homes to be delivered over 5 years from 1 July 2024 and agreed to the National Planning Reform Blueprint to drive increased housing supply through planning reforms. The NSW share of the new national target is 377,000 new homes, with a share of the \$3 billion performance bonus available if more than 313,700 homes are delivered. This target requires a significant increase in housing delivery in NSW.

An independent probity expert will provide advice to the Housing Delivery Authority.

Purpose and function of the Housing Delivery Authority

The purpose of the HDA is to create and implement the new state-led approval pathway for major residential housing projects and a process for rezonings to speed up the delivery of new homes across greater Sydney and NSW.

The new State Significant Development (SSD) approval pathway will be available for new housing developments above an estimated development cost (EDC) of \$60 million in Greater Sydney and EDC of approximately \$30 million in regional NSW.

The new State Rezoning process will enable a concurrent planning proposal to enable an SSD to be determined such as to facilitate proposed densities or land use permissibility.

The functions of the HDA are set out in the Environmental Planning and Assessment Amendment (Housing Delivery Authority) Order 2024.

Structure

Authority and delegations

- Section 2.4 of the EP&A Act enables the Minister to delegate any of their functions under the Act to the HDA.
- Under s 4.36(3) of the EP&A Act, the Minister may declare development to be SSD by a Ministerial planning order.

An instrument of delegation has delegated functions to the HDA (link to the delegation once published)

Compliance obligations of the Housing Delivery Authority

The following legislation or documents outline the obligations with which the HDA must comply:

- *Environmental Planning & Assessment Act 1979*
- *Government Information (Public Access) Act 2009*
- *Privacy and Personal Information Protection Act 1998*
- *State Records Act 1998*

The HDA are to carry out their functions in accordance with the following:

- Housing Delivery Authority Code of Conduct
- Housing Delivery Authority Operational Procedures

The Department's website also provides links to relevant Orders, instruments of delegation and operational policies relevant to the day-to-day operation of HDA business.

The following activities and actions will be undertaken to ensure compliance obligations are met and appropriate procedures followed:

- The Department to provide coordination and secretariat support to ensure panel members meet their requirements and obligations under the EP&A Act, EP&A Regulation and associated orders, delegations and procedures,
- HDA members must complete an annual pecuniary interest declaration
- The Department will keep a record of all individual conflicts of interest identified for individual panel matters or across a particular issue or locality.

Accountabilities

The HDA is an independent body authorised to undertake certain functions under the EP&A Act and regulations. The HDA decisions are not subject to the direction of the Minister, except on matters

relating to panel procedures or where the Minister issues a formal direction under the s 9.1 of the EP&A Act. Where a panel member does not satisfactorily meet their requirements under the operating procedures or code of conduct the Minister has the ability to revoke appointment of the panel member to that panel.

The day-to-day coordination and secretariat support of the HDA panel business is undertaken by the Department.

Resolutions of the HDA will be published to the Department's website providing accountability through the public release of The HDA decision making.

Membership

Appointment

The Minister appoints the chair and members to the Housing Delivery Authority on a part-time basis (Clause 12(2) of Sch 2 to the EP&A Act).

The HDA will comprise the Secretary of the Premier's Department, the Secretary of the Department of Planning, Housing and Infrastructure and the Chief Executive Officer of Infrastructure NSW.

Term of Appointment

A member is eligible (if otherwise qualified) for re-appointment (Clause 11(3) of Sch 2 to the EP&A Act).

Once appointed, each member must accept in writing the terms of reference and code of conduct and declare any conflicts of interest before commencing as a HDA member.

Removal from a position

Under clause 16 of schedule 2 of the EP&A Act, the Minister may terminate an appointment at any time for any reason and without notice. However, the Minister must provide a written statement of the reasons for removing the member from office and make the statement publicly available.

Alternate or Deputy members

The Minister may appoint alternate members in addition to ordinary members to substitute for ordinary members in their absence. The alternate member may act in the place of the ordinary member.

Alternate members are subject to the same responsibilities as ordinary members this is generally due to unavailability due to leave or a conflict of interest.

While acting in the place of an ordinary member, an alternate member has all the functions of the ordinary member and is taken to be that member. 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 in accordance with clause 15 of Sch 2 to the EP&A Act.

Roles and responsibilities

Minister

Under s 2.3 of the EP&A Act the Minister is responsible for the appointment of the chair and members (including alternate members) to the HDA.

Secretariat and other support

Administration and support for the HDA is provided by the Department.

Support includes:

- scheduling of briefings,
- preparing and issuing agendas,
- preparing records of decision,
- record keeping.

Chair

The Minister will appoint a Chair. The Minister has appointed the Secretary of the Premier's Department as the Chair of the HDA by letter of appointment dated 18 December 2024.

As the HDA consists of three people, there would need to be at least two people present in any meeting to make decisions, and where there are only two people present for quorum one of them must be a presiding member (which is the Chair, Deputy Chair (if any) or a person elected by the members to preside). The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

The Chair also has responsibilities in managing conflicts and complaints arising from conduct complaints as outlined in the Housing Delivery Authority Code of Conduct.

Members

HDA members carry out their functions in accordance with the EP&A Act and work with the Chair to make decisions.

Operations

Agendas and Minutes

The briefing agendas, any business papers, briefing reports and attachments are distributed to members of the HDA no less than 7 days prior to a briefing or meeting.

The HDA will conduct business outside of meetings via a circulation of papers and may hold briefings to finalise such matters or to be briefed by Department staff.

Briefing frequency and location

The HDA may transact their business online, in-person or a combination of both. The HDA will generally conduct its business online. The HDA will meet regularly on a needs basis but is expected to meet monthly to consider EOIs.

The HDA will receive quarterly reports from the Housing Taskforce.

Decision making

The decisions or recommendations of the HDA should include:

- the date of the decision/recommendation,
- the reasons for the decision/recommendation.

The HDA will strive to make its decisions by consensus. Where a decision cannot be made by consensus, the decision can be made by majority vote.

Deferring the decision

- A decision can be deferred such as to obtain additional information or advice.

The Housing Delivery Authority reasons

- The HDA must provide reasons for its recommendations, which are to be recorded in the 'Record of decision' template.

The HDA may rely on the briefings and information provided to them, however, the HDA must form its own view and identify its own reasons for its decision.

Dissenting views

- If the HDA's decision (and reasons for the decision) is not by consensus, all members of the HDA (i.e. including the minority) still need to give reasons.

Timing of record of decision

- It is preferable that the HDA record both its decision and its reasons during the briefing to ensure the decision reflects the discussion.

Signatures

- All members of the HDA must sign the record of decision. Where a member is in dissent, they must still sign, as the reasons will set out their dissenting views.

Business outside of Meetings (circulation of papers)

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

Publication requirements and GIPA requests

There is a requirement for the HDA to record and make publicly available its resolutions on the DPHI website under cl 26, Sch 2 to the EP&A Act.

Additionally, the NSW Public Sector provides HDA support and holds board or committee's documents, those documents are subject to an information access application under the *Government Information (Public Access) Act 2009* (GIPA Act). If there is an information access application relating to your board or committee, the relevant Department's GIPA team will liaise with the Secretariat about the appropriate response.

The relevant Department is the decision maker in relation to GIPA applications made to it for documents it holds even though those documents relate to the work of the board or committee.

If information is required to be produced under subpoena, standing order 52 or other legal order, the relevant Department will also assist with that process.

Release required by law

If there is an information access application under the *Government Information (Public Access) Act* (GIPA Act), the GIPA team will liaise with the Secretariat to ensure members produce the appropriate records, if applicable.

If you are asked to help with an information request, it is important you make rigorous searches for all records relevant to the request. You should perform the search in the required timeframes, ensure all documents within scope are assessed, and provide a thorough response.

Conduct of members

The HDA members will abide by the HDA Code of Conduct and the 'Conduct of Members' as outlined in section 7 of the NSW Government Board and Committee Guidelines.

Conflicts of interest and duty

- The HDA members are required to complete and sign a declaration of interest form in relation to each matter to be considered, either before, or at the commencement of consideration of the matter.
- Where any pecuniary or non-pecuniary interest in a matter before the HDA has been disclosed by a member, whether declared before or at the commencement of the briefing, this will be noted in the decision record, even when the member is not in attendance.

Communication

Media requests

Any requests from the media should be forwarded to the Chair who will contact the Department to liaise with the Department's media team regarding the media request.

In the first instance the Department is responsible for speaking to the media on a HDA matter. Following discussion with the Department media team the HDA Chair can be approved to speak to the media, to allow its decisions to be properly represented and communicated.

Communication with third parties

HDA members must adhere to the Key Principles and General Conduct Obligations contained in the Code of Conduct when dealing with others, including council staff, councillors, Department of Planning, Housing and Infrastructure staff and the Secretariat.

Remuneration and Allowances

Remuneration

Remuneration, travel and allowances for the HDA can be determined from time to time by the Minister (s 14 of Sch 2 to the EP&A Act). As the members will be public sector senior executives there is no additional remuneration.

The statutory provisions relating to the employment of Public Service employees (including restrictions on secondary employment) do not apply to the appointment or office of a HDA member (s 19 of Sch 2 to the EP&A Act).

Annual review of performance

The Department will support the HDA in undertaking an annual self-evaluation of its level of effectiveness. The evaluation framework will be prepared by the Department in consultation with the HDA.

The HDA is a body carrying out its functions specified in the Ministerial planning order and as per the EP&A Act. Where there is a breach of the code of conduct or practice this will be referred to an independent third party for evaluation against the code of conduct and can result in the Minister terminating appointment to the HDA.

If the HDA members require any information about any specific development applications, they should do so through the Secretariat rather than contacting any departmental staff directly.