

EP/2 Changes to Planning Panels

Officer's Recommendation

The Manager Development Services recommends that:

1. The changes to Panels required by the NSW Government be noted
2. The General Manager in consultation with the Mayor appoint 1 additional member to the pool of Council Members for the Sydney North Planning Panel, to achieve a total of 4.
3. The General Manager in consultation with the Mayor appoint 10 additional members to the pool of Experts for the Mosman Local Planning Panel, to achieve a total of 15.
4. The General Manager invite expressions of interest from the community for the appointment of additional Community Representatives to the Mosman Local Planning Panel.
5. The General Manager in consultation with the Mayor appoint selected members to achieve a total of not less than 4 and up to 6 Community Representatives to the Mosman Local Planning Panel.

COUNCIL RESOLUTION

Motion Bendall/Menzies

That the Officer's recommendation be adopted subject to Councillor Randall being appointed to the Sydney North Planning Panel.

CARRIED UNANIMOUSLY

EP/2 Changes to Planning Panels

Responsible Officer: **Manager Development Services**

Executive Summary

This report provides information on changes to Planning Panels introduced by the NSW Government and required actions of Council.

Changes to Sydney District and Regional Planning Panels came into effect on 12 December 2022, being the issue date of correspondence from the NSW Department of Planning and Environment.

Changes to Local Planning Panels take effect from 24 April 2023.

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 4. The General Manager invite expressions of interest from the community for the appointment of additional Community Representatives to the Mosman Local Planning Panel.
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Background

On 12 December 2022, Council received correspondence from the NSW Department of Planning and Environment advising that it was introducing new rules to reduce corruption risks, improve decision-making and reduce certainty about who sits on Planning Panels, to reduce the potential for lobbying of panel members.

The new rules are contained within the Local Planning Panels Direction – Operating Procedures and will take effect from 24 April 2023.

Changes to Planning Panels

Changes to the operation of Sydney District Panels and Regional Planning Panels include:

- requiring RPP members to be rotated regularly to randomise panel membership
 - requiring probity checks, including police checks, for community representatives in RPPs, and a statutory declaration that representatives are not property developers or real estate agents
 - encouraging councils to appoint a minimum of 4 alternate council members that can sit on their relevant RPP
 - appointing a minimum of 60 experts in the pool that Sydney District Panels and Regional Planning Panels choose from.
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Changes to the operation of Local Planning Panels include:

- mandating a minimum number of experts in pools for LPPs (15)
- mandating a minimum number of community representatives in LPP pools (4)
- requiring LPP members to be rotated regularly to randomise panel membership
- requiring probity checks, including police checks, for community representatives in LPPs, and a statutory declaration that representatives are not property developers or real estate agents
- clarifying that applicants can request to formally meet with LPPs to brief them on any project
- implementing a framework for the department to induct LPP members.

Actions for Council

As a result of these changes, Council must undertake the following actions:

1. Increase the number of alternate Council Members for the Sydney North Planning Panel to 4. (Currently 3 members)

The current threshold for the determination of development applications by the Sydney North Planning Panel is a capital investment value of \$30 million. This Panel has not determined a Mosman DA since 2015. Current Council members are Councillor Roy Bendall, Paul Stein (Chair of the MLPP) and Brian McDonald (Expert member of the MLPP). It is recommended that the current member group be added to by the appointment of a second Councillor to it.

2. Increase the number of Community and Expert Representatives for the MLLP

The Mosman Local Planning Panel has been long established, operates effectively and has had no exposure to any of the corruption risks sought to be remedied by the proposed changes. The Panel Chair and his alternates have been appointed by the State Government and will be unchanged. The current pool of Experts comprises 5 and the current pool of Community Representatives comprises 3 members.

The current pool of Experts and Community Representatives are effective, and it is recommended they be retained. In accordance with the rule changes however, it will be necessary to appoint 10 additional Expert members and at least 1 additional Community Representative.

Increasing the pool of Community Representatives was also a recommendation made by the Chair of the Mosman Local Planning Panel when briefing Councillors on the operation of the Mosman Panel in July 2022.

The appointment of additional Expert members will need to be from the established pool of pre-approved Experts as determined by the State Government. The appointment of Community Representatives is recommended to be by expression of interest with one to three new members being added to complement the existing three members.

3. Update the Operational Procedures Local Planning Panels

The procedures under which Local Planning Panels must operate from 24 April 2023 are attached as an annexure to this report. New provisions added to the current suite of operational procedures are detailed below.

New provisions:

- At Parts 1.2, 1(c) and 1.3, 1(c) - Chairs or their alternates must interchange experts and community representatives to ensure a level of randomisation.

This is intended to be a safeguard against the lobbying of members. The Mosman Panel has operated to date by rotation of experts when regular expert members are unavailable or when Review applications are considered. Community members have always been regularly and randomly rotated.

- At Part 2.1, 1 - Review applications for Panel decisions must be undertaken by a Panel comprised of alternate members to the original decision makers.

This has always been the practice of the Mosman Panel.

- At Part 3.1, 6 - Chairs or their alternates must regularly rotate the expert and community members from the pool of appointed members to reduce opportunities for improper influence of members.

This is intended to be a safeguard against the lobbying of members. From a practical perspective, the administration around Panel assembly has always been a function delegated to Councils, with Experts required to be booked months in advance of meetings to ensure availability. Regular rotation is more likely to adversely affect consistency in decision making than guard against lobbying of experts. There have been no reported incidents of experts being lobbied throughout the life of the Mosman Panel.

- At Part 3.4, 6 – On request and at the Chair’s discretion an applicant to a development application or planning proposal may brief the panel prior to its decision and; such briefing is to be recorded and made publicly available on the panel’s website.

This provision is somewhat at odds with the improper influence provisions above. However, because the State Government has determined that panels may convene without holding a public meeting (see 3.3, 1), this provision restores some ability for applicants, at the discretion of the Chair, to address the Panel before a decision is made.

The provision has never been exercised by the Chair of the Mosman Panel and all meetings have been public meetings (either at Council or facilitated on-line). Objectors and applicants have always been afforded the opportunity to address the Panel before a decision is made in writing or at the meeting. The panel is not afforded additional resources to carry out prior briefings and it is unclear at this time how this would operate in practice.

- At 4.5 – Requiring advice from Design Review Panels to be considered by Council assessment officers and the Panel.

This is a new provision intended to support design quality by facilitating flexibility in the application of planning controls, to enable development applications to be re-referred to a design review panel and; to leverage design quality reports to refuse poorly designed developments.

Design Review Panels may be constituted under SEPP 65 - Design Quality of Residential Apartment Development by the Minister for Planning, however no Panel has been required to be constituted for Mosman.

The Design Quality Principles contained in SEPP 65 are required to be evaluated by an Architect of a qualifying development (residential flat buildings, shop top housing or mixed use developments with a residential accommodation component), considered in an assessment report and; all such applications are reported to the Mosman Panel for determination.

Additionally, Council has an agreement to share resources for a Design Excellence Panel with other NSROC councils, however as this Panel is orientated to developments seeking to leverage Design Excellence for development bonuses, Mosman has not required access to this resource.

Financial Implications

Costs associated with the implementation of these changes are minor, being limited to the administrative work associated with the expansion of the Expert and Community Member groups. However, it is unclear at this time of the implications for briefings outside the formal meetings.

Relationship with MOSPLAN

Strategic Direction 5 - Well designed, liveable and accessible places

Recommended Action

It is recommended that the Officer's Recommendation be supported.

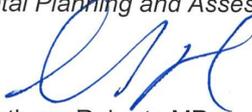
Recommendation endorsed by Director Environment and Planning

Attachments

1. Local Planning Panels Direction until 23 April 2023 – Operational procedures [EP/2.1 - 5 pages]

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*.



The Hon. Anthony Roberts MP
Minister for Planning

Dated: 7/12/22

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 24 April 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