

LOCAL PLANNING PANEL OPERATIONAL GUIDELINES



INTRODUCTION

The Penrith Local Planning Panel (PLPP) is a Panel established under [Part 2, Division 2.5](#) of the Environmental Planning and Assessment Act 1979 (Act). It is responsible for determining certain [development applications](#) (and modification applications) as well as providing advice on development proposals and [planning proposals](#).

The establishment of Local Planning Panels (commonly referred to as Independent Hearing and Assessment Panels) is a mandatory requirement for certain Councils pursuant to the Environmental Planning and Assessment Act, 1979 (“the Act”).

The PLPP is comprised of four (4) sitting members being as follows:

- Chairperson (including a Head Chairperson and 2 alternates)
- Two (2) Professional Experts
- A Community Member

The Chairperson is elected by the State Government and the Experts and Community Members are appointed by Council.

The Panel Members assigned to each meeting are allocated on a rotational basis at the discretion of the Head Chairperson.

This guide details how the PLPP is to operate. It incorporates:

- Procedural requirements from the Act (refer to Schedule 2)
- Requirements from the Local Planning Panels Direction – Operational Procedures issued by the NSW Minister for Planning under section 9.1 of the Act; and
- General requirements to ensure the efficient and effective operation of the Panel. While these requirements will generally be followed, they may be varied by the Chairperson depending on the circumstances of a particular meeting or application.

A Local Planning Panel is not subject to the direction or control of the Council, except on matters relating to Panel procedures and the time within which the Panel is to deal with a matter, provided they are not inconsistent with the Direction of the Minister under Section 9.1 of the Act.



1. PANEL COMPOSITION

CHAIRPERSON

- 1.1 The Chairperson is responsible for the management of the Panel's functions and operations, including managing conflicts of interest. The Chairperson will either be the Head Chairperson or an alternate Chairperson.
- 1.2 The Chairperson is to ensure the Panel fully discharges its responsibilities under the Act, the code of conduct and these operational procedures.
- 1.3 The Chairperson is responsible for the good and orderly conduct of the Panel.
- 1.4 The Chairperson is to decide which Panel members (or alternates) are to hear a matter prior to the meeting commencing.
- 1.5 The Chairperson and alternate chairs are permitted to rotate presiding over meetings at the discretion of the Head Chairperson.
- 1.6 Where possible, deferred matters should be considered by the same Panel composition that presided over the original deferment.
- 1.7 In the absence of an available appointed Chairperson for a meeting or item, an independent expert member can step into the role of Chairperson subject to the agreement of the Head Chairperson.

HEAD CHAIRPERSON

- 1.8 The Head Chairperson is responsible for establishing the overall procedural management of Panel Meetings and the composition of Panel Members for each and every meeting.
- 1.9 The Head Chairperson adopts the same functions as the Chairperson (outlined above) when involved in or presiding over a Panel Meeting.

INDEPENDENT EXPERT MEMBERS

- 1.10 The expert members can be interchanged as needed by the Chairperson for reasons including:
 - a member has a conflict of interest
 - a member is unable to attend on the day
 - to periodically rotate the members
 - to align expertise with issues to be considered.



- 1.11 In the absence of an available independent expert, an alternate Chairperson can step into the role of independent expert subject to the agreement of the Head Chairperson.

COMMUNITY REPRESENTATIVES

- 1.12 The community member can be interchanged as needed by the Chairperson for reasons including:
- a member has a conflict of interest
 - a member is unable to attend on the day
 - to ensure rotation of the members.

QUORUM

- 1.13 Where a quorum (3 members) for a meeting is not present or a quorum is not achieved to determine an application, the meeting or item shall be deferred.

REVIEW OF PANEL DECISIONS

- 1.14 The determination of a review application from a Panel decision shall be determined by different members of the Panel, including Chairperson, to those who made the original determination.

CONDUCT OF PANEL MEMBERS

- 1.15 All Panel members must comply with the [code of conduct](#) approved by the Minister for Planning.

CONFLICT OF INTERESTS

- 1.16 Panel members must avoid or appropriately manage any conflicts of interests. The onus is on the individual Panel member to identify a conflict of interests and take appropriate action.
- 1.17 If a Panel member is not sure of a conflict of interest, that member should discuss the matter with the Chairperson or in the case of an alternate Chairperson, the matter is to be discussed with the Head Chairperson.
- 1.18 If a member of a Panel has a conflict of interest in a matter being considered or about to be considered at a meeting, and the interest appears to raise a conflict with the proper performance of the member's duties, the member must, as soon as possible, disclose the nature of the interest at (or before) a meeting of the Panel.

Particulars of any disclosure made must be recorded by the Panel and be made publicly available upon request.



- 1.19 After a member of a Panel has disclosed a conflict of interest in any matter, the member must not be present during any deliberation of the Panel with respect to the matter, or take part in any decision of the Panel with respect to the matter.

Note: A contravention of this requirement does not invalidate any decision of the Panel.

INTERACTIONS WITH THIRD PARTIES

- 1.20 Panel members are not to discuss any matter that is to be considered by the Panel with councillors, the applicant or associated consultants, parties who have made a submission, or any other person with an interest in the matter outside of the Panel meeting, with the exception of Council officers involved in the assessment of the development application (subject to below).
- 1.21 The Panel will not accept or consider any amended or new information submitted from any persons once the development application is listed for formal determination. Exceptions to this may be considered at the discretion of the Chairperson, where information submitted has been reviewed by the Council's assessing officer in advance of the meeting and is deemed to warrant a change to the recommendation or deferral of the matter to be considered. Any such late information should not be within 48 hours of the meeting.
- 1.22 The Panel will not accept or consider any additional written submissions, documents, reports or amended plans during or after the Panel Meeting unless expressly permitted by the Chairperson and detailed in the statement of reasons for the decision by the Panel.

ENGAGEMENT WITH COUNCIL OFFICERS

- 1.23 Panel members are not permitted to make direct contact with Council officers concerning a development application or planning proposal without the agreement of the Chairperson. This does not apply to enquiries of an administrative nature concerning Panel management. Enquiries of this nature are to be directed to the Council's Development Assessment Coordinator or Secretary Management Team.
- 1.24 Where questions arise from the Panel, or clarification is sought on a development application or planning proposal Panel members should direct such questions to the Chairperson. The Chairperson is permitted to refer requests for information or clarification to the assessing officer prior to a scheduled meeting.
- 1.25 In response to any requests for information from the Chairperson prior to a scheduled meeting, a response to those matters is to be prepared by Council officers by way of a memorandum (except for minor or procedural



matters). The memorandum is to be made publicly available prior to, or following, the scheduled meeting.

2. FREQUENCY OF MEETINGS

- 2.1 Meetings will generally be held on the 2nd and 4th week of the month unless there are insufficient matters scheduled to warrant a meeting.
- 2.2 The cancellation of a scheduled meeting is to occur no less than 10 days from the date of the scheduled meeting, except in exceptional circumstances.

3. MEETING PROCEDURES

PREPARATION OF AGENDA & BUSINESS PAPER

- 3.1 The agenda of a schedule meeting shall be prepared two weeks prior to the meeting and circulated to all nominated Panel Members.
- 3.2 Copies of the business paper and associated documentation shall be made available to all nominated Panel Members at least 7 days prior to the meeting by way of electronic means only.

NOTICE OF MEETINGS

- 3.3 Details of the parties involved in the preparation of a Development Application or Planning Proposal and any submitters to those items are to be provided to the Panel members at least 10 days prior to the meeting (unless otherwise agreed by the Head Chairperson).
- 3.4 Notice of Panel meetings (time and place) shall be provided or made available at least 7 days prior to the meeting.
- 3.5 Applicants and submitters will be advised (in writing including by email) when an application will be heard by the Panel.
- 3.6 Business papers for meetings shall be made publicly available on Council's website at least 5 days prior to the meeting.
- 3.7 Notice of Panel meetings and details of agenda items will be made available to Councillors by way of memorandum at least 5 days prior to the meeting.

NOTICE OF INTENTION TO ADDRESS THE PANEL

- 3.8 Any person wishing to address the Panel must register their intention to do so with Council by no later than 4pm, 2 days before the schedule meeting

to secure an opportunity to speak. Details of registered speakers will only be made available to the Panel prior to the scheduled meeting.

- 3.9 Persons wishing to speak must ensure that the matters raised are relevant to the development proposal or planning proposal being considered, and are not disparaging or defamatory of any other persons. The Chairperson reserves the right to remove a speaker from the registration list or terminate verbal representations where this occurs.
- 3.10 Any person(s) wishing to speak at a meeting that have not been registered to speak in accordance with the above requirements, may only do so that the discretion of the Chairperson.
- 3.11 Councillors are able to address the Panel on any items within their ward. This is in addition to the other speakers. Any councillor who wishes to address the Panel must register their intention to do so by 4pm no later than 2 days before the schedule meeting.
- 3.12 With respect to electronic / on-line Panel Meetings (not face to face), any person wishing to speak must register their intention to do so with Council by no later than 4pm, 2 days before the schedule meeting to secure an opportunity to speak. Upon confirmation of registration, electronic links and instructions to attend the online / electronic meeting will be provided by Council officers to all registered persons. Details of registered speakers will only be made available to the Panel prior to the scheduled meeting.

4. SITE VISIT

- 4.1 Site visits are to be used to understand the local character and context of a site and the nature of a development or planning proposal. The chair may elect for the Panel to undertake joint site inspections for applications that will be considered at the public meeting. Panel members are encouraged to undertake site inspections together however Panel members will be permitted to undertake site inspections independently at the discretion of the Chairperson, and having regard to health considerations. Where a Panel or Panel member does not undertake a site visit, this does not invalidate any decision or recommendation made by the Panel.
- 4.2 Where practicable, Council officers shall accompany the Panel Members to a site inspection for a particular development application or planning proposal.
- 4.3 Site visits can be conducted on the day of the meeting or before the meeting.
- 4.4 Adjoining and/or affected properties may be visited by the Panel at the discretion of the Chairperson. It is not a requirement for the Panel to visit submitters' properties however, the Panel members may visit if the



Chairperson is of the view that the Panel's consideration of an application would significantly benefit from viewing an adjacent property (e.g. view impact). If so, the property owner will be requested to allow access prior to the scheduled site visit.

- 4.5 Site visits are not to be used as a forum for applicants or objectors to address the Panel as a site visit is not a public meeting. The Panel however, may ask questions to clarify issues whilst visiting a site.

BRIEFING OF THE PANEL

- 4.6 Council staff shall brief Panel members on any applications listed for determination. Panel members are permitted to ask questions and clarify issues.
- 4.7 Any matters warranting further information or clarification from Council officers (except minor or procedural matters) prior to the Panel Meeting is to be undertaken by way of memorandum which is provided to the Panel Members and also made available for public access via Council's Website as soon as practicable.

PUBLIC MEETING

- 4.8 The public meeting shall commence at the designated time at the Penrith City Council Chambers or alternatively by electronic means via an on-line format. The format of the meeting is to be at the discretion of the Chairperson and in accordance with applicable legislative requirements. The meeting items will generally occur in the order published online otherwise decided by the Chairperson.
- 4.9 Electronic audio recordings shall be made of public meetings and these recordings shall be made publicly available on Council's website as soon as practicable.
- 4.10 The chair/alternate chair, or in the absence of the chair/alternate chair, a member appointed by the Panel, is to preside at the meeting.
- 4.11 Speakers shall be heard for each item in the agenda in the following order:
- Councillor/s addressing any item of relevance in their ward
 - Objector (or representative) speaking against the application; and then
 - The applicant (or the applicant's representative) speaking for the application.

Note: The Chairperson may limit the number of speakers in relation to a listed. Reasons may relate to avoidance of repetition or for efficiency of the management of the public meeting. Unless the Panel otherwise permits, there shall be no more than one speaker against and one speaker for each

application. This is in addition to any councillors who wish to address the Panel.

- 4.12 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.
- 4.13 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.
- 4.14 A person is not entitled to be legally represented at any meeting of the Panel unless the chair grants permission. In granting any such permission, the chair shall have regard to the following matters;
- the nature and complexity of the matter and whether it involves a question of law,
 - whether the person has the capacity to present their submission without legal representation, and
 - such other matters as the chair considers relevant.
- 4.15 Unless the chair otherwise permits, no speaker may address the Panel for more than 5 minutes in respect of any one matter at any particular meeting. The chair may allow for a short extension of time to enable summation.
- 4.16 A person, other than a member of the Panel, shall not speak while another person is speaking or otherwise interrupt that person while speaking. No defamatory, derogatory, offensive or disrespectful comments should be made at or during a public meeting. The Chairperson has the right to cease an address if these requirements are not observed. Verbal submissions made to the Panel should concentrate on relevant matters. A Panel meeting is not a question-answer session or forum for debate. Any questions posed by a submitter to the Panel will not be answered but rather taken to reflect on an issue or concern.
- 4.17 Panel members may seek to clarify any matter with a speaker or council officer.

DELIBERATION

- 4.18 Following the address from councillors, objectors and applicants on all matters scheduled for that meeting, the Panel is permitted to adjourn from the public meeting to deliberate if a decision is not made during the Panel Meeting. Only voting members of the Panel (and council staff, for administrative support and if matters require clarification) are able to attend this closed session.



- 4.19 In the event that a decision or recommendation is not made during the public meeting, deliberation shall occur following the closure of the public meeting.
- 4.20 The Panel shall prepare a written resolution for each matter, including reasons for the decision or recommendation made.

VOTING & DETERMINATION

- 4.21 The chair shall articulate the draft resolution of the Panel on each item and Panel members shall then vote on the resolution. A decision supported by a majority of the votes is the decision of the Panel. In the event of an equality of votes, the chair (or presiding member) has a second or casting vote.
- 4.22 If a Panel member votes against the resolution, they are entitled (but not obligated) to present their reasons.

POST-MEETING PROCEDURES

- 4.23 The chair shall review and confirm the reasons for the decision made by the Panel after the meeting.
- 4.24 Minutes of the meeting shall include the decision, the outcome of voting and the reasons for the decision. These minutes shall be made publicly available on Council's website as soon as practicable.
- 4.25 The Notice of Determination shall be provided to the applicant.
- 4.26 Should the Panel resolve to request additional information or seek amendment of the application, the Panel may defer the application. A written request to the applicant with the reasons for deferral shall be sent to the applicant as soon as practicable.
- If the amended application requires renotification and there are further submissions received in opposition, it will be considered at another Panel meeting and, where possible, dealt with by the same Chair and Panel members. The procedures in section 4.7-4.9 for addressing the Panel will apply.
 - In other cases, the application may be determined by the Panel electronically (refer to section 5).
 - The Panel may also decide to delegate determination to a Senior nominated Council staff member, where the legislation allows this.

5. TRANSACTION OF BUSINESS OUTSIDE MEETINGS

- 5.1 A Panel may, if it thinks fit, and subject to legislative requirements transact any of its business by the circulation of papers (electronically or in hard



copy) among all the members of the Panel. A resolution approved in writing by a majority of those members is taken to be a decision of the Panel.

- The chair and each member of the panel have the same voting rights as they have at an ordinary meeting of the Panel.
- The resolution is to be recorded in the minutes of the meetings of the Panel.

5.2 A Panel may, where deemed appropriate, and subject to legislative requirements may transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

6. OBLIGATION TO CONSULT WITH COUNCIL/GENERAL MANAGER

6.1 The 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 significant adverse financial impact on Council until after it has consulted with the General Manager.

The consultation may be in writing, with Council being given a specified time to respond in writing. Where a meeting with the General Manager (or delegate) is held to discuss the matter, all relevant Panel members should be present and minutes kept of the meeting and its outcomes recorded, unless the Panel delegates such communication to the Chairperson.