

## **NOTICE OF BURWOOD LOCAL PLANNING PANEL MEETING**

### **Late Items**

The meeting of the Burwood Local Planning Panel will be held in the Council Chamber, 2 Conder Street, Burwood on Tuesday 29 October 2024 at 6:00 PM

Tommaso Briscese  
**General Manager**

# Agenda

**For an Notice of Burwood Local Planning Panel Meeting of Burwood Council to be held in the Conference Room, Level 1, 2 Conder Street, Burwood on Tuesday 29 October 2024 commencing at 6.00pm.**

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## Development Applications

### (Item GB5/24) Delegations of Functions from Burwood Local Planning Panel to Council Officers Minor Heritage Works

File No: 24/44300

Report by Manager City Development

PREVIOUS ITEMS: GB1/24 - Delegation of Functions from Burwood Local Planning Panel to Council Officers in Planning Appeals - Burwood Local Planning Panel Meeting - 14 May 2024 6:00 PM  
GB2/24 - Delegation of Functions to Burwood Local Planning Panel from General Manager - Burwood Local Planning Panel Meeting - 14 May 2024 6:00 PM  
GB4/24 - Delegation of Functions from Burwood Local Planning Panel to Council Officers, Minor Heritage Works - Burwood Local Planning Panel Meeting - 17 Sep 2024 6:00 PM

## Report

### Background

Since the introduction of Local Planning Panels under the *Environmental Planning and Assessment Act 1979* (the EPA Act), the NSW Minister for Planning has issued a number of directions and orders pursuant to EPA Act.

Relevant to this report is the *Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents* dated 6 March 2024 (the Direction).

The Direction identifies at a minimum the type of development applications and modification applications that must be considered by Council's Local Planning Panel (LPP). A copy of the Direction is annexed at "**Attachment 1**".

Relevant to this report is the *Environmental Planning and Assessment (Statement of Expectations) Order 2024* dated 1 July 2024 (the Order). The purpose of this Order is to set expectation for councils in relation to their performance of a range of planning and development functions under the *Environmental Planning and Assessment Act 1979*. If a council is found not to be meeting these expectations, the Minister can take these matters into consideration as part of determining if it is appropriate to appoint a planning administrator or Sydney district or regional planning panel to exercise a council's functions.

The Order requires Burwood Council to determine applications for which it is the consent authority (including development applications determined by the LPP) as soon as practical and within an average of 115 days. A copy of the Order is annexed at "**Attachment 2**".

### Previous delegations to staff

At its meeting on 14 May 2024, the LPP considered two reports seeking:

- a) Delegation of Functions from the LPP to Council Officers in Planning Appeals, and
- b) Delegation of Functions to the LPP from the General Manager.

The intent of these reports was to allow appeals to be dealt with in an efficient and timely manner and to allow additional applications to be considered and determined by the LPP if referred to it by

the Director City Strategy or the Manager City Development. A copy of these reports are annexed at "**Attachment 3**".

At its meeting on 17 September 2024, the LPP considered a report seeking:

- a) Delegation of Functions from LPP to Council Officers in relation to minor works to heritage items.

The intent of this report was to allow minor works to heritage items to be addressed efficiently and in a timely manner. A copy of this report is annexed as "**Attachment 4**."

The LPP supported the delegation in principle but resolved to defer the matter pending further information regarding the justification for the need for the delegation and clarification on the appropriate forum to determine the delegations. There was also discussion regarding the requirement for agreement between the Principal Chair and Alternate Chairs on the matter of delegations. A copy of the meeting minutes is annexed as "**Attachment 5**." Each of the issues raised is addressed in this report.

### **Proposed Changes**

To improve the efficiency of the LPP and reduce delays for applicants, it is recommended that the determination of less complex and uncontroversial applications be delegated back to Council staff. Under section 2.20(8) of the EPA Act:

*A local planning panel may delegate any function of the panel under this or any other Act (other than this power of delegation) to the general manager or other staff of the council...*

It is recommended that the LPP exercise this power for minor works on sites identified as heritage items (including trees). Examples include an application for an internal fitout of a modified tenancy within a locally listed heritage item or the replacement of an under-awning sign. This is discussed in more detail below.

Delegating these minor Development Applications will reduce the number of applications reported at each LPP meeting, decrease waiting times for applicants, and allow the LPP to focus on more complex and controversial matters.

### **1. Works to local heritage items**

Currently, all applications involving alterations or tree lopping on local heritage listed sites are required to be reported to the LPP. This follows a narrow interpretation of the term 'demolition' by the Department of Planning in the requirement for LPP to determine all Development Applications involving 'demolition of a heritage item'.

It is appropriate that the LPP delegate to staff the power to determine Development Applications for locally listed heritage sites where:

- All or most of the significant heritage fabric is maintained;
- There is no adverse impact on the significant heritage fabric or setting of the item; and
- It is agreed by Council's engaged heritage officer that the development can proceed.

Further, it is appropriate that the LPP delegate to staff the power to determine Development Applications for minor works to trees that are either

- Heritage listed; or
- On or overhanging the site of a heritage item



that affect less than (or equal to) 10% of the tree canopy where Council's experts confirm that the proposal:

- Will not adversely affect the health of the tree; and
- Will not adversely affect the heritage significance of the tree or place.

## 2. Caveats

a) This delegation would only be of effect if a Development Application is not required to go before the LPP for another reason. For example, if solely due to the matter being delegated back to Council. If a minor heritage item as discussed above met another LPP threshold 'trigger' – say, for example, 10 objections, or the property were Council owned – then the application would still need to be reported for determination to the LPP.

b) If a Council Officer is uncertain as to the subjective elements of this delegation (terms such as 'adverse impact'), a briefing may be held with the LPP to make sure a particular application falls within the reasonable limits of the delegation.

## Additional information

At the LPP meeting of 17 September 2024 the members requested the following additional information be supplied to support the requested delegation. Each of these requests are addressed below:

### 1. Justification for the need for the delegation

The proposed additional delegations are sought to reduce assessment timeframes and streamline the process. Currently, all applications for works on locally listed heritage items, including trees, must be determined by the LPP.

Recent determinations by the LPP on 17 September 2024 included the construction of an awning on a contemporary building within a site containing a heritage item, and the internal fitout and use of a previously modified local heritage building as a dentistry.

In both cases, these applications were delayed by approximately four weeks to prepare reports for the LPP. There were no community or Council objections, and the works were fully supported by a Council-appointed heritage advisor. The LPP completed the meeting in just nine minutes, highlighting the minor nature of the applications—both of which were well suited for determination by Council staff.

The delay in determining these applications is inconsistent with the *Environmental Planning and Assessment (Statement of Expectations) Order 2024*, which sets obligations and timeframes for the determination of applications, including those to be determined by LPPs.

### 2. Clarification about the appropriate forum to determine the delegations.

Under section 2.20(8) of the EPA Act:

*A local planning panel may delegate any function of the panel under this or any other Act (other than this power of delegation) to the general manager or other staff of the council...*

The Act does not specify a forum in which to determine the delegations. Notwithstanding this the *Local Planning Panels Direction – Operational Procedures* issued under Section 9.1 of the *Environmental Planning and Assessment Act 1979* annexed at “**Attachment 6**” dated 7 December 2022 sets out the following:

*Schedule 1 – Operational Procedures**Part 3 Meetings 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, and any other direction from council, and the code of conduct for local panel members in a timely manner.*

The LPP at the 14 May 2024 meeting found an ordinary LPP meeting the appropriate forum to exercise the above mentioned powers to make a number of delegations.

**3. Requiring agreement between the Principal Chair and Alternate Chairs.**

There is no requirement for consultation between a Principal Chair and Alternate Chairs under the *Environmental Planning and Assessment Act 1979*, the *Local Planning Panels Direction – Development Applications and Applications to Modify Development Consents* dated 6 March 2024, or the *Local Planning Panels Direction – Operational Procedures* dated 7 December 2022.

**Financial Implications**

Nil.

**Conclusion**

Under the EPA Act, the LPP is currently required to consider all applications for locally listed heritage items. It is appropriate for the LPP to delegate its functions under section 2.20(8) of the EPA Act to the General Manager, Director City Strategy, and Manager City Development.

Enabling Council staff to determine minor applications for locally listed heritage items is expected to result in:

- Processing more routine applications, such as shop fitouts, signage, and homeowner applications, more quickly;
- Reducing the volume of minor applications being reported to the LPP;
- Shortening waiting times for applicants and owners; and
- Allowing the LPP to focus on more complex and controversial matters

**Recommendation(s)**

Under section 2.20(8) of the *Environmental Planning and Assessment Act 1979*, the Burwood Local Planning Panel resolves to delegate its determining functions on the following development types to the General Manager, Director City Development and Manager City Development:

**1. Minor alterations and additions to a heritage item, being defined to include:**

- a) Maintains at least 90% of the significant heritage fabric; or
- b) Does not adversely affect the heritage significance of the heritage item; and
- c) Is supported in writing by Council's appointed heritage advisor/expert.

**2. Works to trees that are**

- a) Heritage listed; or
- b) On a heritage site;

and, that

- c) Affect less than (or equal to) 10% of the tree canopy; and


- d) Will not adversely impact upon the health of the tree; and
- e) Will not adversely impact upon the heritage significance of the tree or place; and
- f) Is supported in writing by Council's appointed heritage advisor/expert.

### **Attachments**

- 1 [↓](#) LPP Direction 6 March 2024
- 2 [↓](#) EPAA Statement of expectations Order 2024
- 3 [↓](#) LPP Agenda 14 May 2024
- 4 [↓](#) LPP agenda 17 September 2024
- 5 [↓](#) LPP minutes 17 September 2024
- 6 [↓](#) LPP Operational Procedures

## LOCAL PLANNING PANELS DIRECTION – DEVELOPMENT APPLICATIONS AND APPLICATIONS TO MODIFY DEVELOPMENT CONSENTS

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

  
The Hon. Paul Scully MP  
Minister for Planning and Public Spaces

Dated: 6/3/24

### Objective

The objective of this direction is to identify the development applications and applications to modify development consents that are to be determined by local planning panels on behalf of councils.

### Application

This direction applies to councils in the Greater Sydney Region, Wollongong and Central Coast. It also applies to any other council that constitutes a local planning panel under the *Environmental Planning and Assessment Act 1979* (the Act).

### Interpretation

A word or expression used in this direction has the same meaning as it has in the standard local environmental plan prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* made under the Act, unless it is otherwise defined in this direction.

### Direction

1. Local planning panels of councils in the areas identified in the Table below are to determine development applications for development of a kind specified in the corresponding Schedule to this direction.

Table -

Council	Development
Bayside, Blue Mountains, Burwood, Camden, Campbelltown, Canada Bay, Georges River, Hawkesbury, Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Randwick, Ryde, Strathfield, Waverley, Willoughby, Wollondilly, Woollahra, and any other council that constitutes a local planning panel under the Act	Schedule 1
Blacktown, Canterbury-Bankstown, Central Coast, Cumberland, Fairfield, Inner West, Liverpool, Northern Beaches, Parramatta, Penrith, Sutherland, The Hills, Wollongong	Schedule 2
City of Sydney	Schedule 3

2. Local planning panels are to determine applications under section 4.55(2) of the Act for the modification of development consents granted by the panel that:
- propose amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or
  - propose amendments to a condition of development consent that was not included in the council assessment report but which was added by the panel, or
  - meet the criteria for development applications set out in the Schedules to this direction relating to conflict of interest, contentious development or departure from development standards.

Note: Councils in the areas identified in the Table to this direction are generally precluded from exercising consent authority functions by operation of section 4.8(2) of the Act. This means councils should make arrangements for the determination of all other modification applications under section 4.55(2), as well as sections 4.55(1) and (1A) of the Act, by council staff. Councils should also make arrangements for the determination of modification applications under section 4.56 of the Act by either the local planning panel or council staff.

This direction takes effect on the date of this direction and applies to development applications and applications to modify development consents lodged but not determined before the date of this direction.

## SCHEDULE 1

### 1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

**2. Contentious development**

Development that:

- (a) in the case of a council having an approved submissions policy - is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Housing and Infrastructure which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number and nature of submissions received about development.

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. Departure from development standards**

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

**4. Sensitive development**

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment development) applies.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

## SCHEDULE 2

**1. Conflict of interest**

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

**2. Contentious development**

Development that:

- (a) in the case of a council having an approved submissions policy - is the subject of the number of submissions set by that policy, or
- (b) in any other case - is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Housing and Infrastructure which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number or nature of submissions received about development.

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. Departure from development standards**

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

**4. Sensitive development**

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment) applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.



**SCHEDULE 3****1. Conflict of interest**

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item,
- (d) development for the purpose of end of journey facilities, or
- (e) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

**2. Contentious development**

Development that:

- (a) in the case of a council having an approved submissions policy - is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 25 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Housing and Infrastructure which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number or nature of submissions received about development.

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. Departure from development standards**

For development for the purpose of dwelling houses, dual occupancies and attached dwellings, development that contravenes a development standard imposed by an environmental planning instrument by more than 25% or non-numerical development standard.

For all other development, development that contravenes a development standard

imposed by an environmental planning instrument by 10% or non-numerical development standards.

**4. Sensitive development**

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment) applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

## Environmental Planning and Assessment (Statement of Expectations) Order 2024

I, Paul Scully, the Minister for Planning and Public Spaces, make this Order under section 9.6(9) of the *Environmental Planning and Assessment Act 1979*.



The Hon. Paul Scully MP  
Minister for Planning and Public Spaces

Dated: 1/7/2024

### Explanatory note

The object of this Order is to set expectation for councils in relation to their performance of a range of planning and development functions under the *Environmental Planning and Assessment Act 1979*. If a council is found not to be meeting these expectations, the Minister can take these matters into consideration as part of determining if it is appropriate to appoint a planning administrator or Sydney district or regional planning panel to exercise a council's functions. It is made under section 9.6(9) of the Act.

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**Environmental Planning and Assessment (Statement of Expectations) Order 2024**

under the

Environmental Planning and Assessment Act 1979

**Part 1 Preliminary****1 Name of Order**

This Order is the *Environmental Planning and Assessment (Statement of Expectations) Order 2024*.

**2 Commencement**

This Order commences on 1 July 2024

**3 Definitions**

(1) In this Order—

**the Act** means the *Environmental Planning and Assessment Act 1979*

**Department** means the Department of Planning, Housing and Infrastructure

**Gateway determination** means a determination made by the Minister (or delegate) under section 3.34 of the Act.

**LEP** means a local environmental plan.

**LSPS** means a local strategic planning statement.

**Minister** means the Minister for Planning and Public Spaces.

**Minister's expectations** means the expectations of the Minister in relation to the performance of a council in dealing with planning and development matters, as set out in clause 5 of this Order.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Order.

(2) Words used in this Order have the same meaning as words used in the Act.

(3) Notes included in this Order do not form part of this Order.

**Part 2 Planning and development matters****4 Heads of consideration**

The heads of consideration to be taken into consideration in exercising the power under s.9.6(1)(b) of the Act are:

- (a) Whether or not the Council has failed to meet the Minister's expectations in relation to council performance.
- (b) The duration, frequency and degree to which the council has performed, or failed to perform, in accordance with the Minister's expectations.
- (c) The range and type of planning and development matters in respect of which the council has performed, or failed to perform, in accordance with the Minister's expectations.
- (d) Whether or not an appointment under s.9.6(1)(b) should be made in relation to one or more of a particular class of planning and development matter, or all planning and development matters dealt with by the council.
- (e) The effect of any caretaker period preventing a council's performance in dealing with the planning and development matters (or any particular class of such matters) as set out in clause 5.
- (f) The individual circumstances of each council, for example whether external events like natural disasters have impacted the council, or council has received an unexpectedly high volume of DAs compared to their current staffing levels.
- (g) Whether or not other available interventions or support have failed to result in improvements to council performance in relation to the Minister's expectations.
- (h) With respect to development applications for residential accommodation:
  - Whether the Minister's expectations have been met for development assessment timeframes, and
  - Whether the Council has been identified as having a key responsibility in the delivery of housing supply by the NSW government.
- (i) The public interest.

## 5 Minister's Expectations

### (1) Development assessment

A council should:

- (a) Prepare assessment reports for a regionally significant development application and refer to the relevant Sydney district and regional planning panel as soon as practical and within an average of 250 days from lodgement.
- (b) Lodge development applications for which it is the consent authority as soon as practical and within an average of:
  - From 1 July 2024 to 30 June 2025: 14 days from submission
  - From 1 July 2025 onwards: 7 days from submission.
- (c) Determine development applications for which it is the consent authority (including DAs determined by a local planning panel) as soon as practical and whichever is the lesser of council's previous financial year average, or an average of:
  - From 1 July 2024 to 30 June 2025: 115 days from lodgement
  - From 1 July 2025 to 30 June 2026: 105 days from lodgement
  - From 1 July 2026 to 30 June 2027: 95 days from lodgement
  - From 1 July 2027 onwards: 85 days from lodgement.
- (d) Comply with the procedural and reporting requirements prescribed in the *Guide to Varying Development Standards*, for development applications that involve variations to development standards.

### (2) Planning proposals

A council should:

- (a) decide whether to support a proponent-initiated planning proposal and submit it for gateway determination within the "planning proposal" stage benchmark timeframes in the LEP Making Guideline.
- (b) as the Planning Proposal Authority, publicly exhibit a planning proposal, respond to submissions, and either resolve to use Local Plan Making Authority delegations or request the Department to make the plan within the "public exhibition and assessment" stage benchmark timeframes set out in the LEP Making Guideline.
- (c) as Local Plan Making Authority, make a LEP which has been delegated to council within the "finalisation" stage benchmark timeframes set out in the LEP Making Guideline.

### (3) Strategic planning

A council should:

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- (a) prepare or review its LSPS in accordance with the requirements of the Act, and standards and timeframes identified by the Department.
- (b) prepare a local planning strategy (such as a local housing strategy) to ensure the actions identified in the relevant regional or district strategic plan (including any dwelling provision targets) and local strategic planning statements are delivered in accordance with the standards and timeframes identified by the Department.
- (c) give effect to an adopted local planning strategy (such as a local housing strategy) and any Department approval requirements (including submission of Implementation Delivery Plans) in accordance with the standards and timeframes identified by the Department.
- (d) consider State Environmental Planning Policies or other strategies and policies of the Government, the Minister or the Department concerning planning and development matters when preparing an LSPS, local planning strategy or other plan provided for under the Act.



## General Business

### (Item GB1/24) Delegation of Functions from Burwood Local Planning Panel to Council Officers in Planning Appeals

File No: 24/12397

Report by Manager City Development

#### Report

Since the introduction of Local Planning Panels under the Environmental Planning and Assessment Act 1979 ('EPA Act'), the NSW Minister for Planning has issued a number of directions pursuant to section 9.1 of the Environmental Planning and Assessment Act 1979 (**the EPA Act**).

Relevant to this report is the *Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents* dated 6 May 2024 (**the Direction**).

The Direction identifies the type of development applications and modification applications that must be considered by Council's Local Planning Panel (**LPP**). A copy of the Direction is annexed at "**Attachment 1**".

Following the amendment to the EPA Act of 1 March 2018, the LPP has the control and direction section 8.15(4) of the EPA Act of the conduct of an appeal commenced pursuant to under Section 8.7, 8.8, 8.9 of the EPA Act and any subsequent appeal arising from a decision in those proceedings (**Planning Appeals**) that relates to an application that was determined by the LPP pursuant to the Direction.

Prior to the amendments to the EPA Act, senior Council staff were delegated with the authority to manage Planning Appeals and to give instructions with respect to resolving or defending matters. This report requests that the LPP delegate their functions of control and direction of Planning Appeals to senior Council staff of the Council to allow for the efficient and cost effective conduct of proceedings.

Section 8.15(4) of the EPA Act now provides that:

*(4) If the determination or decision appealed against under this Division was made by a Sydney district or regional planning panel or a local planning panel, the council for the area concerned is to be the respondent to the appeal but is subject to the control and direction of the panel in connection with the conduct of the appeal. The council is to give notice of the appeal to the panel.*

Council's position is that section 8.15(4) of the EPA Act does not apply to deemed refusals because a Local Planning Panel is not defined as a consent authority under section 4.5 of the EPA Act.

Although Council is the respondent in any appeal to the Court, in Planning Appeals that relate to a determination of the LPP, Council's conduct of the class 1 proceedings is subject to the control and direction of the LPP. This means that appeals to which section 8.15(4) applies will need to be reported to and instructions obtained from the LPP. By reason of section 2.20(8) of the EPA Act, the LPP cannot delegate its functions to a single Panel member and therefore a decision of the full Panel is required before solicitors are provided with any instructions.

Such a process is cumbersome in practice. Furthermore, the provision makes it difficult for Council to comply with the Court's requirements that:

*The parties are to participate, in good faith, in the conciliation conference (see s34(1A) of the Land and Environment Court Act 1979), including preparing to be able to fully and meaningfully participate, having authority or the ready means of obtaining authority to reach agreement and genuinely endeavouring to reach agreement at the conciliation conference (Paragraph 47 Practice Note – Class 1 Development Appeals).*

In order to ensure that Council can most efficiently and expediently conduct and manage the Planning Appeals process, it is appropriate that the LPP delegate all its Planning Appeal functions under section 8.15(4) to the General Manager, Director City Strategy and Manager City Development with the condition that in the case of a Planning Appeal relating to a decision of the Panel that is contrary to an assessment report, the General Manager, Director City Strategy or Manager City Development will consult with the Chair of

**Burwood Local Planning Panel Meeting****14 May 2024**

the Panel that made the relevant decision, as to the conduct of the Planning Appeal within fourteen (14) days of Council being served with the appeal.

Section 2.20(8) of the EPA Act allows Local Planning Panels to delegate any of their functions to the General Manager or other staff of the Council. Such a delegation does not require a resolution of the Council under section 381 of the Local Government Act 1993.

The requirement for the General Manager, Director City Strategy and Manager City Development to consult with the Chair of the Panel about the conduct of the appeal means that the Panel can be satisfied that Council will conduct the appeal with the LPP's decision in mind. If the LPP Chair was concerned that an appeal was not being conducted in a manner consistent with its determination, the LPP could resolve to revoke the delegation in that specific matter.

Any judicial review proceedings relating to a determination of the Panel are not the subject of section 8.15(4) of the EPA Act and Council will have the control and direction of such proceedings. Nevertheless, Council would intend to notify the LLP in the event that judicial review proceedings of an LLP decision are commenced.

**Financial Implications**

Should the delegation not be provided to the General Manager, Director City Strategy and Manager City Development, then there are likely to be additional legal costs associated with the management of legal proceedings.

**Conclusion**

Under the EPA Act the LPP currently has the control and direction of the conduct of the proceedings in any Planning Appeals relating to a determination of the LPP. In view of the practical realities of conciliation conferences and the need for instructions at short notice, together with the clear advantages of having an officer present at the conciliation with delegation to give instructions with respect to settlement or the defence of a Planning Appeal, it is appropriate for the LPP to delegate its functions under 8.15(4) of the EPA Act, to the General Manager, Director City Strategy and Manager City Development.

**Recommendation(s)**

That pursuant to Section 2.20(8) of the *Environmental Planning and Assessment Act 1979*, the Burwood Local Planning Panel delegate its functions (i.e. all Planning Appeal functions) as referred to in Section 8.15(4) of the *Environmental Planning and Assessment Act 1979* to the General Manager, Director City Strategy and Manager City Development to independently manage all Planning Appeal functions subject to the requirement that, in the case of a Planning Appeal relating to a decision of the Burwood Local Planning Panel that is contrary to an assessment report, the General Manager, Director City Strategy or Manager City Development will consult with the Chairperson of the Burwood Local Planning Panel that made the relevant decision, as to the conduct of the Planning Appeal within fourteen (14) days of Council being served with the appeal.

**Attachments**

- 1 Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents

## Item Number GB5/24 - Attachment 1

## Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents

## LOCAL PLANNING PANELS DIRECTION – DEVELOPMENT APPLICATIONS AND APPLICATIONS TO MODIFY DEVELOPMENT CONSENTS

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

The Hon. Paul Scully MP  
Minister for Planning and Public Spaces

Dated: 6/5/24

**Objective**

The objective of this direction is to identify the development applications and applications to modify development consents that are to be determined by local planning panels on behalf of councils.

**Application**

This direction applies to councils in the Greater Sydney Region, Wollongong and Central Coast. It also applies to any other council that constitutes a local planning panel under the *Environmental Planning and Assessment Act 1979* (the Act).

**Interpretation**

A word or expression used in this direction has the same meaning as it has in the standard local environmental plan prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* made under the Act, unless it is otherwise defined in this direction.

**Direction**

1. Local planning panels of councils in the areas identified in the Table below are to determine development applications for development of a kind specified in the corresponding Schedule to this direction.

Table -

Council	Development
Bayside, Blue Mountains, Burwood, Camden, Campbelltown, Canada Bay, Georges River, Hawkesbury, Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Randwick, Ryde, Strathfield, Waverley, Willoughby, Wollondilly, Woollahra, and any other council that constitutes a local planning panel under the Act	Schedule 1
Blacktown, Canterbury-Bankstown, Central Coast, Cumberland, Fairfield, Inner West, Liverpool, Northern Beaches, Parramatta, Penrith, Sutherland, The Hills, Wollongong	Schedule 2
City of Sydney	Schedule 3

## Item Number GB5/24 - Attachment 1

## Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents

2. Local planning panels are to determine applications under section 4.55(2) of the Act for the modification of development consents granted by the panel that:
- propose amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or
  - propose amendments to a condition of development consent that was not included in the council assessment report but which was added by the panel, or
  - meet the criteria for development applications set out in the Schedules to this direction relating to conflict of interest, contentious development or departure from development standards.

Note: Councils in the areas identified in the Table to this direction are generally precluded from exercising consent authority functions by operation of section 4.8(2) of the Act. This means councils should make arrangements for the determination of all other modification applications under section 4.55(2), as well as sections 4.55(1) and (1A) of the Act, by council staff. Councils should also make arrangements for the determination of modification applications under section 4.56 of the Act by either the local planning panel or council staff.

This direction takes effect on the date of this direction and applies to development applications and applications to modify development consents lodged but not determined before the date of this direction.

## SCHEDULE 1

## 1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

## Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents

### 2. Contentious development

Development that:

- (a) in the case of a council having an approved submissions policy - is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Housing and Infrastructure which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number and nature of submissions received about development.

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. Departure from development standards

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

### 4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment development) applies.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

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Item Number GB5/24 - Attachment 1

**Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents**

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**SCHEDULE 2**

**1. Conflict of interest**

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

**2. Contentious development**

Development that:

- (a) in the case of a council having an approved submissions policy - is the subject of the number of submissions set by that policy, or
- (b) in any other case - is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Housing and Infrastructure which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number or nature of submissions received about development.

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. Departure from development standards**

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

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Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents

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4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment) applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

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**Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents**

---

**SCHEDULE 3**

**1. Conflict of interest**

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item,
- (d) development for the purpose of end of journey facilities, or
- (e) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

**2. Contentious development**

Development that:

- (a) in the case of a council having an approved submissions policy - is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 25 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Housing and Infrastructure which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number or nature of submissions received about development.

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. Departure from development standards**

For development for the purpose of dwelling houses, dual occupancies and attached dwellings, development that contravenes a development standard imposed by an environmental planning instrument by more than 25% or non-numerical development standard.

For all other development, development that contravenes a development standard



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**Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents**

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imposed by an environmental planning instrument by 10% or non-numerical development standards.

**4. Sensitive development**

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment) applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

## (Item GB2/24) Delegation of Functions to Burwood Local Planning Panel from General Manager

File No: 24/12422

Report by Manager City Development

### Report

Since the introduction of Local Planning Panels under the Environmental Planning and Assessment Act 1979 ('EPA Act') in 2018, the NSW Minister for Planning has issued a number of directions pursuant to section 9.1 of the Environmental Planning and Assessment Act 1979 (**the EPA Act**).

Relevant to this report is the *Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents* dated 6 May 2024 (**the Direction**).

The Direction identifies **at a minimum** the type of development applications and modification applications that must be considered by the Burwood Local Planning Panel (BLPP). A copy of the Direction is annexed at "**Attachment 1**".

All other development applications, modifications to consent and review of determination applications under the Part 4 of the Environmental Planning and Assessment Act 1979 are determined by the NSW Sydney District Planning Panel, the NSW Independent Planning Commission or under Council staff delegations.

At Burwood Council, the determination applications under the Part 4 of the Environmental Planning and Assessment Act 1979 are delegated to the General Manager via section 377 of the Local Government Act 1993. A copy of the Direction is annexed at "**Attachment 2**".

A sub-delegation of functions such as the determination of applications under Part 4 of the Environmental Planning and Assessment Act 1979 are permitted to be provided from the General Managers under s378 of the *Local Government Act 1993* "...to any person or **body** (including another employee of the council)."

The Burwood Local Planning Panel, is considered a '**body**' under the s378 of the *Local Government Act 1993* provision.

Accordingly, following an initial review of Council's delegations, it is considered that in some circumstances, additional matters to those detailed under the 9.1 Ministerial Direction would be in the public interest to be considered in a public forum, by an independent body and determined by the Burwood Local Planning Panel instead of under staff delegation.

As such, pursuant to s378 of the *Local Government Act 1993*, the General Manager of Burwood Council has issued two new separate delegations:

Firstly, that either the Director City Strategy or Manager City Development of Burwood Council are delegated to:

- 1) *Exercise the power under section 4.16 of the Environmental Planning and Assessment Act 1979 to determine development applications for development consent subject to the following limitations:*
  - a) *the delegate is satisfied that the concerns of any objectors identified in written objections received by Council have been considered by the assessment officer in the assessment report; and*
  - b) *the development is not one which has been specified by the Minister by direction or circular as requiring determination by the Burwood Local Planning Panel.*
  - c) *the development is not one which has been specified by the Minister by direction or circular, legislation or any other Environmental Planning Instrument as requiring determination by a NSW Sydney District Planning Panel or the NSW Independent Planning Commission.*
- 2) **Authority to refer any other Application made under Part 4 of the Environmental Planning and Assessment Act 1979 (including Development Applications, Modification to Development Consent Applications, Review of Determination Applications) or Division 6.7 of the Environmental Planning and Assessment Act 1979 (Building Information Certificate Applications) for determination which would ordinarily be delegated for determination to a**

***Council Officer which in the opinion of either the Burwood Council's Director City Strategy or Manager City Development considers it to be in the public interest to have considered and determined by the Burwood Local Planning Panel.***

A copy of this delegation is annexed at "Attachment 3".

Secondly, in the event the delegation under Part 2 above is exercised by either the Director City Strategy or Manager City Development of Burwood Council, the Burwood Local Planning Panel are delegated to:

- 1) ***Determination of any other Application made under Part 4 of the Environmental Planning and Assessment Act 1979 (including Development Applications, Modification to Development Consent Applications, Review of Determination Applications) or Division 6.7 of the Environmental Planning and Assessment Act 1979 (Building Information Certificate Applications) which would ordinarily be delegated for determination to a Council Officer which in the opinion of either the Burwood Council's Director City Strategy or Manager City Development considers it to be in the public interest to have considered and determined by the Burwood Local Planning Panel.***

A copy of this delegation is annexed at "Attachment 4".

### **Financial Implications**

Additional applications considered by the BLPP are covered in existing budgets and financial agreements with Panel Members.

### **Conclusion**

Under the EPA Act, the *Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents* dated 6 May 2024 s9.1 Ministerial Direction identifies **the minimum** the types of development applications and modification applications that must be considered by Council's Local Planning Panel (LPP).

In this instance Burwood Council has identified that from time to time that in some circumstances, additional matters to those detailed under the 9.1 Ministerial Direction would be in the public interest to be considered in a public forum, by an independent body and determined by the Burwood Local Planning Panel instead of under staff delegation.

Accordingly, Council's General Manager has provided appropriate delegations under s378 of the Local Government Act 1993 firstly for the Director City Strategy or Manager City Development to refer additional matters to the BLPP for consideration and determination and secondly for the BLPP to have the delegated authority to determine those additional applications referred.

### **Recommendation(s)**

That the Burwood Local Planning Panel receive and note that pursuant to s378 of the Local Government Act 1993 the delegations provided by the General Manager of Burwood Council under Attachments 3 and 4 of this report, which provide that:

- 1) The Director City Strategy or Manager City Development have the authority to refer applications to the BLPP where in their opinion it is in the public interest to do so which is in addition to those specified under the s9.1 Ministerial Direction *Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents* dated 6 May 2024 (as amended); and
- 2) The Burwood Local Planning Panel to have the delegated authority to determine any additional applications referred to it from the Director City Strategy or Manager City Development.

### **Attachments**

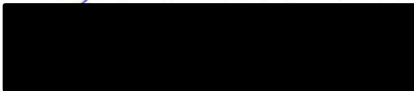
- 1 Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents
- 2 Delegations from Council to the General Manager adopted by Council 18.10.2022
- 3 General Manager Delegation - Determination of any application referred to BLPP for Determination by Director or Manager 7.12.2023

- 4 General Manager Delegation - Determination of Development Applications and ability to refer application to BLPP for determination 7.12.2023

## Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents

### LOCAL PLANNING PANELS DIRECTION – DEVELOPMENT APPLICATIONS AND APPLICATIONS TO MODIFY DEVELOPMENT CONSENTS

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

  
The Hon. Paul Scully MP  
Minister for Planning and Public Spaces

Dated: 6/5/24

#### Objective

The objective of this direction is to identify the development applications and applications to modify development consents that are to be determined by local planning panels on behalf of councils.

#### Application

This direction applies to councils in the Greater Sydney Region, Wollongong and Central Coast. It also applies to any other council that constitutes a local planning panel under the *Environmental Planning and Assessment Act 1979* (the Act).

#### Interpretation

A word or expression used in this direction has the same meaning as it has in the standard local environmental plan prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* made under the Act, unless it is otherwise defined in this direction.

#### Direction

1. Local planning panels of councils in the areas identified in the Table below are to determine development applications for development of a kind specified in the corresponding Schedule to this direction.

Table -

Council	Development
Bayside, Blue Mountains, Burwood, Camden, Campbelltown, Canada Bay, Georges River, Hawkesbury, Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Randwick, Ryde, Strathfield, Waverley, Willoughby, Wollondilly, Woollahra, and any other council that constitutes a local planning panel under the Act	Schedule 1
Blacktown, Canterbury-Bankstown, Central Coast, Cumberland, Fairfield, Inner West, Liverpool, Northern Beaches, Parramatta, Penrith, Sutherland, The Hills, Wollongong	Schedule 2
City of Sydney	Schedule 3

~~Item Number GB2/24 - Attachment 1~~**Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents**

2. Local planning panels are to determine applications under section 4.55(2) of the Act for the modification of development consents granted by the panel that:
- propose amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or
  - propose amendments to a condition of development consent that was not included in the council assessment report but which was added by the panel, or
  - meet the criteria for development applications set out in the Schedules to this direction relating to conflict of interest, contentious development or departure from development standards.

Note: Councils in the areas identified in the Table to this direction are generally precluded from exercising consent authority functions by operation of section 4.8(2) of the Act. This means councils should make arrangements for the determination of all other modification applications under section 4.55(2), as well as sections 4.55(1) and (1A) of the Act, by council staff. Councils should also make arrangements for the determination of modification applications under section 4.56 of the Act by either the local planning panel or council staff.

This direction takes effect on the date of this direction and applies to development applications and applications to modify development consents lodged but not determined before the date of this direction.

**SCHEDULE 1****1. Conflict of interest**

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

## Item Number GB2/24 - Attachment 1

## Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents

**2. Contentious development**

Development that:

- (a) in the case of a council having an approved submissions policy - is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Housing and Infrastructure which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number and nature of submissions received about development.

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. Departure from development standards**

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

**4. Sensitive development**

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment development) applies.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

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**Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents**

---

**SCHEDULE 2**

**1. Conflict of interest**

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

**2. Contentious development**

Development that:

- (a) in the case of a council having an approved submissions policy - is the subject of the number of submissions set by that policy, or
- (b) in any other case - is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Housing and Infrastructure which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number or nature of submissions received about development.

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**3. Departure from development standards**

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.



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Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents

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4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment) applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

Item Number GB5/24 - Attachment 3

**Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents**

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### SCHEDULE 3

#### 1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item,
- (d) development for the purpose of end of journey facilities, or
- (e) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

#### 2. Contentious development

Development that:

- (a) in the case of a council having an approved submissions policy - is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 25 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Housing and Infrastructure which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number or nature of submissions received about development.

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#### 3. Departure from development standards

For development for the purpose of dwelling houses, dual occupancies and attached dwellings, development that contravenes a development standard imposed by an environmental planning instrument by more than 25% or non-numerical development standard.

For all other development, development that contravenes a development standard

## Item Number GB2/24 - Attachment 1

**Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents**

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imposed by an environmental planning instrument by 10% or non-numerical development standards.

**4. Sensitive development**

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment) applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.



## DELEGATIONS FROM COUNCIL TO THE GENERAL MANAGER

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2 Conder Street, BURWOOD NSW 2134  
PO Box 240, BURWOOD NSW 1805  
Phone: 9911-9911 - Fax: 9911-9900  
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Public Document  
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Version No.: 7  
Ownership: Governance & Risk

**Delegations from Council to the General Manager adopted by Council 18.10.2022**

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**Purpose**

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To delegate functions to the General Manager in accordance with section 377 of the *Local Government Act 1993* to facilitate the exercise of Burwood Council functions.

This instrument of delegation specifies the limits of authority, responsibility and accountability for decisions made under delegation.

**Delegations**

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Council delegates to the General Manager (or to the person who acts in that position):

- a) all of the functions, powers, duties and authorities of Council that it may lawfully delegate under the *Local Government Act 1993* or any other Act, regulation, instrument, rule or the like
- b) any functions, powers, duties and authorities delegated to the Council by any authority, body, person or the like

other than the exceptions outlined in this instrument of delegation.

**Exceptions**

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**Expenditure****Prescribed Organisations**

The General Manager cannot expend more than \$1,000,000 via a prescribed organisation i.e.: Local Government Procurement (LGP) and Procurement Australia (PA).

The General Manager has the discretion to refer any expenditure to Council for determination.

**Council Resolved Projects**

Where Council has approved the project, either through a Council resolution or the Operational and Capital Works Program, the General Manager cannot expend more than the resolved dollar value.

**Other Matters****Writing Off Accounts**

The General Manager does not have the delegation to approve the writing off of accounts greater than \$10,000. Write offs are reported to Council on an annual basis.

**Writing Off Stores and Materials**

The General Manager does not have the delegation to approve the writing off of stores and materials greater than \$10,000.

## Item Number GB2/24 - Attachment 3

## General Manager Delegation - Determination of any application referred to BLPP for Determination by Director or Manager 7.12.2023



Burwood Council  
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PO Box 240 Burwood NSW 1805

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## GENERAL MANAGER'S INSTRUMENT OF DELEGATION

With immediate effect and pursuant to s378 of the *Local Government Act 1993*, I, Tommaso Briscese, General Manager of Burwood Council, delegate the following functions to the persons identified in the Schedule 1 of this instrument of delegation ('Instrument'):

- 1) Determination of any Application made under Part 4 of the *Environmental Planning and Assessment Act 1979* (including Development Applications, Modification to Development Consent Applications, Review of Determination Applications) or Division 6.7 of the *Environmental Planning and Assessment Act 1979* (Building Information Certificate Applications) which would ordinarily be delegated for determination to a Council Officer which in the opinion of either the Burwood Council's Director City Strategy or Manager City Development considers it to be in the public interest to have considered and determined by the Burwood Local Planning Panel.

The exercise of any function pursuant to this Instrument is subject to the conditions and limitations set out in Schedule 2 of this Instrument.



Tommaso Briscese  
General Manager

Dated: 7/12/2023

## Schedule 1

For the purposes of this Instrument, a delegate includes each person or body holding the position within or on behalf Burwood Council set out below, together with any person appointed to act in that position:

1. 'Burwood Local Planning Panel' as appointed under Division 2.5 of the *Environmental Planning and Assessment Act 1979*.

## Schedule 2

## Conditions and Limitations Applying to Delegated Functions

The conditions and limitations set out in the General Manager's delegation apply, with the following further condition(s):

- 1 Nil.

## Item Number GB2/24 - Attachment 4

## General Manager Delegation - Determination of Development Applications and ability to refer application to BLPP for determination 7.12.2023



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## GENERAL MANAGER'S INSTRUMENT OF DELEGATION

With immediate effect and pursuant to s378 of the *Local Government Act 1993*, I, Tommaso Briscese, General Manager of Burwood Council, delegate the following functions to the persons identified in the Schedule 1 of this instrument of delegation ('Instrument'):

- 1) Exercise the power under section 4.16 of the *Environmental Planning and Assessment Act 1979* to determine development applications for development consent subject to the following limitations:
  - a) the delegate is satisfied that the concerns of any objectors identified in written objections received by Council have been considered by the assessment officer in the assessment report; and
  - b) the development is not one which has been specified by the Minister by direction or circular as requiring determination by the Burwood Local Planning Panel.
  - c) the development is not one which has been specified by the Minister by direction or circular, legislation or any other *Environmental Planning Instrument* as requiring determination by a NSW Sydney District Planning Panel or the NSW Independent Planning Commission.
- 2) Authority to refer any other Application made under Part 4 of the *Environmental Planning and Assessment Act 1979* (including Development Applications, Modification to Development Consent Applications, Review of Determination Applications) or Division 6.7 of the *Environmental Planning and Assessment Act 1979* (Building Information Certificate Applications) for determination which would ordinarily be delegated for determination to a Council Officer which in the opinion of either the Burwood Council's Director City Strategy or Manager City Development considers it to be in the public interest to have considered and determined by the Burwood Local Planning Panel.

The exercise of any function pursuant to this Instrument is subject to the conditions and limitations set out in Schedule 2 of this Instrument.

Tommaso Briscese  
General Manager

Dated: 7/12/2023

## Schedule 1

For the purposes of this Instrument, a delegate includes each person or body holding the position within or on behalf Burwood Council set out below, together with any person appointed to act in that position:

1. Director City Strategy - City Strategy Directorate. Burwood Council
2. Manager City Development - City Strategy Directorate. Burwood Council

## Schedule 2

## Conditions and Limitations Applying to Delegated Functions

The conditions and limitations set out in the General Manager's delegation apply, with the following further condition(s):

- 1 Nil.

## General Business

### (Item GB4/24) Delegation of Functions from Burwood Local Planning Panel to Council Officers, Minor Heritage Works

File No: 24/35759

Report by Manager City Development

#### Report

#### Background

Since the introduction of Local Planning Panels under the *Environmental Planning and Assessment Act 1979* (the EPA Act), the NSW Minister for Planning has issued a number of directions pursuant to section 9.1 of the EPA Act.

Relevant to this report is the *Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents* dated 6 March 2024 (the Direction).

The Direction identifies at a minimum the type of development applications and modification applications that must be considered by Council's Local Planning Panel (LPP). A copy of the Direction is annexed at "**Attachment 1**".

#### Previous delegations to staff

At its meeting on 14 May 2024, the LPP considered two reports seeking:

- a) Delegation of Functions from LPP to Council Officers in Planning Appeals, and
- b) Delegation of Functions to the LPP from the General Manager.

The intent of these reports was to allow appeals to be dealt with in an efficient and timely manner and to allow additional applications to be considered and determined by the LPP if referred to it by the Director City Strategy or the Manager City Development. A copy of these reports are annexed at "**Attachment 2**".

#### Proposed Changes

In order to improve the efficiency of the LPP and reduce delays for applicants, it is recommended that determination of some of the less complex and uncontroversial applications be delegated back to Council staff.

Under section 2.20(8) of the EPA Act:

*A local planning panel may delegate any function of the panel under this or any other Act (other than this power of delegation) to the general manager or other staff of the council...*

It is recommended that the LPP exercise this power in relation to minor works to sites that are identified as heritage items (including trees). As examples this could relate to an application for an internal fitout to a modified tenancy within a locally listed heritage item or the replacement of an under awning sign. This is discussed in more detail below.

This will reduce the potential volume of minor Development Applications being reported to each LPP meeting, reduce waiting times for applicants, and improve the ability of the LPP to deal with genuinely complex and controversial matters.



**1. Works to local heritage items**

Currently, all applications involving alterations or tree lopping on local heritage listed sites are required to be reported to the LPP. This follows a narrow interpretation of the term 'demolition' by the Department of Planning in the requirement for LPP to determine all Development Applications involving 'demolition of a heritage item'.

It is appropriate that the LPP delegate to staff the power to determine Development Applications for locally listed heritage sites where:

- All or most of the significant heritage fabric is maintained;
- There is no adverse impact on the significant heritage fabric or setting of the item; and
- It is agreed by Council's heritage officer that the development can proceed.

Further, it is appropriate that the LPP delegate to staff the power to determine Development Applications for minor works to trees that are either

- Heritage listed; or
- On or overhanging the site of a heritage item

that affect less than (or equal to) 10% of the tree canopy where Council's experts confirm that the proposal:

- Will not adversely affect the health of the tree; and
- Will not adversely affect the heritage significance of the tree or place.

**2. Caveats**

- a) This delegation would only be of effect if a Development Application is not required to go before the LPP for another reason. For example, if solely due to the matter being delegated back to Council. If a minor heritage item as discussed above met another LPP threshold 'trigger' – say, for example, 10 objections, or the property were Council owned – then the application would still need to be reported for determination to the LPP.
- b) If a Council Officer is uncertain as to the subjective elements of this delegation (terms such as 'adverse impact'), a briefing may be held with the LPP to make sure a particular application falls within the reasonable limits of the delegation.

**Financial Implications**

Additional applications considered by the LPP are covered in existing budgets and financial agreements with Panel Members.

**Conclusion**

Under the EPA Act the LPP is currently required to consider all applications for locally listed heritage items. It is appropriate for the LPP to delegate its functions under section 2.20(8) of the EPA Act, to the General Manager, Director City Strategy and Manager City Development. To avoid unnecessary delays and to ensure the LPP deal with genuinely complex and controversial matters.

**Recommendation(s)**

Under section 2.20(8) of the *Environmental Planning and Assessment Act 1979*, the Burwood Local Planning Panel resolves to delegate its determining functions on the following development types to the General Manager, Director City Development and Manager City Development:

**1. Minor alterations and additions to a heritage item, being defined to include:**

- a) Maintenance of at least 90% of the heritage significant fabric; or

- b) Little or no adverse impact on the heritage fabric or setting of the item; and
- c) Where there is agreement by Council's heritage expert that the development can proceed.

**2. Works to trees that are**

- a) Heritage listed; or
- b) On a heritage site;

and, that

- c) Affect less than (or equal to) 10% of the tree canopy; and
- d) Will not adversely impact upon the health of the tree; and
- e) Will not adversely impact upon the heritage significance of the tree or place; and
- f) Where there is agreement by Council's experts that the development can proceed.

**Attachments**

- 1 BLPP 10 September 2024 - Attachment A - LPP Direction
- 2 BLPP - 10 September 2024 - Attachment B - Reports of BLPP - 14 May 2024

## LOCAL PLANNING PANELS DIRECTION – DEVELOPMENT APPLICATIONS AND APPLICATIONS TO MODIFY DEVELOPMENT CONSENTS

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

The Hon. Paul Scully MP  
Minister for Planning and Public Spaces

Dated: 6/5/24

### Objective

The objective of this direction is to identify the development applications and applications to modify development consents that are to be determined by local planning panels on behalf of councils.

### Application

This direction applies to councils in the Greater Sydney Region, Wollongong and Central Coast. It also applies to any other council that constitutes a local planning panel under the *Environmental Planning and Assessment Act 1979* (the Act).

### Interpretation

A word or expression used in this direction has the same meaning as it has in the standard local environmental plan prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* made under the Act, unless it is otherwise defined in this direction.

### Direction

1. Local planning panels of councils in the areas identified in the Table below are to determine development applications for development of a kind specified in the corresponding Schedule to this direction.

Table -

Council	Development
Bayside, Blue Mountains, Burwood, Camden, Campbelltown, Canada Bay, Georges River, Hawkesbury, Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Randwick, Ryde, Strathfield, Waverley, Willoughby, Wollondilly, Woollahra, and any other council that constitutes a local planning panel under the Act	Schedule 1
Blacktown, Canterbury-Bankstown, Central Coast, Cumberland, Fairfield, Inner West, Liverpool, Northern Beaches, Parramatta, Penrith, Sutherland, The Hills, Wollongong	Schedule 2
City of Sydney	Schedule 3

2. Local planning panels are to determine applications under section 4.55(2) of the Act for the modification of development consents granted by the panel that:
- propose amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or
  - propose amendments to a condition of development consent that was not included in the council assessment report but which was added by the panel, or
  - meet the criteria for development applications set out in the Schedules to this direction relating to conflict of interest, contentious development or departure from development standards.

Note: Councils in the areas identified in the Table to this direction are generally precluded from exercising consent authority functions by operation of section 4.8(2) of the Act. This means councils should make arrangements for the determination of all other modification applications under section 4.55(2), as well as sections 4.55(1) and (1A) of the Act, by council staff. Councils should also make arrangements for the determination of modification applications under section 4.56 of the Act by either the local planning panel or council staff.

This direction takes effect on the date of this direction and applies to development applications and applications to modify development consents lodged but not determined before the date of this direction.

#### SCHEDULE 1

##### 1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

**2. Contentious development**

Development that:

- (a) in the case of a council having an approved submissions policy - is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Housing and Infrastructure which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number and nature of submissions received about development.

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. Departure from development standards**

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

**4. Sensitive development**

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment development) applies.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

## SCHEDULE 2

### 1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

### 2. Contentious development

Development that:

- (a) in the case of a council having an approved submissions policy - is the subject of the number of submissions set by that policy, or
- (b) in any other case - is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Housing and Infrastructure which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number or nature of submissions received about development.

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. Departure from development standards

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

**4. Sensitive development**

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment) applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

## SCHEDULE 3

1. **Conflict of interest**

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item,
- (d) development for the purpose of end of journey facilities, or
- (e) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

2. **Contentious development**

Development that:

- (a) in the case of a council having an approved submissions policy - is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 25 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Housing and Infrastructure which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number or nature of submissions received about development.

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. **Departure from development standards**

For development for the purpose of dwelling houses, dual occupancies and attached dwellings, development that contravenes a development standard imposed by an environmental planning instrument by more than 25% or non-numerical development standard.

For all other development, development that contravenes a development standard



imposed by an environmental planning instrument by 10% or non-numerical development standards.

**4. Sensitive development**

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment) applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

**General Business****(Item GB1/24) Delegation of Functions from Burwood Local Planning Panel to Council Officers in Planning Appeals**

File No: 24/12397

Report by Manager City Development

**Report**

Since the introduction of Local Planning Panels under the Environmental Planning and Assessment Act 1979 ('EPA Act'), the NSW Minister for Planning has issued a number of directions pursuant to section 9.1 of the Environmental Planning and Assessment Act 1979 (**the EPA Act**).

Relevant to this report is the *Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents* dated 6 May 2024 (**the Direction**).

The Direction identifies the type of development applications and modification applications that must be considered by Council's Local Planning Panel (**LPP**). A copy of the Direction is annexed at "**Attachment 1**".

Following the amendment to the EPA Act of 1 March 2018, the LPP has the control and direction section 8.15(4) of the EPA Act of the conduct of an appeal commenced pursuant to under Section 8.7, 8.8, 8.9 of the EPA Act and any subsequent appeal arising from a decision in those proceedings (**Planning Appeals**) that relates to an application that was determined by the LPP pursuant to the Direction.

Prior to the amendments to the EPA Act, senior Council staff were delegated with the authority to manage Planning Appeals and to give instructions with respect to resolving or defending matters. This report requests that the LPP delegate their functions of control and direction of Planning Appeals to senior Council staff of the Council to allow for the efficient and cost effective conduct of proceedings.

Section 8.15(4) of the EPA Act now provides that:

*(4) If the determination or decision appealed against under this Division was made by a Sydney district or regional planning panel or a local planning panel, the council for the area concerned is to be the respondent to the appeal but is subject to the control and direction of the panel in connection with the conduct of the appeal. The council is to give notice of the appeal to the panel.*

Council's position is that section 8.15(4) of the EPA Act does not apply to deemed refusals because a Local Planning Panel is not defined as a consent authority under section 4.5 of the EPA Act.

Although Council is the respondent in any appeal to the Court, in Planning Appeals that relate to a determination of the LPP, Council's conduct of the class 1 proceedings is subject to the control and direction of the LPP. This means that appeals to which section 8.15(4) applies will need to be reported to and instructions obtained from the LPP. By reason of section 2.20(8) of the EPA Act, the LPP cannot delegate its functions to a single Panel member and therefore a decision of the full Panel is required before solicitors are provided with any instructions.

Such a process is cumbersome in practice. Furthermore, the provision makes it difficult for Council to comply with the Court's requirements that:

*The parties are to participate, in good faith, in the conciliation conference (see s34(1A) of the Land and Environment Court Act 1979), including preparing to be able to fully and meaningfully participate, having authority or the ready means of obtaining authority to reach agreement and genuinely endeavouring to reach agreement at the conciliation conference (Paragraph 47 Practice Note – Class 1 Development Appeals).*

In order to ensure that Council can most efficiently and expeditiously conduct and manage the Planning Appeals process, it is appropriate that the LPP delegate all its Planning Appeal functions under section 8.15(4) to the General Manager, Director City Strategy and Manager City Development with the condition that in the case of a Planning Appeal relating to a decision of the Panel that is contrary to an assessment report, the General Manager, Director City Strategy or Manager City Development will consult with the Chair of

**Burwood Local Planning Panel Meeting**

14 May 2024

the Panel that made the relevant decision, as to the conduct of the Planning Appeal within fourteen (14) days of Council being served with the appeal.

Section 2.20(8) of the EPA Act allows Local Planning Panels to delegate any of their functions to the General Manager or other staff of the Council. Such a delegation does not require a resolution of the Council under section 381 of the Local Government Act 1993.

The requirement for the General Manager, Director City Strategy and Manager City Development to consult with the Chair of the Panel about the conduct of the appeal means that the Panel can be satisfied that Council will conduct the appeal with the LPP's decision in mind. If the LPP Chair was concerned that an appeal was not being conducted in a manner consistent with its determination, the LPP could resolve to revoke the delegation in that specific matter.

Any judicial review proceedings relating to a determination of the Panel are not the subject of section 8.15(4) of the EPA Act and Council will have the control and direction of such proceedings. Nevertheless, Council would intend to notify the LLP in the event that judicial review proceedings of an LLP decision are commenced.

**Financial Implications**

Should the delegation not be provided to the General Manager, Director City Strategy and Manager City Development, then there are likely to be additional legal costs associated with the management of legal proceedings.

**Conclusion**

Under the EPA Act the LPP currently has the control and direction of the conduct of the proceedings in any Planning Appeals relating to a determination of the LPP. In view of the practical realities of conciliation conferences and the need for instructions at short notice, together with the clear advantages of having an officer present at the conciliation with delegation to give instructions with respect to settlement or the defence of a Planning Appeal, it is appropriate for the LPP to delegate its functions under 8.15(4) of the EPA Act, to the General Manager, Director City Strategy and Manager City Development.

**Recommendation(s)**

That pursuant to Section 2.20(8) of the *Environmental Planning and Assessment Act 1979*, the Burwood Local Planning Panel delegate its functions (i.e. all Planning Appeal functions) as referred to in Section 8.15(4) of the *Environmental Planning and Assessment Act 1979* to the General Manager, Director City Strategy and Manager City Development to independently manage all Planning Appeal functions subject to the requirement that, in the case of a Planning Appeal relating to a decision of the Burwood Local Planning Panel that is contrary to an assessment report, the General Manager, Director City Strategy or Manager City Development will consult with the Chairperson of the Burwood Local Planning Panel that made the relevant decision, as to the conduct of the Planning Appeal within fourteen (14) days of Council being served with the appeal.

**Attachments**

1. Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents

Item Number GB4/24 - Attachment 2  
BLPP - 10 September 2024 - Attachment B - Reports of BLPP - 14 May 2024

Item Number GB 1/24 - Attachment 1  
Local Planning Panels Direction - Development Applications and Applications to Modify  
D

LOCAL PLANNING PANELS DIRECTION – DEVELOPMENT APPLICATIONS AND  
APPLICATIONS TO MODIFY DEVELOPMENT CONSENTS

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

The Hon. Paul Scully MP  
Minister for Planning and Public Spaces

Dated: 6/8/24

**Objective**

The objective of this direction is to identify the development applications and applications to modify development consents that are to be determined by local planning panels on behalf of councils.

**Application**

This direction applies to councils in the Greater Sydney Region, Wollongong and Central Coast. It also applies to any other council that constitutes a local planning panel under the *Environmental Planning and Assessment Act 1979* (the Act).

**Interpretation**

A word or expression used in this direction has the same meaning as it has in the standard local environmental plan prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* made under the Act, unless it is otherwise defined in this direction.

**Direction**

1. Local planning panels of councils in the areas identified in the Table below are to determine development applications for development of a kind specified in the corresponding Schedule to this direction.

Table -

Council	Development
Bayside, Blue Mountains, Burwood, Camden, Campbelltown, Canada Bay, Georges River, Hawkesbury, Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Randwick, Ryde, Strathfield, Waverley, Willoughby, Wollondilly, Woollahra, and any other council that constitutes a local planning panel under the Act	Schedule 1
Blacktown, Canterbury-Bankstown, Central Coast, Cumberland, Fairfield, Inner West, Liverpool, Northern Beaches, Parramatta, Penrith, Sutherland, The Hills, Wollongong	Schedule 2
City of Sydney	Schedule 3

2. Local planning panels are to determine applications under section 4.55(2) of the Act for the modification of development consents granted by the panel that:
  - propose amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or
  - propose amendments to a condition of development consent that was not included in the council assessment report but which was added by the panel, or
  - meet the criteria for development applications set out in the Schedules to this direction relating to conflict of interest, contentious development or departure from development standards.

Note: Councils in the areas identified in the Table to this direction are generally precluded from exercising consent authority functions by operation of section 4.8(2) of the Act. This means councils should make arrangements for the determination of all other modification applications under section 4.55(2), as well as sections 4.55(1) and (1A) of the Act, by council staff. Councils should also make arrangements for the determination of modification applications under section 4.56 of the Act by either the local planning panel or council staff.

This direction takes effect on the date of this direction and applies to development applications and applications to modify development consents lodged but not determined before the date of this direction.

#### SCHEDULE 1

##### 1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

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2. Contentious development

Development that:

- (a) in the case of a council having an approved submissions policy - is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Housing and Infrastructure which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number and nature of submissions received about development.

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. Departure from development standards

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment development) applies.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

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SCHEDULE 2

1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

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Development that:

- (a) in the case of a council having an approved submissions policy - is the subject of the number of submissions set by that policy, or
- (b) in any other case - is the subject of 10 or more unique submissions by way of objection.

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3. Departure from development standards

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment) applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
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SCHEDULE 3

1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item,
- (d) development for the purpose of end of journey facilities, or
- (e) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

2. Contentious development

Development that:

- (a) in the case of a council having an approved submissions policy - is the subject of the number of submissions set by that policy, or
- (b) in any other case - is the subject of 25 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Housing and Infrastructure which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number or nature of submissions received about development.

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3. Departure from development standards

For development for the purpose of dwelling houses, dual occupancies and attached dwellings, development that contravenes a development standard imposed by an environmental planning instrument by more than 25% or non-numerical development standard.

For all other development, development that contravenes a development standard

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imposed by an environmental planning instrument by 10% or non-numerical development standards.

**4. Sensitive development**

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment) applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

## (Item GB2/24) Delegation of Functions to Burwood Local Planning Panel from General Manager

File No: 24/12422

Report by Manager City Development

### Report

Since the introduction of Local Planning Panels under the Environmental Planning and Assessment Act 1979 ('EPA Act') in 2018, the NSW Minister for Planning has issued a number of directions pursuant to section 9.1 of the Environmental Planning and Assessment Act 1979 (**the EPA Act**).

Relevant to this report is the *Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents* dated 6 May 2024 (**the Direction**).

The Direction identifies **at a minimum** the type of development applications and modification applications that must be considered by the Burwood Local Planning Panel (BLPP). A copy of the Direction is annexed at "**Attachment 1**".

All other development applications, modifications to consent and review of determination applications under the Part 4 of the Environmental Planning and Assessment Act 1979 are determined by the NSW Sydney District Planning Panel, the NSW Independent Planning Commission or under Council staff delegations.

At Burwood Council, the determination applications under the Part 4 of the Environmental Planning and Assessment Act 1979 are delegated to the General Manager via section 377 of the Local Government Act 1993. A copy of the Direction is annexed at "**Attachment 2**".

A sub-delegation of functions such as the determination of applications under Part 4 of the Environmental Planning and Assessment Act 1979 are permitted to be provided from the General Managers under s378 of the *Local Government Act 1993* "...to any person or **body** (including another employee of the council)."

The Burwood Local Planning Panel, is considered a '**body**' under the s378 of the *Local Government Act 1993* provision.

Accordingly, following an initial review of Council's delegations, it is considered that in some circumstances, additional matters to those detailed under the 9.1 Ministerial Direction would be in the public interest to be considered in a public forum, by an independent body and determined by the Burwood Local Planning Panel instead of under staff delegation.

As such, pursuant to s378 of the *Local Government Act 1993*, the General Manager of Burwood Council has issued two new separate delegations:

Firstly, that either the Director City Strategy or Manager City Development of Burwood Council are delegated to:

- 1) *Exercise the power under section 4.16 of the Environmental Planning and Assessment Act 1979 to determine development applications for development consent subject to the following limitations:*
  - a) *the delegate is satisfied that the concerns of any objectors identified in written objections received by Council have been considered by the assessment officer in the assessment report; and*
  - b) *the development is not one which has been specified by the Minister by direction or circular as requiring determination by the Burwood Local Planning Panel.*
  - c) *the development is not one which has been specified by the Minister by direction or circular, legislation or any other Environmental Planning Instrument as requiring determination by a NSW Sydney District Planning Panel or the NSW Independent Planning Commission.*
- 2) **Authority to refer any other Application made under Part 4 of the Environmental Planning and Assessment Act 1979 (including Development Applications, Modification to Development Consent Applications, Review of Determination Applications) or Division 6.7 of the Environmental Planning and Assessment Act 1979 (Building Information Certificate Applications) for determination which would ordinarily be delegated for determination to a**

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**Burwood Local Planning Panel Meeting**

14 May 2024

***Council Officer which in the opinion of either the Burwood Council's Director City Strategy or Manager City Development considers it to be in the public interest to have considered and determined by the Burwood Local Planning Panel.***

A copy of this delegation is annexed at "Attachment 3".

Secondly, in the event the delegation under Part 2 above is exercised by either the Director City Strategy or Manager City Development of Burwood Council, the Burwood Local Planning Panel are delegated to:

- 1) ***Determination of any other Application made under Part 4 of the Environmental Planning and Assessment Act 1979 (including Development Applications, Modification to Development Consent Applications, Review of Determination Applications) or Division 6.7 of the Environmental Planning and Assessment Act 1979 (Building Information Certificate Applications) which would ordinarily be delegated for determination to a Council Officer which in the opinion of either the Burwood Council's Director City Strategy or Manager City Development considers it to be in the public interest to have considered and determined by the Burwood Local Planning Panel.***

A copy of this delegation is annexed at "Attachment 4".

**Financial Implications**

Additional applications considered by the BLPP are covered in existing budgets and financial agreements with Panel Members.

**Conclusion**

Under the EPA Act, the *Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents* dated 6 May 2024 s9.1 Ministerial Direction identifies **the minimum** the types of development applications and modification applications that must be considered by Council's Local Planning Panel (LPP).

In this instance Burwood Council has identified that from time to time that in some circumstances, additional matters to those detailed under the 9.1 Ministerial Direction would be in the public interest to be considered in a public forum, by an independent body and determined by the Burwood Local Planning Panel instead of under staff delegation.

Accordingly, Council's General Manager has provided appropriate delegations under s378 of the Local Government Act 1993 firstly for the Director City Strategy or Manager City Development to refer additional matters to the BLPP for consideration and determination and secondly for the BLPP to have the delegated authority to determine those additional applications referred.

**Recommendation(s)**

That the Burwood Local Planning Panel receive and note that pursuant to s378 of the Local Government Act 1993 the delegations provided by the General Manager of Burwood Council under Attachments 3 and 4 of this report, which provide that:

- 1) The Director City Strategy or Manager City Development have the authority to refer applications to the BLPP where in their opinion it is in the public interest to do so which is in addition to those specified under the s9.1 Ministerial Direction *Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents* dated 6 May 2024 (as amended); and
- 2) The Burwood Local Planning Panel to have the delegated authority to determine any additional applications referred to it from the Director City Strategy or Manager City Development.

**Attachments**

- 1 [Local Planning Panels Direction - Development Applications and Applications to Modify Development Consents](#)
- 2 [Delegations from Council to the General Manager adopted by Council 18.10.2022](#)
- 3 [General Manager Delegation - Determination of any application referred to BLPP for Determination by Director or Manager 7.12.2023](#)

4. [General Manager Delegation - Determination of Development Applications and ability to refer application to BLPP for determination 7.12.2023](#)

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Local Planning Panels Direction - Development Applications and Applications to Modify  
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LOCAL PLANNING PANELS DIRECTION – DEVELOPMENT APPLICATIONS AND  
APPLICATIONS TO MODIFY DEVELOPMENT CONSENTS

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

The Hon. Paul Scully MP  
Minister for Planning and Public Spaces

Dated: 6/8/24

**Objective**

The objective of this direction is to identify the development applications and applications  
to modify development consents that are to be determined by local planning panels on  
behalf of councils.

**Application**

This direction applies to councils in the Greater Sydney Region, Wollongong and  
Central Coast. It also applies to any other council that constitutes a local planning panel  
under the *Environmental Planning and Assessment Act 1979* (the Act).

**Interpretation**

A word or expression used in this direction has the same meaning as it has in the  
standard local environmental plan prescribed by the *Standard Instrument (Local  
Environmental Plans) Order 2006* made under the Act, unless it is otherwise defined in  
this direction.

**Direction**

1. Local planning panels of councils in the areas identified in the Table below  
are to determine development applications for development of a kind  
specified in the corresponding Schedule to this direction.

Table -

Council	Development
Bayside, Blue Mountains, Burwood, Camden, Campbelltown, Canada Bay, Georges River, Hawkesbury, Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Randwick, Ryde, Strathfield, Waverley, Willoughby, Wollondilly, Woollahra, and any other council that constitutes a local planning panel under the Act	Schedule 1
Blacktown, Canterbury-Bankstown, Central Coast, Cumberland, Fairfield, Inner West, Liverpool, Northern Beaches, Parramatta, Penrith, Sutherland, The Hills, Wollongong	Schedule 2
City of Sydney	Schedule 3

2. Local planning panels are to determine applications under section 4.55(2) of the Act for the modification of development consents granted by the panel that:
  - propose amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or
  - propose amendments to a condition of development consent that was not included in the council assessment report but which was added by the panel, or
  - meet the criteria for development applications set out in the Schedules to this direction relating to conflict of interest, contentious development or departure from development standards.

Note: Councils in the areas identified in the Table to this direction are generally precluded from exercising consent authority functions by operation of section 4.8(2) of the Act. This means councils should make arrangements for the determination of all other modification applications under section 4.55(2), as well as sections 4.55(1) and (1A) of the Act, by council staff. Councils should also make arrangements for the determination of modification applications under section 4.56 of the Act by either the local planning panel or council staff.

This direction takes effect on the date of this direction and applies to development applications and applications to modify development consents lodged but not determined before the date of this direction.

#### SCHEDULE 1

##### 1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

2. Contentious development

Development that:

- (a) in the case of a council having an approved submissions policy - is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Housing and Infrastructure which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number and nature of submissions received about development.

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3. Departure from development standards

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment development) applies.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.



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SCHEDULE 2

1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

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- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
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Development that:

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4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment) applies and is 4 or more storeys in height.
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  - (i) a club licence under the *Registered Clubs Act 1976*,
  - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
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D

SCHEDULE 3

1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
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Development that:

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For all other development, development that contravenes a development standard

imposed by an environmental planning instrument by 10% or non-numerical development standards.

**4. Sensitive development**

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy (Housing) 2021*, Chapter 4 (Design of residential apartment) applies and is 4 or more storeys in height.
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- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
  - (i) a club licence under the *Registered Clubs Act 1976*,
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  - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.



## DELEGATIONS FROM COUNCIL TO THE GENERAL MANAGER

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2 Conder Street, BURWOOD NSW 2134  
PO Box 240, BURWOOD NSW 1805  
Phone: 9911-9911 - Fax: 9911-9900  
Email: [Council@burwood.nsw.gov.au](mailto:Council@burwood.nsw.gov.au)  
Website: [www.burwood.nsw.gov.au](http://www.burwood.nsw.gov.au)

Public Document  
Adopted by Council: 18 October 2022 (Min. no. 140/22)  
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Version No.: 7  
Ownership: Governance & Risk

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Item Number GB2/24 - Attachment 2  
Delegations from Council to the General Manager adopted by Council 18.10.2022

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### **Purpose**

To delegate functions to the General Manager in accordance with section 377 of the *Local Government Act 1993* to facilitate the exercise of Burwood Council functions.

This instrument of delegation specifies the limits of authority, responsibility and accountability for decisions made under delegation.

### **Delegations**

Council delegates to the General Manager (or to the person who acts in that position):

- a) all of the functions, powers, duties and authorities of Council that it may lawfully delegate under the *Local Government Act 1993* or any other Act, regulation, instrument, rule or the like
- b) any functions, powers, duties and authorities delegated to the Council by any authority, body, person or the like

other than the exceptions outlined in this instrument of delegation.

### **Exceptions**

### **Expenditure**

#### **Prescribed Organisations**

The General Manager cannot expend more than \$1,000,000 via a prescribed organisation i.e.: Local Government Procurement (LGP) and Procurement Australia (PA).

The General Manager has the discretion to refer any expenditure to Council for determination.

#### **Council Resolved Projects**

Where Council has approved the project, either through a Council resolution or the Operational and Capital Works Program, the General Manager cannot expend more than the resolved dollar value.

### **Other Matters**

#### **Writing Off Accounts**

The General Manager does not have the delegation to approve the writing off of accounts greater than \$10,000. Write offs are reported to Council on an annual basis.

#### **Writing Off Stores and Materials**

The General Manager does not have the delegation to approve the writing off of stores and materials greater than \$10,000.

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General Manager Delegation - Determination of any application referred to BLPP for  
D



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GENERAL MANAGER'S INSTRUMENT OF DELEGATION

With immediate effect and pursuant to s378 of the *Local Government Act 1993*, I, Tommaso Briscese, General Manager of Burwood Council, delegate the following functions to the persons identified in the Schedule 1 of this instrument of delegation ('Instrument'):

- 1) Determination of any Application made under Part 4 of the *Environmental Planning and Assessment Act 1979* (including Development Applications, Modification to Development Consent Applications, Review of Determination Applications) or Division 6.7 of the *Environmental Planning and Assessment Act 1979* (Building Information Certificate Applications) which would ordinarily be delegated for determination to a Council Officer which in the opinion of either the Burwood Council's Director City Strategy or Manager City Development considers it to be in the public interest to have considered and determined by the Burwood Local Planning Panel.

The exercise of any function pursuant to this Instrument is subject to the conditions and limitations set out in Schedule 2 of this Instrument.

Tommaso Briscese  
General Manager

Dated: 7/12/2023

Schedule 1

For the purposes of this Instrument, a delegate includes each person or body holding the position within or on behalf Burwood Council set out below, together with any person appointed to act in that position:

1. 'Burwood Local Planning Panel' as appointed under Division 2.5 of the *Environmental Planning and Assessment Act 1979*.

Schedule 2

Conditions and Limitations Applying to Delegated Functions

The conditions and limitations set out in the General Manager's delegation apply, with the following further condition(s):

- 1 Nil.

Item Number GB4/24 - Attachment 2  
BLPP - 10 September 2024 - Attachment B - Reports of BLPP - 14 May 2024

Item Number GB2/24 - Attachment 4  
General Manager Delegation - Determination of Development Applications and ability to refer at



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GENERAL MANAGER'S INSTRUMENT OF DELEGATION

With immediate effect and pursuant to s378 of the *Local Government Act 1993*, I, Tommaso Briscese, General Manager of Burwood Council, delegate the following functions to the persons identified in the Schedule 1 of this instrument of delegation ('Instrument'):

- 1) Exercise the power under section 4.16 of the *Environmental Planning and Assessment Act 1979* to determine development applications for development consent subject to the following limitations:
  - a) the delegate is satisfied that the concerns of any objectors identified in written objections received by Council have been considered by the assessment officer in the assessment report; and
  - b) the development is not one which has been specified by the Minister by direction or circular as requiring determination by the Burwood Local Planning Panel.
  - c) the development is not one which has been specified by the Minister by direction or circular, legislation or any other *Environmental Planning Instrument* as requiring determination by a NSW Sydney District Planning Panel or the NSW Independent Planning Commission.
- 2) Authority to refer any other Application made under Part 4 of the *Environmental Planning and Assessment Act 1979* (including Development Applications, Modification to Development Consent Applications, Review of Determination Applications) or Division 6.7 of the *Environmental Planning and Assessment Act 1979* (Building Information Certificate Applications) for determination which would ordinarily be delegated for determination to a Council Officer which in the opinion of either the Burwood Council's Director City Strategy or Manager City Development considers it to be in the public interest to have considered and determined by the Burwood Local Planning Panel.

The exercise of any function pursuant to this Instrument is subject to the conditions and limitations set out in Schedule 2 of this Instrument.

Tommaso Briscese  
General Manager

Dated: 7/12/2023

Schedule 1

For the purposes of this Instrument, a delegate includes each person or body holding the position within or on behalf Burwood Council set out below, together with any person appointed to act in that position:

1. Director City Strategy - City Strategy Directorate, Burwood Council
2. Manager City Development - City Strategy Directorate, Burwood Council

Schedule 2

Conditions and Limitations Applying to Delegated Functions

The conditions and limitations set out in the General Manager's delegation apply, with the following further condition(s):

- 1 Nil.





**Burwood**<sup>Inc.1874</sup>

Burwood . Burwood Heights . Croydon . Croydon Park . Enfield . Strathfield

## BURWOOD LOCAL PLANNING PANEL MEETING

MINUTES OF THE MEETING OF THE BURWOOD LOCAL PLANNING PANEL held at the CONFERENCE ROOM, 2 CONDER STREET, BURWOOD on Tuesday 17 September 2024 commencing at 6:00 PM.

### Attendance

Donna Rygate, Chair  
John Brockhoff  
Awais Piracha  
Jai Reid, Manager City Development  
Michelle Butler, Manager Governance & Risk

### Opening of meeting

The meeting opened at 6:00 pm

The Chair opened the meeting with Acknowledgement of Country.

### Apologies

That the apology from Tom Morgan, Community Representative, be noted and accepted. It was noted that Mr Morgan had responded to a request from the Chair for any comments he had on the reports.

### Declarations of Interest

There were no interests declared by Panel Members.

### Address by members of the public on agenda items

Name	Item
Lashta Haidari	(Item DA9/24) Planning Assessment Report - 24 Burleigh Street Burwood - DA.2024.33
Steven Nix	(Item DA9/24) Planning Assessment Report - 24 Burleigh Street Burwood - DA.2024.33

The Panel moved into closed session at 6.08 pm.

**Development Applications****(Item DA9/24) Planning Assessment Report - 24 Burleigh Street Burwood - DA.2024.33**

File No: 24/36659

**Owner:** Jong Boronia Pty Ltd  
**Applicant:** Lashta Haidari  
**Location:** 24 Burleigh Street, Burwood  
**Zoning:** MU1 Mixed Use

**Proposal**

Internal fit-out and use of heritage-listed former police station building as a dental practice, provision of a new accessible entry, minor external works to the building and associated landscape works.

**BLPP Referral Criteria**

The building is a local heritage item and the development involves partial demolition of sections of select internal walls and openings.

**LPP10/ 24 RESOLVED**

That Development Application No. DA.2024.33, which proposes the internal fit-out and use of a heritage-listed former police station building as a dental practice, provision of a new accessible entry, minor external works to the building and associated landscape works, at 24 Burleigh Street, Burwood NSW 2134, be approved subject to the conditions of approval contained in **Attachment 3** to the Council report.

**For:** Donna Rygate, Awais Piracha, John Brockhoff  
**Against:** Nil

**Reasons for the decision**

The Panel inspected the development site and familiarised itself with the environment. The Panel heard from the Applicant.

The Panel's reasons for reaching its decision included:

- The proposed development is an appropriate use of a local heritage item
- The modifications will not affect the local heritage values of the building
- The conditions, as proposed, will manage other impacts
- The proposed development is in the public interest

**(Item DA10/24) Planning Assessment Report - 77-79 Cheltenham Road, Croydon - DA.2024.34**

File No: 24/37309

**Owner:** Sister Jeana Abejwela  
**Applicant:** Jessica Leslie  
**Location:** 77-79 Cheltenham Road, Croydon  
**Zoning:** R2 Low Density Residential

**Proposal**

Construction of a new pergola structure to the rear yard, attached to the existing nursing home on land at No.77-79 Cheltenham Road, Croydon.

The specifics of the proposal are as follows:

- Pergola to the rear yard, attached to the existing dwelling and sitting over the existing paving.
- Pergola Size: 16.350m x 7.450m.
- Materials: Metal roof sheeting, steel posts and structure.

**BLPP Referral Criteria**

Pursuant to the Ministerial direction dated 30 June 2020, under Section 9.1 of the *Environmental Planning and Assessment Act 1979*, the DA is to be determined by the Burwood Local Planning Panel for the following reasons:

1. The proposal seeks to undertake works to heritage item No.141 (Ascot Nursing Home) listed within Schedule 5 of the Burwood Local Environmental Plan 2012 (BLEP 2012).

**LPP11/ RESOLVED  
24**

That Development Application (DA.2024.34) for the construction of a new pergola structure to the rear yard, attached to the existing dwelling on land at No.77-79 Cheltenham Road, Croydon, be approved, subject to the conditions provided within **Attachment 1** of the Council report.

**For:** Donna Rygate, Awais Piracha, John Brockhoff  
**Against:** Nil

**Reasons for the decision**

The Panel inspected the development site and familiarised itself with the environment.

The Panel's reasons for reaching its decision included:

▪ The modifications will not affect the local heritage values of the building
▪ The conditions, as proposed, will manage other impacts
▪ The proposed development is in the public interest

**General Business****(Item GB3/24) Disclosure of pecuniary interests by Burwood Local Planning Panel Members**

File No: 24/36830

**Summary**

In accordance with Clause 4.21 of the *Code of Conduct for Local Planning Panel Members*, the Pecuniary Interests and Other Matters Returns required to be lodged with

**Minutes of Burwood Local Planning Panel Meeting****17 September 2024**

the panel chair under clause 4.17 must be tabled at the next panel meeting after the return is lodged.

**LPP12/ RESOLVED  
24**

That the receipt of Disclosures of Pecuniary Interest and Other Matters Returns by the Burwood Local Planning Panel Members as listed in this report be noted and accepted as tabled in readiness for proactive release via the Burwood Council website.

**For: Donna Rygate, Awais Piracha, John Brockhoff**

**Against: Nil**

**(Item GB4/24) Delegation of Functions from Burwood Local Planning Panel to Council Officers, Minor Heritage Works**

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File No: 24/35759

**Report**

In order to improve the efficiency of the LPP and reduce delays for applicants, it is recommended that determination of some of the less complex and uncontroversial applications be delegated back to Council staff.

Under the EPA Act the LPP is currently required to consider all applications for locally listed heritage items. It is appropriate for the LPP to delegate its functions under section 2.20(8) of the EPA Act, to the General Manager, Director City Strategy and Manager City Development, to avoid unnecessary delays and to ensure the LPP deals with genuinely complex and controversial matters.

**LPP13/ RESOLVED  
24**

The Panel supports delegation, in principle. The Panel resolved to defer the item on the basis that the Principal Chair and Alternate Chairs attached to the Burwood Local Planning Panel have sought amendments to the wording of the draft delegations. The delegations should be revised in consultation with the Principal Chair and Alternate Chairs, justification for delegation needs to be provided, clarification is required about the appropriate forum to determine the delegations, and an agreed form of the delegations with the necessary supporting information should be submitted to the next possible Local Planning Panel meeting or other appropriate decision making forum.


**For: Donna Rygate, Awais Piracha, John Brockhoff**

**Against: Nil**

The meeting closed at 6.09 pm.

**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**