

# Extraordinary Council Meeting

## 20 January 2022

### Attachments

Page

Reports – General Manager

6a.22.008(2) Code of Meeting Practice and Council Meeting Cycle

Attachment A Draft CVC Model Code of Meeting Practice V14.0 (tracked changes) .....2

6a.22.009 Membership of the Joint Regional Planning Proposal

Attachment A Sydney District and Regional Planning Panels - operational procedures, August 2020.....37

**These attachments to be retained for Council Meeting**

## Code of Meeting Practice

Responsible Manager (Title)	Director Corporate & Governance		
Adopted by Council	TBA	Minute Number TBA	
File Reference Number	DWS TBA	Version V14	Review Due
Document(s) this policy Supersedes	Code of Meeting Practice V13 6c.20.126 25 August 2020		
Community Plan Linkage	Leadership - We will have a strong, accountable and representative government		

# ~~MODEL CODE OF MEETING PRACTICE FOR LOCAL COUNCILS IN NSW~~

*Note for Exhibition – will be removed in adopted version*

1. *Red colour print notes inclusions that are not mandatory but listed in model code of meeting practice*
2. *Green colour print is previously adopted local policy*
3. *Green colour print crossed out is recommended remove of local policy*
4. *Purple coloured print crossed wording crossed out has been removed from model code and mandatory replacements made in blue*
5. *Red crossed out print removed from model code*

~~2021~~

**Table of Contents**

1 INTRODUCTION ..... 3

2 MEETING PRINCIPLES..... 3

3 BEFORE THE MEETING ..... 4

4 PUBLIC FORUMS ..... 8

5 COMING TOGETHER..... 10

6 THE CHAIRPERSON..... 14

7 MODES OF ADDRESS..... 15

8 ORDER OF BUSINESS FOR ORDINARY COUNCIL MEETINGS ..... 15

9 CONSIDERATION OF BUSINESS AT COUNCIL MEETINGS ..... 16

10 RULES OF DEBATE ..... 18

11 VOTING..... 20

12 COMMITTEE OF THE WHOLE..... 21

13 DEALING WITH ITEMS BY EXCEPTION ..... 21

14 CLOSURE OF COUNCIL MEETINGS TO THE PUBLIC..... 22

15 KEEPING ORDER AT MEETINGS ..... 25

16 CONFLICTS OF INTEREST ..... 28

17 DECISIONS OF THE COUNCIL ..... 28

18 TIME LIMITS ON COUNCIL MEETINGS ..... 30

19 AFTER THE MEETING..... 30

20 COUNCIL COMMITTEES..... 31

21 IRREGULARITIES..... 34

22 DEFINITIONS ..... 35

## 1 INTRODUCTION

~~This Model Code of Meeting Practice for Local Councils in NSW~~ **The Clarence Valley Council Code of Meeting Practice (the Model Meeting Code) is made prescribed** under section 360 of the *Local Government Act 1993* (the Act) and the *Local Government (General) Regulation 2005-2021* (the Regulation).

This ~~Model Meeting Code~~ **Code** applies to all meetings of councils and committees of councils of which all the members are councillors (committees of council). Council committees whose members include persons other than councillors may adopt their own rules for meetings unless the council determines otherwise.

Councils must adopt a code of meeting practice that incorporates the mandatory provisions of the Model Meeting Code.

A council's adopted code of meeting practice may also incorporate the non-mandatory provisions of the Model Meeting Code and other supplementary provisions. However, a code of meeting practice adopted by a council must not contain provisions that are inconsistent with the mandatory provisions of this Model Meeting Code.

~~The provisions of the Model Meeting Code that are not mandatory are indicated in red font.~~  
**Where the provisions of this code are not mandated, or optional inclusions as identified by the Office of Local Government's model code of meeting practice, they are identified as local policy.**

~~A council and a committee of the council of which all the members are councillors must conduct its meetings in accordance with the code of meeting practice adopted by the council.~~  
**This code once adopted becomes policy of council and can only be amended by resolution of council, in accordance with the Policy Framework for amendment of policy.**

~~The Model Meeting Code also applies to meetings of the boards of joint organisations and county councils. The provisions that are specific to meetings of boards of joint organisations are indicated in blue font.~~

~~In adopting the Model Meeting Code, joint organisations should adapt it to substitute the terms "board" for "council", "chairperson" for "mayor", "voting representative" for "councillor" and "executive officer" for "general manager".~~

~~In adopting the Model Meeting Code, county councils should adapt it to substitute the term "chairperson" for "mayor" and "member" for "councillor".~~

## 2 MEETING PRINCIPLES

2.1 Council and committee meetings should be:

- Transparent:* Decisions are made in a way that is open and accountable.
- Informed:* Decisions are made based on relevant, quality information.
- Inclusive:* Decisions respect the diverse needs and interests of the local community.
- Principled:* Decisions are informed by the principles prescribed under Chapter 3 of the Act.
- Trusted:* The community has confidence that councillors and staff act ethically and make decisions in the interests of the whole community.
- Respectful:* Councillors, staff and meeting attendees treat each other with respect.
- Effective:* Meetings are well organised, effectively run and skilfully chaired.
- Orderly:* Councillors, staff and meeting attendees behave in a way that contributes to the orderly conduct of the meeting.

**Clarence Valley Council Code of Meeting Practice V14 February 2022**  
~~Model Code of Meeting Practice for Local Councils in NSW~~

3

### 3 BEFORE THE MEETING

#### Timing of ordinary council meetings

3.1 Ordinary meetings of the council will be held ~~each month on the fourth Tuesday, commencing at 2:00pm, except for the month of January and December. The venue for the meetings of the Ordinary Council Meetings rotate between Grafton and Maclean. on the following occasions:~~

~~3.2 Meetings of the council may be held on other dates or at other times or other venues. As determined by the council. (Local Policy)~~

~~3.2 The council shall, by resolution, set the frequency, time, date and place of its ordinary meetings.~~

~~Note: Councils must use either clause 3.1 or 3.2~~

**Note: Under section 365 of the Act, councils are required to meet at least ten (10) times each year, each time in a different month unless the Minister for Local Government has approved a reduction in the number of times that a council is required to meet each year under section 365A.**

~~Note: Under section 396 of the Act, county councils are required to meet at least four (4) times each year.~~

~~Note: Under section 400T of the Act, boards of joint organisations are required to meet at least four (4) times each year, each in a different quarter of the year.~~

#### Extraordinary meetings

3.3 If the mayor receives a request in writing, signed by at least two (2) councillors, the mayor must call an extraordinary meeting of the council to be held as soon as practicable, but in any event, no more than fourteen (14) days after receipt of the request. The mayor can be one of the two councillors requesting the meeting.

**Note: Clause 3.3 reflects section 366 of the Act.**

~~3.4 The mayor or, the general manager in consultation with the mayor, may call an extraordinary meeting without the need to obtain the signature of two councillors to consider urgent business. (Local Policy)~~

~~3.5 For the purpose of clause 3.2.2, urgent business is any matter that, in the opinion of the mayor or the general manager, requires a decision by council before the next scheduled ordinary meeting of the council. (Local Policy)~~

#### Notice to the public of council meetings

3.4 The council must give notice to the public of the time, date and place of each of its meetings, including extraordinary meetings and of each meeting of committees of the council.

**Note: Clause 3.4 reflects section 9(1) of the Act.**

3.5 For the purposes of clause 3.4, notice of a meeting of the council and of a committee of council is to be published before the meeting takes place. The notice must be published on the council's website, and in such other manner that the council is satisfied is likely to bring notice of the meeting to the attention of as many people as possible.

3.6 For the purposes of clause 3.4, notice of more than one (1) meeting may be given in the same notice.

#### Notice to councillors of ordinary council meetings

Clarence Valley Council Code of Meeting Practice V14 February 2022  
Model Code of Meeting Practice for Local Councils in NSW

4

- 3.7 The general manager must send to each councillor, at least three (3) days before each meeting of the council, a notice specifying the time, date and place at which the meeting is to be held, and the business proposed to be considered at the meeting.

**Note: Clause 3.7 reflects section 367(1) of the Act.**

- 3.8 The notice and the agenda for, and the business papers relating to, the meeting may be given to councillors in electronic form, but only if all councillors have facilities to access the notice, agenda and business papers in that form.

**Note: Clause 3.8 reflects section 367(3) of the Act.**

Notice to councillors of extraordinary meetings

- 3.9 Notice of less than three (3) days may be given to councillors of an extraordinary meeting of the council in cases of emergency.

**Note: Clause 3.9 reflects section 367(2) of the Act.**

Giving notice of business to be considered at council meetings

- 3.10 A councillor may give notice of any business they wish to be considered by the council at its next ordinary meeting by way of a notice of motion. To be included on the agenda of the meeting, the notice of motion must be in writing and must be submitted **seven (7)** business days before the meeting is to be held.

- 3.11 A councillor may, in writing to the general manager, request the withdrawal of a notice of motion submitted by them prior to its inclusion in the agenda and business paper for the meeting at which it is to be considered.

- 3.12 A councillor may submit no more than two (2) notices of motion to be considered at each monthly meeting cycle of the council. (Local Policy)

- 3.13~~2~~ If the general manager considers that a notice of motion submitted by a councillor for consideration at an ordinary meeting of the council has legal, strategic, financial or policy implications which should be taken into consideration by the meeting, the general manager may

(a) prepare a report in relation to the notice of motion for inclusion with the business papers for the meeting at which the notice of motion is to be considered by the council, ~~noting the report is to identify if the general manager believes the notice of motion to be unlawful and the reason for this or~~

~~(b) by written notice send to all councillors with the business papers for the meeting for which the notice of motion has been submitted, defer consideration of the matter by the council to such a date specified in the notice, pending the preparation of such a report (Local Policy)~~

- 3.14~~3~~ A notice of motion for the expenditure of funds on works and/or services other than those already provided for in the council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the notice of motion. If the notice of motion does not identify a funding source, the general manager must either:

(a) prepare a report on the availability of funds for implementing the motion if adopted for ~~inclusion in the business papers for the meeting at which the notice of motion is to be considered by the council (Local Policy)~~ or

(b) by written notice sent to all councillors with the business papers for the meeting for which the notice of motion has been submitted, defer consideration of the matter by the council to such a date specified in the notice, pending the preparation of such a report.

Questions with notice

- 3.15~~4~~ A councillor may, by way of a notice submitted under clause 3.10, ask a question for response by the general manager about the performance or operations of the council.

3.165 A councillor is not permitted to ask a question with notice under clause 3.154 that comprises a complaint against the general manager or a member of staff of the council, or a question that implies wrongdoing by the general manager or a member of staff of the council.

3.176 The general manager or their nominee may respond to a question with notice submitted under clause 3.154 by way of a report included in the business papers for the relevant meeting of the council or orally at the meeting.

~~3.17 A councillor may ask a question with notice, about a business paper item on the published Agenda and have that question answered by way of a public written response to be noted at the Ordinary Meeting of Council, if the question is put in writing to the General Manager by 11am of the day preceding the meeting noting that the response is to be included in the Questions with Notice report to be tabled at the Ordinary Meeting under clause 8.2 (Local Policy)~~

#### Agenda and business papers for ordinary meetings

3.187 The general manager must cause the agenda for a meeting of the council or a committee of the council to be prepared as soon as practicable before the meeting.

3.198 The general manager must ensure that the agenda for an ordinary meeting of the council states:

- (a) all matters to be dealt with arising out of the proceedings of previous meetings of the council, and
- (b) if the mayor is the chairperson – any matter or topic that the chairperson proposes, at the time when the agenda is prepared, to put to the meeting, and
- (c) all matters, including matters that are the subject of staff reports and reports of committees, to be considered at the meeting, and
- (d) any business of which due notice has been given under clause 3.10.

3.2049 Nothing in clause 3.198 limits the powers of the mayor to put a mayoral minute to a meeting under clause 9.6.

3.210 The general manager must not include in the agenda for a meeting of the council any business of which due notice has been given if, in the opinion of the general manager, the business is, or the implementation of the business would be, unlawful. The general manager must report, without giving details of the item of business, any such exclusion to the next meeting of the council.

3.224 Where the agenda includes the receipt of information or discussion of other matters that, in the opinion of the general manager, is likely to take place when the meeting is closed to the public, the general manager must ensure that the agenda of the meeting:

- (a) identifies the relevant item of business and indicates that it is of such a nature (without disclosing details of the information to be considered when the meeting is closed to the public), and
- (b) states the grounds under section 10A(2) of the Act relevant to the item of business.

#### **Note: Clause 3.21 reflects section 9(2A)(a) of the Act.**

3.232 The general manager must ensure that the details of any item of business which, in the opinion of the general manager, is likely to be considered when the meeting is closed to the public, are included in a business paper provided to councillors for the meeting concerned. Such details must not be included in the business papers made available to the public, and public and must not be disclosed by a councillor or by any other person to another person who is not authorised to have that information.

#### Statement of ethical obligations

3.243 Business papers for all ordinary and extraordinary meetings of the council and committees of the council must contain a statement reminding councillors of their oath or affirmation of office

Clarence Valley Council Code of Meeting Practice V14 February 2022  
Model Code of Meeting Practice for Local Councils in NSW

made under section 233A of the Act and their obligations under the council's code of conduct to disclose and appropriately manage conflicts of interest.

#### Availability of the agenda and business papers to the public

3.254 Copies of the agenda and the associated business papers, such as correspondence and reports for meetings of the council and committees of council, are to be published on the council's website, and must be made available to the public for inspection, or for taking away by any person free of charge at the offices of the council, at the relevant meeting and at such other venues determined by the council.

**Note: Clause 3.234 reflects section 9(2) and (4) of the Act.**

3.265 Clause 3.234 does not apply to the business papers for items of business that the general manager has identified under clause 3.21 as being likely to be considered when the meeting is closed to the public.

**Note: Clause 3.254 reflects section 9(2A)(b) of the Act.**

3.276 For the purposes of clause 3.234, copies of agendas and business papers must be published on the council's website and made available to the public at a time that is as close as possible to the time they are available to councillors.

**Note: Clause 3.265 reflects section 9(3) of the Act.**

3.287 A copy of an agenda, or of an associated business paper made available under clause 3.234, may in addition be given or made available in electronic form.

**Note: Clause 3.276 reflects section 9(5) of the Act.**

#### Agenda and business papers for extraordinary meetings

3.29 The general manager must ensure that the agenda for an extraordinary meeting of the council deals only with the matters stated in the notice of the meeting.

3.30 Despite clause 3.278, business may be considered at an extraordinary meeting of the council, even though due notice of the business has not been given, if:

- (a) a motion is passed to have the business considered at the meeting, and
- (b) the business to be considered is ruled by the chairperson to be of great urgency on the grounds that it requires a decision by the council before the next scheduled ordinary meeting of the council.

3.31 A motion moved under clause 3.289(a) can be moved without notice but only after the business notified in the agenda for the extraordinary meeting has been dealt with.

3.324 Despite clauses 10.20–10.30, only the mover of a motion moved under clause 3.289(a) can speak to the motion before it is put.

3.332 A motion of dissent cannot be moved against a ruling of the chairperson under clause 3.289(b) on whether a matter is of great urgency.

#### Pre-meeting briefing sessions

3.343 Prior to each ordinary meeting of the council, the general manager may arrange a pre-meeting briefing session to brief councillors on business to be considered at the meeting. Pre-meeting briefing sessions may also be held for extraordinary meetings of the council and meetings of committees of the council.

3.354 Pre-meeting briefing sessions are to be held in the absence of the public.

3.365 Pre-meeting briefing sessions may be held by audio-visual link.



- ~~3.376~~ The general manager or a member of staff nominated by the general manager is to preside at pre-meeting briefing sessions.
- ~~3.387~~ Councillors must not use pre-meeting briefing sessions to debate or make preliminary decisions on items of business they are being briefed on, and any debate and decision-making must be left to the formal council or committee meeting at which the item of business is to be considered.
- ~~3.398~~ Councillors (including the mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of a briefing at a pre-meeting briefing session, in the same way that they are required to do so at a council or committee meeting. The council is to maintain a written record of all conflict of interest declarations made at pre-meeting briefing sessions and how the conflict of interest was managed by the councillor who made the declaration.

#### 4 PUBLIC FORUMS

- 4.1 The council may hold a public forum prior to each ordinary meeting of the council for the purpose of hearing oral submissions from members of the public on items of business to be considered at the meeting. Public forums may also be held prior to extraordinary council meetings and meetings of committees of the council.
- 4.2 Public forums may be held by audio-visual link.
- 4.23 Public forums are to be chaired by the mayor or their nominee.
- ~~4.34~~ To speak at a public forum, a person must first make an application to the council in the approved form. Applications to speak at the public forum must be received by 4pm on the Friday before the date on which the public forum is to be held, and must identify the item of business on the agenda of the council meeting the person wishes to speak on, and whether they wish to speak 'for' or 'against' the item.
- 4.45 A person may apply to speak on no more than one items of business on the agenda of the council meeting.
- 4.56 Legal representatives acting on behalf of others are not to be permitted to speak at a public forum unless they identify their status as a legal representative when applying to speak at the public forum.
- 4.67 The general manager or their delegate may refuse an application to speak at a public forum. The general manager or their delegate must give reasons in writing for a decision to refuse an application.
- 4.78 No more than three (3) speakers are to be permitted to speak 'for' and no more than three (3) are allowed to speak 'against' each item of business on the agenda for the council meeting.
- 4.89 If more than the permitted number of speakers apply to speak 'for' or 'against' any item of business, the general manager or their delegate may request the speakers to nominate from among themselves the persons who are to address the council on the item of business. If the speakers are not able to agree on whom to nominate to address the council, the general manager or their delegate is to determine who will address the council at the public forum.
- 4.910 If more than the permitted number of speakers apply to speak 'for' or 'against' any item of business, the general manager or their delegate may, in consultation with the mayor or the mayor's nominated chairperson, increase the number of speakers permitted to speak on an item of business, where they are satisfied that it is necessary to do so to allow the council to hear a fuller range of views on the relevant item of business.
- 4.101 Approved speakers at the public forum are to register with the council any written, visual or audio material to be presented in support of their address to the council at the public forum, and to identify any equipment needs no more than **[number to be specified by the council]**

days before the public forum. The general manager or their delegate may refuse to allow such material to be presented.

4.142 The general manager or their delegate is to determine the order of speakers at the public forum.

4.123 Each speaker will be allowed five (5) minutes to address the council. This time is to be strictly enforced by the chairperson.

4.134 Speakers at public forums must not digress from the item on the agenda of the council meeting they have applied to address the council on. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.

4.145 A councillor (including the chairperson) may, through the chairperson, ask questions of a speaker following their address at a public forum. Questions put to a speaker must be direct, succinct and without argument.

4.156 Speakers are under no obligation to answer a question put under clause 4.145. Answers by the speaker, to each question are to be limited to five (5) minutes.

4.167 Speakers at public forums cannot ask questions of the council, councillors, or council staff.

4.178 The general manager or their nominee may, with the concurrence of the chairperson, address the council for up to five (5) minutes in response to an address to the council at a public forum after the address and any subsequent questions and answers have been finalised.

4.189 Where an address made at a public forum raises matters that require further consideration by council staff, the general manager may recommend that the council defer consideration of the matter pending the preparation of a further report on the matters.

4.1920 When addressing the council, speakers at public forums must comply with this code and all other relevant council codes, policies, and procedures. Speakers must refrain from engaging in disorderly conduct, publicly alleging breaches of the council's code of conduct or making other potentially defamatory statements.

4.201 If the chairperson considers that a speaker at a public forum has engaged in conduct of the type referred to in clause 4.1920, the chairperson may request the person to refrain from the inappropriate behaviour and to withdraw and unreservedly apologise for any inappropriate comments. Where the speaker fails to comply with the chairperson's request, the chairperson may immediately require the person to stop speaking.

4.212 Clause 4.210 does not limit the ability of the chairperson to deal with disorderly conduct by speakers at public forums in accordance with the provisions of Part 15 of this code.

4.223 Where a speaker engages in conduct of the type referred to in clause 4.1920, the general manager or their delegate may refuse further applications from that person to speak at public forums for such a period as the general manager or their delegate considers appropriate.

4.234 Councillors (including the mayor) must declare and manage any conflicts of interest they may have in relation to any item of business that is the subject of an address at a public forum, in the same way that they are required to do so at a council or committee meeting. The council is to maintain a written record of all conflict of interest declarations made at public forums and how the conflict of interest was managed by the councillor who made the declaration.

**Note: Public forums should not be held as part of a council or committee meeting. Council or committee meetings should be reserved for decision-making by the council or committee of council. Where a public forum is held as part of a council or committee meeting, it must be conducted in accordance with the other requirements of this code relating to the conduct of council and committee meetings.**

#### ~~4.1 Presentations~~

~~4.1.1 Presentations may be made to council prior to a council meeting.~~

~~4.1.2 Requests to present to council must be made to the general manager or their delegate in writing, with full disclosure of the presentation.~~

~~4.1.3 The general manager or their delegate may refuse an application to present to council.~~

~~4.1.4 Councillors are to be notified in advance of the presentation, the addressee, the topic and how it relates to the business of council.~~

~~Note: 4.2 reflects (Local Policy.)~~

## 5 COMING TOGETHER

### Attendance by councillors at meetings

5.1 All councillors must make reasonable efforts to attend meetings of the council and of committees of the council of which they are members.

**Note: A councillor may not attend a meeting as a councillor (other than the first meeting of the council after the councillor is elected or a meeting at which the councillor takes an oath or makes an affirmation of office) until they have taken an oath or made an affirmation of office in the form prescribed under section 233A of the Act.**

5.2 A councillor cannot participate in a meeting of the council or of a committee of the council unless personally present at the meeting, [unless permitted to attend the meeting by audio-visual link under this code](#).

~~5.3 The board of the joint organisation may, if it thinks fit, transact any of its business at a meeting at which representatives (or some representatives) participate by telephone or other electronic means, but only if any representative who speaks on a matter before the meeting can be heard by the other representatives. For the purposes of a meeting held in accordance with this clause, the chairperson and each other voting representative on the board have the same voting rights as they have at an ordinary meeting of the board.~~

~~————— Note: Clause 5.3 reflects section clause 397G of the Regulation. Joint organisations may adopt clause 5.3 and omit clause 5.2. Councils must not adopt clause 5.3.~~

5.34 Where a councillor is unable to attend one or more ordinary meetings of the council, the councillor should request that the council grant them a leave of absence from those meetings. This clause does not prevent a councillor from making an apology if they are unable to attend a meeting. ~~However~~However, the acceptance of such an apology does not constitute the granting of a leave of absence for the purposes of this code and the Act.

5.45 A councillor's request for leave of absence from council meetings should, if practicable, identify (by date) the meetings from which the councillor intends to be absent and the grounds upon which the leave of absence is being sought.

5.56 The council must act reasonably when considering whether to grant a councillor's request for a leave of absence.

5.67 A councillor's civic office will become vacant if the councillor is absent from three (3) consecutive ordinary meetings of the council without prior leave of the council, or leave granted by the council at any of the meetings concerned, unless the holder is absent because they have been suspended from office under the Act, or because the council has been suspended under the Act, or as a consequence of a compliance order under section 438HA.

**Note: Clause 5.67 reflects section 234(1)(d) of the Act.**

- 5.78 A councillor who intends to attend a meeting of the council despite having been granted a leave of absence should, if practicable, give the general manager at least two (2) days' notice of their intention to attend.

The quorum for a meeting

- 5.89 The quorum for a meeting of the council is a majority of the councillors of the council who hold office at that time and are not suspended from office.

**Note: Clause 5.89 reflects section 368(1) of the Act.**

- 5.940 Clause 5.89 does not apply if the quorum is required to be determined in accordance with directions of the Minister in a performance improvement order issued in respect of the council.

**Note: Clause 5.940 reflects section 368(2) of the Act.**

- 5.104 A meeting of the council must be adjourned if a quorum is not present:
- (a) at the commencement of the meeting where the number of apologies received for the meeting indicates that there will not be a quorum for the meeting, or
  - (b) within half an hour after the time designated for the holding of the meeting, or
  - (c) at any time during the meeting.

- 5.1142 In either case, the meeting must be adjourned to a time, ~~date~~date, and place fixed:

- (a) by the chairperson, or
- (b) in the chairperson's absence, by the majority of the councillors present, or
- (c) failing that, by the general manager.

- 5.123 The general manager must record in the council's minutes the circumstances relating to the absence of a quorum (including the reasons for the absence of a quorum) at or arising during a meeting of the council, together with the names of the councillors present.

- 5.134 Where, prior to the commencement of a meeting, it becomes apparent that a quorum may not be present at the meeting, or that the health, safety and/or welfare of councillors, council staff and members of the public may be put at risk by attending the meeting because of a natural disaster (such as, but not limited to flood or bushfire) or a public health emergency, the mayor may, in consultation with the general manager and, as far as is practicable, with each councillor, cancel the meeting. Where a meeting is cancelled, notice of the cancellation must be published on the council's website and in such other manner that the council is satisfied is likely to bring notice of the cancellation to the attention of as many people as possible.

- 5.145 Where a meeting is cancelled under clause 5.14, the business to be considered at the meeting may instead be considered, where practicable, at the next ordinary meeting of the council or at an extraordinary meeting called under clause 3.3.

Meetings held by audio-visual link

- 5.156 A meeting of the council or a committee of the council may be held by audio-visual link where the mayor determines that the meeting should be held by audio-visual link because of a natural disaster or a public health emergency. The mayor may only make a determination under this clause where they are satisfied that attendance at the meeting may put the health and safety of councillors and staff at risk. The mayor must make a determination under this clause in consultation with the general manager and, as far as is practicable, with each councillor.

- 5.167 Where the mayor determines under clause 5.16 that a meeting is to be held by audio-visual link, the general manager must:

- (a) give written notice to all councillors that the meeting is to be held by audio-visual link, and
- (b) take all reasonable steps to ensure that all councillors can participate in the meeting by

- audio-visual link, and
- (c) cause a notice to be published on the council's website and in such other manner the general manager is satisfied will bring it to the attention of as many people as possible, advising that the meeting is to be held by audio-visual link and providing information about where members of the public may view the meeting.

5.178 This code applies to a meeting held by audio-visual link under clause 5.156 in the same way it would if the meeting was held in person.

**Note: Where a council holds a meeting by audio-visual link under clause 5.156, it is still required under section 10 of the Act to provide a physical venue for members of the public to attend in person and observe the meeting.**

#### Attendance by councillors at meetings by audio-visual link

5.189 Councillors may attend and participate in meetings of the council and committees of the council by audio-visual link with the approval of the council or the relevant committee.

5.1920 A request by a councillor for approval to attend a meeting by audio-visual link must be made in writing to the general manager prior to the meeting in question and must provide reasons why the councillor will be prevented from attending the meeting in person.

5.204 Councillors may request approval to attend more than one meeting by audio-visual link. Where a councillor requests approval to attend more than one meeting by audio-visual link, the request must specify the meetings the request relates to in addition to the information required under clause 5.1920.

5.212 The council must comply with the Health Privacy Principles prescribed under the *Health Records and Information Privacy Act 2002* when collecting, holding, using and disclosing health information in connection with a request by a councillor to attend a meeting by audio-visual link.

5.223 A councillor who has requested approval to attend a meeting of the council or a committee of the council by audio-visual link may participate in the meeting by audio-visual link until the council or committee determines whether to approve their request and is to be taken as present at the meeting. The councillor may participate in a decision in relation to their request to attend the meeting by audio-visual link.

5.234 A decision whether to approve a request by a councillor to attend a meeting of the council or a committee of the council by audio-visual link must be made by a resolution of the council or the committee concerned. The resolution must state:

- (a) the meetings the resolution applies to, and
- (b) the reason why the councillor is being permitted to attend the meetings by audio-visual link where it is on grounds other than illness, disability, or caring responsibilities.

5.245 If the council or committee refuses a councillor's request to attend a meeting by audio-visual link, their link to the meeting is to be terminated.

5.256 A decision whether to approve a councillor's request to attend a meeting by audio-visual link is at the council's or the relevant committee's discretion. The council and committees of the council must act reasonably when considering requests by councillors to attend meetings by audio-visual link. However, the council and committees of the council are under no obligation to approve a councillor's request to attend a meeting by audio-visual link where the technical capacity does not exist to allow the councillor to attend the meeting by these means.

5.267 The council and committees of the council may refuse a councillor's request to attend a meeting by audio-visual link where the council or committee is satisfied that the councillor has failed to appropriately declare and manage conflicts of interest, observe confidentiality or to comply with this code on one or more previous occasions they have attended a meeting of the council or a committee of the council by audio-visual link.

5.278 This code applies to a councillor attending a meeting by audio-visual link in the same way it Clarence Valley Council Code of Meeting Practice V14 February 2022

Model Code of Meeting Practice for Local Councils in NSW

12

would if the councillor was attending the meeting in person. Where a councillor is permitted to attend a meeting by audio-visual link under this code, they are to be taken as attending the meeting in person for the purposes of the code and will have the same voting rights as if they were attending the meeting in person.

~~5.289~~ A councillor must give their full attention to the business and proceedings of the meeting when attending a meeting by audio-visual link. The councillor's camera must be on at all times during the meeting except as may be otherwise provided for under this code.

~~5.2930~~ A councillor must be appropriately dressed when attending a meeting by audio-visual link and must ensure that no items are within sight of the meeting that are inconsistent with the maintenance of order at the meeting or that are likely to bring the council or the committee into disrepute.

#### Entitlement of the public to attend council meetings

~~5.46304~~ Everyone is entitled to attend a meeting of the council and committees of the council. The council must ensure that all meetings of the council and committees of the council are open to the public.

**Note: Clause 5.4630 reflects section 10(1) of the Act.**

~~5.47312~~ Clause 5.3046 does not apply to parts of meetings that have been closed to the public under section 10A of the Act.

~~5.48323~~ A person (whether a councillor or another person) is not entitled to be present at a meeting of the council or a committee of the council if expelled from the meeting:

- (a) by a resolution of the meeting, or
- (b) by the person presiding at the meeting if the council has, by resolution, authorised the person presiding to exercise the power of expulsion.

**Note: Clause 5.48-32 reflects section 10(2) of the Act.**

**Note: If adopted, clauses 15.134 and 15.145 confer a standing authorisation on all chairpersons of meetings of the council and committees of the council to expel persons from meetings. If adopted, clause 15.14 authorises chairpersons to expel any person, including a councillor, from a council or committee meeting. Alternatively, if adopted, clause 15.15 authorises chairpersons to expel persons other than councillors from a council or committee meeting.**

#### Webcasting of meetings

~~5.49334~~ Each meeting of the council or a committee of the council is to be recorded by means of an audio or audio-visual device. All meetings of the council and committees of the council are to be webcast on the council's website.

~~**Note: Councils will be required to webcast meetings from 14 December 2019. Councils that do not currently webcast meetings should take steps to ensure that meetings are webcast by 14 December 2019.**~~

~~**Note: Councils must include supplementary provisions in their adopted codes of meeting practice that specify whether meetings are to be livestreamed or recordings of meetings uploaded on the council's website at a later time. The supplementary provisions must also specify whether the webcast is to comprise of an audio visual recording of the meeting or an audio recording of the meeting.**~~

5.345 At the start of each meeting of the council or a committee of the council, the chairperson must inform the persons attending the meeting that:

- (a) the meeting is being recorded and made publicly available on the council's website, and
- (b) persons attending the meeting should refrain from making any defamatory statements.

~~5.20356~~ The recording of a meeting is to be made publicly available on the council's website:

- (a) at the same time as the meeting is taking place, or
- (b) as soon as practicable after the meeting ~~Clause 5.19 does not apply to parts of a meeting that have been closed to the public under section 10A of the Act.~~

~~5.24367~~ The recording of a meeting is to be made publicly available on the council's website for at least 12 months after the meeting.

~~5.378~~ Clauses ~~5.356~~ and ~~5.367~~ do not apply to any part of a meeting that has been closed to the public in accordance with section 10A of the Act.

**Note: Clauses 5.334 – 5.378 reflect clause section 236 of the Regulation.**

~~5.389~~ Recordings of meetings may be disposed of in accordance with the *State Records Act 1998*. ~~At the start of each meeting the chairperson is to make a statement informing those in attendance that the meeting is being webcast and that those in attendance should refrain from making any defamatory statements.~~

~~5.22~~ ~~A recording of each meeting of the council and committee of the council is to be retained on the council's website for [council to specify the period of time the recording is to be retained on the website].~~

**Note: Joint organisations are not required to webcast meetings but may choose to do so by adopting clauses 5.1934–5.2239. Joint organisations that choose not to webcast meetings may omit clauses 5.1934–5.2239.**

#### Attendance of the general manager and other staff at meetings

~~5.233940~~ The general manager is entitled to attend, but not to vote at, a meeting of the council or a meeting of a committee of the council of which all of the members are councillors.

**Note: Clause 5.2339 reflects section 376(1) of the Act.**

~~5.24404~~ The general manager is entitled to attend a meeting of any other committee of the council and may, if a member of the committee, exercise a vote.

**Note: Clause 5.2440 reflects section 376(2) of the Act.**

~~5.25412~~ The general manager may be excluded from a meeting of the council or a committee while the council or committee deals with a matter relating to the standard of performance of the general manager or the terms of employment of the general manager.

**Note: Clause 5.2541 reflects section 376(3) of the Act.**

~~5.26423~~ The attendance of other council staff at a meeting, (other than as members of the public) shall be with the approval of the general manager.

~~5.434~~ The general manager and other council staff may attend meetings of the council and committees of the council by audio-visual-link. Attendance by council staff at meetings by audio-visual link (other than as members of the public) shall be with the approval of the general manager.

## 6 THE CHAIRPERSON

### The chairperson at meetings

6.1 The mayor, or at the request of or in the absence of the mayor, the deputy mayor (if any) presides at meetings of the council.

**Note: Clause 6.1 reflects section 369(1) of the Act.**

- 6.2 If the mayor and the deputy mayor (if any) are absent, a councillor elected to chair the meeting by the councillors present presides at a meeting of the council.

**Note: Clause 6.2 reflects section 369(2) of the Act.**

Election of the chairperson in the absence of the mayor and deputy mayor

- 6.3 If no chairperson is present at a meeting of the council at the time designated for the holding of the meeting, the first business of the meeting must be the election of a chairperson to preside at the meeting.
- 6.4 The election of a chairperson must be conducted:
- (a) by the general manager or, in their absence, an employee of the council designated by the general manager to conduct the election, or
  - (b) by the person who called the meeting or a person acting on their behalf if neither the general manager nor a designated employee is present at the meeting, or if there is no general manager or designated employee.
- 6.5 If, at an election of a chairperson, two (2) or more candidates receive the same number of votes and no other candidate receives a greater number of votes, the chairperson is to be the candidate whose name is chosen by lot.
- 6.6 For the purposes of clause 6.5, the person conducting the election must:
- (a) arrange for the names of the candidates who have equal numbers of votes to be written on similar slips, and
  - (b) then fold the slips so as to prevent the names from being seen, mix the slips and draw one of the slips at random.
- 6.7 The candidate whose name is on the drawn slip is the candidate who is to be the chairperson.
- 6.8 Any election conducted under clause 6.3, and the outcome of the vote, are to be recorded in the minutes of the meeting.

Chairperson to have precedence

- 6.9 When the chairperson rises or speaks during a meeting of the council:
- (a) any councillor then speaking or seeking to speak must cease speaking and, if standing, immediately resume their seat, and
  - (b) every councillor present must be silent to enable the chairperson to be heard without interruption.

## 7 MODES OF ADDRESS

- 7.1 If the chairperson is the mayor, they are to be addressed as 'Mr Mayor' or 'Madam Mayor'.
- 7.2 Where the chairperson is not the mayor, they are to be addressed as either 'Mr Chairperson' or 'Madam Chairperson'.
- 7.3 A councillor is to be addressed as 'Councillor [surname]'.
- 7.4 A council officer is to be addressed by their official designation or as Mr/Ms [surname].

## 8 ORDER OF BUSINESS FOR ORDINARY COUNCIL MEETINGS

- 8.1 ~~At a meeting of the council, the general order of business is as fixed by resolution of the council.~~
- 8.12 The general order of business for an ordinary meeting of the council shall be: ~~[councils may adapt the following order of business to meet their needs];~~

01. 01 — Opening meeting



- 02. ~~02~~ Acknowledgement of country
- 03. ~~03~~ Apologies and applications for a leave of absence or attendance by audio-visual link by councillors and statement in relation to recording
- 04. ~~04~~ Confirmation of minutes
- 05. ~~05~~ Disclosures of interests
- 06. ~~06~~ Mayoral minute(s)
- 06.
- 07. ~~07~~ Reports of committees Notice of Motions
- 08. ~~08~~ Reports
- Tender to council
- 09. ~~09~~ Notices of motions/Questions with notice
- 10. ~~10~~ Confidential matters
- 11. Late items of business and matters arising
- 12. ~~11~~ Conclusion of the meeting

**Note: Councils must use either clause 8.1 or 8.2.**

- 8.23 The order of business as fixed under clause ~~{8.1/8.2}~~ ~~[delete whichever is not applicable]~~ may be altered for a particular meeting of the council if a motion to that effect is passed at that meeting. Such a motion can be moved without notice.

**Note: If adopted, Part 13 allows council to deal with items of business by exception.**

- 8.34 Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 8.3 may speak to the motion before it is put.

## 9 CONSIDERATION OF BUSINESS AT COUNCIL MEETINGS

### Business that can be dealt with at a council meeting

- 9.1 The council must not consider business at a meeting of the council:
- (a) unless a councillor has given notice of the business, as required by clause 3.10, and
  - (b) unless notice of the business has been sent to the councillors in accordance with clause 3.7 in the case of an ordinary meeting or clause 3.9 in the case of an extraordinary meeting called in an emergency.
- 9.2 Clause 9.1 does not apply to the consideration of business at a meeting, if the business:
- (a) is already before, or directly relates to, a matter that is already before the council, or
  - (b) is the election of a chairperson to preside at the meeting, or
  - (c) subject to clause 9.9, is a matter or topic put to the meeting by way of a mayoral minute, or
  - (d) is a motion for the adoption of recommendations of a committee, including, but not limited to, a committee of the council.
- 9.3 Despite clause 9.1, business may be considered at a meeting of the council even though due notice of the business has not been given to the councillors if:
- (a) a motion is passed to have the business considered at the meeting, and
  - (b) the business to be considered is ruled by the chairperson to be of great urgency on the grounds that it requires a decision by the council before the next scheduled ordinary meeting of the council.
- 9.4 A motion moved under clause 9.3(a) can be moved without notice. Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 9.3(a) can speak to the motion before it is put.
- 9.5 A motion of dissent cannot be moved against a ruling by the chairperson under clause 9.3(b).

### Mayoral minutes

- 9.6 Subject to clause 9.9, if the mayor is the chairperson at a meeting of the council, the mayor may, by minute signed by the mayor, put to the meeting without notice any matter or topic that is within the jurisdiction of the council, or of which the council has official knowledge.
- 9.7 A mayoral minute, when put to a meeting, takes precedence over all business on the council's agenda for the meeting. The chairperson (but only if the chairperson is the mayor) may move the adoption of a mayoral minute without the motion being seconded.
- 9.8 A recommendation made in a mayoral minute put by the mayor is, so far as it is adopted by the council, a resolution of the council.
- 9.9 A mayoral minute must not be used to put without notice matters that are routine and not ~~urgent~~, or urgent or matters for which proper notice should be given because of their complexity. For the purpose of this clause, a matter will be urgent where it requires a decision by the council before the next scheduled ordinary meeting of the council.
- 9.10 Where a mayoral minute makes a recommendation which, if adopted, would require the expenditure of funds on works and/or services other than those already provided for in the council's current adopted operational plan, it must identify the source of funding for the expenditure that is the subject of the recommendation. If the mayoral minute does not identify a funding source, the council must defer consideration of the matter, pending a report from the general manager on the availability of funds for implementing the recommendation if adopted.

### Staff reports

- 9.11 A recommendation made in a staff report is, so far as it is adopted by the council, a resolution of the council.

### Reports of committees of council

- 9.12 The recommendations of a committee of the council are, so far as they are adopted by the council, resolutions of the council.
- 9.13 If in a report of a committee of the council distinct recommendations are made, the council may make separate decisions on each recommendation.

### Questions

- 9.14 A question must not be asked at a meeting of the council unless it concerns a matter on the agenda of the meeting or notice has been given of the question in accordance with clauses 3.10 and 3.134.
- 9.15 A councillor may, through the chairperson, put a question to another councillor about a matter on the agenda.
- 9.16 A councillor may, through the general manager, put a question to a council employee about a matter on the agenda. Council employees are only obliged to answer a question put to them through the general manager at the direction of the general manager.
- 9.17 A councillor or council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to ~~documents~~ information. Where a councillor or council employee to whom a question is put is unable to respond to the question at the meeting at which it is put, they may take it on notice and report the response to the next meeting of the council.
- 9.18 Councillors must put questions directly, succinctly, respectfully and without argument.
- 9.19 The chairperson must not permit discussion on any reply to, or refusal to reply to, a question put to a councillor or council employee.

## 10 RULES OF DEBATE

### Motions to be seconded

- 10.1 Unless otherwise specified in this code, a motion or an amendment cannot be debated unless or until it has been seconded.

### Notices of motion

- 10.2 A councillor who has submitted a notice of motion under clause 3.10 is to move the motion the subject of the notice of motion at the meeting at which it is to be considered.

(a) The general manager may request relevant staff to make comment on, but not make a recommendation in relation to ~~not~~, the notice of motion. (Local Policy)

- 10.3 If a councillor who has submitted a notice of motion under clause 3.10 wishes to withdraw it after the agenda and business paper for the meeting at which it is to be considered have been sent to councillors, the councillor may request the withdrawal of the motion when it is before the council.

- 10.4 In the absence of a councillor who has placed a notice of motion on the agenda for a meeting of the council:

- (a) any other councillor may, with the leave of the chairperson, move the motion at the meeting, or
- (b) the chairperson may defer consideration of the motion until the next meeting of the council.

### Chairperson's duties with respect to motions

- 10.5 It is the duty of the chairperson at a meeting of the council to receive and put to the meeting any lawful motion that is brought before the meeting.
- 10.6 The chairperson must rule out of order any motion or amendment to a motion that is unlawful or the implementation of which would be unlawful.
- 10.7 Before ruling out of order a motion or an amendment to a motion under clause 10.6, the chairperson is to give the mover an opportunity to clarify or amend the motion or amendment.
- 10.8 Any motion, ~~amendment~~ amendment, or other matter that the chairperson has ruled out of order is taken to have been lost.

### Motions requiring the expenditure of funds

- 10.9 A motion or an amendment to a motion which if passed would require the expenditure of funds on works and/or services other than those already provided for in the council's current adopted operational plan must identify the source of funding for the expenditure that is the subject of the motion. If the motion does not identify a funding source, the council must defer consideration of the matter, pending a report from the general manager on the availability of funds for implementing the motion if adopted.

### Amendments to motions

- 10.10 An amendment to a motion must be moved and seconded before it can be debated.
- 10.11 An amendment to a motion must relate to the matter being dealt with in the original motion before the council and must not be a direct negative of the original motion. An amendment to a motion which does not relate to the matter being dealt with in the original motion, or which is a direct negative of the original motion, must be ruled out of order by the chairperson.
- 10.12 The mover of an amendment is to be given the opportunity to explain any uncertainties in the proposed amendment before a seconder is called for.

- 10.13 If an amendment has been lost, a further amendment can be moved to the motion to which the lost amendment was moved, and so on, but no more than one (1) motion and one (1) proposed amendment can be before council at any one time.
- 10.14 While an amendment is being considered, debate must only occur in relation to the amendment and not the original motion. Debate on the original motion is to be suspended while the amendment to the original motion is being debated.
- 10.15 If the amendment is carried, it becomes the motion and is to be debated. If the amendment is lost, debate is to resume on the original motion.
- 10.16 An amendment may become the motion without debate or a vote where it is accepted by the councillor who moved the original motion.

#### Foreshadowed motions

- 10.17 A councillor may propose a foreshadowed motion in relation to the matter the subject of the original motion before the council, without a seconder during debate on the original motion. The foreshadowed motion is only to be considered if the original motion is lost or withdrawn and the foreshadowed motion is then moved and seconded. If the original motion is carried, the foreshadowed motion lapses.
- 10.18 Where an amendment has been moved and seconded, a councillor may, without a seconder, foreshadow a further amendment that they propose to move after the first amendment has been dealt with. There is no limit to the number of foreshadowed amendments that may be put before the council at any time. However, no discussion can take place on foreshadowed amendments until the previous amendment has been dealt with and the foreshadowed amendment has been moved and seconded.
- 10.19 Foreshadowed motions and foreshadowed amendments are to be considered in the order in which they are proposed. However, foreshadowed motions cannot be considered until all foreshadowed amendments have been dealt with.

#### Limitations on the number and duration of speeches

- 10.20 A councillor who, during a debate at a meeting of the council, moves an original motion, has the right to speak on each amendment to the motion and a right of general reply to all observations that are made during the debate in relation to the motion, and any amendment to it at the conclusion of the debate before the motion (whether amended or not) is finally put.
- 10.21 A councillor, other than the mover of an original motion, has the right to speak once on the motion and once on each amendment to it.
- 10.22 A councillor must not, without the consent of the council, speak more than once on a motion or an amendment, or for longer than five (5) minutes at any one time.
- 10.23 Despite clause 10.22, the chairperson may permit a councillor who claims to have been misrepresented or misunderstood to speak more than once on a motion or an amendment, and for longer than five (5) minutes on that motion or amendment to enable the councillor to make a statement limited to explaining the misrepresentation or misunderstanding.
- 10.24 Despite clause 10.22, the council may resolve to shorten the duration of speeches to expedite the consideration of business at a meeting.
- 10.25 Despite clauses 10.20 and 10.21, a councillor may move that a motion or an amendment be now put:
- (a) if the mover of the motion or amendment has spoken in favour of it and no councillor expresses an intention to speak against it, or
  - (b) if at least two (2) councillors have spoken in favour of the motion or amendment and at least two (2) councillors have spoken against it.

- 10.26 The chairperson must immediately put to the vote, without debate, a motion moved under clause 10.25. A seconder is not required for such a motion.
- 10.27 If a motion that the original motion or an amendment be now put is passed, the chairperson must, without further debate, put the original motion or amendment to the vote immediately after the mover of the original motion has exercised their right of reply under clause 10.20.
- 10.28 If a motion that the original motion or an amendment be now put is lost, the chairperson must allow the debate on the original motion or the amendment to be resumed.
- 10.29 All councillors must be heard without interruption and all other councillors must, unless otherwise permitted under this code, remain silent while another councillor is speaking.
- 10.30 Once the debate on a matter has concluded and a matter has been dealt with, the chairperson must not allow further debate on the matter.

## 11 VOTING

### Voting entitlements of councillors

- 11.1 Each councillor is entitled to one (1) vote.

**Note: Clause 11.1 reflects section 370(1) of the Act.**

- 11.2 The person presiding at a meeting of the council has, in the event of an equality of votes, a second or casting vote.

**Note: Clause 11.2 reflects section 370(2) of the Act.**

- 11.3 Where the chairperson declines to exercise, or fails to exercise, their second or casting vote, in the event of an equality of votes, the motion being voted upon is lost.

~~11.4 A motion at a meeting of the board of a joint organisation is taken to be lost in the event of an equality of votes.~~

~~———— Note: Clause 11.4 reflects clause section 397E of the Regulation. Joint organisations must adopt clause 11.4 and omit clauses 11.2 and 11.3. Councils must not adopt clause 11.4.~~

~~Note: Under section 400U(4) of the Act, joint organisations may specify more stringent voting requirements for decisions by the board such as a 75% majority or consensus decision making. Where a joint organisation's charter specifies more stringent voting requirements, clause 11.4 must be adapted to reflect those requirements.~~

### Voting at council meetings

- ~~11.45~~ A councillor who is present at a meeting of the council but who fails to vote on a motion put to the meeting is taken to have voted against the motion.

- ~~11.56~~ If a councillor who has voted against a motion put at a council meeting so requests, the general manager must ensure that the councillor's dissenting vote is recorded in the council's minutes.

- ~~11.67~~ The decision of the chairperson as to the result of a vote is ~~final, unless~~ **final unless** the decision is immediately challenged and not fewer than two (2) councillors rise and call for a division.

- ~~11.78~~ When a division on a motion is called, the chairperson must ensure that the division takes place immediately. The general manager must ensure that the names of those who vote for the motion and those who vote against it are recorded in the council's minutes for the meeting.

~~11.89~~ When a division on a motion is called, any councillor who fails to vote will be recorded as having voted against the motion in accordance with clause 11.5 of this code.

~~11.940~~ Voting at a meeting, including voting in an election at a meeting, is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system). However, the council may resolve that the voting in any election by councillors for mayor or deputy mayor is to be by secret ballot.

~~11.104~~ All voting at council meetings, (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of councillors who voted for and against each motion or amendment, (including the use of the casting vote), being recorded.

**Note: If clause 11.104 is adopted, clauses 11.56 – 11.89 and clause 11.13 may be omitted.**

#### Voting on planning decisions

~~11.112~~ The general manager must keep a register containing, for each planning decision made at a meeting of the council or a council committee (including, but not limited to a committee of the council), the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.

~~11.123~~ For the purpose of maintaining the register, a division is taken to have been called whenever a motion for a planning decision is put at a meeting of the council or a council committee.

~~11.134~~ Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document.

~~11.145~~ Clauses ~~11.112~~–~~11.134~~ apply also to meetings that are closed to the public.

**Note: Clauses ~~11.112~~–~~11.145~~ reflect section 375A of the Act.**

**Note: The requirements of clause ~~11.112~~ may be satisfied by maintaining a register of the minutes of each planning decision.**

## 12 COMMITTEE OF THE WHOLE

12.1 The council may resolve itself into a committee to consider any matter before the council.

**Note: Clause 12.1 reflects section 373 of the Act.**

12.2 All the provisions of this code relating to meetings of the council, so far as they are applicable, extend to and govern the proceedings of the council when in committee of the whole, except the provisions limiting the number and duration of speeches.

**Note: Clauses 10.20–10.30 limit the number and duration of speeches.**

12.3 The general manager or, in the absence of the general manager, an employee of the council designated by the general manager, is responsible for reporting to the council the proceedings of the committee of the whole. It is not necessary to report the proceedings in full, but any recommendations of the committee must be reported.

12.4 The council must ensure that a report of the proceedings (including any recommendations of the committee) is recorded in the council's minutes. However, the council is not taken to have adopted the report until a motion for adoption has been made and passed.

## 13 DEALING WITH ITEMS BY EXCEPTION

~~13.1~~ The council or a committee of council may, at any time, resolve to adopt multiple items of business on the agenda together by way of a single resolution.

~~13.2~~ Before the council or committee resolves to adopt multiple items of business on the agenda together under clause 13.1, the chairperson must list the items of business to be adopted and

ask councillors to identify any individual items of business listed by the chairperson that they intend to vote against the recommendation made in the business paper or that they wish to speak on.

- 13.3 The council or committee must not resolve to adopt any item of business under clause 13.1 that a councillor has identified as being one they intend to vote against the recommendation made in the business paper or to speak on.
- 13.4 Where the consideration of multiple items of business together under clause 13.1 involves a variation to the order of business for the meeting, the council or committee must resolve to alter the order of business in accordance with clause 8.23.
- 13.5 A motion to adopt multiple items of business together under clause 13.1 must identify each of the items of business to be adopted and state that they are to be adopted as recommended in the business paper.
- 13.6 Items of business adopted under clause 13.1 are to be taken to have been adopted unanimously.
- 13.7 Councillors must ensure that they declare and manage any conflicts of interest they may have in relation to items of business considered together under clause 13.1 in accordance with the requirements of the council's code of conduct.
- 13.8 Any motion relating to the remuneration of elected members must not be included in the list of multiple items of business to be adopted by way of a single resolution. (Local Policy)

#### 14 CLOSURE OF COUNCIL MEETINGS TO THE PUBLIC

##### Grounds on which meetings can be closed to the public

- 14.1 The council or a committee of the council may close to the public so much of its meeting as comprises the discussion or the receipt of any of the following types of matters:
- (a) personnel matters concerning particular individuals (other than councillors),
  - (b) the personal hardship of any resident or ratepayer,
  - (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,
  - (d) commercial information of a confidential nature that would, if disclosed:
    - (i) prejudice the commercial position of the person who supplied it, or
    - (ii) confer a commercial advantage on a competitor of the council, or
    - (iii) reveal a trade secret,
  - (e) information that would, if disclosed, prejudice the maintenance of law,
  - (f) matters affecting the security of the council, councillors, council staff or council property,
  - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,
  - (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,
  - (i) alleged contraventions of the council's code of conduct.

**Note: Clause 14.1 reflects section 10A(1) and (2) of the Act.**

- 14.2 The council or a committee of the council may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.

**Note: Clause 14.2 reflects section 10A(3) of the Act.**

##### Matters to be considered when closing meetings to the public

- 14.3 A meeting is not to remain closed during the discussion of anything referred to in clause 14.1:
- (a) except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and

- (b) if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret – unless the council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.

**Note: Clause 14.3 reflects section 10B(1) of the Act.**

- 14.4 A meeting is not to be closed during the receipt and consideration of information or advice referred to in clause 14.1(g) unless the advice concerns legal matters that:

- (a) are substantial issues relating to a matter in which the council or committee is involved, and  
 (b) are clearly identified in the advice, and  
 (c) are fully discussed in that advice.

**Note: Clause 14.4 reflects section 10B(2) of the Act.**

- 14.5 If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in clause 14.2), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting other than consideration of whether the matter concerned is a matter referred to in clause 14.1.

**Note: Clause 14.5 reflects section 10B(3) of the Act.**

- 14.6 For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:

- (a) a person may misinterpret or misunderstand the discussion, or  
 (b) the discussion of the matter may:  
 (i) cause embarrassment to the council or committee concerned, or to councillors or to employees of the council, or  
 (ii) cause a loss of confidence in the council or committee.

**Note: Clause 14.6 reflects section 10B(4) of the Act.**

- 14.7 In deciding whether part of a meeting is to be closed to the public, the council or committee concerned must consider any relevant guidelines issued by the [Departmental](#) Chief Executive of the Office of Local Government.

**Note: Clause 14.7 reflects section 10B(5) of the Act.**

Notice of likelihood of closure not required in urgent cases

- 14.8 Part of a meeting of the council, or of a committee of the council, may be closed to the public while the council or committee considers a matter that has not been identified in the agenda for the meeting under clause 3.22+ as a matter that is likely to be considered when the meeting is closed, but only if:

- (a) it becomes apparent during the discussion of a particular matter that the matter is a matter referred to in clause 14.1, and  
 (b) the council or committee, after considering any representations made under clause 14.9, resolves that further discussion of the matter:  
 (i) should not be deferred (because of the urgency of the matter), and  
 (ii) should take place in a part of the meeting that is closed to the public.

**Note: Clause 14.8 reflects section 10C of the Act.**

Representations by members of the public

- 14.9 The council, or a committee of the council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.



**Note: Clause 14.9 reflects section 10A(4) of the Act.**

- 14.10 A representation under clause 14.9 is to be made after the motion to close the part of the meeting is moved and seconded.
- 14.11 Where the matter has been identified in the agenda of the meeting under clause 3.21 as a matter that is likely to be considered when the meeting is closed to the public, in order to make representations under clause 14.9, members of the public must first make an application to the council in the approved form. Applications must be received by **4pm on the Friday** before the meeting at which the matter is to be considered.
- 14.12 The general manager (or their delegate) may refuse an application made under clause 14.11. The general manager or their delegate must give reasons in writing for a decision to refuse an application.
- 14.13 No more than **two (2)** speakers are to be permitted to make representations under clause 14.9.
- 14.14 If more than the permitted number of speakers apply to make representations under clause 14.9, the general manager or their delegate may request the speakers to nominate from among themselves the persons who are to make representations to the council. If the speakers are not able to agree on whom to nominate to make representations under clause 14.9, the general manager or their delegate is to determine who will make representations to the council.
- 14.15 The general manager (or their delegate) is to determine the order of speakers.
- 14.16 Where the council or a committee of the council proposes to close a meeting or part of a meeting to the public in circumstances where the matter has not been identified in the agenda for the meeting under clause 3.21 as a matter that is likely to be considered when the meeting is closed to the public, the chairperson is to invite representations from the public under clause 14.9 after the motion to close the part of the meeting is moved and seconded. The chairperson is to permit no more than **two (2)** speakers to make representations in such order as determined by the chairperson.
- 14.17 Each speaker will be allowed **three (3)** minutes to make representations, and this time limit is to be strictly enforced by the chairperson. Speakers must confine their representations to whether the meeting should be closed to the public. If a speaker digresses to irrelevant matters, the chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.

Expulsion of non-councillors from meetings closed to the public

- 14.18 If a meeting or part of a meeting of the council or a committee of the council is closed to the public in accordance with section 10A of the Act and this code, any person who is not a councillor and who fails to leave the meeting when requested, may be expelled from the meeting as provided by section 10(2)(a) or (b) of the Act.
- 14.19 If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary restrain that person from re-entering that place for the remainder of the meeting.

Obligations of councillors attending meetings by audio-visual link

- 14.20 **Councillors attending a meeting by audio-visual link must ensure that no other person is within sight or hearing of the meeting at any time that the meeting is closed to the public under section 10A of the Act.**

Information to be disclosed in resolutions closing meetings to the public

- 14.20~~1~~ The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting. The grounds must specify the following:

[Clarence Valley Council Code of Meeting Practice V14 February 2022](#)  
[Model Code of Meeting Practice for Local Councils in NSW](#)

- (a) the relevant provision of section 10A(2) of the Act,
- (b) the matter that is to be discussed during the closed part of the meeting,
- (c) the reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

**Note: Clause 14.201 reflects section 10D of the Act.**

Resolutions passed at closed meetings to be made public

- 14.242 If the council passes a resolution during a meeting, or a part of a meeting, that is closed to the public, the chairperson must make the resolution public as soon as practicable after the meeting, or the relevant part of the meeting, has ended, and the resolution must be recorded in the publicly available minutes of the meeting.
- 14.223 Resolutions passed during a meeting, or a part of a meeting, that is closed to the public must be made public by the chairperson under clause 14.242 during a part of the meeting that is webcast.

## 15 KEEPING ORDER AT MEETINGS

Points of order

- 15.1 A councillor may draw the attention of the chairperson to an alleged breach of this code by raising a point of order. A point of order does not require a seconder.
- 15.2 A point of order cannot be made with respect to adherence to the principles contained in clause 2.1.
- 15.3 A point of order must be taken immediately it is raised. The chairperson must suspend the business before the meeting and permit the councillor raising the point of order to state the provision of this code they believe has been breached. The chairperson must then rule on the point of order – either by upholding it or by overruling it.

Questions of order

- 15.4 The chairperson, without the intervention of any other councillor, may call any councillor to order whenever, in the opinion of the chairperson, it is necessary to do so.
- 15.5 A councillor who claims that another councillor has committed an act of disorder, or is out of order, may call the attention of the chairperson to the matter.
- 15.6 The chairperson must rule on a question of order immediately after it is raised but, before doing so, may invite the opinion of the council.
- 15.7 The chairperson's ruling must be obeyed unless a motion dissenting from the ruling is passed.

Motions of dissent

- 15.8 A councillor can, without notice, move to dissent from a ruling of the chairperson on a point of order or a question of order. If that happens, the chairperson must suspend the business before the meeting until a decision is made on the motion of dissent.
- 15.9 If a motion of dissent is passed, the chairperson must proceed with the suspended business as though the ruling dissented from had not been given. If, as a result of the ruling, any motion or business has been rejected as out of order, the chairperson must restore the motion or business to the agenda and proceed with it in due course.

- 15.10 Despite any other provision of this code, only the mover of a motion of dissent and the chairperson can speak to the motion before it is put. The mover of the motion does not have a right of general reply.

#### Acts of disorder

- 15.11 A councillor commits an act of disorder if the councillor, at a meeting of the council or a committee of the council:

- (a) contravenes the Act, ~~or any the Regulation in force under the Act~~ or this code, or
- (b) assaults or threatens to assault another councillor or person present at the meeting, or
- (c) moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the council or the committee, or addresses or attempts to address the council or the committee on such a motion, amendment or matter, or
- (d) insults, ~~or~~ makes ~~personal reflections~~ unfavourable personal remarks about, ~~or~~ or imputes improper motives to any other council official, or alleges a breach of the council's code of conduct, or
- (e) says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the council or the committee into disrepute.

**Note: Clause 15.11 reflects ~~clause~~ section 182 of the Regulation.**

- 15.12 The chairperson may require a councillor:

- (a) to apologise without reservation for an act of disorder referred to in clauses 15.11(a), ~~or~~ (b), or (e), or
- (b) to withdraw a motion or an amendment referred to in clause 15.11(c) and, where appropriate, to apologise without reservation, or
- (c) to retract and apologise without reservation for any statement that constitutes an act of disorder referred to in clauses 15.11(d) and (e).

**Note: Clause 15.12 reflects ~~clause~~ section 233 of the Regulation.**

#### How disorder at a meeting may be dealt with

- 15.13 If disorder occurs at a meeting of the council, the chairperson may adjourn the meeting for a period of not more than fifteen (15) minutes and leave the chair. The council, on reassembling, must, on a question put from the chairperson, decide without debate whether the business is to be proceeded with or not. This clause applies to disorder arising from the conduct of members of the public as well as disorder arising from the conduct of councillors.

#### Expulsion from meetings

- 15.14 All chairpersons of meetings of the council and committees of the council are authorised under this code to expel any person, including any councillor, from a council or committee meeting, for the purposes of section 10(2)(b) of the Act.

- ~~15.15 All chairpersons of meetings of the council and committees of the council are authorised under this code to expel any person other than a councillor, from a council or committee meeting, for the purposes of section 10(2)(b) of the Act. Councillors may only be expelled by resolution of the council or the committee of the council.~~

**Note: Councils may use either clause 15.14 or clause 15.15.**

- ~~15.16– Clause [15.14/15.15] ~~[delete whichever is not applicable]~~, does not limit the ability of the council or a committee of the council to resolve to expel a person, including a councillor, from a council or committee meeting, under section 10(2)(a) of the Act.~~

- ~~15.17– A councillor may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the council for having failed to comply with a requirement under clause 15.12. The expulsion of a councillor from the meeting for that reason does not prevent any other action from being taken against the councillor for the act of disorder concerned.~~

**Note: Clause 15.167 reflects clause section 233(2) of the Regulation.**

- 15.18– A member of the public may, as provided by section 10(2)(a) or (b) of the Act, be expelled from a meeting of the council for engaging in or having engaged in disorderly conduct at the meeting.
- 15.19– Where a councillor or a member of the public is expelled from a meeting, the expulsion and the name of the person expelled, if known, are to be recorded in the minutes of the meeting.
- 15.20– If a councillor or a member of the public fails to leave the place where a meeting of the council is being held immediately after they have been expelled, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using only such force as is necessary, remove the councillor or member of the public from that place and, if necessary, restrain the councillor or member of the public from re-entering that place for the remainder of the meeting.

#### How disorder by councillors attending meetings by audio-visual link may be dealt with

- 15.21– Where a councillor is attending a meeting by audio-visual link, the chairperson or a person authorised by the chairperson may mute the councillor's audio link to the meeting for the purposes of enforcing compliance with this code.
- 15.22– If a councillor attending a meeting by audio-visual link is expelled from a meeting for an act of disorder, the chairperson of the meeting or a person authorised by the chairperson, may terminate the councillor's audio-visual link to the meeting.

#### Use of mobile phones and the unauthorised recording of meetings

- 15.23– Councillors, council staff and members of the public must ensure that mobile phones are turned to silent during meetings of the council and committees of the council.
- 15.24– A person must not live stream or use an audio recorder, video camera, mobile phone or any other device to make a recording of the proceedings of a meeting of the council or a committee of the council without the prior authorisation of the council or the committee.
- 15.25– Without limiting clause 15.18, a contravention of clause 15.24 or an attempt to contravene that clause, constitutes disorderly conduct for the purposes of clause 15.18. Any person who contravenes or attempts to contravene clause 15.24, may be expelled from the meeting as provided for under section 10(2) of the Act.
- 15.26– If any such person, after being notified of a resolution or direction expelling them from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place for the remainder of the meeting.

#### Inviting and receiving advice from the General Manager

- 15.27 The chairperson may invite the general manager to provide advice to the meeting. The general manager may after invitation choose to provide the requested advice by delegating the response to a staff member.
- 15.28 Where the chairperson wishes to invite the general manager to provide advice to the meeting, or where the general manager wishes to indicate an offer to provide advice, and excepting where the general manager may make an urgent interjection to advise of unlawful proceedings or likely unlawful outcome were the meeting to continue uninterrupted, an interjection indicating an invitation or offer of advice is not to occur so as to interrupt the proper course of the meeting being conducted under the other provisions of this code.
- 15.29 Where the chairperson invites the general manager to provide advice, such advice is to be delivered only after the chairperson has called an adjournment to any

proceedings underway at the time and where that adjournment is called in accordance with code of meeting practice provisions allowing for an interruption.

- 15.30 Where verbal or written advice is provided by the general manager, or by a staff member through the general manager, to a meeting of council, such advice is provided to the meeting by way of the public address and audio recording system. Where written advice is read to the meeting, the source document is to be tabled following the reading of that advice into the audio recording system.
- 15.31 Where the chairperson is to receive confidential advice in any form from the general manager, the meeting is to be adjourned for such period of time as to allow the giving and receiving of that confidential advice to occur in a place not seen or heard by any other councillor or by any member of the public in attendance at the meeting.

Note Clause 15.27 to 15.31 is Local Policy

## 16 CONFLICTS OF INTEREST

- 16.1 All councillors and, where applicable, all other persons, must declare and manage any conflicts of interest they may have in matters being considered at meetings of the council and committees of the council in accordance with the council's code of conduct. All declarations of conflicts of interest and how the conflict of interest was managed by the person who made the declaration must be recorded in the minutes of the meeting at which the declaration was made.
- 16.2 Councillors attending a meeting by audio-visual link must declare and manage any conflicts of interest they may have in matters being considered at the meeting in accordance with the council's code of conduct. Where a councillor has declared a pecuniary or significant non-pecuniary conflict of interest in a matter being discussed at the meeting, the councillor's audio-visual link to the meeting must be suspended or terminated and the councillor must not be in sight or hearing of the meeting at any time during which the matter is being considered or discussed by the council or committee, or at any time during which the council or committee is voting on the matter.

## 17 DECISIONS OF THE COUNCIL

### Council decisions

- 17.1 A decision supported by a majority of the votes at a meeting of the council at which a quorum is present is a decision of the council.

**Note: Clause 17.1 reflects section 371 of the Act in the case of councils and section 400T(8) in the case of joint organisations.**

**Note: Under section 400U(4) of the Act, joint organisations may specify more stringent voting requirements for decisions by the board such as a 75% majority or consensus decision making. Where a joint organisation's charter specifies more stringent voting requirements, clause 17.1 must be adapted to reflect those requirements.**

- 17.2 Decisions made by the council must be accurately recorded in the minutes of the meeting at which the decision is made.

### Rescinding or altering council decisions

- 17.3 A resolution passed by the council may not be altered or rescinded except by a motion to that effect of which notice has been given under clause 3.10.

**Note: Clause 17.3 reflects section 372(1) of the Act.**

- 17.4 If a notice of motion to rescind a resolution is given at the meeting at which the resolution is carried, the resolution must not be carried into effect until the motion of rescission has been dealt with.

**Note: Clause 17.4 reflects section 372(2) of the Act.**

Clarence Valley Council Code of Meeting Practice V14 February 2022  
Model Code of Meeting Practice for Local Councils in NSW

17.5 If a motion has been lost, a motion having the same effect must not be considered unless notice of it has been duly given in accordance with clause 3.10.

**Note: Clause 17.5 reflects section 372(3) of the Act.**

17.6 A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been lost, must be signed by three (3) councillors if less than three (3) months has elapsed since the resolution was passed, or the motion was lost.

**Note: Clause 17.6 reflects section 372(4) of the Act.**

17.7 If a motion to alter or rescind a resolution has been lost, or if a motion which has the same effect as a previously lost motion is lost, no similar motion may be brought forward within three (3) months of the meeting at which it was lost. This clause may not be evaded by substituting a motion differently worded, but in principle the same.

**Note: Clause 17.7 reflects section 372(5) of the Act.**

17.8 The provisions of clauses 17.5–17.7 concerning lost motions do not apply to motions of adjournment.

**Note: Clause 17.8 reflects section 372(7) of the Act.**

17.9 A notice of motion submitted in accordance with clause 17.6 may only be withdrawn under clause 3.11 with the consent of all signatories to the notice of motion.

17.10 A notice of motion to alter or rescind a resolution relating to a development application must be submitted to the general manager no later than one (1) business ~~after~~ day after the meeting at which the resolution was adopted.

17.11 A motion to alter or rescind a resolution of the council may be moved on the report of a committee of the council and any such report must be recorded in the minutes of the meeting of the council.

**Note: Clause 17.11 reflects section 372(6) of the Act.**

17.12 Subject to clause 17.7, in cases of urgency, a motion to alter or rescind a resolution of the council may be moved at the same meeting at which the resolution was adopted, where:

- (a) a notice of motion signed by three councillors is submitted to the chairperson, and
- (b) a motion to have the motion considered at the meeting is passed, and
- (c) the chairperson rules the business that is the subject of the motion is of great urgency on the grounds that it requires a decision by the council before the next scheduled ordinary meeting of the council.

17.13 A motion moved under clause 17.12(b) can be moved without notice. Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 17.12(b) can speak to the motion before it is put.

17.14 A motion of dissent cannot be moved against a ruling by the chairperson under clause 17.12(c).

#### Recommitting resolutions to correct an error

17.15 Despite the provisions of this Part, a councillor may, with the leave of the chairperson, move to recommit a resolution adopted at the same meeting:

- (a) to correct any error, ambiguity or imprecision in the council's resolution, or
- (b) to confirm the voting on the resolution.

17.16 In seeking the leave of the chairperson to move to recommit a resolution for the purposes of clause 17.15(a), the councillor is to propose alternative wording for the resolution.

- 17.17 The chairperson must not grant leave to recommit a resolution for the purposes of clause 17.15(a), unless they are satisfied that the proposed alternative wording of the resolution would not alter the substance of the resolution previously adopted at the meeting.
- 17.18 A motion moved under clause 17.15 can be moved without notice. Despite clauses 10.20–10.30, only the mover of a motion referred to in clause 17.15 can speak to the motion before it is put.
- 17.19 A motion of dissent cannot be moved against a ruling by the chairperson under clause 17.15.
- 17.20 A motion moved under clause 17.15 with the leave of the chairperson cannot be voted on unless or until it has been seconded.

## 18 TIME LIMITS ON COUNCIL MEETINGS

- 18.1 Meetings of the council and committees of the council are to conclude no later than 7pm
- 18.2 If the business of the meeting is unfinished at 7pm the council or the committee may, by resolution, extend the time of the meeting.
- 18.3 If the business of the meeting is unfinished at 7pm and the council does not resolve to extend the meeting, the chairperson must either:
- (a) defer consideration of the remaining items of business on the agenda to the next ordinary meeting of the council, or
  - (b) adjourn the meeting to a time, date and place fixed by the chairperson.
- 18.4 Clause 18.3 does not limit the ability of the council or a committee of the council to resolve to adjourn a meeting at any time. The resolution adjourning the meeting must fix the time, date and place that the meeting is to be adjourned to.
- 18.5 Where a meeting is adjourned under clause 18.3 or 18.4, the general manager must:
- (a) individually notify each councillor of the time, date and place at which the meeting will reconvene, and
  - (b) publish the time, date and place at which the meeting will reconvene on the council's website and in such other manner that the general manager is satisfied is likely to bring notice of the time, date and place of the reconvened meeting to the attention of as many people as possible.

## 19 AFTER THE MEETING

### Minutes of meetings

- 19.1 The council is to keep full and accurate minutes of the proceedings of meetings of the council.
- Note: Clause 19.1 reflects section 375(1) of the Act.**
- 19.2 At a minimum, the general manager must ensure that the following matters are recorded in the council's minutes:
- (a) the names of councillors attending a council meeting and whether they attended the meeting in person or by audio-visual link,
  - (ab) details of each motion moved at a council meeting and of any amendments moved to it,
  - (bc) the names of the mover and seconder of the motion or amendment,
  - (ed) whether the motion or amendment was passed or lost, and
  - (de) such other matters specifically required under this code.

- 19.3 The minutes of a council meeting must be confirmed at a subsequent meeting of the council.

**Note: Clause 19.3 reflects section 375(2) of the Act.**

- 19.4 Any debate on the confirmation of the minutes is to be confined to whether the minutes are a
- [Clarence Valley Council Code of Meeting Practice V14 February 2022](#)  
[Model Code of Meeting Practice for Local Councils in NSW](#)

full and accurate record of the meeting they relate to.

- 19.5 When the minutes have been confirmed, they are to be signed by the person presiding at the subsequent meeting.

**Note: Clause 19.5 reflects section 375(2) of the Act.**

- 19.6 The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.

- 19.7 The confirmed minutes of a council meeting must be published on the council's website. This clause does not prevent the council from also publishing unconfirmed minutes of its meetings on its website prior to their confirmation.

Access to correspondence and reports laid on the table at, or submitted to, a meeting

- 19.8 The council and committees of the council must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports laid on the table at, or submitted to, the meeting.

**Note: Clause 19.8 reflects section 11(1) of the Act.**

- 19.9 Clause 19.8 does not apply if the correspondence or reports relate to a matter that was received or discussed or laid on the table at, or submitted to, the meeting when the meeting was closed to the public.

**Note: Clause 19.9 reflects section 11(2) of the Act.**

- 19.10 Clause 19.8 does not apply if the council or the committee resolves at the meeting, when open to the public, that the correspondence or reports are to be treated as confidential because they relate to a matter specified in section 10A(2) of the Act.

**Note: Clause 19.10 reflects section 11(3) of the Act.**

- 19.11 Correspondence or reports to which clauses 19.9 and 19.10 apply are to be marked with the relevant provision of section 10A(2) of the Act that applies to the correspondence or report.

Implementation of decisions of the council

- 19.12 The general manager is to implement, without undue delay, lawful decisions of the council.

**Note: Clause 19.12 reflects section 335(b) of the Act.**

## 20 COUNCIL COMMITTEES

Application of this Part

- 20.1 This Part only applies to committees of the council whose members are all councillors.

Council committees whose members are all councillors

- 20.2 The council may, by resolution, establish such committees as it considers necessary.
- 20.3 A committee of the council is to consist of the mayor and such other councillors as are elected by the councillors or appointed by the council.
- 20.4 The quorum for a meeting of a committee of the council is to be:
- (a) such number of members as the council decides, or
  - (b) if the council has not decided a number – a majority of the members of the committee.

Functions of committees

Clarence Valley Council Code of Meeting Practice V14 February 2022  
Model Code of Meeting Practice for Local Councils in NSW



- 20.5 The council must specify the functions of each of its committees when the committee is ~~established, but~~ established but may from time to time amend those functions.

#### Notice of committee meetings

- 20.6 The general manager must send to each councillor, regardless of whether they are a committee member, at least three (3) days before each meeting of the committee, a notice specifying:
- (a) the time, date and place of the meeting, and
  - (b) the business proposed to be considered at the meeting.
- 20.7 Notice of less than three (3) days may be given of a committee meeting called in an emergency.

#### Attendance at committee meetings

- 20.8 A committee member (other than the mayor) ceases to be a member of a committee if the committee member:
- (a) has been absent from three (3) consecutive meetings of the committee without having given reasons acceptable to the committee for the member's absences, or
  - (b) has been absent from at least half of the meetings of the committee held during the immediately preceding year without having given to the committee acceptable reasons for the member's absences.
- 20.9 Clause 20.8 does not apply if all of the members of the council are members of the committee.

#### Non-members entitled to attend committee meetings

- 20.10 A councillor who is not a member of a committee of the council is entitled to attend, and to speak at a meeting of the committee. However, the councillor is not entitled:
- (a) to give notice of business for inclusion in the agenda for the meeting, or
  - (b) to move or second a motion at the meeting, or
  - (c) to vote at the meeting.

#### Chairperson and deputy chairperson of council committees

- 20.11 The chairperson of each committee of the council must be:
- (a) the mayor, or
  - (b) if the mayor does not wish to be the chairperson of a committee, a member of the committee elected by the council, or
  - (c) if the council does not elect such a member, a member of the committee elected by the committee.
- 20.12 The council may elect a member of a committee of the council as deputy chairperson of the committee. If the council does not elect a deputy chairperson of such a committee, the committee may elect a deputy chairperson.
- 20.13 If neither the chairperson nor the deputy chairperson of a committee of the council is able or willing to preside at a meeting of the committee, the committee must elect a member of the committee to be acting chairperson of the committee.
- 20.14 The chairperson is to preside at a meeting of a committee of the council. If the chairperson is unable or unwilling to preside, the deputy chairperson (if any) is to preside at the meeting, but if neither the chairperson nor the deputy chairperson is able or willing to preside, the acting chairperson is to preside at the meeting.

#### Procedure in committee meetings

- 20.15 Subject to any specific requirements of this code, each committee of the council may regulate its own procedure. The provisions of this code are to be taken to apply to all committees of the council unless the council or the committee determines otherwise in accordance with this clause.
- 20.16 Whenever the voting on a motion put to a meeting of the committee is equal, the chairperson of the committee is to have a casting vote as well as an original vote unless the council or the committee determines otherwise in accordance with clause 20.15.

~~20.17 A motion at a committee of a joint organisation is taken to be lost in the event of an equality of votes.~~

~~————— Note: Clause 20.17 reflects clause section 397E of the Regulation. Joint organisations must adopt clause 20.17 and omit clause 20.16. Councils must not adopt clause 20.17.~~

- 20.18 Voting at a council committee meeting is to be by open means (such as on the voices, by show of hands or by a visible electronic voting system).

#### Closure of committee meetings to the public

- 20.19 The provisions of the Act and Part 14 of this code apply to the closure of meetings of committees of the council to the public in the same way they apply to the closure of meetings of the council to the public.
- 20.20 If a committee of the council passes a resolution, or makes a recommendation, during a meeting, or a part of a meeting that is closed to the public, the chairperson must make the resolution or recommendation public as soon as practicable after the meeting or part of the meeting has ended, and report the resolution or recommendation to the next meeting of the council. The resolution or recommendation must also be recorded in the publicly available minutes of the meeting.
- 20.21 Resolutions passed during a meeting, or a part of a meeting that is closed to the public must be made public by the chairperson under clause 20.20 during a part of the meeting that is webcast.

#### Disorder in committee meetings

- 20.22 The provisions of the Act and this code relating to the maintenance of order in council meetings apply to meetings of committees of the council in the same way as they apply to meetings of the council.

#### Minutes of council committee meetings

- 20.23 Each committee of the council is to keep full and accurate minutes of the proceedings of its meetings. At a minimum, a committee must ensure that the following matters are recorded in the committee's minutes:

- (a) the names of councillors attending a meeting and whether they attended the meeting in person or by audio-visual link,
- (ab) details of each motion moved at a meeting and of any amendments moved to it,
- (bc) the names of the mover and seconder of the motion or amendment,
- (ed) whether the motion or amendment was passed or lost, and
- (ed) such other matters specifically required under this code.

**20.24 All voting at meetings of committees of the council (including meetings that are closed to the public), must be recorded in the minutes of meetings with the names of councillors who voted for and against each motion or amendment, (including the use of the casting vote), being recorded.**

- 20.25 The minutes of meetings of each committee of the council must be confirmed at a subsequent meeting of the committee.

- 20.26 Any debate on the confirmation of the minutes is to be confined to whether the minutes are a full and accurate record of the meeting they relate to.
- 20.27 When the minutes have been confirmed, they are to be signed by the person presiding at that subsequent meeting.
- 20.28 The confirmed minutes of a meeting may be amended to correct typographical or administrative errors after they have been confirmed. Any amendment made under this clause must not alter the substance of any decision made at the meeting.
- 20.29 The confirmed minutes of a meeting of a committee of the council must be published on the council's website. This clause does not prevent the council from also publishing unconfirmed minutes of meetings of committees of the council on its website prior to their confirmation.

## 21 IRREGULARITIES

- 21.1 Proceedings at a meeting of a council or a council committee are not invalidated because of:
- (a) a vacancy in a civic office, or
  - (b) a failure to give notice of the meeting to any councillor or committee member, or
  - (c) any defect in the election or appointment of a councillor or committee member, or
  - (d) a failure of a councillor or a committee member to declare a conflict of interest, or to refrain from the consideration or discussion of, or vote on, the relevant matter, at a council or committee meeting in accordance with the council's code of conduct, or
  - (e) a failure to comply with this code.

**Note: Clause 21.1 reflects section 374 of the Act.**

## 22 DEFINITIONS

the Act	means the <i>Local Government Act 1993</i>
act of disorder	means an act of disorder as defined in clause 15.11 of this code
amendment	in relation to an original motion, means a motion moving an amendment to that motion
audio recorder	any device capable of recording speech
audio-visual link	means a facility that enables audio and visual communication between persons at different places
business day	means any day except Saturday or Sunday or any other day the whole or part of which is observed as a public holiday throughout New South Wales
chairperson	in relation to a meeting of the council – means the person presiding at the meeting as provided by section 369 of the Act and clauses 6.1 and 6.2 of this code, and in relation to a meeting of a committee – means the person presiding at the meeting as provided by clause 20.11 of this code
this code	means the council's adopted code of meeting practice
committee of the council	means a committee established by the council in accordance with clause 20.2 of this code (being a committee consisting only of councillors) or the council when it has resolved itself into committee of the whole under clause 12.1
council official	has the same meaning it has in the Model Code of Conduct for Local Councils in NSW
day	means calendar day
division	means a request by two councillors under clause 11.7 of this code requiring the recording of the names of the councillors who voted both for and against a motion
foreshadowed amendment	means a proposed amendment foreshadowed by a councillor under clause 10.18 of this code during debate on the first amendment
foreshadowed motion	means a motion foreshadowed by a councillor under clause 10.17 of this code during debate on an original motion
open voting	means voting on the voices or by a show of hands or by a visible electronic voting system or similar means
planning decision	means a decision made in the exercise of a function of a council under the <i>Environmental Planning and Assessment Act 1979</i> including any decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but not including the making of an order under Division 9.3 of Part 9 of that Act
performance improvement order	means an order issued under section 438A of the Act
quorum	means the minimum number of councillors or committee members necessary to conduct a meeting
the Regulation	means the <i>Local Government (General) Regulation 2005-2021</i>
webcast	a video or audio broadcast of a meeting transmitted across the internet either concurrently with the meeting or at a later time
year	means the period beginning 1 July and ending the following 30 June



## Sydney District and Regional Planning Panels operational procedures

---

August 2020



NSW Department of Planning, Industry and Environment | [dpie.nsw.gov.au](http://dpie.nsw.gov.au)

Published by NSW Department of Planning, Industry and Environment

[dpie.nsw.gov.au](http://dpie.nsw.gov.au)

Title: Sydney District and Regional Planning Panels operational procedures

Published: August 2020

ISBN: 978-0-7313-3590-9

Department reference number: IRD20/25837

---

© State of New South Wales through Department of Planning, Industry and Environment 2020. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning, Industry and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: These procedures are provided for general guidance and information only and are made available on the understanding that the NSW Department of Planning, Industry and Environment (department) is not providing legal advice.

The department has compiled the procedures in good faith, exercising all due care and attention.

The procedures do not affect or replace relevant statutory requirements.

Where an inconsistency arises between the provisions of the procedures and relevant statutory provisions, the statutory requirements prevail.

While every reasonable effort has been made to ensure that this document is correct at the time of printing, the State of New South Wales, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

The procedures are not intended to give rise to any rights, claims, benefits, privileges, liabilities or obligations with respect to matters the subject of the procedures.

It should be noted that the procedures may be affected by changes to legislation at any time and/or be subject to revision without notice.

It is recommended that independent advice be sought in respect of the operation of the procedures and the statutory requirements applying to Sydney District and Regional Planning Panels under the *Environmental Planning and Assessment Act 1979*.

## Definitions

**Aboriginal Land SEPP** means the State Environmental Planning Policy (Aboriginal Land) 2019

**Capital Investment Value (CIV)** means all costs necessary to establish and operate a development, as defined in clause 3 of the Environmental Planning & Assessment Regulation 2000

**Commission** means the Greater Sydney Commission

**Council** means the council for the local government area in which the land the subject of a development application, rezoning review or application for a site compatibility certificate is located

**Days** means calendar days unless otherwise stated

**Department** means the Department of Planning, Industry and Environment

**Development Application (DA)** means an application for consent under Part 4 of the *Environmental Planning & Assessment Act 1979* to carry out development but does not include an application for a complying development certificate

**District** means any part of the Greater Sydney Region, or other region of the State, declared to be a district by the Minister

**Education SEPP** means the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

**EP&A Act** means the *Environmental Planning & Assessment Act 1979*

**EP&A Regulation** means the Environmental Planning & Assessment Regulation 2000

**Greater Sydney Region** means the region comprising the local government areas within the boundary shown on the map in Schedule 1 of the *Greater Sydney Commission Act 2015*

**GSC Act** means the *Greater Sydney Commission Act 2015*

**LALC** means Local Aboriginal Land Council

**LEP** means local environmental plan

**LGA** means local government area

**LGNSW** means Local Government NSW

**LG Act** means *Local Government Act 1993*

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

**Panel or Planning Panel** means a Sydney district or regional planning panel. The Panels were previously known as Joint Regional Planning Panels (JRPPs).

**Planning Panel** meeting means a public briefing meeting or a public determination meeting.

**Planning proposal** means a document prepared to explain the intended effect of, and justification for, making a proposed environmental planning instrument

**Regionally significant development** means development that meets criteria set out under Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011

**Planning proposal authority (PPA)** means the public authorities identified under section 3.32 of the EP&A Act

**SCC means a Site Compatibility Certificate** issued under the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

**Seniors SEPP** means the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

**Secretariat** means the Planning Panels Secretariat which provides technical and administrative support to the Planning Panels

**Secretary** means the Secretary of the Department of Planning, Industry and Environment

**State and Regional Development SEPP or SRD SEPP** means the State Environmental Planning Policy (State and Regional Development) 2011

**Sydney Planning Panel** means a Sydney district planning panel

**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.



## Contents

1. Introduction.....	1
2. Defining the regions and districts .....	2
3. Functions of Planning Panels .....	3
4. Membership of Planning Panels .....	5
5. Code of Conduct considerations .....	7
6. Administration .....	9
7. Government information, privacy and complaints .....	10
8. Monitoring, review and reporting .....	11
9. Liability and indemnification.....	12
10. Roles of councils and other panels .....	13
11. Development application and assessment.....	15
12. Determination of development applications.....	21
13. Reviews and appeals .....	23
14. Planning proposals .....	26
15. Site compatibility certificates .....	29
Schedule 1: Procedures for briefings, meetings and decisions.....	30

## 1. Introduction

The Planning Panels (Panels) were introduced in NSW on 1 July 2009 to strengthen decision making for regionally significant development and certain other planning functions under the EP&A Act.

These procedures relate to the operation of both the Sydney District and Regional Planning Panels.

The Panels are independent bodies representing the Crown and are not subject to the direction of the Minister, except on matters relating to Planning Panel procedures or where the Minister issues a formal direction under the EP&A Act.

These procedures are the Planning Panels charter and have been developed to explain the objectives, powers and authorities of the Planning Panels. They also detail the means of operating the Planning Panels and clarify the roles of various parties in the work of the Planning Panels.

The procedures should be read in conjunction with the Planning Panels Code of Conduct which explains the standard of conduct expected of Planning Panel members.

These procedures will be kept under review and may be amended periodically.

## 2. Defining the regions and districts

Planning Panels are constituted for each region of the State (other than the Greater Sydney Region), and each district of the Greater Sydney Region (see sections 2.12 and 3.2 and Part 3 of Schedule 2 of the EP&A Act).

The nine Planning Panels are the:

- Northern Regional Planning Panel
- Hunter and Central Coast Regional Planning Panel
- Western Regional Planning Panel
- Southern Regional Planning Panel
- Sydney North Planning Panel
- Sydney Eastern City Planning Panel
- Sydney Central City Planning Panel
- Sydney Western City Planning Panel
- Sydney South Planning Panel.

## 3. Functions of Planning Panels

### 3.1 Functions

The principal functions of Planning Panels are to determine regionally significant DAs and undertake rezoning reviews. Additional functions of Planning Panels include:

- preparing planning proposals if they are directed to be a planning proposal authority
- determining Crown DAs
- determining modification applications for regionally significant development
- determining DA reviews
- determining SCCs
- advising the Minister upon request.

### 3.2 Legislation

Legislation governing Planning Panels includes:

- the EP&A Act for the constitution and functions of Planning Panels and obligations in respect to councils, with the following key provisions:
  - Division 2.4 and Schedule 2 provides for the constitution of Planning Panels, member appointments, functions and general procedures
  - Division 3.4 allows for a Planning Panel to act as the planning proposal authority and undertake planning proposal reviews
  - Section 4.5 specifies that a Planning Panel is the consent authority for regionally significant development
  - Section 4.7 sets out the consent functions of a Planning Panel which are to be exercised by the relevant council.
- the EP&A Regulation contains provisions for where a Planning Panel is exercising consent authority functions
- the State and Regional Development SEPP sets out in Part 4 and Schedule 7 development declared to be regionally significant
- the Aboriginal Land SEPP sets out in Part 3 development declared to be regionally significant
- the Seniors SEPP and the Education SEPP both set out processes for consideration and determination of relevant applications for Site Compatibility Certificates.

### 3.3 Classes of regionally significant development

The State and Regional Development SEPP identifies the types of development classified as regionally significant (see Schedule 7 of the SEPP). The Aboriginal Land SEPP also identifies development declared to be regionally significant development (see Part 3 of the SEPP). The relevant Planning Panel will be the consent authority for regionally significant development.

**Note:** State significant development or development within the City of Sydney cannot be declared as regionally significant development (see section 4.7 of the EP&A Act).

On lodgement of a DA, the council will decide if a DA is regionally significant development.

The capital investment value (CIV) is relevant for some regionally significant development and should be calculated at the time of lodgement. Councils should request a quantity surveyor's

certificate or similar expert assessment to confirm the CIV from the applicant. The CIV is to be calculated in accordance the Planning Circular PS 10-008 (or as updated).

The Planning Panels determine applications to modify consent for regionally significant development under section 4.55(2) of the EP&A Act which seek to modify:

- new or amended conditions of consent imposed by the Panel
- development for which the applicant or landowner is:
  - the council
  - a councillor
  - a member of council staff who is principally involved in the exercise of council's functions under the Act
  - a member of the NSW or Commonwealth Parliament, or
  - a relative (within the meaning of the *Local Government Act 1993*) of a person referred to above;
- development that is subject to 10 or more unique submissions by way of an objection; or
- development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

All other section 4.55(2), 4.55(1) and 4.55(1A) modification applications to development consents granted by a Panel are to be determined by the relevant council. A court granted consent may be modified by a Panel under section 4.56 if it is the consent authority.

## 4. Membership of Planning Panels

(Part 4, Schedule 2 of the EP&A Act)

### 4.1 Members

Each Panel consists of five members, with three of the members, including the chair, appointed by the Minister (State members) and two members nominated by the relevant council (council members).

Property developers and real estate agents are not eligible to be members of a Panel.

The agenda of a Panel meeting may include consideration of multiple matters, each located in different council areas. The council members who join the State members to form a Panel will change, depending on the LGA in which the matter under consideration is located.

Panel members can be appointed to more than one Panel, either as a Panel member and/or as an alternate member.

When there is a vacancy on a Panel, the Minister in the case of a State member, and the relevant council in the case of a council member, will appoint another member to that vacancy.

Terms of appointment for Panel members, both State and council, must not exceed three years. Members are eligible for re-appointment. A State member of a Sydney Planning Panel must not be a member for more than nine years in total.

The secretariat is responsible for maintaining a register of all Panel members.

### 4.2 Chair and deputy chair

Chairs of the Planning Panels are appointed by the Minister from among the State members. The Minister must obtain the concurrence of Local Government NSW (LGNSW) to the appointment unless LGNSW:

- does not notify its concurrence or refusal within 21 days of being requested, or
- has previously refused to give concurrence for two different persons nominated by the Minister for that appointment.

At any time, the members may determine to elect a deputy chair from among the State members for any term. The role of a deputy chair is to act as the chair in the chair's absence.

The chair (or, in the absence of the chair, a person elected by the members) presides at Panel meetings. The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### 4.3 Expertise requirements for members appointed by the Minister

All Panel members appointed by the Minister, including alternates, must have expertise in one or more of the following areas: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration.

### 4.4 Council members

Two council members are appointed by each council. At least one council member must have expertise in one or more of the following areas: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism.

## 4.5 Selection of council members

Each council determines how their members are selected. In selecting members, councils should have regard to any conflict of duties that would be created for a person nominated to the Panel if they are in any way responsible or involved in the assessment of matters to be determined by the Panel or involved in voting or deliberating on matters that come before the Panel.

Councils are not restricted to nominating people from the council's local area. They can appoint, terminate, and reappoint members at any time, and can determine the duration of each appointment. Generally, so as to ensure the greatest degree of continuity for the Panels, councils should consider appointing members for the maximum term of three years provided for under the EP&A Act. However, councils should reconsider if the nominations to the Panels are appropriate within 12 months following a council election.

Following a change to its nominees, council is to forward the new member's contact details to the secretariat as soon as possible and this must be a minimum of 14 days before any meeting at which they will act as a Panel member.

If a council fails to nominate one or more council members, a Panel may still exercise its functions in relation to the area of the council concerned.

## 4.6 Payment of council members

Councils determine the fees they pay their Panel members. The Minister has provided guidance to all councils on appropriate rates of remuneration for travel and subsistence allowances for their members.

Each council is responsible for making any payments to its Panel members when they attend Panel meetings.

## 4.7 Alternate members

The Minister may at any time appoint a person to be the alternate of another member appointed by the Minister and may revoke any such appointment.

A council may also at any time appoint a person to be the alternate of a member nominated by the council and may revoke any such appointment.

Any changes are to be notified in writing to the secretariat as soon as possible and at least 14 days before undertaking any Panel business.

The alternate will act in the place of the member with all the powers of the member. Although a member may be appointed as an alternate for two or more members, they will only have one vote on any Panel decision.

## 4.8 Rotation of members

All chairs and members are required to periodically rotate with alternate members. The chair is to determine the frequency of rotation.

Following a matter being deferred, where possible the same members should reconvene to finalise the determination.

## 5. Code of Conduct considerations

### 5.1 Planning Panels Code of Conduct

All Panel members must comply with the Planning Panels Code of Conduct when exercising their functions as a Panel member and make impartial merit-based decisions in accordance with their statutory obligations. The latest version of the Planning Panels Code of Conduct is available online at [www.planningpanels.nsw.gov.au](http://www.planningpanels.nsw.gov.au). On appointment each Panel member must acknowledge in writing that they will abide by the Planning Panels Code of Conduct.

### 5.2 Declaration of interests

On being informed of a matter to come before the Panel members should consider if they have an actual, potential or reasonably perceived conflict and, if so, declare the conflict and take any appropriate action, such as allowing an alternate member to take their place.

Panel members are required to complete and sign a declaration of interest form in relation to each matter which is considered by the Panel, either before, or at the commencement of, the Panel's determination proceedings. Any verbal declarations are to be recorded in writing.

To avoid any perceptions of bias, and to meet requirements of the Code of Conduct, councillors who have previously deliberated or voted on a matter that is to come before the Panel (such as a submission from the council on a DA for regionally significant development, a related voluntary planning agreement or a planning proposal) must stand aside from their place on the Panel and allow council's nominated alternative member to take their place. Alternatively, the member may choose to not participate in the deliberations or voting on the matter at the council (or council committee) meeting. They should also not remain in the council chamber during the council's deliberations.

### 5.3 Representations to Planning Panel members

If a Panel member is approached by any person about a matter to come before the Panel, i.e. a DA, or planning proposal or Site Compatibility Certificate, the Panel member must not discuss the matter.

Any person that approaches a Panel member should be encouraged to make a written submission to the council planning staff for DAs during the exhibition period, or if the matter relates to a planning proposal for which the Panel is the Planning Proposal Authority, to the secretariat. Issues raised in submissions will be addressed in the assessment report to be provided to the Panel.

### 5.4 Interactions with third parties about matters before the Planning Panel

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 a public briefing meeting, public determination meeting, site visit or briefing.

### 5.5 Public meetings organised by the council or community about the proposed development

To avoid any perception of bias, Panel members should avoid attending public meetings about a proposed development organised by members of the community or council, unless the meeting has been organised at the request of the Panel.



Panel members should decline any invitation to attend a public meeting and advise the meeting organisers to make a submission to council and register to address the Panel at its meeting.

## 6. Administration

Administration and support for the Panels is provided by the Planning Panels Secretariat. Support includes:

- scheduling of meetings, briefings and site visits
- preparing and issuing agendas and business papers
- notification of meetings
- arranging for travel and accommodation for State appointed Panel members
- preparing records of decision (with assistance from council)
- arranging for the audio recording of public Panel meetings
- record keeping for the Panels
- being the first point of contact for councils to notify a Panel of any decision made by the Panel which is the subject of a merit appeal in the Land and Environment Court.

The secretariat is the first point of contact for all Panel matters and publishes a wide range of information on its website:

[www.planningportal.nsw.gov.au/planningpanels](http://www.planningportal.nsw.gov.au/planningpanels)

The contact details for the secretariat are:

Phone: (02) 8217 2060

Email: [enquiry@planningpanels.nsw.gov.au](mailto:enquiry@planningpanels.nsw.gov.au)

## 7. Government information, privacy and complaints

### 7.1 Right to information and privacy management

The department assists Planning Panels in managing applications made under the *Government Information (Public Access) Act 2009* and the *Privacy and Personal Information Protection Act 1998*.

Applications of this nature can be made to [patiunit@planning.nsw.gov.au](mailto:patiunit@planning.nsw.gov.au) or visit the department's website at:

<http://www.planning.nsw.gov.au/About-Us/Right-to-Information/How-Can-I-Access-Information>

### 7.2 Complaints

The department assists Planning Panels in managing complaints. Complaints are investigated and managed in accordance with the department's Management of Complaints Policy.

Dissatisfaction with determinations of the Planning Panels will not be regarded as a complaint.

If you wish to make a complaint telephone, write or email the department at:

Phone: 1300 305 695

Email: [information@planning.nsw.gov.au](mailto:information@planning.nsw.gov.au)

Complaints made in this way will be recorded in the department's Complaints Register and will be allocated to the appropriate level for investigation and response.

If you are not satisfied with a response, you can ask for the issue to be considered by a more senior officer.

Code of conduct complaints will be dealt with under the Planning Panels Code of Conduct.

At any time, a person can complain to external bodies such as the Independent Commission Against Corruption (ICAC), the Ombudsman, or the Audit Office of NSW. Allegations of corrupt conduct, misconduct, or serious waste of resources are encouraged to be made directly to these organisations.

Complaints about council, councillors, council staff or local planning panels (IHAPs) should be directed to the relevant council.

## 8. Monitoring, review and reporting

The secretariat monitors the progress of DAs referred to the Panels. It is expected that council will complete its assessment report within 60 days after the close of the public exhibition period.

The performance of the Panels is monitored and reported in the department's Annual Report.

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.

To ensure assessment and determination times are not subject to delay:

- a. 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.
- b. 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 2000* must be considered by the Panels.

### 8.1 Availability of information

The secretariat makes a range of information publicly available on its website, including:

Panel notices with dates, locations and times (at least 7 days before the Planning Panel meeting),

- the relevant council's assessment report and recommendation (at least 7 days before the Panel meeting)
- records of briefings and Panel meetings, Determinations and Statements of Reasons, decisions on rezoning reviews and Site Compatibility Certificates, resolutions of the Planning Panels and any advice provided by the Panels to the Minister, Secretary or GSC, as relevant
- audio recordings of Panel meetings
- a schedule of meeting dates reserved for Panel business.

Councils remain responsible for receiving, notifying and exhibiting DAs and supporting documents in accordance with statutory provisions and council's own notification and exhibition requirements set out in its community participation plan.

## 9. Liability and indemnification

Panel members are excluded from personal liability as long as the act or omission was done in good faith for the purpose of carrying out their duties under the EP&A Act (see s 2.28 of the EP&A Act).

The NSW Government extends insurance indemnity cover to Panel members. For indemnification provisions to apply Panel members must act honestly and in accordance with the Panel Code of Conduct in the performance of their responsibilities.

For further information please contact the NSW Self Insurance Corporation (icare) at:  
<https://www.icare.nsw.gov.au>

## 10. Roles of councils and other panels

### 10.1 Role of councillors and council staff

The elected council and council staff have different roles in the assessment of DAs. Under the *Local Government Act 1993*, the independence of council staff is protected in the preparation of advice and recommendations. Staff members are not subject to direction by the council or by a councillor as to the content of any advice or recommendation made by the staff member. Equally, a council or councillor is not bound by the advice or recommendation made by a member of staff.

### 10.2 Assessment role

Council staff undertake the assessment of a DA. The assessment of a DA includes accepting the DA, consultation, concurrence and obtaining general terms of approval from an agency if required, carrying out community participation requirements and assessment of the matters set out in 4.15 of the EP&A Act. The assessment is documented in a report with recommendations. The report is then considered by the person or body that is the consent authority.

Council is responsible for carrying out community participation requirements on behalf of the Panels (see section 4.7(2)(d) and Division 2.6 of the EP&A Act).

The department undertakes the assessment of planning proposals and applications for site compatibility certificates referred to the Panels.

### 10.3 Determination role

Historically, one of the roles of an elected council has been to determine or make decisions on DAs in their capacity as a consent authority. There are occasions, however, where the determination role is performed by other people or bodies, either because the council has delegated that function, or because it has been conferred upon another person or body. For example, where local planning panels have been introduced elected councils no longer determine DAs (see section 2.17 of the EP&A Act).

The Panel for the area in which the development is to be carried out is the consent authority for regionally significant development (see section 4.5 of the EP&A Act).

### 10.4 Post-determination role

Council staff are responsible for post-determination functions including:

- Notifying Panel determinations on DAs (see sections 4.7(2)(e), 4.18 and 4.59 of the EP&A Act)
- registering Panel development consents on the NSW Planning Portal (see sections 4.7(2)(e) and 4.20 of the EP&A Act)
- monitoring and enforcing compliance with conditions of the development consent.

The notice of determination should be issued once council receives a copy of the endorsed and final determination from the Panel. The notice of determination must include all conditions imposed by the Panel, including any additional or amended conditions.

The council has no power to amend conditions or include additional conditions following the Panel's determination.

Council will advise any person who made a submission on the DA of the determination.

The council continues to be responsible for the monitoring of, and enforcing compliance with, any conditions of the development consent.

Where an application has been approved subject to a 'deferred commencement' condition council is responsible for determining whether the requirements of the condition have been met (see section 4.16(3) of the EP&A Act). Council advises the chair of the Panel in writing when the matter specified in the condition has been satisfied (see clause 123E (2) of the EP&A Regulation).

## 10.5 Support provided to Planning Panels by councils

Planning Panels are entitled on request to the general manager of a council, to use the staff and facilities of the relevant council, have access to council records, and any other assistance or action for the purpose of carrying out their functions (see section 2.27 of the EP&A Act).

It is expected that use of council facilities such as meeting rooms would be arranged prior to Panel meetings.

Support, such as recording the written decisions of the Panel, audio recording of Panel meetings, copying of documents and the provision of professional advice, may also be required.

Generally, the relevant council bears the administrative and council staffing costs associated with Panel meetings. Administrative costs may include those associated with the meeting venue and set up, the attendance of council staff, as well as administrative support.

The chair and members of a Panel will need to be mindful of the regular duties and responsibilities of council staff when requests for assistance are made. Requests by members of Panels for support and assistance from councils should be made through the chair to the general manager (or other person nominated by the general manager) of the council concerned.

## 10.6 Role of design review panels

Design review panels are established by councils either formally under *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* with the approval of the Minister, or informally to bring special design expertise to the assessment of certain types of DAs.

Design review panels that are properly integrated in the assessment process are an effective tool which helps to improve the quality of design outcomes. The quality of design has a bearing on many, but not all, of the matters considered in the assessment of a DA.

The role of design review panels in the assessment of applications is not changed by the fact that the application is to be determined by a Panel. However, it is generally more effective in terms of design quality outcomes and timeliness if the design review panel is convened at the pre-DA stage or early in the assessment phase.

## 10.7 Role of local planning panels

The purpose of local planning panels is to provide independent, expert determination of DAs. Local planning panels determine all DAs that meet criteria set by the Minister.

Although similar in operation, the roles of local planning panels and the Planning Panels do not overlap.

## 11. Development application and assessment

### 11.1 Pre-development application meetings

Pre-DA meetings between applicants and assessment officers are commonly used to inform lodgement requirements and likely assessment pathways before applications are submitted to the consent authority.

Applicants are encouraged to meet with council before lodging a DA, and to respond to the advice of council when preparing the DA.

To avoid any apprehension of bias, it is not appropriate for determining bodies, such as Panels or their members to participate in pre-DA meetings.

### 11.2 Making of development applications

DAs for regionally significant development are made to the relevant local council.

In the case of development located in two or more LGAs, a separate DA must be lodged with the councils of each LGA. Additionally:

- each DA should only address that part of the development located on land in the relevant LGA
- neighbouring councils may wish to consider setting up joint assessment procedures, if appropriate
- the Panel will determine each DA separately (although the determinations may be made concurrently).

### 11.3 Notification to the secretariat

Within 7 days of receiving a DA for regionally significant development, the council registers the DA with the secretariat.

The registration is made via the Panels website or the NSW Planning Portal. The registration includes all information required on the website registration page. The DA documents are electronically transmitted to the secretariat at the same time.

The secretariat advises relevant Panel members of the DA once the registration is accepted. The DA documents, including the application form are generally sent to Panel members electronically.

These documents allow Panel members to become familiar with the development and to identify if they have any potential conflicts of interest prior to their review of the assessment report and before attending the Panel meeting to consider the application in public.

### 11.4 Public exhibition of development applications by council

Public exhibition of the DA is undertaken by council staff in accordance with the requirements of the EP&A Act, EP&A Regulation and Council's Community Participation Plan or any relevant development control plan or policy of council.

Notification of exhibition, including letters and advertisements, should contain appropriate statements to advise:

- that the {name of relevant} Panel is the consent authority for the application



- that submissions made in respect of the application should be made to {name of relevant} Council, but will be provided to the Panel and may be viewed by other persons with an interest in the application
- names and addresses of submitters will be provided to the Panel for notification purposes
- other information required by the EP&A Act or EP&A Regulation.

## 11.5 Requests for additional information

It is the applicant's responsibility to provide adequate information and technical reports on potential impacts of the proposed development.

Holding a pre-DA meeting with council staff will often clarify council requirements for the lodgement of an application. However, the applicant may be requested by council staff to provide further information or reports to properly address all relevant aspects of the development, or to enable an assessment report to be completed.

During the assessment process the Panel may identify issues at a briefing that must be addressed or clarified in council's assessment report, and for which council may request further information.

Amended plans or additional information for a DA must be lodged with council.

## 11.6 Status reports

Councils must advise the secretariat if it is evident that there are difficulties in assessing the DA or the assessment report will not be completed within the timeframe indicated in the referral notification.

The secretariat tracks the progress of DAs registered with it and requests status updates from council for DAs lodged for 70 days or more.

Where a response or concurrence from public agencies delays the assessment of a DA, a council can ask the secretariat for assistance to ensure the agency responds to council in a timely manner.

Where there is an ongoing and unreasonable delay in the processing of a DA, council may be requested by the Panel to complete its assessment without further delay.

## 11.7 Assessment of the development application

The council that received the DA is responsible, through its staff, for the assessment of the application.

It is council's responsibility to prepare an assessment report addressing all statutory requirements and properly considering all issues. Usually councils will rely on their own professional staff, however where they do not have the technical expertise required in-house, they may engage external expertise. All costs associated with the preparation of the assessment report are to be covered from application fees, which are retained by council.

The assessment report must clearly identify how the proposal meets the relevant requirements for regionally significant development, and that the Panel is responsible for determining the application.

The assessment report must include a recommendation on the proposed development:

- if the recommendation is for approval of the application, the report must include recommended conditions of consent
- if the recommendation is for refusal, the report must include reasons for refusal based on the assessment in the report.

The chair of the Panel may request without prejudice draft conditions of consent where council's report recommends refusal.

In considering an application, a Panel may request additional information to assist in its determination of the application.

## 11.8 Varying development standards

Where a DA includes a variation to a development standard, an application under clause 4.6 of the relevant LEP is required (or, where the development is not in a standard instrument LEP, an objection under *State Environmental Planning Policy No 1—Development Standards* (SEPP 1)). Council's assessment report includes an assessment of the application against the relevant statutory provisions.

The function of obtaining concurrence from the Secretary under clause 4.6 is a matter for the council. However, where concurrence is assumed, the council does not need to obtain concurrence. The Panel will determine whether a clause 4.6 application is well founded on the basis of the applicant's justification.

## 11.9 Local infrastructure contributions

The assessment report should address contributions required in accordance with the council's relevant contributions plan (see section 7.11 and 7.12 of the EP&A Act). The Panel is able to impose additional or different contributions than those set out in the contributions plan. For Crown developments, councils should address contributions in accordance with the relevant planning circular (Circular No. D6, issued September 1995 or as updated).

## 11.10 Special infrastructure contributions and certification requirements

If the development falls within a special contributions area the council should address the relevant requirements in its assessment report and recommend appropriate conditions in accordance with the Ministerial direction (see section 7.24 of the EP&A Act).

The council must address any "Satisfactory Arrangements" clause in the applicable LEP in its assessment report. These clauses usually state that development consent must not be granted by a consent authority until arrangements to the satisfaction of the Secretary have been made to contribute to regional or State infrastructure. A Panel cannot provide consent to the DA until the Secretary (or delegate) of the department has certified in writing that satisfactory arrangements have been made.

## 11.11 Development subject to delays in determination

An applicant with a DA that has a CIV between \$10 million and \$30 million can refer the DA to the relevant Panel for determination if it remains undetermined for 120 days after being lodged with council (see Schedule 7 of the State and Regional Development SEPP). The referral process is outlined below:

- when making a referral, applicants must use the Regional Development Request form available on the Panels website,
- the applicant is to complete the relevant part of the form and submit it to **both** the relevant council and the secretariat,
- once the council receives the referral form it cannot determine the DA until a decision has been made regarding whether the Panel will have the function of determining the DA, however council can continue to assess the DA,

- the council sends the completed referral form and copies of all DA documents, to the secretariat within seven days. Council should also send its explanation for the delay in completing its assessment,
- the chair will consider the information in the referral form and advise the secretariat if the referral is accepted (i.e. the applicant is not responsible for a delay in the application), generally within 14 days of the applicant making the referral. The chair will consider a number of matters in making this decision, including:
  - permissibility and zoning, including whether the determination is dependent on a rezoning
  - whether the determination is dependent on a voluntary planning agreement or the approval of a masterplan or DCP
  - whether the landowner's consent has been provided
  - whether the required referrals and concurrences have been obtained
  - whether there have been requests for further information, and what the responses were to those requests
  - if council has considered the DA and the outcome of that consideration
- once the chair decides, the secretariat will notify the council and the applicant as to whether the development is regionally significant development
- if the referral is not accepted the chair must advise the reason(s) for not accepting the referral
- if the referral is accepted, council completes the assessment of the application and prepares an assessment report for submission to the secretariat
- a briefing with council may be held prior to determination.

## 11.12 Council representation to the Planning Panel

An elected council may make a submission on a DA within their LGA that is to be determined by a Panel up to seven days before the Panel meeting.

After the assessment report is sent to the secretariat, it may be given to the elected council to assist in its decision as to whether it will be making a submission to the Panel. The elected council's submission should not be prepared by persons involved in the assessment of the application but could be prepared by another council officer, or a consultant.

A council submission should not be specifically referenced in the assessment report or recommendations prepared by the council staff. If council makes a submission, a staff representative or individual Councillors may register to address the Panel at the meeting to express the views of council.

Councillors who are also Panel members have an independent role because they have been nominated by their council as its nominee to the Panel.

## 11.13 Submission of assessment report to the secretariat

The completed assessment report and recommendation is to be immediately sent via electronic means to the secretariat.

The assessment report is not to be endorsed or presented to the elected council before being sent to the secretariat.

The following items are to be sent in a digital format to the secretariat:

- assessment report and any attachments and recommendations (including conditions)
- the Council Assessment Report cover sheet (available on the Planning Panels website),

- final architectural drawings and plans and other reports that the assessing officer considers that the Panel may require in order to make an informed decision
- copies of each submission received in respect of the DA
- a completed List of Submitters (available on the Planning Panels website) containing the names, postal addresses and email addresses (if provided) of every person or body who made a submission to allow the secretariat to notify submitters of the details of the Panel meeting
- in the case of petitions, only the name and address of the head petitioner should be provided, if that person can be identified and
- the final number of unique submissions by way of objection received.

**Note:** Council's assessment report must include a summary and assessment of all submissions so that the Planning Panel can consider the submissions as part of the assessment of the DA. Based on the details provided by council, the secretariat will notify persons who made submissions of the time, date and venue of the Panel meeting at which the relevant application will be considered. Councils should also give the secretariat copies of any late submissions and, where necessary, provide further assessment if the issues are not already covered in council's assessment report.

## 11.14 Written submissions to the Planning Panel

All written submissions must be sent directly to council to be considered as part of the assessment of the DA.

Submissions sent to the Panel will be given to council for assessment. Panels will not normally accept information "in confidence" that is not also given to council. However, if confidentiality is requested, the reason must be clearly stated as to why it is confidential and relevant to the assessment matter before the Panel and the chair will consider the request.

## 11.15 Rezoning, development control plans and planning agreements

Where a DA is lodged concurrently with a planning proposal seeking the rezoning of land under the LEP Council's assessment report must address the DA against the proposed zoning. Council is responsible for progressing the planning proposal. The Panel cannot determine a DA to approve such development until the land is rezoned to permit that development.

Where the provisions of an environmental planning instrument require a development control plan (DCP), (previously known as a master plan) to be adopted by the council before granting development consent, it is the responsibility of council to prepare and adopt the DCP prior to sending the assessment report to the Panel. In such circumstances, the Panel will not determine the application until the DCP is adopted by the council.

If a planning agreement is proposed, it should be negotiated by council staff. Council's assessment report for the Panel would normally make reference to any planning agreement and its relationship to the DA.

The Panel may only impose a condition of consent requiring a planning agreement be entered into if the condition reflects the terms of any offer made by the applicant to enter into a planning agreement (see section 7.4 of the EP&A Act).

## 11.16 Referral of Crown development applications with a CIV less than \$5 million

Crown DAs with a CIV greater than \$5 million are regionally significant development. Crown DAs with a CIV under \$5 million can be referred to the relevant Panel (see section 4.33 of the EP&A Act) by either:

- the applicant where council (or IHAP, if relevant) has not determined in the prescribed period, or
- the council at any time including before the end of the prescribed period.

Before the end of the prescribed period, only a council (not the applicant) can refer an application to the Panel.

For Crown DAs with a CIV of less than \$5 million where a council or IHAP seeks to refuse consent or impose a condition to which the applicant has not provided their agreement, the application is also to be referred by council to the relevant Panel (see section 4.33(2) of the EP&A Act). Planning Circular PS 09-017 outlines the Crown DA provisions and policy.

The referral to the Panel must be in writing. Additional procedures for the referral, including the requirement to notify the other party in writing of the referral are set out at sections 4.33(6) and section 4.33(7) of the EP&A Act.

Once the application is referred to a Panel, the council registers DA on the Planning Panels website and gives its assessment report to the Planning Panel to consider.

## 12. Determination of development applications

### 12.1 Determining regionally significant development applications

Planning Panels determine regionally significant development as the consent authority.

For contentious matters, where the DA has attracted 10 or more unique submissions by way of objection, the Panels will generally hold a public determination meeting to consider the DA. Refer to **Schedule 1** for more information on the detailed procedures for Panel meetings.

The purpose of the public determination meeting is for the Panel to hear views of the community and other interested parties, such as the applicant and the council, on the DA before the Panel makes a decision.

After reviewing written submissions on a DA, considering the recommendation in council's assessment report and hearing from those wishing to address the Panel, the Panel may determine the application or defer its decision for reasons that will be stated in the meeting record.

In circumstances where the DA is the subject of less than 10 unique submissions by way of objection a Panel is able to determine the application by an electronic circulation of papers.

### 12.2 Obligation to consult council—if adverse financial impacts

A Panel must not make a decision that will have, or that might reasonably be expected to have, a significantly adverse financial impact on a council without first consulting the council (see section 2.26 of the EP&A Act).

The consultation must be in writing, with the council being given a specified time to respond in writing. Where a briefing with the general manager (or nominee) is to be held to discuss the matter, all relevant Panel members should be present, and a meeting record and outcomes should be sent to the secretariat.

### 12.3 Determining Crown development applications

A consent authority for Crown development cannot refuse consent to a Crown DA except with the approval of the Minister, nor can it impose a condition on a development consent for Crown development except with the approval of the applicant or the Minister.

This requirement applies to Crown development that is to be considered by a Panel, where the application is for regionally significant development, or where the DA is referred to the Panel under Division 4.6 of the EP&A Act.

Where the Panel wishes to either refuse an application or impose conditions not agreed by the applicant, or where a Panel fails to determine the DA within the prescribed period, the applicant or the Panel may refer the DA to the Minister. The Minister may then direct the Panel to approve or refuse the Crown DA within a specified time.

### 12.4 Determining DAs for coastal protection works

Certain coastal protection works are classified as regionally significant development. Where a Panel is to determine a DA for coastal protection works the chair and the council nominated members will remain on the panel, however the State members will be replaced by members appointed by the Minister who have expertise in coastal engineering or coastal geomorphology (see clause 8A, Schedule 7 of the SRD SEPP).

## 12.5 Delegation to council to determine applications

If the Minister agrees, Panels may delegate the determination of applications to councils, a local planning panel of a council or the general manager or other staff of council (see section 2.16(2) of the EP&A Act). Delegation may be for development in a specified area, for a class of application, or be made on a case-by-case basis.

In situations where the determination is delegated, councils must:

- register the application on the Planning Panels website
- inform and update the secretariat on the processing of the application as requested
- provide a copy to the secretariat of all determination documents, including the assessment report and Notice of Determination.

The chair of the relevant Planning Panel may request the council to not exercise the delegated function in certain circumstances.

Any determination made by council under delegation is a decision of the Panel.

## 13. Reviews and appeals

### 13.1 Decision reviews

Planning Panels also review decisions made on DAs by the Panels (see Division 8.2 of the EP&A Act). The Council notifies the Panel when a request to review a decision has been lodged. The Panel reviewing the decision will be comprised of different members to those members that made the original decision and will be called the Decision Review Panel of the [relevant] Planning Panel.

Note that decision reviews cannot be requested where the following applies:

- the time to lodge a legal appeal has passed,
- a merit appeal has been determined regarding the DA, or
- it is an application for complying development, a Crown DA or a designated development DA.

The Decision Review Panel may ask to be briefed on the decision review request, either by the applicant, Council staff undertaking the assessment, or other experts engaged to assess the application.

The circumstances where this may be needed include where the applicant for the DA has amended the development the subject of the original DA since the original determination.

If needed, the Decision Review Panel may also hold a site visit or public briefing meeting.

Council must prepare an additional assessment report to the Decision Review Panel if the DA or application to modify a development consent has been amended after its initial determination, or if submissions have been made following any further notification.

A Decision Review Panel will only need to hold a public determination meeting if the application was exhibited and 10 or more unique submissions by way of objection were received.

Council must give written notice to the applicant of the result of the review within 7 days of the completion of the review.

### 13.2 Appeals against a Planning Panel determination

#### Merit appeals

An applicant who is dissatisfied with a determination or deemed refusal of an application may lodge a merit appeal to the Land and Environment Court within six months against the decision as provided for in the EP&A Act.

Note: An application is deemed to have been refused if it is not determined within 40 days, or 60 days if the application is for designated or integrated development, requires concurrence of a concurrence authority or is accompanied by a biodiversity development assessment report and that proposes a discount in the biodiversity credits required under the report to be retired.

If the development is designated development, then an objector to the development who is dissatisfied with a determination may also lodge a merit appeal in the Land and Environment Court within 28 days as provided for in the EP&A Act.

The council for the area will be the respondent for any merit appeal against a determination made by a Panel on a development application. The council 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 Planning Panel. It must do this by notifying the secretariat. Notification to the Panel must be made no more than seven days after the council receives notice of the appeal and must advise whether the council will be actively defending the appeal.



Note: Each Planning Panel chair has delegated authority to act as the Planning Panel's representative to provide instructions and seek legal advice in relation to appeals. Planning Panel delegations are published on the Planning Panels website.

The Panel will determine its level of involvement in an appeal, and what directions (if any) it wishes to issue to the council, on a case-by-case basis. While a Panel has the power to direct and control the council, it may choose not to exercise the power. If a Panel wishes to take a more active role in a council's conduct of the appeal, the Panel can exercise its powers to control and direct council. In some circumstances the Panel may seek to join proceedings and act as the respondent in the place of the council.

Council is to:

1. provide the Panel with a copy of the application commencing the appeal within 7 days of the council being served with it,
2. provide the council's proposed statement of facts and contentions to the Panel at least 7 days before the later of:
  - a. the day of the first directions hearing for the appeal or
  - b. the day the statement is filed,
3. identify in the council's statement of facts and contentions the steps taken by the council to notify the Panel of the appeal, and any response received by the council, and
4. provide the Panel with:
  - a. a copy of any directions or orders made by the Court in relation to the appeal within 7 days of the directions or orders being given,
  - b. a copy of any proposed in principle agreement between the parties to the appeal following a conciliation conference under section 34 of the *Land and Environment Court Act 1979* within 3 days of the proposed in principle agreement being reached and before any written agreement is executed,
  - c. the dates on which the appeal will be heard within 3 days of the council receiving notice of them, and
  - d. a copy of any judgment of the Court in relation to the appeal.

The council should include in its Statement of Facts and Contentions the actions taken by council to notify the Panel of the appeal and any response from the Panel.

### Deemed refusals

A Panel may determine a DA even though it is subject to a deemed refusal appeal. When a deemed refusal appeal has been filed with the Court, the usual practice is for council's assessment officer to complete their assessment report.

Applications may be deemed to have been refused before a Panel has been briefed on the application. Where a Panel has not been briefed on an application that is subject to an appeal, the Panel may request a briefing from the council.

### Judicial review and civil enforcement proceedings

Any person may commence judicial review or civil enforcement proceedings in the Land and Environment Court against a Panel determination. Unlike merit appeals, in these types of proceedings the Panel will be named as a respondent.

A submitting appearance may be filed by the Panel if the grounds of challenge are not related to the powers or procedures of the Panel in determining the application.

### Appeals against determinations where council is the applicant

The Panel will be the respondent in merit appeal and judicial review proceedings in the Land & Environment Court where council is the applicant.

## 14. Planning proposals

Panels also undertake plan-making functions including:

- undertaking administrative reviews,
- acting as the planning proposal authority (PPA) in certain circumstances, and
- providing advice to the Minister or the Secretary on any planning or development matters or environmental planning instrument referred to them.

**Note:** The Independent Planning Commission undertakes these functions in the City of Sydney LGA.

### 14.1 Reviews

A Panel may be asked to review certain plan-making decisions. Reviews include:

- **Rezoning reviews**—which may be requested by a proponent before a planning proposal has been submitted to the department for a Gateway Determination, and
- **Independent proposal reviews**—which may be requested by a Local Aboriginal Land Council before a planning proposal for land subject to a development delivery plan or interim development delivery plan, that is shown in the Aboriginal Land SEPP, has been submitted to the department for a Gateway Determination.

These review processes allow councils and proponents to have decisions about the strategic merits of proposed amendments to LEPs reconsidered.

The department's *A Guide to Preparing Local Environmental Plans* sets out lodgement requirements, including information the council or proponent must provide for reviews to be undertaken.

### 14.2 Rezoning reviews

If a proponent (e.g. developer, landowner) has requested that a council prepare a planning proposal for a proposed instrument, the proponent may ask for a rezoning review if:

- the council has notified the proponent that the request to prepare a planning proposal is not supported, or
- the council has failed to indicate its support 90 days after the proponent submitted a request, accompanied by the required information, or has failed to submit a planning proposal for a Gateway determination within a reasonable time after the council has indicated its support.

On receipt of an application the department notifies the Panel and the relevant council within 3 business days.

The Panel reviews the planning proposal initially considered by council, rather than any amended or updated version. Council will be requested to confirm that the planning proposal is that which was initially considered by council, and to provide any additional comments or information to the department within 21 days.

The Panel may be briefed by the department, council and proponent to clarify any issues before completing the review. The Panel may request a site visit to assist in its considerations.

A briefing or site visit will be attended by the Panel, department staff and, in certain circumstances, the applicant and council staff. Any briefing or site visit will follow the procedures set out in Schedule 1.

## Determination

The review and determination should be in accordance with the Planning Circular PS 18-012 (or as updated).

The Panel's determination is to be based on the strategic and site-specific merits of the proposal.

Planning proposals that do not reasonably meet the strategic and site-specific merit tests will not proceed to a Gateway determination.

The Panel's determination is to provide a clear decision on whether the planning proposal should proceed or not to a Gateway determination.

Decisions on rezoning reviews will generally be made by a resolution following a circulation of papers in accordance with the procedures set out in Schedule 1.

Communication of the Panel's determination is made to the proponent and the council within 90 days of the department receiving the initial rezoning review request.

## Planning Proposal Authority

If the Panel determines that a proposal should proceed to a Gateway determination, councils will be provided the opportunity of accepting the planning proposal authority role. If the council does not accept the role within 42 days an alternate planning proposal authority will be appointed.

Each Panel has delegated authority to direct itself to be the planning proposal authority where a proposal has been subject to a rezoning review and the council has not accepted this role.

## 14.3 Independent proposal reviews

Independent proposal reviews give Local Aboriginal Land Councils an opportunity for an independent body to give advice on planning proposals for land subject to a development delivery plan, or interim development delivery plan, that is shown in the Aboriginal Land SEPP.

The process for an independent proposal review is similar to that outlined for rezoning reviews.

When a Panel is undertaking an independent proposal review in determining the strategic merit of a proposal it will also need to consider the consistency of the planning proposal with the relevant development delivery plan for the land (or interim development delivery plan) shown in the Aboriginal Land SEPP and when determining the site-specific merit of the proposal it will also need to have regard to the social and economic benefit to the Aboriginal community facilitated by the proposal.

The review and determination should be in accordance with the Planning Circular PS 19-003 (or as updated).

Each Panel has delegated authority to direct itself to be the planning proposal authority where a proposal has been subject to an independent proposal review and the council has not accepted this role.

## 14.4 Planning Proposal Authority (PPA)

A Panel may be directed to be the PPA for planning proposal by the Minister. Generally, a Panel has delegation from the Minister to act as PPA if it has recommended that a planning proposal proceed to Gateway and the council has declined to remain as the PPA.

As PPA, the Panel performs all the functions that a council normally would in preparing LEPs. This includes:

- submitting a planning proposal to Gateway
- undertaking any necessary agency consultation prior to public exhibition of the proposal

- endorsing the public exhibition of a planning proposal that has received a Gateway determination and met all of the Gateway conditions
- exhibiting the planning proposal in accordance with the terms of the Gateway determination
- considering a recommendation report, addressing submissions received during public exhibition
- holding a public meeting if the proposal is the subject of 10 or more unique submissions by way of objection following public exhibition
- submitting a request to the department, as delegate of the Minister, that the LEP be legally drafted and made.

The Minister (or delegate) remains responsible for determining and making the LEP.

## 14.5 Support provided to the Planning Panel in its role as PPA

When a Panel is acting as PPA the secretariat arranges any necessary agency and community consultation (public exhibition) and the department provides technical support and briefings to the Panel.

## 14.6 Availability of Planning Panel decisions and advice

The Panel needs to make a number of decisions throughout the plan-making process when undertaking reviews or acting as PPA. Decisions of the Panels will be made publicly available on the Planning Panels website within 7 business days of any decision.

## 14.7 Community consultation

There is no requirement for a Panel meeting to be held prior to determining a rezoning review. The Gateway determination details requirements, if any, for community consultation on planning proposals. The Panel may hold Panel meetings at any time, at the discretion of the chair.

Submissions received as part of the public exhibition of a planning proposal for which a Panel is the PPA are made publicly available on the Panels' website.

## 15. Site compatibility certificates

Panels determine applications for SCCs made under the Seniors SEPP and the Education SEPP.

Written applications are to be lodged with the department. The department prepares an assessment of the application and a recommendation for the relevant Panel. The Panel considers the application and the department's assessment report and those matters set out within clause 25 of the Seniors SEPP, or clause 15 of the Education SEPP as relevant. The Panel may determine an application by issuing a SCC or refusing to do so.

The Panel may request a briefing and/or a site visit to assist in its considerations.

A briefing or site visit will be attended by the Panel and department staff and follow the procedures set out in Schedule 1.

Decisions on SCCs will generally be made by a resolution following a circulation of papers in accordance with the procedures set out in Schedule 1.

Should a DA be supported by an SCC issued by the Panel come before the Panel for determination, the Panel will be comprised of different members to the members that issued the SCC.

## Schedule 1: Procedures for briefings, meetings and decisions.

### 1. Briefings and site visits

The chair may agree to a site visit or a briefing prior to a Panel making a decision or providing advice on a matter.

A site visit or briefing is solely to identify and clarify issues with the proposal. Panel members will not offer opinions on the merits of the proposal or ask those involved with the assessment of the proposal for their opinion or recommendations at site visits or briefings.

However, the Panel may identify issues that it expects to be addressed or clarified in any assessment report.

A site visit or briefing will be attended by the Panel and relevant council or department assessment staff or other persons engaged in the assessment of the DA or matter to be determined by the Panel. In some circumstances, other parties, including the applicant or people who made submissions on an application or matter may also be invited to attend a site visit or briefing. The invitation of parties is at the discretion of the chair.

Briefings on DAs may include a presentation by council assessment staff on key elements of the proposal and the planning controls that affect it (such as zoning), and an overview of issues of concern arising through the Council's assessment or raised in submissions. The timing of the submission of the assessment report and tentative date for a determination may also be discussed.

The assessment officer briefing the Panel should have available a set of large-scale plans at the briefing.

Only Panel members who will sit on the Panel to determine the matter should attend the briefing.

Briefings and site visits on planning proposals and site compatibility certificates follow the same format, with departmental staff briefing the Panel.

It is not mandatory that the Panel be briefed prior to considering a matter. Where there is a briefing, it should take place within four weeks of the close of any public exhibition period, and before council makes any major request for further information from the applicant (although council can request further information before the exhibition). The assessment of a DA should not be delayed for a briefing to occur.

Panel members may identify further issues where they need clarification or more information. A Panel may request briefings with council or department staff to clarify any element of the proposal and the assessment report prior to the Panel making its decision.

Briefings are not determination meetings and Panel members should not make any comment that would indicate pre-determination of the matter.

The chair should take into consideration the availability of all members of the Panel and any other necessary persons when deciding to conduct a site visit.

Entry to any private land may only take place with the express permission of the owner of the land, and it is the responsibility of council staff, in relation to a DA, or department staff in relation to a planning proposal, to seek owner's consent when required.

A written record of the briefing or site visit is made including time, date, attendees, any declarations and key issues discussed and is published on the Planning Panels website within 7 days. Site visits or briefings are not recorded by audio/ video record, an audio record or a transcription record.

It may be appropriate to invite the applicant or proponent to attend the briefing when:

- the Panel could benefit from additional technical explanation on a complex matter
- the development or other options are still being considered (e.g. if a major re-design has been requested by the council), or if
- material to be presented may be commercially sensitive or confidential.

The Panel will publish clearly documented reasons why a briefing by an applicant was necessary so that there is no apprehension of bias.

Site inspections and briefings are not public meetings of the Panel.

## 2. Meetings

### Public briefing meetings

If the matter before the Panel attracts significant community interest, the Panel may consider calling a public briefing meeting.

Public briefing meetings are held to hear submissions in a public forum and to meet with key stakeholders to discuss unresolved issues. Community groups and individuals may register to speak to the Panel at the public briefing meeting. Public briefing meetings are held at the discretion of the Panel.

Panel members should not make any comment that would indicate pre-determination of the application at a public meeting.

### Determination meetings

For contentious matters, where a DA has attracted 10 or more unique submissions by way of objection, the Panels will generally hold a public determination meeting to consider the DA.

Notice of a public determination meeting is given at least 7 days before the meeting. Notice of the meeting (including the time, date and venue for the meeting) are:

- notified on the Panels website
- given to every person who made a submission to the council (in the case of petitions, only the head petitioner).

The meeting agenda, any business papers, assessment reports and attachments (including any representations made by council) are distributed to members of the Panel and uploaded on the Planning Panels website in advance of the meeting.

People wishing to address the Panel must register prior to the meeting.

The chair determines the order of presentations to the Panel and the amount of time given to each speaker. At the meeting, it is acceptable to provide the Panel with written material which summarises the matters to be presented to the panel by the speaker. However, written material must be kept to a minimum.

## 3. Procedures for public meetings

Planning Panel meetings are to be conducted in public.

### Meeting dates and agendas

A regular schedule of proposed meeting dates is determined at the beginning of each year by the secretariat in consultation with the chair. The meeting dates are listed on the Planning Panels website and are reserved for public briefing meetings, Panel briefings and site visits, or Panel meetings. Panel public determination meetings are generally arranged within 14 days of receiving council's assessment report.



Additional meetings of a Panel may be organised at the discretion of the chair. These additional dates are posted on the website as soon as they become available.

The chair may consult with the general managers (or their nominee) of the relevant councils when approving the agenda for each meeting.

The council notifies the secretariat of any revised date for completion of the assessment report as soon as it is aware of any delay and advises of the reasons for the delay.

### The meeting time and venue

The meeting time and venue is determined by the chair in consultation with relevant councils, and taking into account:

- the location of the proposed developments to be considered at the Panel meeting
- the number of persons who have expressed an interest in the different matters to be considered at the Panel meeting
- the availability of a suitable venue and the accessibility of the proposed venue for those persons
- local considerations and logistics.

The meeting time and venue should:

- maximise accessibility to people who have expressed an interest in the matters to be considered at the meeting, and
- facilitate the open exchange of information between the Panel members and other parties.

Items from a number of different LGAs might be considered at one meeting provided the venue is reasonably accessible to most interested parties.

In regional areas, the chair may need to convene meetings in a number of locations to ensure they are accessible to the greatest number of people with an interest in the application being considered.

### Notice of meeting

Notice of a Panel meeting is to be given by the secretariat at least 7 days before the meeting. Notice is given to Panel members, the general managers (or their nominee) of the councils in that region or district, every person who made a submission to the council (in the case of petitions, only the head petitioner) in respect of an item to be considered at the meeting and the applicants for those items. A notice is placed on the Panels website and may be placed in the local newspaper.

The notice is to include details of:

- the time and date of the meeting
- the venue for the meeting
- the matter under consideration (DA/s or planning proposal)
- the availability of agenda and business papers, which will include the assessment report and recommendations
- other matters to be considered at the meeting.

### Distribution of meeting agenda and business papers

The meeting agenda, business papers/assessment reports and attachments, including any representations made by councils, are to be distributed to members of the Panel and uploaded on the Panels website by the secretariat no less than 7 days prior to the meeting.

## Opening and closing meetings

The chair will open the meeting by introducing the Panel and its members, state the purpose of the meeting, read out any apologies and call for declarations of interest following the declarations of interest procedures.

The chair will note any site visits or briefings the panel has had the benefit of and describe the order of proceedings and time limits for speakers.

The chair may also request council staff to briefly summarise the key issues that have arisen in the assessment report.

The panel will then listen to those wishing to address the panel. After the presentations the panel will make its determination and the chair will read out the decision of the panel before closing the meeting.

## Declarations of interest procedures

The declarations of interest procedures set out below follow the requirements of the Panels Code of Conduct (Code):

1. The chair calls on Panel members to complete and sign written declarations of interest forms prior to the meeting for each panel matter (under clause 4.1 of the Code). Any verbal declarations must be recorded in writing.

Note: Under the Code, a panel member should declare the following interests:

- a. an actual, potential or reasonably perceived conflict of interest (see clause 3.1 of the Code)
  - b. a pecuniary interest listed under clauses 3.10 – 3.12 of the Code
  - c. a non-pecuniary interest (see clause 3.14 of the Code)
  - d. a conflict of duties listed under clauses 3.18 – 3.25 of the Code
  - e. a pecuniary interest or non-pecuniary interest arising from a political contribution or donation (see clause 3.26 of the Code)
  - f. a position and pecuniary interest in corporations, partnerships or other businesses that may be relevant to the activities of the Panel in accordance with the Department of Premier of Cabinet's Guidelines 'Conduct Guidelines for Members of NSW Government Boards and Committees' (see clause 4.3 of the Code)
  - g. a personal dealing with council (see clause 5.1 of the Code)
  - h. a gift or benefit listed under clauses 5.2 – 5.6 of the Code.
2. The chair reviews the written and signed declarations and the management measures put in place for any declared interests.
  3. If the chair is satisfied that reasonable and appropriate management measures are consistent with those set out in the Code, then a note to this effect is to be made on the meeting record.
  4. Should the chair have concerns, the chair is to raise these concerns with the member and suggest additional reasonable and appropriate management measures including, if warranted, that the member not take part in the determination for the matter (see clause 3.8 of the Code).
  5. The chair is to provide the member an opportunity to respond.
  6. The chair is to consider any response prior to making a final decision on the reasonable and appropriate management measures and note the response, the decision, and the chair's reasons for the decision in the meeting record.

## Presentations at a Panel meeting

The chair determines the order of presentations to the Panel. Panel members may ask questions of those making presentations. The amount of time given to each speaker is at the discretion of the chair.

At the Panel meeting, it is at the chair's discretion whether to accept written material which summarises the matters to be presented to the Panel by the speaker. Any allowed written material must be kept to a minimum.

By registering to speak at a meeting, speakers agree to being audio recorded and to the publication of that recording on the Panels website.

### a. Presentation by the assessment officer

The chair may request that the assessing officer responsible for preparing the assessment report (or a representative) presents a summary of the DA or planning proposal, as the case may be, and outline any relevant assessment issues at the start of the presentations. The assessment officer should have available at the Panel meeting a set of large-scale plans (including any amended plans).

Generally, it is council's professional planning and assessment staff that prepare DA assessment reports for the Panel's consideration.

Where a Panel is acting in the role of the PPA for a planning proposal matter the department provides technical assistance, which may include the provision of an assessment report for the Panel.

The assessment officer (or representative) should inform the chair of any late submissions received, and of any issues raised which may not have been addressed in the assessment report.

The assessment officer (or representative) should be present throughout the Panel meeting, so that the chair can seek clarification where necessary of assessment issues that may arise during the course of the meeting. Other technical experts from the council/department may also be present (such as traffic engineers) and the chair may ask for clarification of specific issues. Any questions to council/department staff can only be made by Panel members and are to be directed through the chair.

### b. Presentation by the applicant or proponent

The applicant, in the case of a DA, or the proponent, in the case of a planning proposal, will be given the opportunity to outline the proposal and respond to the assessment report. The applicant/proponent may also be required to respond to submissions made at the meeting. The time allocated to the applicant/proponent, including their consultant(s), is at the discretion of the chair, but is generally 15 minutes. Additional time may be allocated where professional consultants have been engaged by the applicant/proponent to present at the meeting.

### c. Presentation by people or groups who made submissions

Panel meetings enable people or groups to make a presentation to the Panel meeting. People who wish to address the Panel must register with the secretariat prior to the meeting by contacting the secretariat by telephone or email within the timeframe specified in the notification letter (generally two days before the Panel meeting).

For those people who are of the view that they would not be appropriately or adequately represented by any groups, they may register to speak to the Panel as individuals.

The chair will advise on the time allocated for verbal submissions which will vary from meeting to meeting depending on a number of considerations such as the number of registered speakers.

As a guide:

- individual submitters will have 3 minutes to speak
- a speaker for a community organisation/group will have 10 minutes to present. Additional time may be allocated where professional consultants have been engaged by community groups to present at the meeting.

In addition, where a large group of people have common issues to raise at the meeting, the chair may ask that a spokesperson be appointed to speak on behalf of the group. In such cases, the spokesperson will generally be allocated more time than individual speakers.

The chair seeks to ensure that all groups or individuals who request to address the Panel are heard. Any requests for extending time limits should be made to the Panel at the meeting and may be granted at the discretion of the chair.

Speakers should focus their oral presentations on the assessment report and its recommendation rather than re-stating information outlined in their earlier written submissions. The Panel has been provided with all submissions and associated documents before the Panel meeting.

d. Presentation by people or groups that have not made a submission

The chair has the discretion to allow any member of the public to address the Panel, even if they have not made a submission or registered to speak by the relevant deadline. Considerations may include the number of persons that made submissions and have requested to address the meeting and the available time.

e. Presentation by an expert engaged by the Panel

For the purpose of making a decision on a matter, such as a DA or a planning proposal, a Panel may obtain independent assessment reports, advice and assistance that the Panel may require, particularly in relation to complex technical matters. This would be in addition to any assessment report or other information provided by the relevant council/department in assessing the application.

Selection of such experts is to be determined by the chair in consultation with the other Panel members.

Depending on the circumstances, the expert may submit a report with recommendations directly to the Panel. In addition, the expert may be invited to present the outcomes of their report at the Panel meeting.

The independent assessment report should be made available on the Planning Panels website prior to the meeting, except where this information includes legal advice provided to the Panel and is subject to legal professional privilege.

### Adjourning during a Planning Panel meeting

A Panel may adjourn a meeting where:

- a briefing is required to hear confidential or sensitive information, and/or
- the panel wishes to confer amongst itself before reconvening the meeting for voting and determination.

Before the adjournment the panel chair publicly states the reasons for the adjournment which are recorded in the audio and written record of the meeting.

If the meeting is adjourned so that the panel may confer amongst themselves prior to making a decision, the chair briefly summarises the matters discussed in the adjournment after reconvening the meeting. The panel may discuss the matter further in the meeting and/or make its determination.

Panel discussions during adjournments are not recorded.

## 4. Decisions and determinations

The Panel will strive to make its decisions unanimously. Where a decision cannot be made by unanimously, the decision will be made by majority vote. The chair will have a second or casting vote if required because of an equality of votes.

### Quorum for a Planning Panel decisions

A quorum is a majority of the Panel's members, including the chair, i.e. a total of three members. The decision of the Panel will be deferred if a quorum is not present.

Where conflicts of interest are known before a decision is to be made, alternate members will be used to make a quorum.

### The Planning Panel's consideration

In addition to the assessment report, the Panel is to take into account all written submissions, as well as the views expressed by those addressing the Panel should a public meeting be required.

### Deferring the decision

A decision may be deferred for any reason including to obtain additional information or advice.

Should the Panel determine to defer a decision on an application, it must provide a written record of the reasons for deferral.

Where the determination of a proposal 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.

It is the council's responsibility to follow up on any requests for additional information or amendments from the applicant, to determine whether re-exhibition is required, and to provide a supplementary assessment report to the Panel.

### The Panel's reasons

The Panel must provide reasons for its decisions, which are to be recorded in the 'Determination and Statement of Reasons' template provided by the secretariat.

The Panel may rely on the conclusions and recommendations within the assessment report, however, the Panel must identify where it has its own reasons for making the decision and where it adopts the reasons from any assessment report of Council or the department. As part of setting out its reasons the Panel is to:

- provide a summary of the main issues raised in submissions
- demonstrate how the Panel considered the community's concerns
- demonstrate how the Panel dealt with the issues raised, should they have been found to have merit i.e. requested further studies, applied appropriate conditions or, agreed with council recommendation that the applicant had satisfactorily addressed the concerns.

### Determinations on DAs

The determination must clearly state whether a DA is unconditionally approved, approved with conditions, or refused.

Any new conditions of consent or changes to the recommended conditions of consent must be recorded.

If the Panel resolves to approve an application that is recommended for refusal, the Panel may seek a further report from the council's planning officer providing recommended conditions of

consent. The Panel may request without prejudice conditions of consent before a Panel meeting if council's report recommends refusal.

The determination and statement of reasons must include the following:

- the decision of the Panel
- the date of the decision
- the reasons for the decision (having regard to any statutory requirements applying to the decision)
- how community views were considered in making the decision.

DA determinations must be publicly notified in accordance with clause 20 Schedule 1 of the EP&A Act.

The decision of the Panel is not subject to a 'Rescission Motion' as in local government.

Decisions of Decision Review Panels are called a 'Review of Decision' Determination and Statement of Reasons.

### Determinations on matters other than DAs

Decisions made by the Panels on SCCs, Rezoning Reviews and where the Panel is the Planning Proposal Authority will include the following:

- the decision of the Panel
- the date of the decision
- the reasons for the decision (having regard to any statutory requirements applying to the decision).

### Resolutions of the Panels

The Panels may from time to time make resolutions on certain matters, e.g. to authorise the chair to provide instruction in relation to legal appeals on behalf of the Panel.

Resolutions of the Panel will be published on the Panels website.

### Dissenting views

If the decision (and reasons for the decision) is not unanimous, all members of the Panel (i.e. including the minority) still need to give reasons.

### Timing of Determination and Statement of Reasons

It is preferable that the Panel record both its decision and its reasons at the time of the determination.

### Signatures

All members of the Panel must sign the Determination and Statement of Reasons. Where one or two members are in dissent, they must still sign, as the reasons will set out their dissenting views.

## 5. Transactions of business outside meetings

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

The chair may decide that the Panel can complete its business through an electronic determination. These circumstances may arise when:

- there are less than 10 unique submissions by way of objection
- the Panel has held a public meeting and deferred its decision to request specific additional information from an applicant or council (such as amended drawings) and if council, after having accepted the amended drawings, has decided that re-exhibition of is not required
- the Panel is voting on a procedural matter, or
- the Panel is voting on a decision following a briefing in relation to a Rezoning Review, Planning Proposal or site compatibility certificate.

Prior to an electronic determination the council report and recommendation are made available on the Planning Panels website for 7 days.

Following consideration of the assessment report, the Panel advises the secretariat of its decision and a record of decision is completed and endorsed by all members.

Resolutions approved by circulation of papers are recorded in writing and made publicly available on the Panels website within 7 days. The circulation of papers is generally done electronically and are not recorded by audio/ video record, an audio record or a transcription record.

## 6. Records of proceedings

The chair is responsible for ensuring that full and accurate records are kept of the proceedings of Panel meetings, briefings and other business.

An audio recording will be made for all public briefing meetings and determination meetings and will be published on the Panels website. By registering to speak at a meeting, speakers agree to being recorded and to the publication of that recording. Where a speaker has not registered to speak but wants to make a submission at the meeting it is at the chair's discretion and the speaker is asked to agree to being recorded and that recording being published.

Document templates for written records of proceedings are provided by the secretariat.

Secretariat or council staff will assist in the preparation of draft written records. A copy of the unconfirmed written record is provided to all Panel members who participated in the proceedings. Panel members may submit any proposed corrections to the unconfirmed record to the secretariat for confirmation by the chair.

Alternatively, a Panel may choose to complete and endorse the final record immediately after completing the meeting or briefing. In this case, draft records are not circulated.

When the written records have been confirmed and endorsed by the chair the written record is placed on the Panels website.

The confirmed written record is available within 7 days of the Panel meeting or briefing.

Any written record for a Panel meeting details:

- the opening and closing times of the meeting
- the details of the matter considered by the Panel
- the names of all members of the Panel, including the chair
- any disclosure of interest made by a member, the reason for that disclosure of interest and whether the member making the disclosure participated in the discussion or determination of the matter
- any adjournments and reasons for the adjournment
- the names of each person heard by the Panel in respect of a matter
- any decision of the Panel
- reasons for the decision

- the names of each member who voted for or against the decision, and reasons for dissent, where the decision is not unanimous
- the signatures of all the members making the decision.

A written record of briefings or site visits are made including time, date, attendees, any declarations and key issues discussed and are published on the Panels website within 7 days. Site visits or briefings are not recorded by audio/ video record, an audio record or a transcription record.

The secretariat, with assistance from the relevant council, is responsible for recording decisions for Panel meetings.

Panel members are required to provide any notes made during a meeting, briefing or site inspection to the secretariat for registration as a record. This includes hand-written or electronic notations.