

Making independent planning panels work better

The NSW Government is making changes to the way independent planning panels work to make them more efficient and to improve the assessment and determination times of development applications.

These changes are being made as part of the Planning Acceleration Program to support the state's immediate and long-term economic recovery from the COVID-19 crisis.

In 2019 the NSW Productivity Commission conducted a review of the Independent Planning Commission (IPC). The review recommended several actions to streamline processes to optimise efficiency, output and performance.

The planning panel changes incorporate a number of the NSW Productivity Commission's recommendations and provide greater consistency between the operations of local planning panels (LPPs) and Sydney district and regional planning panels (RPPs) to provide greater certainty to applicants and the community.

The changes, to commence 1 August 2020, will speed up panel determinations by:

- reducing the need to conduct public panel meetings for non-contentious matters by applying a '10-or-more' objection trigger for public meetings
- reducing the amount of modifications going to panels
- obliging panel chairs to more actively manage development applications (DAs) coming to the panels to reduce panel deferrals and assessment timeframes
- allowing chairs to bring forward determination on DAs that are experiencing unreasonable delays of over 180 days from lodgement
- introducing panel performance measures.

These changes have primarily been made through amendments to section 123BA of the Environmental Planning and Assessment Regulation 2000, clause 21 of the State Environmental Planning Policy (State and Regional Development) 2011 (State and Regional Development SEPP), LPP directions and the Sydney District and Regional Planning Panels Operational Procedures. Consequential amendments have been made to the LPP and RPP codes of conduct.

Details of the changes

Local planning panels

The Minister for Planning and Public Spaces has amended the *Local Planning Panels Directions – Development Applications* so that only certain larger-scale applications to modify development consents need to be referred to the local planning panels. Council staff will be delegated to deal with minor modifications.

Panels will only deal with s. 4.55(2) modifications that meet the current LPP criteria for conflicts of interest, contentious development or departure from development standards.

The *Local Planning Panels Directions – Operational Procedures* has been amended to:

- require panels to make determinations within two weeks of being provided an assessment report
- require panels to hold a public meeting only where the DA has attracted 10 or more unique submissions by way of objection

- allow, at the chair's discretion, applicants to attend a briefing, along with council staff, to explain complex matters or present confidential or commercially sensitive material
- oblige panel chairs to work with council to ensure key issues are addressed during assessment in order to minimise deferrals by the panels at determination stage
- require the panels to provide reasons for deferring a decision and set timeframes in which any additional information must be provided in order to finalise the determination
- give panel chairs the ability to require council to report a DA to the panel within four weeks for determination if the application has experienced unreasonable delays in excess of 180 calendar days from lodgement.

Sydney district and regional planning panels

The same changes have been made in relation to the RPPs through amendments to the Environmental Planning and Assessment Regulation 2000 and the Sydney District and Regional Planning Panels Operational Procedures. An ['Instruction on Functions Exercisable by Councils on Behalf of Sydney District or Regional Planning Panels'](#) in relation to modifications of development consent for regionally significant development has been published on the Planning Panels website.

Additionally, the minister has:

- amended the State Regional Development SEPP to remove the requirement that DAs that are the subject of a regionally significant concept plan be considered regionally significant
- provided approval for all RPPs to delegate directly to council staff any panel functions.

Frequently asked questions about the changes

Why are most modifications now able to be determined by council staff rather than a planning panel?

The changes are intended to ensure that decisions are reached quickly and at the appropriate level, with due regard to their complexity and contentiousness. Applications for the modification of development consents generally have lower potential to cause significant impacts than development applications. By allowing council staff to determine the less significant modification applications, the panels can focus on more significant proposals. This will lead to shorter determination times both for modifications and for applications determined by panels.

Panels will remain the determining body for certain modifications applications, such as those that involve a conflict of interest, contentious developments or significant departures from set development standards. Applications that propose to modify a condition of consent amended or added by a panel will also be determined by the panels.

Why are less controversial matters now able to be determined by council staff or by the panel without a public meeting?

The changes to planning panels mean that only applications for contentious matters that are the subject of 10 or more unique submissions by way of objection will proceed to a public meeting. Other applications referred to the panel will be considered through the electronic circulation of papers. This will increase the efficiency of panels and reduce the time within which panel decisions are made.

Community views will still need to be taken into account by the panel before it makes a decision on a development application. The panels will continue to do this by considering written submissions made during the exhibition period of the development application.

What is considered a ‘unique’ submission?

A submission which is substantively 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. Council assessment staff are best placed to determine whether a submission is ‘unique’.

Why are applicants now able to brief local planning panels?

There are occasions where panels benefit from being briefed by council staff on a proposal. In certain circumstances applicants or their consultants may, at the discretion of the panel chair, attend these briefings to explain complex or confidential matters to LPPs. Written records of the briefings will be published to ensure transparency. This change will align procedures for LPPs with RPPs and lead to more efficient and informed decision-making.

Why is the Minister issuing performance criteria for panels and panel chairs?

While planning panels have largely been operating well, the performance criteria are being implemented to improve their operation. The changes are in response to issues raised by key stakeholders and the NSW Productivity Commission’s review of the IPC. By developing performance criteria, panels will know what targets they are expected to achieve, and development applicants and the community will know what consistent standards to expect from panels.

Will councils be required to report on more aspects of planning panel operations?

A consequence of the reforms is that councils need to report additional information to the department. The data collected will allow the department to analyse how panels are operating against the new performance criteria and help inform ongoing improvements to the panel processes.

We will update the planning portal to allow this information to be captured. We’ll also update the user guide, which advises councils how to complete the reporting.

Will additional delegations need to be set up by panels and councils?

Some councils may need to review current delegations. However, the changes will lead to a more efficient system in the medium to long term, with the right scale of applications being determined at the right level of the planning system.

A ministerial approval has been established to allow RPPs to delegate functions to council staff to make it easier for decisions to be made at the appropriate level.

What does the change in relation to regionally significant concept plans mean?

Previously, any DA subject to a regionally significant concept plan was considered regionally significant. The reforms mean that councils must ensure the DA is consistent with the concept plan. Development that is subject to a regionally significant concept plan and is a regionally significant development in its own right (under Schedule 7 of the State and Regional Development SEPP) will remain regionally significant development.

This change will allow regional planning panels to focus on genuine regionally significant development, reducing determination times.

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