

AMENDED ITEM



Item No: 5.4
Title: Notice of Motion - Local Planning Panels - changes to operations
Department: Councillor

10 August 2020 Ordinary Council Meeting

Reference: F2020/00039 - D14101551

Author: Jane Smith, Councillor

Councillor Smith has given notice that at the Ordinary Council Meeting to be held on 10 August 2020 she will move the following motion:

- 1 That Council noted that the Minister for Planning and Public Spaces, the Hon Rob Stokes, recently announced changes to the operations of Local Planning Panels including:**
 - **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.**
- 2 That Council write to the NSW Minister for Planning and Public Spaces the Hon. Rob Stokes MP and the Premier of New South Wales Ms Gladys Berejiklian, to express its concern in relation to the changes (to commence on 1 August 2020) to the operations of NSW Planning Panels which have the aim of speeding up determinations of development applications, with potential damaging consequences for community input, for the reasons outlined in this Notice of Motion below.**
- 3 That Council submit a Motion to the LGNSW Annual Conference which reflects these concerns.**

Background

NSW Government has introduced reforms to how Planning Panels work (see Attachment). These changes are being made as part of the Planning Acceleration Program developed to address the COVID-19 crisis.

Other Councils have also expressed concerns regarding these changes. For example, Woollahra Council unanimously supported a similar motion on 27 July 2020. The notes reflect the concerns raised at that meeting.

Many of these reforms are questionable and do not lead to transparency regarding decisions on development in the community.

The changes, to commence 1 August 2020, are designed to speed up Panel determinations by:

1 Requiring Panels to make determinations within 2 weeks of being provided an assessment report.

This provides no flexibility in scheduling were a Panel has a significant number of proposals for determination. This may lead to insufficient time to consider the numerous documents and issues arising and could reduce the Panel's ability to apply proper due diligence to each case or obtain expert opinion. This will also present challenges in terms of the panel conducting site visits after receiving assessment reports and determining an application.

2 Requiring the Panel to hold a public meeting only where a DA has attracted "10 or more" unique submissions by way of objection.

One of the main reasons for introduction of Panels was to eliminate the possibly of corruption. It is conceivable that a reason for referral to the Panel (e.g. a perceived conflict of interest of a Councillor) does not attract 10 objections and therefore is not dealt with at this level. There are also other conceivable instances whereby 10 objections may not be made due to lack of community awareness of this requirement and where there may be a contentious development. This could be exacerbated due to limited notification procedures. This will prevent the public from raising genuine concerns about incomplete reports and the like. It also does not give any weight to submissions with significant petition signatures.

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- 3 Allowing, 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.**

This could remove the Panel's independence. The Panels were set up to be independent of the internal workings of Councils, not working with them and applicants.

- 4 Requiring the Panels to provide reasons for deferring a decision and setting timeframes in order to finalise determinations.**

Panels already provide reasons for deferring decisions. The setting of timeframes may impose undue pressure on Councils that have to provide reports on the additional information if applicants leave providing the information until the last possible opportunity.

- 5 Giving Panel Chairs the ability to require Council to report a DA to the Panel within 4 weeks for determination if the application has experienced unreasonable delays in excess of 180 calendar days from lodgement.**

Applicants are frequently the very cause of delays when providing insufficient or incomplete documentation for assessment, dragging out the time that assessments take.

- 6 Reducing the amount of modifications going to Panels.**

Applicants frequently lodge DAs that are then progressively modified. Removing the requirement for modification to go back to the Panel will encourage ongoing modification instead of the community getting what is exhibited in the first place. Council's staff workload will increase even more with due diligence being put at risk.

- 7 Introducing Panel performance measures.**

Panels are funded directly by local Councils. With additional performance measures, there may be a need for additional resources or funding that Councils may need to find. The inclusions of "targets" will put an emphasis on pushing approvals through rather than due diligence in assessment. The standard the community expects is good planning, not speedy planning. Good planning can be inherently in conflict with the standard that many developers want.

NOTE: the same changes have been made to the Sydney District and Regional Planning Panels thought amendments to the Environmental Planning and Assessment Regulation 2000 and the Planning Panels' Operation Procedures.

Additionally the Minister has:

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(contd)**

- 8 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”.**

The definition of a DA being “regionally significant in its own right” is not clear. This will impact on who determines the development.

- 9 Provided approval for all Regional Planning Panels to delegate directly to Council staff any Panel functions.**

This could allow abrogation of the Regional Planning Panel’s responsibility, shift their workload to Councils and potentially put decision making for DAs with a value greater than \$30million into the hands of Council staff, with no independent oversight. The Panels were set up to deal with large scale developments to ensure that there was no potential risk of corruption at local level.

Chief Executive Officer Response

The Chief Executive Officer considers that this Notice of Motion has legal, strategic, financial or policy implications which should be taken into consideration by the meeting. As a result, the Chief Executive Officer has provided a report in relation to the Notice of Motion. This report is provided as Attachment 2.

Attachments

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| 1 | Planning Panels Reforms Information Sheet | D14101556 |
| 2 | CEO Response - Notice of Motion - Local Planning Panels - changes to operations | D14105114 |

Planning panel reforms

Information sheet



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

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- 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.

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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.

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

Thank you.

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Title: CEO Response - Notice of Motion - Local Planning Panels - changes to operations

Department: Environment and Planning

10 August 2020 Ordinary Council Meeting

Reference: F2020/00039 - D14105114

Author: Ailsa Prendergast, Section Manager, Development Assessment South

Executive: Andrew Roach, Acting Director, Environment and Planning



Summary

This report provides a response to Item 5.4 - Notice of Motion - Local Planning Panels - changes to operations

- 1 That Council noted that the Minister for Planning and Public Spaces, the Hon Rob Stokes, recently announced changes to the operations of Local Planning Panels including:**
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- 2 That Council write to the NSW Minister for Planning and Public Spaces the Hon. Rob Stokes MP and the Premier of New South Wales Ms Gladys Berejiklian, to express its concern in relation to the changes (to commence on 1 August 2020) to the operations of NSW Planning Panels which have the aim of speeding up determinations of development applications, with potential damaging consequences for community input, for the reasons outlined in this Notice of Motion below.**
- 3 That Council submit a Motion to the LGNSW Annual Conference which reflects these concerns.**

Staff Comment:

In March 2018, Local Planning Panels were made mandatory for all Sydney metro councils and Wollongong City Council. Prior to that time, Councils could 'opt in' to the Local Planning Panel arrangement (then called Independent Hearing & Assessment Panels, or IHAPs).

On 12 February 2020, Council received correspondence from the NSW Department of Planning Industry & Environment (the Department) indicating that the NSW Minister for Planning & Public Spaces, The Hon. Rob Stokes MP, had made a regulatory amendment requiring Central Coast Council to establish a Local Planning Panel in accordance with Section 2.17 of the *Environmental Planning & Assessment Act, 1979*.

At the Ordinary Meeting of Central Coast Council on 11 May 2020, Council resolved to constitute the Central Coast Local Planning Panel and to the appointment of the inaugural panel members.

The first Panel meeting was held on 11 June 2020.

Operating Guidelines/Legislative Background

The operating framework for Local Planning Panels is set out in the *Environmental Planning & Assessment Act 1979*, the associated *Regulations*, in addition to a suite of documents including Ministerial Directions as well as Guidance and Best Practice materials published by the NSW Department of Planning Industry & Environment.

Amendments to the Operating Framework for Local Planning Panels

On 15 June 2020 the Department of Planning Industry & Environment provided advice that there would be changes to the way the planning panels work. The aims, as stated by the Department were '*to make them more efficient and improve the assessment and determination times of development applications*'. These amendments came into effect on 1 August 2020.

It is noted that, as part of these reforms, the Minister for Planning & Public Spaces endorsed revised Directions and other information as follows:

- *Local Planning Panels Direction - Development Application and Application to Modify Development Consents*; and
- *Local Planning Panels Direction - Operational Procedures*
- A '*Statement of Expectations*' from the Minister for Planning and Public Spaces setting out expectations that to all Panel Chairs.

In summary, these documents provide a range of changes to the operation of Local Planning Panels including:

- Panel Chairs should have an understanding of the number and type of matters likely to be coming to the Panel for determination, regularly review with council

staff timeframes for the reporting of these matters to the Panel and work with relevant council staff to ensure key issues are addressed during assessment in order to minimise the number of deferrals by the panel

- Chairs/panels should consider whether the council should be required to report the matter to the Panel within four weeks for determination for those applications experiencing an unreasonable delay in excess of 180 calendar days from lodgement.
- once a planning assessment is completed by the council and referred to the Panel, the Panel will be expected to determine the matter within 14 calendar days (in the case of development applications/modification applications) and provide advice within 14 calendar days (in the case of planning proposals).
- Panel is only required to hold a public meeting where a development application 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
- To support the Chairs, the Panels, and to ensure that these changes are effective, council staff will need to continue to provide technical and operational support, including enhanced engagement with Panel Chairs in relation to the number and type of matters likely to be coming to the Panel for determination or advice.
- Council expected to report to each Panel meeting a report that sets out all development applications lodged that are known to require referral to the panel, the time in calendar days since lodgement, the key issues (and reasons for delay if applicable), any additional information the Panel Chair requests.

Cost Implications

The amendments set out by the amended Panel operations requirements potentially places additional workload on officers of the Council, including preparations of additional reports to the Panel to furnish the Chair/Panel with updates on outstanding applications (including application details, lodgement date, key issues, likely reporting timeframe any additional information the Panel Chair requests).

Staff Recommendation:

In addition to the matters set out in the Notice of Motion, Council considers whether to also make comment in relation to the additional resourcing implications of the changes to Panel operations.