

PERFORMANCE AUDIT

12 DECEMBER 2022

Development applications: assessment and determination stages

NEW SOUTH WALES AUDITOR-GENERAL'S REPORT

THE ROLE OF THE AUDITOR-GENERAL

The roles and responsibilities of the Auditor-General, and hence the Audit Office, are set out in the *Government Sector Audit Act 1983* and the *Local Government Act 1993*.

We conduct financial or 'attest' audits of state public sector and local government entities' financial statements. We also audit the Consolidated State Financial Statements, a consolidation of all state public sector agencies' financial statements.

Financial audits are designed to add credibility to financial statements, enhancing their value to end-users. Also, the existence of such audits provides a constant stimulus to entities to ensure sound financial management.

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As well as financial and performance audits, the Auditor-General carries out special reviews, compliance engagements and audits requested under section 27B(3) of the *Government Sector Audit Act 1983*, and section 421E of the *Local Government Act 1993*.



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In accordance with section 421D of the *Local Government Act 1993*, I present a report titled '**Development applications: assessment and determination stages**'.

A handwritten signature in black ink, appearing to read 'Margaret Crawford'.

Margaret Crawford
Auditor-General for New South Wales
12 December 2022

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RECONCILIATION COMMITMENT STATEMENT

The Audit Office of New South Wales pay our respect and recognise Aboriginal people as the traditional custodians of the land in NSW.

We recognise that Aboriginal people, as custodians, have a spiritual, social and cultural connection with their lands and waters, and have made and continue to make a rich, unique and lasting contribution to the State. We are committed to continue learning about Aboriginal and Torres Strait Islander peoples' history and culture.

We honour and thank the traditional owners of the land on which our office is located, the Gadigal people of the Eora nation, and the traditional owners of the lands on which our staff live and work. We pay our respects to their Elders past and present, and to the next generation of leaders.

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Section one

Development applications:
assessment and
determination stages

Executive summary

Local councils in New South Wales are responsible for assessing local and regional development applications under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

In assessing development applications, councils consider:

- whether the proposed development application is compliant with legislation and environmental planning instruments
- whether the proposed development meets local planning controls and objectives
- any environmental, social and economic impacts
- any submissions from impacted properties, neighbours and interested parties
- the public interest.

Once assessed, a development application will be determined by council staff under delegated authority, the elected council, or an independent planning panel.¹

The involvement of a particular independent planning panel is established under legislative and policy instruments, and depends on the type and value of the proposed development. Most development applications are assessed and determined by council staff under delegated authority.

In determining development applications, independent planning panels must manage any potential, real or perceived conflicts of interest of panel members for a given development application, meet and vote on development applications, and publish their decisions and reasons.

Under the EP&A Act, and as required by statutory instruments and procedures, councils and the Department of Planning and Environment (DPE) must provide secretariat and other support functions to independent planning panels.

Previous reviews and inquiries have identified several significant risks that are present within the processes involved in the assessment and determination of development applications. These risks include possible non-compliance with complex legal and policy requirements, potential improper influence from developers and other stakeholders, and a perceived lack of transparency within the planning system and planning outcomes.

There are several planning pathways for development in New South Wales. This audit focuses on local and regional development that requires assessment and determination by a local council and/or an independent local planning panel or Sydney or regional planning panel in three Local Government Areas (LGAs): Byron Shire Council, Northern Beaches Council, The Hills Shire Council.

Audited councils were selected from a range of criteria, including:

- the number, value and types of development applications determined in 2018–19
- average determination timeframes
- appeals against determinations and Land and Environment Court outcomes
- LGA demographics.

The audit also avoided councils that had previously been subject to a performance audit.

¹ Prescribed councils within designated Sydney districts are required to refer contentious development applications to local planning panels for determination. If the proposed development is above a threshold for estimated cost of works, or meets other prescribed criteria, the EP&A Act may require it to be referred to a Sydney or regional planning panel.

The objective of this audit was to assess whether:

- selected councils have effectively assessed and determined development applications in compliance with relevant legislation, regulations and government guidance
- selected councils and DPE effectively support independent planning panels to determine development applications in compliance with relevant legislation, regulations and government guidance.

Conclusion – Byron Shire Council

Byron Shire Council has established clear roles, responsibilities and delegations for assessment and determination of development applications. However, the effectiveness of the Council's approach is limited by gaps in governance, risk management and internal controls.

Byron Shire Council has established clear roles, responsibilities and delegations for assessment and determination of development applications. However, the Council does not have a consolidated policy and procedure for development assessment, has not adequately followed up on the outcomes of internal reviews that identified opportunities to strengthen its assessment and determination procedures and approach, and has not demonstrated that it has managed relevant risks effectively.

The Council has not ensured that delegations have been consistently followed in the assessment of development applications.

Byron Shire Council's approach to managing conflicts of interest in development assessments does not provide transparency over potential conflicts of interest.

Byron Shire Council manages the risk of conflicts of interest for development assessment under its Code of Conduct. The Council has also implemented a separate policy that details additional requirements for managing conflicts of interest relevant to the development assessment process, but has not regularly updated this policy and requirements between it and the Code of Conduct have not been aligned. This creates a risk that planning staff may be following inconsistent or outdated advice in managing conflicts of interest.

Across the period of review, the Council did not require staff to provide a disclosure of interest for individual development applications to be contained within assessment reports. Including these disclosures would increase transparency and ensure that staff are sufficiently considering any conflicts of interest relevant to each separate assessment process.

Byron Shire Council has processes that promote compliance with legislation, regulation and government policy, but can improve how it undertakes some aspects of these that would ensure transparency, quality and consistency.

Our review of a sample of completed development applications from the Council indicated that most assessments were completed in compliance with relevant legislation, regulations and government guidance, but that there were some opportunities to improve elements of the assessment process, including: transparency of any conflicts of interest involved in the assessment process, ensuring compliance with delegated authority limits, and consideration of modification application provisions.

The Council has established templates to guide planners through relevant assessment considerations required by legislation, regulations and other guidance. However, it could do more to strengthen its approach to peer or manager review, monitoring legislative changes, and how it monitors the completion of relevant training by planning staff.

Conclusion – Northern Beaches Council

Northern Beaches Council has established processes to support compliant and effective assessment and determination of development applications.

The Council has a clear governance and risk management framework for development assessment that sets out roles, responsibilities and delegations.

Northern Beaches Council has established clear roles, responsibilities and delegations for development application assessment and determination. The Council has identified development assessment related risks, and has put in place controls and mitigating actions to manage the risks to within risk tolerances.

Northern Beaches Council's approach to managing conflicts of interest promotes transparency.

Northern Beaches Council manages the risk of conflicts of interest for development assessment under its Code of Conduct. The Council has implemented an additional framework for planning staff to respond to the risk of conflicts of interest in development assessment processes. This framework requires its staff to disclose any conflicts of interest as a formal step in assessing development applications and includes declarations of any interests within assessment reports or planning panel minutes.

Our review of a sample of completed development applications indicated that the assessment reports had been compliant with the Council's approach to transparently documenting conflicts of interest.

Northern Beaches Council has established processes to deliver consistent, quality assessment of development applications.

Northern Beaches Council staff use an electronic development assessment tool that provides guidance, links to legislative and policy instruments and other applications that support assessment and drive consistency in approach. The Council applies a peer review process in which a manager or team member in a more senior position reviews an assessment report prior to determination to ensure that expected standards of quality and consistency have been met.

Our review of a sample of completed development applications indicated that assessments were undertaken in compliance with relevant legislation, regulations and government guidance.

Northern Beaches Council transparently documents assessment reports, supporting information and determination outcomes.

Northern Beaches Council has implemented a transparent approach to how it assesses and determines development applications. The Council publishes assessment reports, supporting technical reports, plans and submissions for all development applications. Notices of determination and final plans are also published alongside the assessment reports, allowing for greater transparency to the public.

Northern Beaches Council has established processes to effectively support the Northern Beaches Local Planning Panel.

Northern Beaches Council has established processes to support the Northern Beaches Local Planning Panel as required under legislative and policy instruments. The Council has processes to ensure that development applications required to be referred to a planning panel are identified and monitored, supports identification and documentation of any conflicts of interest, and transparently documents decisions of the panel.

Our review of a sample of meeting records held across the audit period of review indicated that these requirements were met and were transparently documented.

Conclusion – The Hills Shire Council

The Hills Shire Council has established processes to support compliant and effective assessment and determination of development applications.

The Council has established a comprehensive governance and risk management framework for development assessment that sets out clear roles, responsibilities and delegations.

The Hills Shire Council has established a comprehensive framework for managing risks related to development assessment. Such risks are clearly identified and associated controls are in place to reduce or mitigate the risks. The Council has undertaken regular internal audits of development assessments, including reviewing completed applications to ensure compliance with relevant legislative and policy requirements.

The Council has established clear roles, responsibilities and delegations, and its staff assessing and determining development applications are supported by a standard set of policies and procedures for undertaking assessment and determination of applications.

The Hills Shire Council is managing conflicts of interest in line with Code of Conduct requirements but could more transparently document these.

The Hills Shire Council manages conflicts of interest for those involved in development application processes through provisions under its Code of Conduct. Under this Code of Conduct, staff must declare any conflicts of interest to their manager. However, the Council does not require staff to disclose any conflicts of interest in development application assessment reports which limits transparency to reviewing managers or any other determination bodies.

The Hills Shire Council has established processes to deliver consistent, quality assessment of development applications.

The Hills Shire Council has established templates to guide planners through relevant development assessment and determination considerations required by legislation, regulations and other guidance. The Council requires a peer review to occur prior to any determination which ensures a check on the compliance and quality of the assessment report prepared.

Our review of a sample of completed development applications from the Council indicated that assessments were performed in compliance with relevant legislation, regulations and government guidance.

The Hills Shire Council has established processes to effectively support The Hills Shire Local Planning Panel.

The Hills Shire Council has met requirements to provide secretariat and other support to The Hills Shire Local Planning Panel as required under legislative and policy instruments. It has processes to ensure that development applications required to be referred to a planning panel are identified and monitored, supports identification and documentation of any conflicts of interest, and transparently documents decisions of the panel.

Our review of a sample of meeting records held across the audit period of review indicated that these requirements were met and were transparently documented.

Conclusion – Department of Planning and Environment

The Department of Planning and Environment (DPE) has established processes that meet its statutory and policy requirements to support Sydney and regional planning panels.

DPE has established processes to provide secretariat and other support to planning panels. It has met requirements to provide administrative support to the panels through its planning panels secretariat including undertaking administrative functions, supporting recruitment of panel members, and addressing complaints about the panel processes.

DPE has not ensured collection of annual pecuniary interest declarations for all panel members for the three Sydney and regional planning panels in scope for this audit. DPE could not provide annual pecuniary interest declarations for part of the audit period for three of the 47 members of these panels, as is required by DPE's Code of Conduct for Regional Planning Panels.

DPE does not formally measure its effectiveness in providing support to panels, but panel chairs consulted as part of this audit advised that they had no concerns with the level of secretariat support provided by DPE.

DPE could do more to facilitate information sharing between panels and could formalise how it provides comparative information to panels to improve consistency and standardisation in approach and share good practice. DPE has identified these gaps in reviews of its services and functions and has a plan in place to address them.

DPE has effectively documented planning panel decisions and made them available to all stakeholders. It also effectively documented interests declared as part of consideration of development applications for in-scope panels.

1. Recommendations

As a matter of priority, Byron Shire Council should:

1. ensure all delegations for determination of development applications are followed.

By June 2023, Byron Shire Council should:

2. finalise and implement a consolidated policies and procedures manual for development assessment
3. strengthen transparency over conflicts of interest within development application assessments by:
 - requiring a declaration of any interests to be made within assessment reports
 - aligning or consolidating its policies that govern conflicts of interest management
 - ensuring councillors' conflicts of interest declarations are retained in all meetings discussing or considering development applications
4. strengthen its peer review process to ensure development application assessment reports meet quality and consistency requirements.

By June 2023, The Hills Shire Council should:

1. strengthen transparency over conflicts of interest within individual development assessment processes by requiring a declaration of any interests to be documented within assessment report templates controlled by the Council.

As a matter of priority, the Department of Planning and Environment should:

1. ensure all panel members have made the required annual pecuniary interest disclosures.

By November 2023, the Department of Planning and Environment should:

2. update and rationalise templates and processes used to facilitate secretariat support to planning panels to ensure consistency in approach
3. formalise and implement processes to obtain and share information between regional planning panel chairs, including:
 - good practice
 - performance metrics
 - training opportunities
4. establish processes to collect feedback from panels to measure the effectiveness of support it provides to regional planning panels.

1. Introduction

This audit continues a series of audits examining the development assessment process in NSW local councils and is focused on the assessment and determination stages.

The Audit Office of New South Wales previously considered local government development assessments in our 2019 performance audit: ['Development assessment: pre-lodgement and lodgement in Camden Council and Randwick City Council'](#).

1.1 Background

Development applications

A development application is a formal application for development that requires consent under the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act).

Most development applications are lodged with local councils to be assessed and determined based on the merits of the proposal and compliance with legislative and policy requirements.

In assessing an application for development, councils must consider and balance the impacts of development to the property owner, neighbours, the community, and the environment in both the immediate context and over the longer term. In forming a recommendation for approval or refusal, local councils consider whether the proposed development application:

- is consistent with and permissible under Local Environmental Plans (LEP) and other planning policy requirements
- enhances or maintains the desired local character without adverse environmental, social or economic impacts
- ensures the amenity and management of land, buildings and streetscapes
- has adequately considered submissions from affected owners, neighbours and other interested parties.

According to data from the Department of Planning and Environment (DPE), in 2019–20 50,593 local development applications were approved in New South Wales with an estimated construction value of nearly \$34 billion.

Exhibit 1: Reported approved development applications, NSW FY2019–20

Category	Total
Determined by council staff	48,540
Determined by councillors	668
Determined by a local planning panel*	951
Determined by a regional planning panel	277
Total	50,593

* Local Planning Panels apply within Greater Sydney and therefore councillors are not involved in determination of development applications.

Source: Department of Planning and Environment 2022 (unaudited).

Common forms of proposed developments include new dwellings and commercial, retail and industrial developments (Exhibit 2).

Exhibit 2: The most common forms of development in New South Wales in 2019–20



Source: Department of Planning and Environment 2022 (unaudited).

Key terms

The NSW Planning System is complex and operates within legislative and policy requirements, uses legal terms and applies legal principles.

Exhibit 3 outlines some key terms used within development assessment and this report.

Exhibit 3: Key terms used within development assessment

Term	Explanation
Development application	An application for development in which formal consent must be obtained from a consent authority. A development application itself consists of application forms, supporting technical reports and plans.
Consent authority	The authority that determines whether development consent is granted – typically for local developments councils are the consent authority.
Referral	A request for consultation with a referral authority (typically NSW Government agencies or private-public utilities) about a development application as required by an environmental planning instrument.
Concurrence	Agreement of a concurrence authority to a development that must be obtained before the consent authority can grant development consent.
Modification application	An application to modify a granted consent for development – including the development itself or some conditions imposed as part of that consent.
Review application	An application to review a determination decision.
Clause 4.6 variation	A request made by an applicant to vary a provision of an environmental planning instrument.

Term	Explanation
Local Planning Panel	An independent planning panel that considers certain kinds of development applications. Prescribed within designated Sydney districts but optional in other areas of New South Wales.
Regional Planning Panel	An independent planning panel that considers regionally significant development. Applies across all councils.
Submission	Formal correspondence to a consent authority outlining reasons in support of or objecting to a proposed development.

Source: Audit Office Research 2022.

Legislative, regulatory and policy framework for development assessment

Development assessment and supporting activities undertaken by councils are guided by a legislative, regulatory and policy framework that provides for both technical and process considerations (Exhibit 4).

Exhibit 4: Relevant legislative, regulatory and policy instruments for development assessment

Legal or policy instrument	Relevant requirements for development assessment
<i>Environmental Planning and Assessment Act 1979</i>	<p>The EP&A Act is the legislative instrument that establishes local councils as the consent authority for applications for local development and regulates how and what councils should consider in assessing and determining development applications.</p> <p>The Act establishes:</p> <ul style="list-style-type: none"> • environmental, social and economic factors that councils must consider in merit assessments of development applications • requirements for consultation and concurrence, where necessary • requirements for notification and exhibition of proposed development • requirements for determination, such as granting of consent or refusal and requirements for the imposition of conditions • post-determination procedures, including how determination outcomes, (including, where applicable, reasons for refusal or conditions) should be communicated to the applicant • whether and how a modification to an existing development should be considered and consent granted • authority for planning panels and requirements to refer certain types of development applications to planning panels.
Environmental Planning and Assessment Regulation 2000 ² (EP&A Regulation)	<p>The EP&A Regulation clarifies provisions of the EP&A Act, and establishes:</p> <ul style="list-style-type: none"> • procedures regarding how development applications are made • procedures for consideration of integrated development or designated development applications • procedures for how consultation and concurrence should be carried out • timeframes for determining development applications • additional compliance requirements • requirements for review applications.

² The Environmental Planning & Assessment Regulation 2000 (EP&A Regulation 2000) was repealed in 2021 and replaced by the Environmental Planning and Assessment Regulation 2021. The EP&A Regulation 2000 was in force for the audit period of review.

Legal or policy instrument	Relevant requirements for development assessment
Planning System Circulars prepared by DPE	Planning System Circulars clarify relevant interpretations or guidance of key matters to drive consistency across development assessments across the NSW planning system.
State Environmental Planning Policies (SEPPs)	SEPPs are policies that address planning issues within New South Wales. SEPPs provide policy requirements that must be considered in development assessments, including requirements for certain kinds of referrals to other agencies, coastal management, infrastructure, and apartment design. SEPPs override local planning controls, such as Local Environmental Plans in certain circumstances.
Local Environmental Plans (LEPs) and which are specific to each LGA ³	LEPs are strategic environmental planning instruments specific to each LGA. LEPs are subject to public comment prior to adoption by the Council. LEPs establish the local planning framework and zoning restrictions for how land may be developed and used. For example, LEPs establish standards for height, density, landscape, traffic management. LEP standards may be contravened by request of an applicant but any variations must be accompanied by a written request that sets out why the LEP standard required to be varied is unreasonable and contravening the standard would be in the public interest.
Development Control Plans (DCP)	DCPs are policies used by councils to clarify provisions of the LEP. For example, DCPs establish numerical standards for compliance for matters including building design, siting and size, access to sunlight, view sharing, landscaping, car parking, heritage, stormwater treatment, waste management, fences and walls.
<i>Local Government Act 1993</i> (LG Act)	The LG Act establishes provisions for councils to implement a Code of Conduct that guides council staff, councillors in some processes relevant to assessing and determining development applications.
Minister Directions (Planning Panels)	Legal authority and guidelines for the operation of independent planning panels.
Council policies and procedures	Establish operational rules and requirements that need to be met to achieve a satisfactory outcome.

Source: Audit Office Research 2022.

In addition to legislative and policy requirements, DPE has published relevant guidance to assist councils to establish and monitor processes councils use to carry out development assessment.

DPE's 'Development Assessment: Best Practice Guide for Councils' establishes the department's expected 'best practice' arrangements for councils to structure development assessment functions. The Guide suggests approaches and requirements across five stages – pre-lodgement, lodgement, assessment, determination and construction certificate – to ensure that target timeframes to determine development applications are met.

³ In the case of amalgamated councils, this may include multiple LEPs and DCPs as legacy from the former LGAs. For example, Northern Beaches Council still has several LEPs and DCPs applicable to the former Manly, Pittwater and Warringah Council Local Government Areas.

1.2 Roles and responsibilities of local councils

Councils' responsibilities for assessing and determining development applications

There are several planning pathways for development in New South Wales (Exhibit 5). Under these pathways, different kinds of development require different kinds of consent.

Exhibit 5: Development pathways in New South Wales

Planning pathway	Description	Examples	Assessment	Determination
Local development	Development that needs consent and is not considered regional or State Significant Development (SSD) within a LEP or SEPP	New home construction, home extensions through to medium sized commercial, retail and industrial developments	Council	Council or local planning panel
Regional development	Development that needs consent and is defined as Regional in SEPP (State and Regional Development)	Development with: <ul style="list-style-type: none"> • an estimated cost of works above \$30 million • with an estimated cost of works over \$5M which is council-related or • Crown development or • infrastructure, community facilities or eco-tourist facilities 	Council	Sydney or regional planning panel
Exempt development	Minor building renovations	Decks, carports, garden fences, repairs to windows, painting a house	Not required	Not required
Complying development	Works that must demonstrate compliance with SEPP (Exempt and Complying Development Code) 2008	New home construction, alterations and additions, new industrial buildings, demolition, change of business use	Council or private certifier	Council or private certifier: applicant choice
State significant development	Development that needs consent and is defined as SSD in SEPP (State and Regional Development)	Educational facilities, manufacturing, mining and extraction, tourist and recreation facilities	DPE	Independent Planning Commission or Minister for Planning
State significant infrastructure	Major transport and services developments that have a wider significance and impact than just the local area	Rail and road infrastructure, water storage and treatment, wharf and boating facilities, pipelines, development in national parks	DPE	Minister for Planning
Development without consent	Low-impact or routine activities listed in the LEP or SEPPs	Home business in a residential zone, environmental protection works in an environmental conservation zone	None required	None required although a permit or approval may be required
Designated fishing activities	Commercial fishing activities using particular methods or in particular locations	Commercial fishing activities using particular methods or in particular locations	DPE	Minister for Primary Industries

Source: Audit Office 2022.

Councils assess and determine most development applications under the *EP&A Act*, which establishes local councils as the consent authorities for local and regional development.

Under this authority, councils may issue approvals and notices of determination under delegated authority, on behalf of local planning panels and regional planning panels, as well as any consent orders from the Land and Environment Court.

Certain criteria and thresholds may require a development application to be referred on to a planning panel for determination (Exhibit 6).

Exhibit 6: Planning panels

Local Planning Panels	Regional planning panels
<p>Local planning panels determine development applications which involve:</p> <ul style="list-style-type: none"> • a potential conflict of interest - including development where the applicant or landowner is council, councillor, council planning staff member or member of Parliament • contentious development that has received more than ten unique submissions • variations to a development standard imposed by an environmental planning instrument by more than ten per cent • sensitive development: <ul style="list-style-type: none"> a) designated development b) development which is subject to apartment design considerations (SEPP 65) and is four or more storeys in height c) demolition of a heritage item d) licenced premises e) restricted premises and sex services premises f) a planning agreement applies. 	<p>regional planning panels determine 'regional development' applications which includes:</p> <ul style="list-style-type: none"> • development with a Capital Investment Value (CIV) over \$30 million • development with a CIV over \$5 million which is: <ul style="list-style-type: none"> – lodged by or on behalf of a council – lodged by or on behalf of the Crown (State of NSW) – private infrastructure and community facilities – eco-tourist facilities – extractive industries, waste facilities and marinas that are designated development – certain coastal subdivisions • development with a CIV between \$10 million and \$30 million which is referred to the Planning Panel by the applicant after 12 days.

Source: Department of Planning and Environment and Minister for Planning (2020).

Assessing development applications

In assessing applications for proposed development, councils' planning officers must consider and document completion of certain requirements, including:

- obtaining referrals and concurrence
- consideration of any natural hazards relevant to the land for the proposed development
- notification and/or exhibition of the proposed development to affected residents, neighbours and landowners
- reviewing any submissions made in support of or against the proposed development
- applying planning and legislative controls identified within environmental planning instruments, including those proposed to be varied by the applicant.

Determining development applications

Following assessment, council officers, councillors or a planning panel determine to approve, defer or refuse consent of the proposed development based on the reasons outlined in the assessment report.

Following determination, councils are required to publish a notice of consent, statement of reasons for refusal or any conditions of consent imposed, and the approved plans. Councils are not legally required to publish assessment reports.⁴

However, provisions of the *Government Information (Public Access) Act 2009* and the *Government Information (Public Access) Regulation 2018* require 'open access' to development application documentation.⁵

Requests to vary provisions of planning instruments

Development applications lodged with a council may also request variations to development standards under Clause 4.6 of the Standard Local Environmental Plan.

Clause 4.6 permits councils to approve a development application that may contravene a development standard in its LEP or any other environmental planning instrument. In considering such requests, a council is required to obtain a written request from the applicant who must demonstrate that the contravention is justified as:

- compliance with the development standard would be unreasonable or unnecessary in the circumstances of the case
- there are sufficient environmental planning grounds to justify contravening the development standard.

DPE permits councils to determine applications requesting Clause 4.6 variations, but requires that significant contraventions (for example, contraventions of building height of above ten per cent of the relevant height limit outlined in a LEP and as guided by a DCP) be determined by a planning panel in LGAs where planning panels are mandated or determined by councillors in other LGAs.

The Independent Commission Against Corruption (ICAC) has previously reported that Clause 4.6 variations should be carefully considered, as variations to development standards that have been consulted and approved by the community may result in significant windfalls to developers and may establish precedents that undermine the purpose and utility of LEPs. As a consequence of these risks, councils may require additional review (i.e. by an internal panel or manager) or apply strict delegations to reduce the risk of corrupt conduct.

Oversight and monitoring undertaken by DPE

DPE's 'Development Assessment: Best Practice Guide for Councils' establishes expected practices and approaches for development assessment by councils and sets target timeframes for development application determination.

Councils report on their progress against these targets directly to DPE, in annual reports and through the NSW Planning Portal.

DPE provides oversight and monitoring over some council assessment and determination activities. For example, it receives information on council determination statistics and publishes this information on the NSW Planning Portal, and also undertakes audits of councils' approaches to assessing Clause 4.6 variations, including the compliance and frequency of such requests.

⁴ There is no provision in the EP&A Act or EP&A Regulation requiring this.

⁵ Section 9 of the *Government Information (Public Access) Act 2009* outlines that a person may make an access application for government information under Part 4 of the Act unless there is an overriding public interest against disclosure of the information. The *Government Information (Public Access) Regulation 2018* Schedule 1 requires that information about development applications are prescribed as 'open access information'.

1.3 Independent planning panels

Local planning panels

The NSW Parliament introduced mandatory requirements under the EP&A Act for all councils in Greater Sydney and Wollongong to establish a Local Planning Panel in 2017.

Since the relevant provisions were enacted in March 2018, the role of local planning panels has been to determine certain types of local development applications on behalf of councils and to provide expert advice to councils on planning proposals.

The purpose of independent planning panels is to:

- mitigate corruption risk for local planning
- promote better planning outcomes through greater expertise, independence and probity in decision-making
- ensure people with expertise have a determinative role on development applications
- promote consistent decision-making and enable faster decisions
- allow councillors to focus on strategic planning functions
- promote transparency and consistency in planning decisions.

Local planning panels are governed by a range of statutory rules established under Directions issued by the Minister for Planning including a Code of Conduct and Operational Procedures. Local councils are directed to provide secretariat and administrative support to panels under legislation and these rules.

Local planning panels are comprised of four members: a chair, two independent expert members and a community representative. Councils that are required to constitute a local planning panel must appoint chairs and independent expert members approved by the Minister for Planning based on their professional standing, experience, technical ability and understanding of the development assessment process. An additional Community Member is appointed by the council to bring local knowledge and experience to the local planning panel.

Local planning panel procedures establish that a minimum of three panel members must be present to establish a quorum. Voting arrangements are documented in meeting records which must be made public on the council's website. Panels may hold public meetings or can determine by electronic circulation of papers.

The Auditor-General does not have a mandate to audit local planning panels. Local planning panels are not prescribed government agencies nor auditable entities under the *Government Sector Audit Act 1983* or the *Local Government Act 1993*.

This audit has not examined the effectiveness of the local planning panels.

Sydney and Regional Planning Panels

Sydney and Regional Planning Panels have operated in New South Wales since 2009.

Typically, regionally significant development is development with an estimated capital investment value of over \$30 million, however other referral criteria may require that regionally significant development be referred to a Sydney or Regional Planning Panel. For example, development applications estimated at over \$5 million and including involvement of a council, councillor staff or the Crown as the applicant will also require referral to the panel.

Sydney and Regional planning panels are comprised of five members, including a panel chair selected by the Minister for Planning, two independent planning panel members that are appointed from a pool of eligible candidates and two members nominated by the relevant council.

Recruitment pools of eligible panel chairs and independent members are initially vetted by DPE's Planning Panel Secretariat and endorsed by the Minister for Planning. Local councils must nominate 'council members' to represent their Council when a panel determines development applications relevant to the council's LGA.

Regional Planning Panel procedures establish that a minimum of three panel members must be present to establish a quorum. Voting arrangements are documented in meeting records which must be made public on the NSW Planning Portal. Panels may hold public meetings or can determine by an electronic circulation of papers.

Regional planning panel procedures establish that DPE is responsible for providing administrative and secretariat support to regional panels including requirements to, among other things:

- schedule panel meetings, briefings and site visits including notification to affected owners or residents, and to arrange travel for panel members
- prepare and issue agendas and business papers and preparing records of decisions (with assistance from councils).

This audit has not assessed the effectiveness of regional planning panels.

1.4 Development assessment related risks

Governance and corruption risks

Previous reviews and reports by the NSW Ombudsman, ICAC and a review of the NSW Planning System commissioned by DPE have outlined that there are several important risks present within development assessment, including:

- the complex legislative framework which may lead to inconsistent or incorrect application of planning controls
- the importance of segregating duties within the planning process to prevent end-to-end control which brings corruption risks
- management of conflicts of interest
- possible improper influence from developers or stakeholders, given the potential for large financial gains and which may oppose community interests or sentiment
- a perceived lack of transparency in the NSW planning system which may drive adverse perceptions, and that without explanations of processes undertaken in assessment and/or an absence of reasons for decisions, this may create conditions for, or perceptions of, corrupt conduct.

ICAC investigations have also highlighted the consequences of ineffective approaches to governance, risk management and internal controls over development assessment related processes. These investigations have included findings of corrupt conduct in several local councils.

Verification of information provided by development applicants

Accurate verification and validation of information provided by applicants is an important step within the assessment and determination of development applications. Estimated cost of works (and therefore capital investment value) informs whether a development application is required to be referred to an independent panel.

Alongside other investigative works, accurate verification and validation of information could assist to detect whether there is any splitting of development applications to prevent appropriate referral – for example deliberately underquoting cost of works to ensure the decision remains with a council.

Further, from a practical perspective, councils often tie contribution fees from proposed development to the cost of works, so it is important they calculate this correctly to ensure they are accurately recovering contributions from applicants.

Reported skills shortages in planning expertise

Over the past decade, several reports and reviews have identified skills shortages in town planning for local councils in New South Wales. In 2021 and 2022, the National Skills Commission has identified that New South Wales faced a shortage of urban and town planners.

Councils and industry stakeholders interviewed as part of the audit advised that this shortage of qualified planners across the NSW Planning System results in increased workload pressures due to high demand for development over recent years and inexperienced planning staff delivering rushed or poor-quality assessments. Further, councils and stakeholders advised that the skills shortage creates competition for planning staff between councils which results in high staff turnover and loss of corporate knowledge.

1.5 Conflicts of interest within local councils' development assessment processes

Conflicts of interest risks

NSW Ombudsman and ICAC have published several investigations and reports that have outlined that conflicts of interest are a key risk to effective assessment and determination of development applications.

For example, planners undertaking assessment and/or determination of development applications could obtain a personal benefit in return for a favourable outcome from a development application process, could apply personal bias to their judgements, and could be subject to improper influence.

In certain circumstances a conflict of interest may be inherent where the Council is both the applicant and the consent authority responsible for assessing a development application.

Framework for managing conflicts of interest

Under the *Local Government Act 1993*, councils must adopt a Code of Conduct that incorporates the provisions of the Model Code of Conduct (Model Code). The Model Code prescribes obligations for both general conduct and specific conduct relating to land use planning, development, and other regulatory functions.

Importantly, the Model Code provisions require that councillors and 'designated persons' must disclose and manage pecuniary interests and non-pecuniary interests.

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of an appreciable financial gain or loss to that person or a spouse, de facto partner, relative, partner or employer or company or other body of which a person or a nominated person, partner or employer is a shareholder or member.

A non-pecuniary interest is a private or personal interest that a person has that does not amount to a pecuniary interest. It may commonly arise out of family or personal relationships or out of involvement in sporting, social, religious or other cultural groups and associations and may include an interest of a financial nature. Non-pecuniary interests arise where a reasonable and informed person would perceive that a person could be influenced by a private interest when carrying out official functions in relation to a matter.

Councils must also adopt Procedures for the Administration of the Model Code of Conduct (Procedures). The Procedures govern how complaints or allegations of conflicts of interest breaches must be investigated and resolved, including any disciplinary action.

Councils may implement additional provisions that go further than the Model Code and Procedures provisions, but must not adopt provisions that do not meet the standard. All audited councils have adopted a Code of Conduct consistent with the Model Code provisions and manage general disclosure requirements under the Code and Procedures implemented for their respective council.

The Office of Local Government is currently reviewing the Model Code of Conduct and its requirements as part of its review of the Misconduct Framework.

1.6 NSW Government targets and reform initiatives

State government targets

DPE has not set targets or expectations for quality or transparency for development application assessment and determination outcomes outside of compliance with relevant legislative provisions. Targets and expected outcomes for local councils' development assessment aim to reduce timeframes to determine applications and streamline approvals.

In its 'Best Practice Guide for Development Assessment', DPE outlined that councils should adopt key performance indicators in line with the Premier's Priority Target to achieve:

- 90% of development applications determined within 40 days by 2019
- completion the assessment stage within 35 days.

The timeframe target is no longer a Premier's Priority, and DPE has not updated its Guide to reflect any changes in policy or targets. DPE does not report against these targets systematically but provides a dashboard that tracks data provided by all councils.

In November 2021, the Minister for Planning and Public Spaces issued the Environmental Planning and Assessment (Statement of Expectations) Order 2021 under the *EP&A Act* which established expectations for councils in relation to their performance of a range of planning and development functions. Relevant development assessment targets for councils included expectations for a council to:

- prepare and refer assessment reports for regionally significant development applications to regional panels within 250 days from lodgement
- determine development applications for which it is the consent authority as soon as practical and no longer than 180 days from lodgement
- report a development application for which its functions as a consent authority are exercisable by the local planning panel for determination within four weeks of a request from the panel chair.

DPE's dashboard reports that the average statewide determination days by determining authority for FY20 were:

- 412 days for regional planning panel development applications
- 231 days for local planning panel development applications
- 197 days for councillor-determined development applications
- 83 days for development applications determined by council staff.

The Order explained that if a council is found not to be meeting these expectations, the Minister could appoint a planning administrator or regional panel to exercise a council's planning functions. The Order was not in force for the audit period of review.

Reform initiatives over the period of review

DPE has implemented several reform initiatives over the audit period of review aimed at reducing processing times for regionally significant development applications. The reform programs included the provision of funding to councils, and time-limited additional funding to DPE to amend the way it supported Sydney and regional planning panels.

In August 2020 the NSW Government introduced targets to reduce the average assessment time for regionally significant developments by 25% from a baseline of 366 days to 275 days by June 2023.

Two programs implemented over the period of review aimed to improve councils' assessment timeframes and performance – the Faster Assessment Pilot Program and the Public Spaces Legacy Program.

Faster Assessments Pilot Program

The Faster Assessments pilot program put in place a standardised and simplified assessment process to improve councils' assessment performance.

The pilot implemented early engagement between panels, councils, applicants and DPE to enable discussions on expected development issues and to provide clarity regarding how regionally significant development assessment and determination processes should work. It also established clear targets for timeliness and committed councils to report regular data on compliance with milestones.

In July 2021, 13 councils were provided \$350,000 in grant funding to test and provide feedback on the new process, close outstanding 'legacy' cases, report on metrics and establish a community of practice. In February 2022, the pilot was extended to a further seven councils.

Public Spaces Legacy Program

On 5 August 2020, DPE introduced the Public Spaces Legacy Program. The Program provided funding to 68 eligible councils that committed to accelerate their median assessment timeframe for development applications by 20% between 1 September 2020 and 30 June 2021. The improvement target was benchmarked against evidence of councils' assessment performance over the past 2–3 years.

Funding was available for councils that could demonstrate a significant acceleration of their planning decision process between 1 September 2020 and 30 June 2021.

Funding provided to councils aimed to provide improved high-quality public and open spaces, such as spaces for personal and social recreation, sport and physical activity, active transport corridors, waterway and riparian corridors, biodiversity and fauna conservation, and visual and landscape amenity. It included natural areas and linkages, foreshore areas, parklands, sports grounds and courts, children's play spaces, public streets and linear walking, cycling, and equestrian tracks.

1.7 About the audit

Audit scope and focus

This audit assessed whether the selected councils had effectively assessed and determined development applications, and whether the councils and DPE effectively supported independent planning panels to determine development applications in compliance with relevant legislation, regulations and government guidance.

This included an assessment of whether:

- selected councils had governance, risk management and internal controls in place to:
 - ensure assessments are free from improper influence and bias
 - ensure determinations made by council staff under delegation are consistent, impartial, documented and transparent
- selected councils had processes and procedures in place to ensure development applications are assessed and determined in line with relevant legislation, regulations and government guidance
- selected councils effectively support local planning panels to determine development applications
- DPE effectively support regional planning panels and Sydney planning panels to determine development applications
- decisions and their rationale are documented and accessible.

The audit did not:

- directly assess the timeliness of councils' approaches to assessing and determining development applications
- assess councils' approaches to planning proposals or rezoning applications
- assess the setting or collecting of fees and charges relevant to development assessment.

As part of our audit procedures, the audit reviewed a sample of development applications lodged and determined by the audited councils over the period of review. The review considered whether planning controls, internal controls and council processes had been applied by the councils to ensure compliance with relevant legislation, regulations, and government guidance.

More information about the audit is provided in Appendix five.

Audited councils

This audit focuses on local and regional development that requires assessment and determination by a local council and/or an independent local planning panel or Sydney or regional planning panel in three LGAs: Byron Shire Council, Northern Beaches Council, The Hills Shire Council.

Audited councils were selected from a range of criteria including:

- the number, value and types of development applications determined in 2018–19
- average determination timeframes
- appeals against determinations and Land and Environment Court outcomes
- LGA demographics.

The audit also avoided councils that had previously been subject to a performance audit.

Appendices two, three and four provide further detail on the type and profile of development applications determined by the in-scope councils for the period of review.

2. Byron Shire Council

2.1 Governance, risk management and internal controls for development application assessment and determination

Byron Shire Council has established clear roles, responsibilities and delegations for assessment and determination of development applications

Byron Shire Council has established clear instruments of delegation and role descriptions that outline administrative and statutory delegated authority to assess and determine development applications,⁶ as well as team management functions including the ability to allocate development applications for determination.

These delegation instruments are regularly reviewed, with updates and recommended changes to delegations reported to the Council's senior management for endorsement.

For complex development applications that meet certain criteria, Byron Shire Council's delegations and Code of Meeting Practice establish that those applications are required to be referred to the Planning Review Committee of Council ('Planning Review Committee') based on:

- the number of submissions
- validity of matters raised in public submissions
- extent of any variation requested to Council policies (for example, DCP provisions)
- lack of policy to direct determination of the application, or
- the perceived public significance of the application.

The Planning Review Committee, on advice from council staff, will determine whether a referred development application will be determined by councillors or will remain with council staff to determine under delegated authority.

Byron Shire Council has not effectively ensured that delegations for determining development applications have been followed

Compliance with delegations helps to ensure that appropriate and authorised actions are undertaken. Under Byron Shire Council's delegations, planning team management have delegated authority to assess and determine development applications according to a range of criteria, including: the estimated cost of works put forward by the applicant, number of proposed subdivided lots, compliance with the Local Environmental Plan, Development Control Plan and other policies (for example, whether a Clause 4.6 variation is proposed), and whether the development application is required to be referred to the Planning Review Committee.

Delegated authority to determine development applications is distributed based on the estimated cost of works of the proposed development within the development application:

- the Council's Director Sustainable Environment and Economy has delegation to determine development applications with an estimated cost of works up to \$10 million
- the Council's Manager has delegation to determine development applications up to \$2 million
- the Council's Planning Team Leader has delegation to determine development applications with an estimated cost of works up to \$1.5 million.

⁶ Including modification applications and review applications.

Our review of a sample of completed development applications from the Council found some gaps in documentation of delegated authority and some errors in applied delegated authority.

Further review of all development applications determined within the audit review period found seven additional instances where delegations were not applied correctly, and six instances where errors in recording appeared to show delegations not applied correctly. Over this period of review, Byron Shire Council determined 1,764 applications.

The Council advised it has amended the templates used for development application assessments to address the identified gaps and to ensure estimated cost of works is considered by determining officers ahead of approval under delegated authority.

Byron Shire Council does not have a consolidated policy and procedure manual for assessment and determination

DPE's 'Development Assessment: Best Practice Guide for Councils' recommends that councils adopt standard processes and procedures for development assessment. Byron Shire Council does not have a consolidated standard operating procedure for development assessments. This gap has been regularly identified as a key risk by the Council and internal reviews since 2013 have included recommendations to implement a standard procedure.

While the Council has process maps, templates and other guidance for elements of the development assessment process, without a consolidated standard operating procedure there are risks that:

- staff are not performing duties consistently and in line with management's expectations of how they should approach development applications assessment and determination, including to ensure compliance with statutory and requirements
- staff do not have assistance to understand council's preferred approach
- using instructions spread across multiple process maps, and templates may result in important considerations being missed.

Two recent examples of Byron Shire Council's Director in charge of Planning assessing complex development applications did not ensure segregation of duties

Segregation of duties is an important control to respond to the risk of end-to-end control of the development assessment process. The consequences of a planner having end-to-end control over the assessment process could include conditions conducive to possible corrupt conduct, improper influence and/or bias, limited management oversight to ensure consistent outcomes, and increased risks relating to not identifying or managing conflicts of interest.

Byron Shire Council advised that for two recent complex development applications applying recently implemented planning controls, its Director in charge of Planning was required to undertake the assessment as previous staff that would have been responsible for assessing the developments had left, and the Council concluded that there was no other member of staff with the necessary level of expertise or familiarity with the Council's strategic direction.

The Council advised that in these cases, the Northern Regional Planning Panel or councillors determined the applications – therefore ensuring the Director was not reviewing the assessment - and that some additional review input was provided by relevant senior planning and engineering officers prior to determination. This process is not clearly outlined in a policy, procedure or delegations.

The process does not apply effective segregation of duties, and it removes a key oversight and quality assurance mechanism as usually the Director would undertake final review of development assessments.

Byron Shire Council has not clearly demonstrated how it manages risks and implements controls relevant to development assessment to within accepted tolerances

Byron Shire Council has identified management of urban planning as a strategic risk, and has also identified operational risks relevant to the development assessment process, including managing conflicts of interest and ensuring compliance with delegations.

However, the Council is not effectively monitoring the extent to which identified controls are mitigating the risks to within the Council's target risk rating. Across the audit period of review, the Council rated strategic risks relating to urban planning as 'high' which is the Council's target risk rating. However, the Council had not explained why this was an acceptable risk rating, and did not report about the effectiveness of controls or mitigating actions. Further, operational risks relating to effective committee governance, and compliance with delegations were consistently above the Council's target risk rating.

The Council has not identified an inherent risk rating for risks relevant to development assessment, which limits its ability to demonstrate how its controls, treatments or mitigating actions aim to reduce identified risks.

Byron Shire Council has undertaken internal audits of development assessments but has not followed up on the audit outcomes and recommendations

Byron Shire Council has carried out regular internal audits to provide assurance to management about whether development assessment has been done well and in compliance with statutory obligations. However, the Council has not effectively monitored the implementation of the outcomes and recommendations of these audits.

Across multiple reviews, repeat issues have been raised regarding the absence of standard operating procedures and outdated procedures, and the Council has not demonstrated how key outcomes and recommendations of a 2016 review have been addressed.

The Council advised that since the most recent audit, limited resources, the impact of COVID-19 and natural disasters and a large increase in the number of development applications have impacted its ability to finalise the audit recommendations.

Byron Shire Council has identified and responded to risks relating to planning skills shortages

Planning skills shortages have impacted the NSW planning system over the period of review. Council planning staff interviewed as part of this audit advised us that this issue is particularly acute within their planning team, and is exacerbated by the recent increased demand for development approvals within the LGA over the period of review.

Byron Shire Council has identified workforce planning, including recruitment, retention, and resource management as both a strategic and operational risk.

The Council advised that as a result of the difficulties in recruiting and retaining planners it has relied on consultants and contractors to assist in or complete development application assessments in some instances. This approach risks:

- contractor unfamiliarity with the Council approach to assessment
- cost inefficiencies
- consultant planners may not have relevant local knowledge and experience, and where such services are provided remotely, can make local site inspections difficult.

The Council advised that it mitigates such risks by ensuring senior staff spend time briefing consultants, and that in most cases consultants have local experience and knowledge.

Byron Shire Council has used non-qualified planning staff to support assessment of development applications

Byron Shire Council advised that as a further way of addressing resourcing constraints, it has used non-qualified planning staff acting in higher duties to assess some low-risk and/or administrative components of development applications.

This process does not follow the usual practices of Council for allocation, assessment and determination of development applications, and risks that the staff involved are not subject to usual safeguards and controls such as pecuniary interests disclosures. Further, where staff are not qualified planners, they may not be up to date with new planning developments or practice.

For example, Byron Shire Council requires that planners make annual pecuniary interests disclosures under 'designated persons returns', but on review of the pecuniary interest disclosures we found that non-planning staff had not been identified as designated persons and therefore no disclosures had been made.

Under this arrangement, the Council advised that non-planning staff can identify and allocate development applications that they assess themselves and assign to the Manager for determination. This process is not formalised in policies and procedures, does not comply with delegations regarding allocation of work under Council delegations, and does not ensure sufficient segregation of duties.

The Council advised that all applications assessed by non-planning staff have been low-risk or straightforward (for example carports, swimming pools, or pergolas) and the assessments have been reviewed and determined by senior staff. Council advised it has discontinued this practice and will require all future development applications to be allocated by the Team Leader or Manager.

2.2 Managing the risk of conflicts of interest

Byron Shire Council has not aligned its two policies that govern its approach to managing potential conflicts of interest within development assessment

Byron Shire Council has adopted a Code of Conduct consistent with the Model Code of Conduct and manages the risk of improper influence, bias and conflicts of interest, including disclosure requirements, under the Code's provisions.

In addition to its Code of Conduct, Byron Shire Council has developed and implemented a team-specific procedure for managing conflicts of interest that may arise within development application assessments. Within this procedure, the Council has considered how its planning team should identify, declare and manage pecuniary and non-pecuniary interests. However, the Council's 'Conflicts of Interest in Development Assessments' procedure has not been updated since 2017 and has not been aligned with the Council's current Code of Conduct.

Without clear alignment between the provisions of the Code of Conduct and Council's additional team-specific procedure for managing conflicts of interest, there is reduced confidence that management's intended approach for managing the risk of conflicts of interest is being achieved, and there is also a risk that staff are following inconsistent or outdated advice.

Byron Shire Council's complaints management approach does not support systematic monitoring of development assessment complaints

Councils must adopt Procedures for the Administration of the Model Code of Conduct (the Procedures). Byron Shire Council's Procedures outline its approach to receiving and responding to complaints about conflicts of interest or improper influence. The Procedures assign accountability for responding to complaints and actions to manage substantiated complaints to the General Manager, who has discretion to determine the management response.

Complaints received by the Council are tracked in a complaints register stored on the Council's Customer Records Management system (CRM) which includes details about the complaint and whether the complaint has been responded to.

However, complaints about the development assessment process are treated as a submission and saved within individual development application folders. Not saving complaints in CRM creates a risk that they are not responded to, cannot be easily accessed in future for improvement processes or audit, and are not in a useable format for meta-analysis.

Byron Shire Council did not respond to a development application submission that alleged Code of Conduct breaches

Our review of a sample of development applications completed from 1 July 2019 to 30 June 2021 identified one instance where a late submission to a development application included allegations of Code of Conduct breaches.

Byron Shire Council advised that it did not consider that the allegations raised in the submission met its threshold for a 'Code of Conduct complaint' as per its policy for administering Code of Conduct complaints, and that similar allegations had been raised and addressed in an earlier complaint relating to the same development precinct. The Council did not formally respond to this submission at the time of determining the development application.

The Council later provided a response to the same submitter, in reply to a subsequent complaint alleging similar Code of Conduct breaches in relation to a different development related matter within the same development precinct. In this instance, the General Manager responded directly to the submitter indicating that they did not consider the allegations relating to Councillor conduct met the requirements of a formal Code of Conduct complaint as required by the Council's policy.

Byron Shire Council has gaps in its procedures to identify and manage conflicts of interest for staff assessing and determining development applications

Byron Shire Council does not require its staff responsible for assessing and determining development applications to document whether they have any real, perceived or potential conflicts of interest in each development application assessment report. Under the Council's Code of Conduct, staff are required to consider and make any conflict of interest disclosures in relation to all aspects of their work but such a process relies on personal disclosure, and does not provide for transparency in relation to individual development application assessments. This limits reviewers' ability to know whether any conflicts of interest have been identified by staff involved in specific assessments and if so, what actions have been taken to manage these.

The Council advises that in response to the audit findings, assessment reports now include a conflicts of interest declaration for both the assessing officer and the delegated officer determining the development application.

Under its Code of Conduct, Byron Shire Council staff identified as 'designated persons' are required to make annual pecuniary interest disclosures. Disclosures that have been made are available online. Some of the Council's staff identified as 'designated persons' for the purposes of the Code of Conduct have not completed annual pecuniary interests disclosures, nor have relevant contractors.

We identified one instance where Council did not effectively manage a perceived conflict of interest for one of the staff members on the development assessment team. The Council advised this perceived conflict of interest was disclosed and managed as part of the staff member's contract. However, this disclosure and management strategy was not clearly documented, nor detailed in annual conflicts of interest disclosures.

Byron Shire councillors have not been required to declare conflicts of interest at meetings that decide whether they should determine a development application

Councillors have an important role within Byron Shire Council's development assessment processes and so it is important there is transparency around any real, potential or perceived conflicts of interest.

Byron Shire councillors have delegation to consider whether an application should remain with council staff to be determined under delegated authority, and can call up certain applications for determination by the councillors. The decision to call up an application for determination is made by councillors at the Planning Review Committee.

Unlike other meetings of Council, including meetings where development applications are determined, Byron Shire Council did not require recording of any potential conflict of interest by councillors for Planning Review Committee meetings. This limits transparency in the process surrounding important decisions outlining the preferred determination forum.

During the course of the audit, the Council introduced changes to its meeting procedure for the Planning Review Committee to require councillors to declare any interests on the agenda for the Committee meetings.

2.3 Processes and procedures to ensure compliance with relevant legislation, regulations and other guidance

Byron Shire Council has assessed and determined most applications in compliance with legislative requirements but can improve how it considers modification applications

Byron Shire Council has developed assessment report templates. The templates are standardised and support planners to carry out consideration of legislation and planning provisions, assessment of the impacts of the development, undertaking concurrence, consultation, and referrals, performing site visits and imposing conditions.

Our review of a sample of development applications completed from 1 July 2019 to 30 June 2021 indicated that Byron Shire Council had undertaken most assessments in compliance with legislation, regulation and other guidance. The sample review demonstrated that, for most applications:

- assessments were carried out in compliance with legislative provisions for consideration of environmental, social and economic impacts
- Clause 4.6 variations requests were adequately considered and acquitted
- notification and exhibition requirements were met
- submissions were considered and acquitted
- determination decisions were clearly documented and objectors and interested parties were notified.

However, the review also indicated opportunities to improve how the Council had considered applications for modification of consent. The Council advised it has made changes to its templates that guide planners through modification applications to ensure that correct legislative provisions have been considered.

The review identified some gaps in documenting referrals to approval bodies to ensure environmental hazards were adequately considered. The Council advised that this gap has been addressed by the implementation of the NSW Planning Portal which automated certain referrals and concurrence processes.

Byron Shire Council has not formalised its approach to monitoring legislative changes

Byron Shire Council advised that it does not have a formal process to identify updates to planning legislation, regulation and government guidance. Instead, the planning team draws on multiple sources to identify updates, including news, NSW Government issued Planning System Circulars and emails, NSW Planning Portal, Land and Environment Court judgements, newsletters from planning law firms and from the Planning Institute of Australia, as well as interactions with other Councils and the Council's strategic planning team.

An assigned, formal and periodic process to monitor legislative updates would provide greater certainty that essential updates are identified and implemented in time to ensure development application assessments are compliant with relevant legislative requirements.

Byron Shire Council has adequately documented development application determinations and evidence, but could improve how transparently it communicates assessment outcomes

Keeping accurate and comprehensive records assists council officers to demonstrate that they have acted within established rules and made decisions in the public interest.

Across the sample of development applications we reviewed, we found Byron Shire Council had adequate documentation arrangements and evidence to support the conclusions and reported outcomes of assessment reports. However, the sample review also identified some opportunities to improve how transparently the Council's planners had documented reasons behind professional judgement.

Byron Shire Council adequately documented notices of determination as required under the *Environmental Planning and Assessment Act 1979*. Our review of a sample of completed development applications identified that notices of determination were effectively completed, and that where particular requirements to notify objectors or interested parties applied Byron Shire Council did so in compliance with relevant requirements. In most cases, notices of determination were posted on Byron Shire Council's 'DA tracker' website, and reasons for refusal and conditions were clearly explained.

Byron Shire Council does not publish assessment reports. Instead, applicants may request access to assessment reports under provisions of the *Government Information (Public Access) Act 2009* (GIPA Act). While the Council tracks some details about the GIPA Act requests it receives, it does not track the department or topic of those requests. Council advised that information requests for assessment reports and compliance certificates accounts for most Council information requests and is burdensome.

While publishing assessment reports is not required under planning legislation or Council policy, it would provide an extra layer of transparency and assurance to the public and may decrease the number of information requests for the Council's records management team.

2.4 Processes to deliver consistent, quality assessments of development applications

Byron Shire Council can strengthen its peer review processes to ensure quality and compliance

Byron Shire Council uses a 'peer review' procedure to ensure that development applications are reviewed by a manager or more senior employee before an assessment report is finalised. The Council advised that, under its peer review processes, a reviewing manager can send the assessment report back or can overrule the assessment recommendations if they disagree with the assessment report outcome or issues covered in the report. In such cases, the reviewing manager is required to leave comments explaining the changes. Council advised it does not track statistics for when assessment reports are returned to assessing officers.

The Council also advised that Council executive staff provide an additional review should the application be referred to the Planning Review Committee, Council or on to the Northern Regional Panel. Council advised that an audit trail of these reviews is retained within the software it uses to prepare Council meeting agendas and supporting business papers.

Peer review processes are compliant with recommended practices under DPE's 'Development Assessment: Best Practice Guide for Councils'. This process supports transparency of outcomes and provides an audit trail. In addition, peer review processes support quality review, and also ensure adequate segregation of duties and that assessing officers cannot determine the development applications they have assessed.

However, the outcomes of our sample review identified opportunities to strengthen the peer review of assessment reports:

- some errors and improvement opportunities were evident across the samples – such as incorrect consideration of modification application provisions and incorrect delegation to determine – were evident despite approval and sign-off from reviewing managers
- inconsistencies in the way sampled development application assessment reports and determinations were documented did not always demonstrate the peer review process occurred.

Byron Shire Council has processes to verify and validate estimated cost of works information provided by applicants

Byron Shire Council has processes to verify and validate estimated cost of works. The Council has a 'cost benchmark sheet' that provides baseline estimates for construction costs, and council staff perform a 'completeness review' ahead of formal assessment to check whether all documents have been provided and are sufficient to use in assessing the development application. Applicants are required to submit a cost summary report prepared by a 'suitably qualified person' when the estimated cost of works is above \$3 million in line with DPE's Planning Circular PS13-002.

Byron Shire Council is monitoring development application workloads and throughput but is not systematically reviewing the outcomes of assessments

NSW Government planning targets for local councils require that councils determine applications within 40 days, and several funding programs require that councils monitor and demonstrate that targets are being met. Byron Shire Council is effectively monitoring how its planning division are performing against these metrics.

However, the Council is not formally monitoring quality outcomes, and does not have key performance indicators for the quality of development application assessments. Monitoring development application assessment quality would assist the Council in ensuring that the approach taken by assessing officers is consistent, compliant and meets management's preferred approach.

Further, Byron Shire council is not undertaking formal, systematic and random auditing of completed applications. Instead, the Council advised it relies on its peer review process to ensure that development applications meet the required quality expectations.

Random auditing or review of completed assessment reports would help the Council to better understand the quality, compliance against legislative obligations, and probity within assessment and determination process to inform continuous improvement.

Byron Shire Council can improve how it documents important elements of its processes to ensure quality and consistency of development applications

Byron Shire Council uses informal staff meetings to ensure key messages or interpretations of planning issues are discussed and followed. Staff advised these meetings support them to raise complex or novel matters for consideration and oversight by management.

This approach is recommended under DPE's 'Development Assessment: Best Practice Guide for Councils' which suggests senior management in the planning team be available for 'Directions Meetings' to drive consistency and reduce roadblocks to determination.

However, Byron Shire Council does not minute the team meetings. This risks that the learnings of these meetings may not be shared wider than meeting participants to ensure lessons learned or complex judgements are known across the team, and that actions agreed in meetings are not monitored through to completion.

Byron Shire Council can improve how it records completed training. The Council's training register does not record all training council staff have undertaken. For example, council staff advised that they had attended training related to planning and assessment, but this is not recorded on the register.

Accurately recording and monitoring training completion would support the Council to ensure employee's training needs are identified and met and reduce the risk of capability gaps.

3. Northern Beaches Council

3.1 Governance, risk management and internal controls for council assessments and determinations

Northern Beaches Council has established clear roles, responsibilities and delegations for development application assessment and determination

Northern Beaches Council use team structures and management reporting lines as the principal governance arrangements for managing how its staff assess and determine most development applications. The Council has divided its planning team to enable specialisation across parts of its LGA with differing Local Environmental Plans (LEP)⁷ and to enable assessment of some applications under fast-track arrangements – which aligns with suggested arrangements within DPE's 'Development Assessment: Best Practice Guide for Councils'.

Roles, responsibilities and delegations are established clearly through:

- clear descriptions of the roles and responsibilities, objectives and accountability assigned to planners, principal planners, managers, and the Executive Manager and Director
- roles and responsibilities set out in instruments of delegation that outline administrative and statutory authority for development assessment-related activity, including assessment, approval, refusal, review and determination.

Our review of a sample of completed development applications found that applications determined under delegated authority by council staff were compliant with instruments of delegation.

Northern Beaches Council has implemented an internal panel to add greater scrutiny over locally significant development applications

Northern Beaches Council has established criteria and procedures for additional governance for development applications that meet certain criteria of 'local significance'. Locally significant development applications are:

- applications with an estimated cost of construction above \$1 million and have received three unresolved objections
- subdivision applications with a net increase of five or more additional lots and that have received three unresolved objections
- modification applications where the application is not considered substantially the same as the original application
- review applications for development applications previously determined by the Development Determination Panel (DDP) or a manager
- have been identified by the Director or Executive Manager as required to be determined by the panel (discretionary).

⁷ Northern Beaches Council was proclaimed in 2016, and the Council was formed from the previous LGAs of Manly, Pittwater and Warringah.

In such cases, the Council requires the development application to be referred to DDP. The DDP operates as a determination panel, and its members include executive staff and managers from the Planning and Place Division of Northern Beaches Council. The agenda and minutes of the DDP are transparently documented on the Council's website.

The Council advised the DDP has been delegated authority from DPE to determine development applications that would ordinarily require referral to the Northern Beaches Local Planning Panel, such as applications seeking a variation to a development standard greater than ten per cent for dwelling houses.

This intermediary panel arrangement is not mandatory under legislation but adds an additional level of oversight and greater scrutiny to the assessment and determination of development applications.

Northern Beaches Council has identified development assessment related risks and has established controls and mitigating actions

Northern Beaches Council has clearly identified both strategic and operational risks relating to development assessment. The Council has clearly documented its approach to risk management, including its acceptance of a risk above acceptable risk tolerances. Operational risks and threats to development assessment service delivery are also addressed during annual business planning processes for the development assessments team.

However, we identified some minor gaps in risk management documentation, including how the Council had assessed its treatment of risks, assignment of actions required to control or mitigate identified risks and the status of that action or activity.

The Council advised that some of these gaps are due to system limitations (for example, an inability to assign multiple control owners) and some are due to actions not being kept up to date.

Northern Beaches Council has followed up on outcomes from internal audits of development assessment

Northern Beaches Council has completed several internal audits relevant to development assessment. The Council has completed all actions and recommendations from these reviews, and the Council advised management actively reports on and tracks implementation of all audit recommendations.

Northern Beaches Council has identified and responded to risks relating to recruitment and retention of planning officers

Planning skills shortages have impacted the NSW planning system over the period of review. Northern Beaches Council advised us that this issue impacts the Council and its planning team. The Council has identified that workforce planning, including recruitment, retention, and resource management is a strategic and operational risk related to development applications.

In response to these challenges, the Council has used consultants and contractors over the period of review. The Council has also established a panel of providers to supplement assessment work where required and it pre-qualifies consultants to ensure that they are suitable and to ensure quality outcomes.

3.2 Responding to the risk of conflicts of interest

Northern Beaches Council has implemented bespoke requirements to respond to the risk of conflicts of interest in development assessment processes

Northern Beaches Council has adopted a Code of Conduct consistent with the Model Code of Conduct Provisions and manages general pecuniary interests disclosure requirements under the Code and Procedures implemented for their Council. All persons identified as 'designated persons' for the purposes of the Code of Conduct have completed annual pecuniary interests disclosures, and this is managed within its 'Disclosures' Application which is an online application the Council implemented to facilitate and monitor disclosures made by councillors and council staff. Redacted copies of the designated person conflict of interest disclosures are also available on the Council's website.

Northern Beaches Council has implemented an additional framework to its Code of Conduct requirements to respond to several specific conflicts of interest risks relating to development assessment.

This framework for managing conflicts of interest requires staff to consider and manage risks relating to real, potential or perceived conflicts of interest in development applications where the applicant may be a neighbour, landowners and current or recent staff members. The framework outlines expected responses, including escalation of certain applications through management reporting lines and/or to the DDP or independent planning panels. This framework strengthens the process for considering and managing conflicts of interest, and has been regularly updated throughout the period of review.

Northern Beaches Council manages complaints about possible conflicts of interest or improper influence in planning assessments through its Procedures for the Administration of the Code of Conduct. The Procedures assign accountability for responding to complaints to the Council's appointed Internal Ombudsman and Complaints Coordinator and actions to manage substantiated complaints to the Chief Executive Officer, who has discretion to determine the management response.

The Council also has a complaints management policy which establishes that complaints which fall within the *Public Interests Disclosure Act 1994* definitions will be received and managed by the Council under relevant provisions. The Council maintains a register of complaints to enable systematic recording and monitoring of complaints information. This register allows the Council to monitor development application-related Code of Conduct complaints.

Northern Beaches Council requires its staff to disclose potential, perceived or real conflicts of interest as a formal step in assessing development applications which strengthens transparency

Northern Beaches Council requires its staff to disclose potential, perceived or real conflicts of interest related to applications they are assessing within assessment reports.

Our review of sampled development applications indicated that several reports did not contain disclosures, for example those that were drafted by consultants and those that would further be escalated to a planning panel.

In response to the audit sample review findings, the Council advised it has revised its processes, and now requires disclosures to be included in all assessment reports, and has implemented a requirement for consultants to make a similar declaration in any reports they draft.

This approach to managing and declaring conflicts of interest goes beyond the requirements of the Model Code of Conduct and provides for transparency in process.

3.3 Processes and procedures to ensure compliance with relevant legislation, regulations and other guidance

Northern Beaches Council has assessed and determined development applications in compliance with legislation, regulations, council policy and other guidance

Our review of a sample of development applications completed from 1 July 2019 to 30 June 2021 indicated that Northern Beaches Council had undertaken assessments that were compliant with legislation, regulation and other guidance. The review found:

- assessments were carried out in compliance with legislative provisions for consideration of environmental, social and economic impacts
- Clause 4.6 variations requests were adequately considered and acquitted
- notification and exhibition requirements were met
- submissions were considered and acquitted
- determination decisions were clearly documented and objectors and interested parties were notified
- modification applications and review applications were appropriately assessed and determined
- requirements to refer certain development applications on to independent planning panels were met.

Northern Beaches Council requires determinations to be made by a manager, or a more senior position one level above the assessing officer, or peer review of assessments prior to referral to a panel for determination. Our review of a sample of completed development applications found that the Council had determined all applications in line with appropriate delegated authority.

Northern Beaches Council uses an electronic development assessment tool as a policy and procedure manual for assessment and determination

DPE's 'Development Assessment: Best Practice Guide for Councils' recommends that councils adopt standard processes and procedures. While Northern Beaches Council does not have a consolidated policy and procedure manual for development assessment and determination, it uses an electronic development assessment tool to guides staff and managers through procedures to assess and determine development applications. In addition, the Council has developed process maps that outline broad steps to be undertaken for the determination stage.

The electronic development assessment tool covers requirements and considerations planners should complete in undertaking assessments and allows for changes to requirements to be centrally managed.

However, Northern Beaches Council does not provide formalised training for the development assessment tool to ensure the application is used in line with expected processes. The Council advised that mentoring and on the job training is offered rather than formal training, but completion of such training is not formally recorded.

Northern Beaches Council has monitored changes in legislative requirements and has updated instructions within its development assessment tool to support required changes

It is important that councils monitor changes to legislative and planning policy requirements to ensure assessments are compliant. Given Northern Beaches Council's electronic development assessment tool frames how its planners consider development applications in the absence of a standard operating procedure or manual, it is also important to ensure that changes in guidance and links to relevant legislation within the tool are current, fit for purpose and reflect management's intended approach.

Northern Beaches Council has assigned responsibility for monitoring updates and changes to legislation and other requirements to a senior planner to carry out in addition to the planner's wider responsibilities. The Council also discusses possible implications and changes to planning legislation and instruments through its Planning Review Group (committee), and minutes from these meetings are circulated to planners.

In support of identified required changes to templates or procedures, the Council has formally assigned responsibility for updating the tool to the Business Systems and Administration Team Manager, who is supported by planning team managers and the IT team. This approach supports accountability for the changes and gives management the ability to confirm that the system reflects the most up to date planning controls and supports its preferred interpretation and application of these controls.

Northern Beaches Council uses check-in meetings to drive consistency and the expected approach from management

Using regular meetings to drive consistent approach is recommended within DPE's 'Development Assessment: Best Practice Guide for Councils'.

Northern Beaches Council use a range of meetings to communicate lessons learned, updates to legislation, recommended interpretations, and processes to staff. Meetings are well attended, and common items discussed include changes to practice and process, team management, and current court matters.

Northern Beaches Council's approach to publish assessment reports promotes transparency

Transparency is an important tool in providing public accountability for planning decisions. ICAC has reported that a transparent planning system ensures that the public has meaningful information about decision-making processes, as well as being informed about the basis for decisions.

Northern Beaches Council publishes its assessment reports and approved plans as well as other supporting information. While it is not a legislative requirement to publish assessment reports, this approach promotes transparency for the public and interested parties to the development within the LGA.

Northern Beaches Council has transparently documented development application determination decisions and supporting information

Keeping accurate and comprehensive records assists council officers to demonstrate that they have acted within established rules and made decisions in public interest. Northern Beaches Council publishes notices of determination on Northern Beaches Council's development application website, and reasons for refusal and conditions are clearly expressed within such notices.

Across the sample of development applications we reviewed, we found Northern Beaches Council met requirements to publish the outcome of applications determined by council staff under delegation and all determined applications had the required notice of determination on file with reasons for conditions or refusals, as appropriate.

Northern Beaches Council have also effectively and transparently documented the outcomes for complex and/or significant development applications escalated to the DDP for determination.

3.4 Processes to deliver consistent, quality assessments of development applications

Northern Beaches Council has quality review procedures built into its electronic development assessment tool but these are not enforced

Northern Beaches Council applies management oversight processes, including a peer or manager review, for all development applications. In addition, assessment reports are escalated to the Executive Manager and Director where the application is to be referred to the Local Planning Panel or Sydney North Planning Panel for determination.

Review processes by peers and/or managers are documented within the Council's electronic development assessment tool, and the Council can run reports to demonstrate that these reviews have occurred. However, the integrity of peer and manager reviews and sign off can be compromised by limitations within the electronic development assessment tool. For example, the tool does not prevent assessing officers from reviewing and signing off their own work.

The Council advised that managers should check assessment report file integrity as part of their review, and that there is an audit trail that can be checked to detect any instances where expected approvals have not occurred. However, council staff interviewed as part of the audit advised that this check was not occurring.

In response to these limitations, the Council advised it has strengthened existing controls and implemented new controls designed to prevent breaches of the Council's expected quality review procedures.

Peer review processes are compliant with recommended practices under DPE's 'Development Assessment: Best Practice Guide for Councils'. In addition to supporting quality review, they also ensure adequate segregation of duties and that assessing officers cannot determine the development applications they have assessed.

Northern Beaches Council has processes to verify and validate estimated cost of works information provided by applicants

Northern Beaches Council has processes to verify and validate estimated cost of works. These processes comprise both formal cost calculators that provide a check against the applicant assumptions for cost of works, and/or requirements for applicants to submit a quantity surveyor report validating the cost of works in line with the DPE Planning Circular PS13-002. Northern Beaches Council also advised that its planners use mapping and other tools to identify and consider site-specific constraints, and will use professional judgement and experience to check or scrutinise the estimated cost of works.

In 2020, Northern Beaches Council established the Development Advisory Services (DAS) team, which includes planners and administrative staff. The team is responsible for completing the application review process for lodged applications, to ensure they are ready for assessment by one of the planning teams. This process is guided by templates, and includes identifying relevant planning controls, verifying provided information, and organising notification and exhibition.

Northern Beaches Council advised that a development application and all documents provided in support of the application are checked ahead of formal lodgement and acceptance by the Council and, after allocation to an assessing officer, that officer is also accountable for cross-checking completeness and accuracy of the information relied on to support their work. Our review of a sample of completed development applications demonstrated Northern Beaches Council were consistently critical of the information received from applicants, and requested further information where necessary.

Northern Beaches Council monitors workload and throughput but is not systematically reviewing the outcomes of assessments

Northern Beaches Council monitors the number of development applications that its teams are assessing, and the average time it has taken to determine those applications. The Council also monitors the time taken to process referrals, overall timeliness in line with key performance indicators for time to determine applications and timeliness of administrative processes that support development assessment.

However, Northern Beaches Council is not formally monitoring the assessment report quality outcomes and does not have key performance indicators for the quality of development application assessments. Monitoring assessment quality would help Northern Beaches Council have a greater level of assurance that the approach taken by assessing officers is consistent, compliant and meets management's preferred approach.

Northern Beaches Council does not undertake formal, systematic and random auditing of completed applications. Random auditing or review of applications would help Northern Beaches Council to understand the quality, compliance against legislative obligations, and probity within assessment and determination process to inform their processes and approach to continuous improvement. Instead, the Council advised it relies on a range of other quality control processes, including:

- peer or manager reviews
- provisions and expectations set out in staff performance and improvement plans
- regular check ins with managers and staff on development applications that are experiencing delays
- mentoring and coaching of junior staff.

3.5 Supporting the Northern Beaches Local Planning Panel to determine development applications

Northern Beaches Council has established processes to meet statutory and administrative requirements to provide secretariat and other support

Local Planning Panel Policies and Procedures require that councils provide secretariat and other support to local planning panels, including: recruitment of expert panel members from a pool of candidates vetted by DPE, recruitment of community panel members, provision of information, recording of meeting minutes, organisation of meetings including site visits, and notifying and exhibiting applications that would be considered by the planning panel.

Northern Beaches Council has established processes to meet these requirements. The Council has developed templates and instructions for supporting the panels.

The Council has assigned responsibility for supporting the panel at both the Executive Manager level who works closely with Panel Chairs to facilitate panel proceedings and panel member appointments, and at the Development Support Officer level who provides administrative support to the Panel.

Northern Beaches Council advised and we observed that Council's Local Planning Panel secretariat, or planners responsible for the assessment report can respond to requests from the Panel for further information or support if any documents are missing. Council officers are invited to attend planning panel meetings to provide expert advice, including in relation to the veracity of the arguments or supporting evidence within the assessment report.

We observed a meeting of the Northern Beaches Local Planning Panel and noted that the secretariat support was provided in line with requirements. For example, we observed effective management or appearances from notified/impacted residents, drafting and amending of conditions, provision of information and supporting site visits.

Northern Beaches Council has processes to ensure that development applications required to be referred to a planning panel are identified and monitored

Northern Beaches Council has processes in place to identify development applications required to be referred to an independent planning panel. The Council uses a 'checklist' on lodgement of a development application to confirm whether it should be referred to the panel based on the content of supporting information – for example, whether the application requests a contravention of a development standard, or is 'sensitive development'.

Council planners assessing applications will also perform a check once the notification period is closed to confirm whether the number of submissions warrants referral to the local planning panel. This process is documented and built into the Council's electronic development assessment tool, and forms a key component of the assessment report.

The Council also supports the Chair of the Northern Beaches Local Planning Panel to monitor the upcoming applications that will require panel determination.

Northern Beaches Council assists Local Planning Panel Chairs to manage conflicts of interest through documenting and publishing declarations of interest

Management of the planning panel members' conflicts of interest is the responsibility of the Local Planning Panel Chair. Northern Beaches Council retains and publishes annual planning panel member pecuniary interest disclosure returns and each panel meeting record declares whether any panel members have disclosed an interest or have made a nil interest declaration.

The Council advised it also assists in managing conflicts of interest by providing advanced notice of the development applications that are planned to be considered for determination, and by raising any potential conflicts of interest issues with the Chair so the issue can be managed.

Northern Beaches Council has met requirements to document planning panel decisions

Northern Beaches Council has met requirements to document Northern Beaches Local Planning Panel decisions. Decisions of the planning panel and minutes from the meeting are reported on the Council's website. Reasons for determination and conditions of consent are clearly outlined and included in minutes from planning panel meetings, and the voting record of the panel is also outlined within the minutes.

We reviewed documentation available on the Northern Beaches Local Planning Panel website for a sample of development applications and found a record of the panel's decision and a recording or transcript of the panel meeting was available for all applications within the sample.

4. The Hills Shire Council

4.1 Governance, risk management and internal controls for assessment and determination of development applications

The Hills Shire Council has established clear roles, responsibilities and delegations for development application assessment and determination

The Hills Shire Council clearly documents roles, responsibilities and instruments of delegation for development assessment related activity including assessment and determination development applications, as well as team management functions such as ability to allocate applications to staff for assessment.

The Hills Shire Council uses team structures and management reporting lines as the principal governance arrangements for managing how its staff assess and determine most development applications. The Council's teams are divided into two main areas 'Subdivision and Certification' and 'Development Assessment' which it advises enables efficient consideration of applications.

The Council also uses a 'fast track' arrangement for certain categories of development applications including pergolas, carports, decks, pools, home businesses or straightforward tenancy occupations – which aligns with suggested arrangements within DPE's 'Development Assessment: Best Practice Guide for Councils'.

The Hills Shire Council has implemented additional governance for some significant development applications

Additional governance arrangements are in place for development applications The Hills Shire Council has identified as significant but do not meet criteria for referral to the Local Planning Panel. Such applications are referred on to the Council's 'Development Assessment Unit (DAU)', which has delegated authority to determine these applications, and its members include managers and executive members from within the Development and Compliance Team.

Significant development applications are defined under the Council's delegations and include:

- development applications recommended for refusal (except those based on insufficient information)
- applications with variations to DCP standards and where more than one objection has been received
- applications to modify consents and with any submissions
- applications seeking a variation to a LEP or SEPP standard of between seven per cent and ten per cent
- applications referred under the Group Manager's discretion – for example, due to the nature of the use or the strength of an objection.

This intermediary panel arrangement is not mandatory under legislation, but the Council advised that the panel adds an additional level of oversight and greater scrutiny to the assessment and determination of development applications in The Hills Shire Council. The agenda and minutes of DAU meetings are transparently documented on The Hills Shire Council's website.

Our review of a sample of completed development applications from The Hills Shire Council found that applications determined by council staff under delegated authority, or the DAU were assessed and determined in compliance with the Council's instruments of delegation.

The Hills Shire Council has identified development assessment related risks and has a comprehensive approach to respond to such risks

The Hills Shire Council has a comprehensive approach to managing development assessment-related risks. Accountability for risk management is set out under an Enterprise Risk Management Framework and all managers are responsible and accountable for managing risks assigned to their team and division.

The Council has identified risks relevant to development assessment –for example, an operational risk related to failure to complete assessments of development applications within statutory requirements – and has identified controls to respond to these risks. The Council has also implemented risk registers specific to teams responsible for development assessment with risks and controls clearly assigned to managers. Risk is a standing item for discussion in manager meetings, as well as team meetings.

The Hills Shire Council has undertaken regular internal audits to assess risks related to managing development assessments

The Hills Shire Council carried out internal audits of development assessments in 2012, 2015 and 2018. These included a review of samples of development applications to check compliance with statutory obligations.

The Council's internal audit function also reviews how Council is placed against risks and findings from relevant independent integrity agency reports, such as ICAC and the Audit Office of New South Wales. For example, it completed a risk assessment of the development assessments function within council against the findings of the Audit Office of New South Wales 2019 performance audit on pre-lodgement and lodgement stages in Randwick and Camden Councils.

The Hills Shire Council has identified and responded to risks relating to recruitment and retention of planning officers

Planning skills shortages have impacted the NSW planning system over the period of review. The Council advised us that this issue is particularly acute within its planning teams, and elevated due to the throughput and case load assigned to its planners. The Hills Shire Council has identified workforce planning, including recruitment, retention, and resource management as a strategic and operational risk. In response to these risks, the Council advised they have used contractors or consultant planners more frequently in the past two years.

The Council also advised that in response to employee turnover they have had to undertake ongoing recruitment of qualified staff over the period of review, and have replaced some senior planner vacancies with graduate planners. This creates some risks including relying on staff with less experience, and less knowledge of Council's approach to assessing development applications.

The Council advised that to reduce this risk, peer reviews of assessments by graduate planners are more thorough and graduate planners are given more coaching and support.

4.2 Responding to the risk of conflicts of interest

The Hills Shire Council manages conflicts of interest for those involved in assessing and determining development applications through provisions under its Code of Conduct

The Hills Shire Council has adopted a Code of Conduct consistent with the Model Code of Conduct. Under the Code of Conduct, Council requires 'designated staff' - including those exercising planning functions - to make annual pecuniary interests disclosures.

The Hills Shire Council maintains a register of 'designated persons' pecuniary interest returns which the Council updates in compliance with Code of Conduct requirements and can be made available to the public on request. The Council could strengthen the transparency around these returns, as the register published on the Council website has not been updated since 2018–19.

In addition to the annual disclosures, the Council also requires staff to identify and appropriately manage any non-pecuniary interests, including as any real, potential or perceived interests arise.

Under this approach, the onus is on the staff member to identify, disclose in writing to the manager and follow any actions imposed to manage the conflict.

The Hills Shire Council does not apply any additional requirements to manage conflicts of interest for development assessments, but recently communicated a reminder to its planning staff about the significance of complying with the Model Code of Conduct requirements. All staff acknowledged the reminder.

The Hills Shire Council have processes and procedures to receive and respond to complaints about alleged conflicts of interest or improper influence. The procedures assign accountability for responding to complaints and actions to manage substantiated complaints to the General Manager, who has discretion to determine the management response.

The Council also has a public interest disclosure policy that provides for complainants to make protected disclosures. The Council advised this framework provides an avenue for planning staff to report any misconduct or improper influence. The Council records complaints centrally, and can monitor whether complaints are related to development applications or Code of Conduct complaints. The Council advised that managers are responsible for managing issues surrounding development application complaints, and complaints or issues are discussed and shared during manager and team meetings.

The Hills Shire Council does not require staff to disclose any conflicts of interest in development application assessment reports

The Hills Shire Council does not require planners to make a statement about whether they have any conflict of interest in assessment reports. The Council advised that under its Code of Conduct, staff are required to declare any conflicts of interest to their manager at which point the staff would be excluded from the assessment and determination process.

An absence of such a declaration in assessment reports reduces transparency to approving managers and determining bodies that all real, potential or perceived conflicts of interest have been considered and acquitted in the assessment and determination process.

4.3 Processes and procedures to ensure compliance with relevant legislation, regulations and other guidance

The Hills Shire Council has assessed and determined development applications in compliance with legislation, regulations, council policy and other guidance

Our review of a sample of development applications completed from 1 July 2019 to 30 June 2021 indicated that The Hills Shire Council had undertaken assessments that were compliant with legislation, regulation and other guidance. The review found:

- assessments were carried out in compliance with legislative provisions for consideration of environmental, social and economic impacts
- notification and exhibition requirements were met
- Clause 4.6 variations requests were adequately considered and acquitted
- submissions were considered and acquitted
- determination decisions were clearly documented and objectors and interested parties were notified
- modification applications and review applications were appropriately assessed and determined
- requirements to refer certain development applications on to independent planning panels were met.

The Hills Shire Council requires determination approval from a manager one level above or peer review of assessments prior to determination. Our review of a sample of completed development applications also found that the Council had determined all applications in line with appropriate delegated authority.

The Hills Shire Council has a consolidated, comprehensive policy and procedure manual for assessment and determination

DPE's 'Development Assessment: Best Practice Guide for Councils' recommends that councils adopt standard processes and procedures. The Hills Shire Council has a consolidated, comprehensive policy and procedure manual for development assessment. The manual outlines a detailed explanation of the procedures, processes and functions performed by the development assessments team. It has been regularly updated over the period of review.

The Hills Shire Council's procedure manual outlines clear and comprehensive processes for assessment and determination, including requirements for a 'peer review' or review by a manager.

Having a consolidated policy and procedure manual promotes consistency and quality of assessments and provides for team members to have ready access to management's preferred approach to managing the assessment and determination of development applications.

The Hills Shire Council has established templates to guide planners through relevant considerations required by legislation, regulations, and other guidance

In addition to the policy and procedure manual, The Hills Shire Council has developed a comprehensive set of templates and checklists to ensure assessment of development applications is compliant with legislation, regulations and other guidance. The Council has also developed a procedure to support compliant consideration of subdivision development applications.

Council planning officers must complete a 'delegated authority sheet' template that assists them to assess a development application and must also complete 'site visit checklists' to link their site notes to relevant considerations for assessment.

Standard templates help to ensure management's preferred approach is understood and applied consistently.

The Hills Shire Council has established processes to monitor updates to legislation and other requirements

The Hills Shire Council has established an effective process for monitoring updates and changes to legislation and other planning instruments and has implemented required changes to policies, procedures and templates:

- The Council's strategic planning team routinely monitors changes to legislation and planning instruments and the development assessment team drafts and implements necessary changes to planning processes and templates based on those updates.
- Principal planners identify gaps or inefficiencies in existing processes and templates and take carriage of the process of drafting and implementation of changes to address them.
- Changes are identified and implemented in a timely manner, and consultation occurs prior to any changes to the systems and templates planners rely on to assess development applications.
- The Council notifies councillors and management of planning policy changes.

Accurately monitoring changes to provisions and requirements helps to ensure that council staff are aware of recent changes and are assessing applications in compliance with these changes.

The Hills Shire Council requires its staff meet quality standards but is not systematically monitoring compliance and quality of assessments to drive a consistent approach

The Hills Shire Council staff and managers advised that peer review and manager-review processes should identify non-compliance or improvement opportunities. For example, where an assessment does not meet requirements or a judgement was incorrect and it was material to the assessment or recommendations made by a planner, an assessment report would be sent back to the planner to address the error or re-evaluation.

Formal records of any required edits or changes are noted within the Council's document management system but are not systematically monitored. Monitoring trends in any required report changes could assist the Council to identify common areas of improvement required and support identification of training needs.

The Council advised that any identified gaps in the quality of assessment reports are managed by reviewing managers, primarily through informal feedback to junior planners or through performance management processes.

Our review of a sample of development applications completed from 1 July 2019 to 30 June 2021 did not indicate instances of quality gaps reported by reviewing managers, as no assessment reports were sent back to planners from management due to incorrect analysis or conclusions or identified non-compliance.

Team governance supports distribution of key messages, lessons learned, updates to legislation, recommended interpretations, and processes

The Hills Shire Council use a range of meetings focused on team administration, risk management, priorities and objectives and planning-specific matters to promote key messages and lessons learned. Minutes from team meetings indicated that they were well attended, and common items discussed included updates to legislation, changes to practice and process, risk management, and current court matters.

Staff advised these meetings support them to raise complex or novel matters for consideration and oversight by management and valued the role they played in forming assessments and driving consistency.

The Hills Shire Council has adequately documented development application decisions and evidence

Keeping accurate and comprehensive records assists council officers to demonstrate that they have acted within established rules and made decisions in the public interest.

Across our sample review of completed development applications, The Hills Shire Council met requirements to publish the outcome of development applications determined by council staff under delegation and the DAU, and had complied with requirements to notify objectors or interested parties. Notices of determination, relevant meeting records and voting outcomes were posted on The Hills Shire Council's Development Tracker website, and reasons for refusal and conditions are clearly expressed within such notices.

While the Council has met requirements to document development application consent outcomes, it does not publish assessment reports. Publishing assessment reports is not currently required under planning legislation or Council policy but would provide an extra layer of transparency and assurance to the public.

The Council advised that applicants could request access to assessment reports under GIPA procedures. It also advised that it uses informal communication with interested parties to discuss elements of assessment reports to ensure that any queries about reasons underpinning assessment outcomes are transparent.

The Council advised that, while it does not regularly monitor the number of GIPA requests for assessment reports, such requests are not frequent, and this indicates there is limited demand that assessment reports should be published.

4.4 Processes to deliver consistent, quality assessments of development applications

The Hills Shire Council comprehensively record training undertaken by their employees

The Hills Shire Council maintains a comprehensive training register that clearly indicates relevant training staff have attended across the period of review. Planning staff have attended relevant courses provided by DPE and the Planning Institute of Australia over the audit period of review, and this has been captured within the register. The Council is planning to build on its approach to monitoring training by assigning key performance indicators for training hours, and position-specific modules.

As the Council has recruited junior and graduate planning officers to replace senior planners that have left the organisation over the period of review, it is important that adequate training and mentoring is provided to support professional development.

Accurately recording and monitoring training completion supports the Council to ensure employees' training needs are identified and met and reduces the risk of capability gaps.

The Hills Shire Council has quality review procedures

The Hills Shire Council uses a peer review process to ensure that development applications are reviewed by an officer one level above or a peer at the same grade. Development applications that are required to be considered by the Local Planning Panel or Sydney Central City Planning Panel are further escalated to managers for review prior to issuing to the Panels.

Our review of a sample of development applications indicated that management oversight was carried out for development applications assessed and determined under delegated authority.

Peer review processes are compliant with recommended practices under DPE's 'Development Assessment: Best Practice Guide for Councils'. In addition to supporting quality review, they also ensure adequate segregation of duties and that assessing officers cannot determine the development applications they have assessed.

The Hills Shire Council has processes to verify and validate estimated cost of works information provided by applicants

The Hills Shire Council has processes to verify and validate estimated cost of works. These processes include requirements for applicants to submit a quantity surveyor report validating the cost of works where the cost is above \$3 million as per DPE's Planning Circular PS13-002. The Hills Shire Council also advised that its planning staff use professional judgement and experience to check or scrutinise cost of works.

Development applications and all documents provided in support of the development applications are checked ahead of formal lodgement and acceptance by the Council and after allocation to an assessing officer. That officer is also accountable for cross-checking completeness and accuracy of the information relied on to support their work. The Hills Shire Council's development application assessment policy and procedure outlines requirements for validation and checking of information.

The Hills Shire Council is monitoring workload and throughput but is not monitoring quality outcomes

NSW Government planning targets for councils require that councils determine applications within 40 days, and several funding programs require that Councils monitor and report to DPE to demonstrate that targets are being met. The Hills Shire Council is effectively monitoring and reporting against these targets.

However, the Council does not formally monitor quality outcomes and does not have key performance indicators for the quality of development applications assessments. Monitoring development application assessment quality would provide the Council with a greater level of assurance that the approach taken by assessing officers is consistent, compliant and meets management's preferred approach.

The Hills Shire Council development team is not systematically auditing or reviewing completed development applications

The Hills Shire Council has not undertaken regular management audits or reviews of its assessment reports and determination outcomes. Instead, the Council relies on peer reviews to identify quality issues and to confirm that assessment reports have been completed in compliance with legislative and policy requirements. While the Council retains records of all peer review feedback, it does not track relevant statistics and instead relies on the experience of managers to monitor any overarching trends.

Regularly auditing or reviewing completed assessments would help the Council to understand development application assessment quality, including whether peer reviews had appropriately picked up any quality issues and to understand compliance against legislative obligations for completed development applications and provides for greater probity of the development application process to inform continuous improvement initiatives.

4.5 Supporting The Hills Local Planning Panel to determine development applications

The Hills Shire Council has processes to ensure that development applications required to be referred to a planning panel are identified and monitored

The Hills Shire Council uses one Principal Coordinator to manage its development application allocation process. As part of the initial validation and acceptance check, the Principal Coordinator identifies when a development application is required to be referred to The Hills Local Planning Panel, for example based on the type of development proposed. Assessing officers are responsible for identifying when and how development applications should be escalated to the local planning panel based on the number of submissions.

Planning portal requirements also assist in identification of development applications required for referral, as the application lodgement and acceptance process aims to facilitate early and automated identification of development applications required to go to the panel. However, this process was not in place for the entire period of review.

The Hills Shire Council advised us, and we observed, that the Council's local planning panel secretariat or planners responsible for the assessment report can provide support to The Hills Local Planning Panel should documents be missing. Council officers are invited to attend The Hills Local Planning Panel meetings to provide expert advice, including as to the veracity of the arguments or supporting evidence to the development application.

The Hills Shire Council support the Panel Chair to monitor the upcoming matters that will require panel determination and any legal matters concerning the panel.

The Hills Shire Council has established processes to meet statutory and administrative requirements to provide secretariat and other support

Local Planning Panel Policies and Procedures require that councils provide secretariat and other support to local planning panels, including: recruitment of expert panel members from a pool of candidates vetted by DPE, recruitment of community panel members, provision of information, recording of meeting minutes, organisation of meetings including site visits, and notifying and exhibiting development applications that would be considered by the Planning Panel.

The Hills Shire Council have established processes to meet these requirements. Secretariat responsibilities are assigned to and clearly outlined in role descriptions for council administrative staff and are also outlined within the Council's Local Planning Panel operation guidelines. The Council has also established processes monitoring the performance of the panel as required under section 2.20 of the *Environmental Planning and Assessment Act 1979*.

We observed a current meeting of the The Hills Local Planning Panel and noted that the secretariat support was provided in line with requirements. For example, we observed effective management or appearances from notified/impacted residents, live drafting and amending of conditions, provision of information and supporting site visits.

The Hills Shire Council has met requirements to support the Local Planning Panel Chair to manage conflicts of interest through documenting and publishing declarations of interest

Management of planning panel members' conflicts of interest is the responsibility of the Local Planning Panel Chair. The Hills Shire Council assist to obtain and document planning panel members' declarations of interest. To allow time for the panel to identify conflicts of interest, Council provides the panel with a draft list of development applications two weeks prior to the meeting which includes details of the applicant and consultants.

The Hills Local Planning Panel conflict of interest documentation is compliant with the Code of Conduct for local planning panel members and the Council's Local Planning Panel procedures, as:

- the Council maintains planning panel member pecuniary interest disclosure returns
- the Council retains a list of all disclosures raised in panel meetings
- each panel meeting record declares whether any panel members have disclosed an interest and the relevant details.

The Hills Shire Council has met requirements to document local planning panel decisions

The Hills Shire Council has met requirements to document and publish decisions and meeting records for development applications determined by The Hills Shire Local Planning Panel.

We reviewed planning panel documentation available on The Hills Shire Local Planning Panel website for a sample of development applications referred to the Local Planning Panel for determination each month within the audit period of review. We found that minutes from the panel meetings were made available in a timely manner, clearly outlined any declarations of interests, the panel's decision and reasons supporting the decision, how community views were considered in decision-making and the voting outcome.

5. Supporting regional planning panels

5.1 Secretariat and other support processes

DPE has established effective processes to meet its secretariat and other support requirements

DPE maintains the Regional Planning Panel Operational Procedures ('Regional Planning Panel Procedures'). It has regularly updated the Regional Planning Panel Procedures to reflect legislative and policy changes to the role and function of the Sydney and regional planning panels (regional planning panels). The procedures outline the responsibilities of DPE to, among other things:

- schedule panel meetings, briefings and site visits including notification to affected owners or residents, and to arrange travel for panel members
- prepare and issue agendas and business papers and preparing records of decisions (with assistance from council)
- maintain adequate records.

DPE has detailed procedure manuals, checklists, and templates for many of these responsibilities, and has also developed templates for many of its interactions with other entities, including emails to inform councils, applicants and objectors of Panel decisions, calendar invites for Panel Chairs and applicants for briefings and Panel meetings, and resolutions of Panels.

However, DPE's large number of manuals, checklists, and templates could be consolidated further to ensure consistency in approach and that secretariat support officers have clear guidance to ensure that all necessary actions are undertaken.

We reviewed a sample of meeting records from the regional planning panels in scope for the audit and noted that records of decisions, meeting records, assessment reports, notices of meetings and recordings were available.

DPE could do more to facilitate information sharing and reporting between panels to promote consistency

Panel Chairs and councils interviewed as part of the audit advised they would benefit from DPE providing more comparative performance reporting, guidelines, and information sharing between Panels to promote consistency and sharing of good practice:

- reporting – information comparing development application volumes across panels and across councils,
- guidelines – explanations and templates for legislation changes
- information sharing – sharing Panel process improvements between panels and between councils, and organising more information sharing events for panel members.

DPE advised that in recent years, due to staff turnover, impacts of the COVID-19 pandemic and other reform priorities, it has been unable to provide this additional support. For example, it has been unable to provide the panels with regular training and information and practice sharing opportunities. While these functions are not required by policy or procedures, they may improve the consistency of council and panel processes.

DPE does not formally measure the quality of secretariat support it provides to independent planning panels

DPE has key performance indicators for the support it provides to panels, but these indicators are focused on the time it takes panels to assess development applications for regionally significant development and do not directly relate to the quality or adequacy of support provided to the panels. As a result, DPE is not able to measure the quality of the support it provides and to identify areas for improvement.

However, Panel Chairs interviewed as part of the audit advised they are broadly satisfied with the support provided by DPE in relation to its statutory responsibilities and reported that DPE was responsive to suggestions for improvements.

Internal reviews have identified opportunities to improve delivery and governance, but DPE has not fully implemented the review recommendations

In August 2020, DPE was set a target to reduce the average assessment time for development applications for regionally significant development from 366 days to 275 days by June 2023. A key initiative under this target involved providing DPE with additional funding to restructure its planning panels secretariat support team to include a Director and four case managers. This aimed to increase the level of senior support to panels and identify and implement process improvements.

Other initiatives included reducing the number of outstanding legacy development applications, working with councils and applicants to improve the panel determination process, and upgrading the NSW Planning Portal to improve performance related to regionally significant developments.

Recent internal reviews of the regionally significant development team undertaken to inform strategies to meet the aims of the additional funding have identified opportunities to improve delivery and governance arrangements, including those that support planning panels. Such reviews focused primarily on opportunities to:

- resource and structure its team more efficiently – for example by clear assignment of team to support panels and aligned roles and responsibilities
- standardise procedures that govern ways of working
- implement a business improvement team to promote continuous improvement.

DPE advised that it has been unable to fully implement its planned restructured operating model, due to staff turnover and efforts to support multiple NSW Government-led legislative changes, process reforms and pilot programs – for example, the Regionally Significant Development Faster Assessments pilot.

Councils and DPE could do more to ensure all relevant development applications are referred to regional planning panels

Development applications are referred to a Sydney or Regional Planning Panel when they meet criteria for independent determination, which includes:

- a capital investment value (CIV) over \$30 million
- and/or a CIV above \$5 million and Council or the NSW Government is the applicant.

Operational procedures for Sydney and regional planning panels outline DPE and councils' responsibilities in supporting the panels. The procedures assign responsibility to councils for identifying development applications that meet the regionally significant development and DPE then referring these development applications to Sydney or regional planning panels.

In 2019, DPE mandated use of the NSW Planning Portal for all development applications by the end of 2020–21. The NSW Planning Portal and councils' internal electronic development application management systems can identify when a development application is required to be assessed by a panel based on the criteria of CIV or regionally significant development characteristics.

DPE could use the NSW Planning Portal to review each Council's list of development applications and query councils on whether development applications should be sent to panels, but it advised that it is not performing these checks and that each individual council is responsible for ensuring all development applications are referred appropriately. DPE advised that such a process would be administratively burdensome due to the large number of development applications and councils.

We reviewed data on estimated capital investment values of development applications lodged and determined between 2019 and 2021 for the three councils subject to this audit and observed that all development applications that should have been referred based on the criteria of CIV (over \$30 million) were appropriately referred to the relevant panel.

5.2 Supporting management of conflicts of interest

DPE supports Panel Chairs to ensure that real, perceived or potential conflicts of interest for planning panel members have been considered for development applications

Under the DPE's Panel Code of Conduct, panel members are required to provide annual pecuniary interest declarations to DPE and provide declarations of any conflicts of interest to Panel Chairs for each development application referred to the panel for determination.

DPE performs two key functions that support the management of real, perceived or potential conflicts of interest for planning panel proceedings:

- general interest disclosures – DPE organises for initial identification of pecuniary interests by potential panel members during recruitment, and organises for the completion and documentation of annual pecuniary interest disclosures
- specific interest disclosures – DPE documents declaration of interests made by panel members and as managed by the Panel Chair on a case by case basis, and maintains a register of all declared interests for planning panel matters.

Our review of a sample of panel documentation from the panels in scope for this audit indicated that conflict of interest declarations were completed by panel members as they arose, and that DPE had adequately documented and published declarations on the NSW Planning Portal.

Regional planning Panel Chairs are responsible for obtaining declarations⁸ of conflicts of interest for each panel matter. Panel Chairs interviewed as part of the audit advised us that, as per the Panel Code of Conduct, any interests declared on an annual basis do not identify non-pecuniary interests, and there is an onus on the panel members to disclose these when and as they arise in individual consideration of development applications.

Panel Chairs are responsible for reviewing any declarations and managing any conflicts. Declarations made during a meeting or briefing must include any management measures, responses from the Panel member, and the Panel Chair's decision and reasons, and must be made available online (on the NSW Planning Portal) within seven days of the Panel meeting or briefing.

DPE did not retain annual declarations of pecuniary interests for three of 47 in-scope panel members for part of the audit period

DPE's Code of Conduct for Regional Planning Panels requires that panel members to complete and sign an annual declaration of pecuniary interests.

DPE was not able to provide annual declarations for three of the 47 regional panel members that could have sat on an in-scope regional panel for the period 2019–20. DPE was able to provide annual disclosures for these panel members from previous or subsequent years.

⁸ Verbal declarations must be recorded in writing.

DPE's complaint lodgement process could be more user-friendly and transparent

Panel operational procedures outline that complaints about the panels are to be investigated and managed in accordance with DPE's complaints management policy. Lodged complaints are tracked through DPE's organisation-wide complaints management system. DPE's complaints register includes case number, date received, relevant panel, date closed, and a detailed description of the complaint and the outcome.

While DPE advises it has addressed complaints in line with the policy, the user experience and transparency of the complaints management process can be improved:

- there is inconsistency in formal guidance about where applicants should lodge complaints (panel secretariat or department more broadly)
- the online form which DPE advises is the preferred forum to lodge complaints is hard to find among other information provided about planning panels.

Two of three complaints about planning panels were not resolved within the one-month timeframe set by the DPE complaints policy. DPE advised its increased turnover has led to some complaints not being addressed in a timely manner.

5.3 Documenting panel decisions

DPE has effectively documented and made planning panel decisions available to all stakeholders

Under Regional Planning Panel Operational Procedures, DPE is responsible for preparing draft written records of a panel meeting, briefing, or site visit (with assistance from council). Draft written records are provided to panel members who participated in the relevant panel meeting for corrections, and then provided to the Panel Chair for confirmation. The confirmed, signed, written record must be available online (on the NSW Planning Portal) within seven days of the panel meeting or briefing.

A review of a sample of all meetings held for in-scope panels over the audit period of review found that panel meetings had relevant documentation and publication of meeting records, and that council assessment reports and records of panel decisions available on the NSW Planning Panel.

Where there are less than ten unique submissions, the Regional Planning Panel Operational Procedures permit a determination by circulation of papers. In this case, there is no requirement to hold a public meeting.

We reviewed a sample of all meetings held over the audit period of review and found that panel determinations made by circulation of paper clearly marked this occurrence, and records of decisions were available on the NSW Planning Portal.

Section two

Appendices

Appendix one – Response from agencies

Response from Byron Shire Council

Page 1 of 1

#E2022/121248
Your ref: D2224116/PA6690



7 December 2022

Margaret Crawford
Auditor-General for New South Wales
by email: [REDACTED]

Dear Ms Crawford

Performance Audit - Development applications: assessment and determination stages

Thank you for providing the NSW Audit Office final report on Development applications: assessment and determination. Council appreciates the opportunity to provide a response to be included in the published report.

Council has considered and accepts each of the recommendations. We have already implemented some of these changes and will work towards finalising those remaining by June 2023.

The response also provides background information in relation to the audit reporting period. Between July 2019 and June 2021 there were significant challenges and changes that impacted our development assessment processes that should be considered with the final report.

Please do not hesitate to contact me if you have any further questions.

Your sincerely

A handwritten signature in black ink, appearing to read "Mark Arnold".

Mark Arnold
General Manager

Enc. Council's response to Audit (#E2022/121251)

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Traditional home of the Bundjalung People

Response to Performance Audit



Background

Continual improvement is important to Council. The opportunity to have our development assessment processes reviewed through this audit is welcome. It gave Council the opportunity to further finetune processes and procedures and consider more recent changes that have been introduced quickly either by legislative requirements or other by circumstances outside Council's control, such as the Covid 19 response.

The reporting period was between July 2019 and June 2021. Some of these changes include:

- **Manual to electronic lodgement and assessment processes**

During the period, there was a rapid transition from a hardcopy /paper-based development application (DA) lodgement and assessment process to support a completely electronic process.

The implementation of these electronic processes was fast-tracked by Covid 19 restrictions and working from home arrangements. Lockdowns also provided challenges with state border closures preventing key planning staff travelling from Queensland to NSW to work for extended periods.

During the second half of 2020 maintaining hardcopy files became unworkable and were phased out when staff were unable to attend the office. From January 2021 all hardcopy files were transitioned to digital versions.

- **Introduction of the NSW Planning Portal**

Council was an early adopter of the NSW Planning Portal ('the Portal') prior to it being mandated by the NSW Government for all Councils in 2020.

At the beginning of the audit review period, on 1 July 2019 Council opened the Portal as a non-mandatory option for lodging DAs.

It was planned to phase out hardcopy DA lodgements by 1 July 2020. But due to Covid 19 public health orders and the closure of the customer service centre we were forced to transition in March 2020. While it had its challenges, it provided the community the ability to continue submitting DAs and our planners to be able to assess them during the lockdown and subsequent Queensland/NSW border closures.

The Portal has continued to evolve rapidly with major changes being regularly introduced by the NSW Government. Our processes are continually being reviewed and new procedures introduced as a result.

- **Impacts of Covid 19:**

From March 2020 the response to Covid 19 provided many challenges. Over the next 18 months, the impacts of the measures were felt in many ways that had direct impact on the ability to continue business-as-usual in development assessment.

Some of these impacts include

- Lockdowns
- Transitioning to working electronically from home
- Legislation changes to support the Governments Covid 19 response

- Border closures preventing Queensland based staff from entering NSW for extended periods.
- Government incentives to stimulate the economy (impacts explained below)
- Regional migration (impacts explained below)

- **Increase in development**

As a consequence of measures introduced to assist with the impacts of Covid 19, there was a sharp increase in development in the Byron Shire over the reporting period.

This included

- Increased migration from locked down cities to regional areas.
- Increased property prices and major development activity.
- Introduction of the Federal Government 'HomeBuilder' program to encourage construction of new builds or renovations.
- Inability to travel freely, both nationally and internationally increased residential development.

The result of these impacts placed increased pressure on development staff by creating an increase in development applications. The increased workload seen staff assessing up to 80 DAs at a time during the period, all while dealing with the Covid 19 challenges outlined above.

As an indication of the impact of this increase on staff and processing of DAs, the [Department of Planning Best Practice Guide](#) recommends "...assessing officers are capable of achieving the 40 day assessment timeframe when they manage up to 25 relatively straightforward DAs at any one time. Where officers have more than 25 relatively straightforward DAs, and/or where a significant proportion of the applications are complex, assessment timeframes increase proportionally."

The increase in DAs continued through into 2022.

In closing, during a time of enormous change and pressure, staff were able to continue assessing development applications to meet the community expectations and should be congratulated on their performance. The audit outcomes are an indication of the significant changes and challenges experienced during unprecedented times.

The recommendations and comments from the audit will be used to improve our systems and processes.

Conclusions

- Byron Shire Council has established clear roles, responsibilities and delegations for assessment and determination of development applications. However, the effectiveness of the Council's approach is limited by gaps in governance, risk management and internal controls.

Byron Shire Council has established clear roles, responsibilities and delegations for assessment and determination of development applications. However, The Council does not have a consolidated policy and procedure for development assessment; has not adequately followed up on the outcomes of internal reviews that identified opportunities to strengthen its assessment and determination procedures and approach; and has not demonstrated that it has managed relevant risks effectively.

The Council has not ensured that delegations have been consistently followed in the assessment of development applications.

Response:

Council has developed procedures for the lodgement, assessment, and determination of development applications. While these procedures are not within a consolidated form, staff are aware of the processes and senior staff provide guidance where necessary.

These procedures have been developed over a period of increased workload and significant change. They will be consolidated into a standard operating procedure as recommended.

- Byron Shire Council's approach to managing conflicts of interest in development assessments does not provide transparency over potential conflicts of interest.

Byron Shire Council manages the risk of conflicts of interest for development assessment under its Code of Conduct. The Council has also implemented a separate policy that details additional requirements for managing conflicts of interest relevant to the development assessment process but has not regularly updated this policy and requirements between it and the Code of Conduct have not been aligned. This creates a risk that planning staff may be following inconsistent or outdated advice in managing conflicts of interest.

Across the period of review, the Council did not require staff to provide a disclosure of interest for individual development applications to be contained within assessment reports. Including these disclosures would increase transparency and ensure that staff are sufficiently considering any conflicts of interest relevant to each separate assessment process.

Response:

Council has a code of conduct that applies to all members of staff. It is based on the Model Code of Conduct for Local Councils in NSW which has been prescribed under the Local Government (General) Regulation 2021. It is the principal document used by staff to manage conflicts of interest. Separate to this, and to minimise the potential for conflicts of interest arising from assessment of development applications, the Management of Conflicts of Interest in Development Matters Procedure was developed to support the Code of Conduct.

Staff are aware of both the policy and procedure, and act accordingly. As a result of the Audit, a declaration has been included in the assessment template of each development application (including modifications and reviews) to endorse this.

- Byron Shire Council has processes that promote compliance with legislation, regulation and government policy, but can improve how it undertakes some aspects of these that would ensure transparency, quality and consistency.

Our review of a sample of completed development applications from the Council indicated that most assessments were completed in compliance with relevant legislation, regulations, and government guidance, but that there were some

opportunities to improve elements of the assessment process including: transparency of any conflicts of interest involved in the assessment process; ensuring compliance with delegated authority limits; and consideration of modification application provisions.

The Council has established templates to guide planners through relevant assessment considerations required by legislation, regulations, and other guidance. However, it could do more to strengthen its approach to peer or manager review; monitoring legislative changes; and how it monitors the completion of relevant training by planning staff.

Response:

As a result of recommendations from this Audit, Council has made some minor changes to improve transparency, quality, and consistency. These are outlined below in the relevant commentary.

It is however noted the issues raised were of a minor nature and may have been a result of the excessive workloads over the reporting period as outlined in the background information above.

Recommendations:

Council has considered and accepts each of the recommendations. We have already implemented some of these changes and will work towards finalising the remaining recommendations by June 2023.

As a matter of priority, Byron Shire Council should:

Recommendation	Response
1. ensure all delegations for determination of development applications are followed.	Assessment report templates have been amended to provide a means for delegations to be identified.

By June 2023, Byron Shire Council should:

Recommendation	Response
2. finalise and implement a consolidated policies and procedures manual for development assessment	Consolidation of processes and procedures has commenced.
3. strengthen transparency over conflicts of interest within development applications assessment by: <ul style="list-style-type: none"> a. requiring a declaration of any interests to be made within assessment reports b. aligning or consolidating its policies that govern conflicts of interest management c. ensuring Councillors' conflicts of interest declarations are retained in all meetings discussing or considering development applications 	Transparency over conflicts of interest will be resolved as follows: <ul style="list-style-type: none"> a. Development assessment reports now include a declaration that the assessing officer does not have a conflict of interest. b. The <i>Management of Conflicts of Interest in Development Applications Procedure</i> will be reviewed when the Code of Conduct is reviewed to ensure consistency. c. The Planning Review Committee are now required to declare any conflicts of interest in development applications discussed at meetings.
4. strengthen its peer review process to ensure development application assessment reports meet quality and consistency requirements.	The development assessment report template has been updated to minimise future errors.

Commentary

2.1 Governance, risk management and internal controls for development application assessment and determination

Byron Shire Council has established clear roles, responsibilities and delegations for assessment and determination of development applications

Noted.

Byron Shire Council has not effectively ensured that delegations for determining development applications have been followed

As discussed above in the Background information, during the reporting period there were significant pressures placed on development planners. There were 6 applications, from over 1,700 (or 0.4%) whereby there were minor breaches in delegation.

The Director has since undertaken a due diligence review of these approvals and is satisfied that no further action is warranted, nor would the outcome have been different if the correct delegation was applied.

To address this in the future, development assessment reports have been amended to ensure the correct delegations are applied to officer recommendations.

Byron Shire Council does not have a consolidated policy and procedure manual for assessment and determination

Council has developed procedures for the lodgement, assessment, and determination of development applications. While these procedures are not within a consolidated format, staff are aware of them, and senior staff provide guidance where necessary.

A number of these procedures have been developed during the reporting period in response to the significant changes that occurred, such as mandating the Portal due to Covid 19 restrictions and transitioning to a fully electronic lodgement and assessment process.

Council has a suite of templates that also guide this process.

The procedures and templates will be consolidated into a standard operating procedures manual.

Two recent examples of Byron Shire Council's Director in charge of Planning assessing complex development applications did not ensure segregation of duties

The Director did not assess the development applications. The assessment was undertaken by the Major Development Planner, who resigned prior to finalising the DAs. The Director completed the assessment, supported by the Planning Manager and relevant senior engineer, environmental health and ecology officers. Both applications were outside the Director's delegations and required determination by Council and the Northern Regional Planning Panel respectively.

Additionally, the applications were the first major DAs assessed against the Byron Bay Town Centre LEP requirements. There was a need to ensure assessment standards were set for future major development in the town centre. This required a level of seniority and experience in management and assessment of significant development applications. Future DAs will be assessed by senior staff.

Byron Shire Council has not clearly demonstrated how it manages risks and implements controls relevant to development assessment to within accepted tolerances

Council has identified the need to review the current Risk Management System, including the type, rating and actions across the organisation.

The review has been delayed due to Covid and the natural disaster response. It is anticipated this review will be undertaken in the next financial year.

Byron Shire Council has undertaken internal audits of development assessments but has not followed up on the audit outcomes and recommendations

Previous audit recommendations were commenced, but due to restructures and other matters arising within the relevant business areas were not completed.

The most recent audit was undertaken during 2020. Processes within the development assessment area have been revised with the introduction of electronic lodgement and assessment, and the NSW Planning Portal. As such, these processes are not contained within one standard operating procedure but have been developed and are currently in use.

They will be incorporated into a single standard operating manual to be finalised as per the recommendation by June 2023.

Byron Shire Council has identified and responded to risks relating to planning skills shortages

Council continues to experience planning skills shortages and has developed strategies to mitigate the impacts of losing staff during a period of increased development in the Shire.

These temporary strategies include seconding relevant staff from other areas of Council and the use of local consultant planners to assess development applications.

The use of consultant planners to assess development applications where Council may have a pecuniary or non-pecuniary interest has been common practice for a number of years. Consultants are required to make declarations when signing contract agreements at the commencement of their engagement. The majority of planning consultants engaged are local to the area and have relevant knowledge and experience. Most are not undertaking any other work in the area at the same time working for Council.

Byron Shire Council has used non-qualified planning staff to support assessment of development applications

As outlined above, Council has used the secondment of staff from other areas to backfill positions to alleviate planning skills shortages.

While the assertion is that non-qualified planning staff have been used to support assessment of development applications, the officer in question has been employed as a Development Support Officer for a number of years and has undertaken certificate qualifications in planning to develop skills in that role.

The development support role requires extensive knowledge of the planning system, local planning controls and the Shire.

Applications assessed by this officer were of a minor nature, including swimming pools, sheds, carports, etc. The role was to complete a standard template development assessment and refer it to senior staff for review and determination. This officer does not have delegations to determine applications.

The use of an experienced planning support officer was a proactive measure to assist in growing and supporting our existing workforce. It is consistent with our Workforce Plan.

2.2 Managing the risk of conflicts of interest

Byron Shire Council has not aligned its two policies that govern its approach to managing potential conflicts of interest within development assessment

As discussed in the Conclusion commentary above, Council has a code of conduct that applies to all members of staff. Separate to this, and to minimise the potential for conflicts of interest arising from assessment of development

applications, the *Management of Conflicts of Interest in Development Matters Procedure* was developed to support the Code of Conduct. Staff are aware of both the policy and procedure, and act on them accordingly.

As a result of the Audit, a declaration has been included in the assessment template of each development application (including modifications and reviews) to further endorse the Code of Conflict. Additionally, the procedure will be amended so it is regularly reviewed in conjunction with the policy.

Byron Shire Council's complaints management approach does not support systematic monitoring of development assessment complaints

Council has a Customer Request Management (CRM) system to record requests from the community that require an action. Development submissions (ie. as a result of public exhibition) are recorded in the CRM system as they are required to be considered during the assessment of an application.

Complaints in relation to a grievance or dissatisfaction with the assessment of an application are managed by an officer more senior to the assessment officer (ie. team leader, manager or director). The outcome of these complaints is recorded on the development application. Council's Complaints Procedure is currently under review.

Complaints in relation to Code of Conduct matters are managed by Council's Legal Counsel.

Byron Shire Council did not respond to a development application submission that alleged Code of Conduct breaches

The Procedures for the Administration of the Code of Conduct provide, at clause 4.2 that:

The following are not "code of conduct complaints" for the purposes of these procedures:

- a. complaints about the standard or level of service provided by the council or a council official*
- b. complaints that relate solely to the merits of a decision made by the council or a council official or the exercise of a discretion by the council or a council official*
- c. complaints about the policies or procedures of the council*
- d. complaints about the conduct of a council official arising from the exercise of their functions in good faith, whether or not involving error, that would not otherwise constitute a breach of the standards of conduct prescribed under the council's code of conduct.*

The Procedures in clauses 4.4 and 4.5 provide that a Code of Conduct complaint must be made within three months of the alleged conduct occurring or within three months of the complainant becoming aware of the alleged conduct and that a complaint made after three months may only be accepted if the General Manager or their delegate is satisfied that the allegations are serious and compelling grounds exist for the matter to be dealt with under the code of conduct.

The fact that a complainant may title their complaint to be a "Code of Conduct" complaint does not mean that it is, or will be assessed as, a Code of Conduct complaint.

The General Manager must be satisfied when applying the provisions in the Procedures that the complaint is, indeed, a Code of Conduct complaint.

If it is not, then there is no need to refer the complaint to the Office of Local Government.

An aggrieved complainant has the right to escalate the matter to the Office of Local Government or the NSW Ombudsman.

Byron Shire Council has gaps in its procedures to identify and manage conflicts of interest for staff assessing and determining development applications

The Code of Conduct applies to all members of council staff, including Planners. Training is provided during induction and when the policy is reviewed. Staff are also required to acknowledge the Code of Conduct regularly. Should conflicts arise with individual applications, these would be managed by senior staff.

As a result of the Audit, a declaration has been included in the assessment template of each development application (including modifications and reviews) to enforce this.

Byron Shire Councillors have not been required to declare conflicts of interest at meetings that decide whether they should determine a development application

The role of the Planning Review Committee is to review an application and decide if it should be determined by the full Council at an Ordinary (Planning) meeting or if it should be determined under Delegated Authority based on certain set criteria. The minutes of the Planning Review Committee are then reported to Council.

The committee does not have power to determine development applications.

A conflict-of-interest declaration has since been included in the meeting agenda and minutes.

2.3 Processes and procedures to ensure compliance with relevant legislation, regulations and other guidance

Byron Shire Council has assessed and determined most applications in compliance with legislative requirements but can improve how it considers modification applications

The audit revealed a very small number of modification applications where the type of modification application noted differed from the assessment. These were assessed correctly, in accordance with legislation.

The standard assessment template and procedures have been amended to ensure the correct titling of modification applications.

Byron Shire Council has not formalised its approach to monitoring legislative changes

The Landuse Planning Team have informally undertaken this role in the past. This has now been formalised.

Additionally, senior staff within the development assessment area also undertake this role through liaison with Government departments and legal avenues.

Byron Shire Council has adequately documented development application determinations and evidence, but could improve how transparently it communicates assessment outcomes

Council proactively publishes all development application material via the DA Tracker, regardless of the requirement to exhibit them. Determination notices are uploaded when the DA is finalised.

Assessment reports are made available to the public in accordance with Government Information (Public Access) Act 2009 (GIPA) legislation. There is no requirement to upload Assessment Reports within the Environmental Planning and Assessment Act 1979.

Subject to additional resourcing for software solutions, assessment reports may become available in the future.

2.4 Processes to deliver consistent, quality assessments of development applications

Byron Shire Council can strengthen its peer review processes to ensure quality and compliance

The peer review process allows for planners and the senior staff with appropriate delegations to review DAs and seek feedback. Where issues are raised, this feedback is saved within the Development Assessment Report or Council's Electronic Document Management System.

The errors or inconsistencies identified are likely a result of the excessive workloads over the reporting period as outlined in the background information above.

The development assessment report template has been updated to minimise future errors.

Byron Shire Council has processes to verify and validate estimated cost of works information provided by applicants

Noted.

Byron Shire Council is monitoring development application workloads and throughput but is not systematically reviewing the outcomes of assessments

An audit program of development assessment was identified in the 2020 development assessment audit. The program has been delayed due to Covid, increased development application pressures and the natural disaster response.

Byron Shire Council can improve how it documents important elements of its processes to ensure quality and consistency of development applications

Noted, recommendations in relation to minuting staff meetings and centralising staff training will be established.

Response from Northern Beaches Council



northern
beaches
council

29 November 2022

Ms Margaret Crawford
Auditor-General for New South Wales
GPO Box 12
SYDNEY NSW 2001

Email: mail@audit.nsw.gov.au

Our Ref: 2022/749726

Dear Ms Crawford

Development Application Performance Audit – Assessment and Determination

I refer to your letter dated 9 November 2022 and thank you for the opportunity to provide a response to the final performance audit report.

Northern Beaches Council thanks the NSW Audit Office for the opportunity to participate in the Development Application Performance Audit and acknowledges the hard work and professionalism that staff from the NSW Audit Office demonstrated throughout the audit process. We welcome the opportunity the audit provided to benchmark, validate, and further enhance Northern Beaches Council's practices, procedures, systems, and reporting.

Northern Beaches Council being an amalgamated Council has worked hard to implement a robust, transparent, and efficient development assessment system across the three former Councils, whilst maintaining the highest levels of integrity, and continuous improvement being of utmost importance.

I appreciate that the performance audit report has validated our efforts in this regard and welcome the report reflecting Northern Beaches Council's efforts to manage its development assessment and determinations functions within the very complex planning and legislative environment that we operate in, and that the report acknowledges the effectiveness of our governance and internal controls.

The findings of the audit will be reported to Councillors, senior management and the Audit and Risk Improvement Committee.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Ray Brownlee'.

Ray Brownlee PSM
Chief Executive Officer

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Avalon Beach NSW 2107

Response from The Hills Shire Council



THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

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PO Box 7064, Norwest 2153
ABN 25 034 494 656 | DX 9966 Norwest

01 December 2022

Ms Margaret Crawford
Auditor-General for New South Wales
GPO Box 12
SYDNEY NSW 2001

Our Ref: 20428847
Your Ref: D2224118/PA6690

Dear Ms Crawford

Performance Audit – Development applications: assessment and determination stages

Thank you for the opportunity to provide a response on the above audit for incorporation into the published report.

I thank you for the audit and welcome the findings that The Hills Shire Council has established processes to support compliant, effective assessment and determination of development applications. I am pleased your audit has also found that Council has a comprehensive governance and risk management for development assessment that sets out clear roles, responsibilities and delegations.

I have considered the recommendation for The Hills Shire Council that by June 2023 The Hills Shire Council should strengthen transparency over conflicts of interest within individual development assessment processes by requiring a declaration of any interests to be documented within assessment report templates controlled by the Council. I note that this is currently managed through our Code of Conduct under which staff must declare any conflicts of interest to their Manager. Notwithstanding this, the recommendation will be implemented and I acknowledge this will improve the transparency of the process.

Should you have any further enquiries please contact Cameron McKenzie, Group Manager Development & Compliance on [REDACTED] or myself on [REDACTED].

Yours faithfully

A handwritten signature in black ink, appearing to read 'Michael Edgar'.

Michael Edgar
GENERAL MANAGER

www.thehills.nsw.gov.au | 9843 0555

Response from Department of Planning and Environment

Department of Planning and Environment



Our ref: IRF22/4303

Your ref: D2224119/PA6690

Ms Margaret Crawford
Auditor-General for New South Wales

Via email: mail@audit.nsw.gov.au

Subject: Performance Audit – Development applications: assessment and determination stages

Margaret
Dear Ms Crawford

Thank you for inviting a formal response on behalf of the Department of Planning and Environment regarding the Performance Audit - Development applications: assessment and determination stages.

I welcome the performance audit's recommendations, and the Department supports all recommendations directed to the Department. Please find attached the Department of Planning and Environment's response to each of the four recommendations made in the report. Your audit recommendations will contribute to the continued improvement of the Department's support to the Planning Panels as transparent and independent expert planning bodies.

I thank the audit team for the significant work they have undertaken and their professional and collaborative approach to working with the Department.

Should you wish to discuss any aspects of the Department's response, please do not hesitate to contact me, or Marcus Ray, Deputy Secretary, NSW Planning.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Shaun Smith', written over a circular stamp or seal.

Shaun Smith
A/Secretary

Encl: DPE response to recommendations

7.12.22

4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150
Locked Bag 5022, Parramatta NSW 2124

www.dpie.nsw.gov.au 1

DPE Response to Recommendations in Performance Audit - Development applications: assessment and determination stages

AO Recommendation	AO Timeframe for Implementation	DPE Implementation Response	Progress on Implementation
1. ensure all panel members have made the required annual pecuniary interest disclosures.	As a matter of priority	<ul style="list-style-type: none"> Establish a Panel Coordinator within the Regionally Significant Development (RSD) Team of DPE. The Panel Coordinator shall be responsible for ensuring panel members update and submit annual declarations of pecuniary interest disclosures The Panel Coordinator shall report on status of pecuniary interest disclosures to the Director Regionally Significant Development 	<ul style="list-style-type: none"> Panel Coordinator established: December 2022 Annual pecuniary interest declarations will be sought from new panel member appointments commencing January 2023.
2. update and rationalise templates and processes used to facilitate secretariat support to planning panels to ensure consistency in approach	By November 2023	<ul style="list-style-type: none"> Establish a Panel Coordinator within the RSD Team of DPE. The Panel Coordinator shall sit within a newly established Business Improvement team of the RSD Team. The Panel Coordinator shall be responsible for updating templates associated with regular panel business. The Business Improvement team shall be responsible for maintaining and continuously innovating Panel processes to best support Panel operations, and to ensure consistency in approach. The Business Improvement team will be responsible for communicating and training the RSD Team on consistent processes and approaches for Panel support The Business Improvement team lead will report to the Director Regionally Significant Development 	<ul style="list-style-type: none"> Panel Coordinator established: December 2022 Business Improvement Team established December 2022 RSD Process document (a Knowledge Management Hub) developed April 2022 is scheduled for update in January 2023. Update of templates due to commence in February 2023 Process updates, training and regular feedback for update will be ongoing in the Business Improvement Team
3. formalise and implement processes to obtain and share information between regional planning panel chairs, including: <ul style="list-style-type: none"> good practice performance metrics 	By November 2023	<ul style="list-style-type: none"> Develop and implement a Leadership Program for the induction and ongoing training of Panel members. The program shall commence with the induction of new panel recruits in February 2023. Quarterly meetings for all panel chairs and members will be held as part of the program. The program shall focus on <ul style="list-style-type: none"> Setting expectations for standards and consistency in panel operations, which may include sessions on procedural fairness, professional standards, acceptable behaviour, skills for chairing meetings and so on. 	<ul style="list-style-type: none"> Panel Coordinator established: December 2022 Business Improvement Team established December 2022 Funding for a Leadership Program was approved for FY 2022-23 Leadership Program development commenced November 2023 including:
<ul style="list-style-type: none"> training opportunities 		<ul style="list-style-type: none"> Providing continuing education as required for improving panel operations, for example, ePlanning Portal training. Communication from the Department about legislation, policy and other changes affecting panel operations Facilitated sessions to seek collaboration and feedback from panel members regarding best practise for panel business, including business systems and processes Communication regarding performance metrics, such as Panel and Council statistics on timeframes, number of matters and so on. The Leadership program will be managed by the Panel Coordinator within the RSD Team. Feedback arising through quarterly meetings of the program will be escalated to the Business Improvement Team lead, Senior Case Managers and the Director Regionally Significant Development as appropriate. 	<ul style="list-style-type: none"> Induction Day for new Panel Members scheduled for February 2023 scheduling and programming for following quarterly meetings has commenced
4. establish processes to collect feedback from Panels to measure the effectiveness of support it provides to Regional Planning Panels.	By November 2023	<ul style="list-style-type: none"> Surveys of panel chairs and members to be established as part of feedback on and during the Leadership Program outlined above. 	<ul style="list-style-type: none"> Funding for a Leadership Program was approved for FY 2022-23, and program development has commenced as noted above.

Appendix two – Council profile: Byron Shire Council

About the Council

Byron Shire Council is located on the Far North Coast of New South Wales and shares boundaries with Tweed Shire Council, Lismore City Council and Ballina Shire Council. The LGA spans 566.7 km² and contains beaches, hinterland and rural areas.

At 30 June 2021, the Australian Bureau of Statistics estimated the resident population for Byron Shire LGA was around 36,000.

Development applications within Byron Shire Council

Over 1,700 development applications were determined by Byron Shire Council between 1 July 2019 and 30 June 2021 (Exhibit 7). The estimated total construction cost for these developments is around \$570 million.

Exhibit 7: Byron Shire Council development applications⁹ determined in FY2020 and FY2021













Financial year	Determined by council staff under delegation	Determined by councillors	Determined by Northern Regional Planning Panel
2019–20	877	31	1
2020–21	815	37	2

Source: Byron Shire Council 2022 (unaudited).

⁹ Including development applications, modification applications and review applications. Not including development applications determined by the Land and Environment Court.

Exhibit 8 outlines the types of development determined by the Council across the audit period of review.

Exhibit 8: Determined development applications by development type - in FY20 and FY21

 <p>Residential - alterations and additions 712</p>	 <p>Residential - new second occupancy 325</p>	 <p>Subdivision 88</p>	 <p>Commercial / retail / office 84</p>
		 <p>Industrial 51</p>	 <p>Residential - new multi unit 47</p>
	 <p>Residential - single new dwelling 311</p>	 <p>Tourist 46</p>	 <p>Other 40</p>
			 <p>Community facilities 23</p>
			 <p>Residential - other 7</p>
			 <p>Infrastructure 5</p>

Source: Byron Shire Council 2022 (unaudited).

Appendix three – Council profile: Northern Beaches Council

About the Council

Northern Beaches Council was proclaimed by the Governor of NSW on 12 May 2016 from the merger of the former Manly, Warringah and Pittwater Councils.

The Council is located in northern Sydney and shares boundaries with Central Coast Council, Hornsby Shire Council, Ku-Ring-Gai Council and Willoughby City Council.

The LGA spans 264 km² and contains beaches, urban areas and natural parks.

At 30 June 2020, the Australian Bureau of Statistics estimated the resident population for the Northern Beaches Council LGA was around 264,500. The Council has reported it has the third most populous Council area within greater Sydney.

Development applications within Northern Beaches Council

Over 4,700 applications within Northern Beaches Council LGA were determined between 1 July 2019 and 30 June 2021 (Exhibit 9). The estimated total construction cost for these developments is around \$1.8 billion.

Exhibit 9: Northern Beaches Council development applications¹⁰ determined in FY2020 and FY2021















	Determined by council staff under delegation	Determined by DDP	Determined by NBLPP	Determined by SNPP
2019–20	2,085	95	103	6
2020–21	2,180	114	116	16

Source: Northern Beaches Council 2022 (unaudited).

¹⁰ Including development application, modification and review applications. Not including development applications determined by the Land and Environment Court.

Exhibit 10 outlines the types of development determined by the Council across the audit period of review.

Exhibit 10: Determined development applications by development type - FY2020 and FY2021

 <p>Residential - alterations and additions 2,986</p>	 <p>Residential - single new dwelling 521</p>	 <p>Residential - new second occupancy 201</p>		 <p>Other 138</p>
		 <p>Subdivision 105</p>	 <p>Residential - seniors living 62</p>	 <p>Mixed 56</p>
	 <p>Commercial / retail / office 260</p>	 <p>Residential - other 79</p>	 <p>Residential - new multi unit 53</p>	 <p>Community facilities 18</p>
			 <p>Industrial 34</p>	 <p>Infrastructure 9</p>
				 <p>Tourist 3</p>

Source: Northern Beaches Council (unaudited).

Appendix four – Council profile: The Hills Shire Council

About the Council

The Hills Shire Council is located within north-west Sydney. It shares boundaries with Central Coast Council, Hornsby Shire Council, Blacktown Council, Hawkesbury Council and Parramatta Council.

The Hills Shire Council LGA has a mix of rural and urban areas and has experienced recent growth and change. The Council reports that over the last 20 years significant development has occurred within a number of the Council's suburbs. Part of the new metro train line runs through the LGA with six stations located within the Shire.

At 30 June 2020, the Australian Bureau of Statistics estimated the resident population for The Hills Shire Council LGA was around 192,500.

Development applications within The Hills Shire Council

Over 3,700 development applications were determined by The Hills Shire Council between 1 July 2019 and 30 June 2021 (Exhibit 11). The estimated total construction cost for these developments is around \$7 billion.

Exhibit 11: The Hills Shire Council development applications¹¹ determined in FY2020 and FY2021

	Determined by council staff under delegation	Determined by DAU	Determined by The Hills LPP	Determined by SCCPP
2019–20	1,654	47	13	27
2020–21	1,894	56	32	25

Source: The Hills Shire Council 2022 (unaudited).

¹¹ Including development applications, modifications and review applications. Not including development applications determined by the Land and Environment Court.

Exhibit 12 outlines the types of development determined by the Council across the audit period of review.

Exhibit 12: Determined applications by development type - FY2020 and FY2021

 <p>Residential - single new dwelling 1,678</p>	 <p>Residential - alterations and additions 941</p>	 <p>Other 250</p>		 <p>Residential - new second occupancy 212</p>	
		 <p>Commercial / retail / office 126</p>	 <p>Residential - new multi unit 74</p>	 <p>Residential - other 33</p>	
	 <p>Subdivision 392</p>	 <p>Community facilities 14</p>	 <p>Mixed 13</p>	 <p>Residential - seniors living 4</p>	
		 <p>Industrial 14</p>	 <p>Tourist 1</p>	 <p>Infrastructure 1</p>	

Source: The Hills Shire Council 2022 (unaudited).

Appendix five – About the audit

Audit objective

This audit assessed whether selected local councils have effectively assessed and determined development applications, and whether selected councils and DPE effectively support independent planning panels to determine development applications in compliance with relevant legislation, regulations, and government guidance.

Audit criteria

We addressed the audit objective by considering the following audit questions and criteria

1. Assessments: have selected councils assessed development applications effectively and in line with relevant legislation, regulations and government guidance?
 - a) Governance, risk management and internal controls are in place to ensure council assessments and recommendations are free from improper influence and bias.
 - b) Processes and procedures are in place to ensure development applications are assessed by councils in compliance with legislation, regulations and other guidance.
 - c) Councils have processes in place to deliver consistent, quality assessments of development applications.
2. Determinations made by council: have selected councils determined development applications effectively and in line with relevant legislation, regulations and government guidance?
 - a) Governance, risk management and internal controls are in place to ensure determinations made by councils are consistent, impartial, documented and transparent.
 - b) Determinations by councils have been made in line with relevant legislation, regulations and government guidance.
3. Supporting independent planning panels to determine development applications: Are independent planning panels¹² effectively supported to determine development applications from selected councils?
 - a) Selected councils effectively support local planning panels to determine development applications.
 - b) DPE effectively support Sydney and regional planning panels to determine development applications.
 - c) Decisions and their rationale are documented and accessible.

Audit scope and focus

In assessing the criteria, we checked the following aspects:

- Local and regional development applications assessed by council and determined by council or a planning panel during the 2019–20 and 2020–21 financial years
- Development assessments completed by councils or their consultants
- Development application modifications
- LEP Clause 4.6 variations from the development standards.

¹² Local Planning Panels and Regional Planning Panels.

Audit exclusions

This audit did not assess:

- complying and exempt development
- development applications determined by the Minister
- making of planning instruments or rezoning proposals
- pre-lodgement and lodgement processes
- enforcement action
- merit outcomes of decisions made in the Land & Environment Court
- merit of decisions made by independent planning panels
- Independent planning panel's meeting conduct.

Audit approach

Our procedures included:

1. interviews with:
 - council planning staff responsible for assessing development applications
 - council planning staff responsible for determining development applications
 - council governance staff responsible for managing conflicts of interest
 - council and DPE secretariat staff responsible for supporting independent planning panels to determine development applications
 - other relevant stakeholders to the audit, including independent planning panel Chairs, Local Government NSW, ICAC, NSW Ombudsman, Planning Institute of Australia (NSW)
2. examining documents and data from audited councils and DPE:
 - policies, procedures and or protocols for:
 - assessing and determining development applications
 - managing conflicts of interest
 - Code of Conduct
 - compliance and conflicts of interest registers
 - overall development application data and outcomes
 - relevant internal reviews undertaken by councils or planning panels
3. undertaking a detailed examination of a sample of at least 25 development applications files per council of development application files assessed and determined between 1 July 2019 and 30 June 2021
4. understanding and evaluating relevant internal controls.

The audit approach was complemented by quality assurance processes within the Audit Office to ensure compliance with professional standards.

Audit methodology

Our performance audit methodology is designed to satisfy Australian Audit Standard ASAE 3500 Performance Engagements and other professional standards. The standards require the audit team to comply with relevant ethical requirements and plan and perform the audit to obtain reasonable assurance and draw a conclusion on the audit objective. Our processes have also been designed to comply with requirements specified in the *Government Sector Audit Act 1983* and the *Local Government Act 1993*.

Acknowledgements

We gratefully acknowledge the cooperation and assistance provided by the audited councils and the Department of Planning and Environment. In particular, we wish to thank our liaison officers and staff who participated in interviews and provided material relevant to the audit.

Audit cost

Including staff costs, travel and overheads, the estimated cost of the audit is \$735,000.

Appendix six – Performance auditing

What are performance audits?

Performance audits determine whether State or local government entities carry out their activities effectively and do so economically and efficiently and in compliance with all relevant laws.

The activities examined by a performance audit may include a government program, all or part of an audited entity, or more than one entity. They can also consider particular issues which affect the whole public sector and/or the whole local government sector. They cannot question the merits of government policy objectives.

The Auditor-General's mandate to undertake performance audits is set out in section 38B of the *Government Sector Audit Act 1983* for State government entities, and in section 421B of the *Local Government Act 1993* for local government entities.

Why do we conduct performance audits?

Performance audits provide independent assurance to the NSW Parliament and the public.

Through their recommendations, performance audits seek to improve the value for money the community receives from government services.

Performance audits are selected at the discretion of the Auditor-General who seeks input from parliamentarians, State and local government entities, other interested stakeholders and Audit Office research.

How are performance audits selected?

When selecting and scoping topics, we aim to choose topics that reflect the interests of parliament in holding the government to account. Performance audits are selected at the discretion of the Auditor-General based on our own research, suggestions from the public, and consultation with parliamentarians, agency heads and key government stakeholders. Our three-year performance audit program is published on the website and is reviewed annually to ensure it continues to address significant issues of interest to parliament, aligns with government priorities, and reflects contemporary thinking on public sector management. Our program is sufficiently flexible to allow us to respond readily to any emerging issues.

What happens during the phases of a performance audit?

Performance audits have three key phases: planning, fieldwork and report writing.

During the planning phase, the audit team develops an understanding of the audit topic and responsible entities and defines the objective and scope of the audit.

The planning phase also identifies the audit criteria. These are standards of performance against which the audited entity, program or activities are assessed. Criteria may be based on relevant legislation, internal policies and procedures, industry standards, best practice, government targets, benchmarks or published guidelines.

At the completion of fieldwork, the audit team meets with management representatives to discuss all significant matters arising out of the audit. Following this, a draft performance audit report is prepared.

The audit team then meets with management representatives to check that facts presented in the draft report are accurate and to seek input in developing practical recommendations on areas of improvement.

A final report is then provided to the head of the audited entity who is invited to formally respond to the report. The report presented to the NSW Parliament includes any response from the head of the audited entity. The relevant minister and the Treasurer are also provided with a copy of the final report. In performance audits that involve multiple entities, there may be responses from more than one audited entity or from a nominated coordinating entity.

Who checks to see if recommendations have been implemented?

After the report is presented to the NSW Parliament, it is usual for the entity's Audit and Risk Committee / Audit Risk and Improvement Committee to monitor progress with the implementation of recommendations.

In addition, it is the practice of NSW Parliament's Public Accounts Committee to conduct reviews or hold inquiries into matters raised in performance audit reports. The reviews and inquiries are usually held 12 months after the report received by the NSW Parliament. These reports are available on the NSW Parliament website.

Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian standards.

The Public Accounts Committee appoints an independent reviewer to report on compliance with auditing practices and standards every four years. The reviewer's report is presented to the NSW Parliament and available on its website.

Periodic peer reviews by other Audit Offices test our activities against relevant standards and better practice.

Each audit is subject to internal review prior to its release.

Who pays for performance audits?

No fee is charged to entities for performance audits. Our performance audit services are funded by the NSW Parliament.

Further information and copies of reports

For further information, including copies of performance audit reports and a list of audits currently in-progress, please see our website www.audit.nsw.gov.au or contact us on 9275 7100.

OUR VISION

Our insights inform and challenge government to improve outcomes for citizens.

OUR PURPOSE

To help Parliament hold government accountable for its use of public resources.

OUR VALUES

Pride in purpose
Curious and open-minded
Valuing people
Contagious integrity
Courage (even when it's uncomfortable)

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