

Department of Planning, Housing and Infrastructure

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# Housing Delivery Authority Operational Procedures

December 2024



# Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land, and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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## Definitions

*Estimated Development Cost* has the same meaning as ‘estimated development cost’ defined in Section 6 of the *Environmental Planning and Assessment Regulation 2021*.

*Council* means the council for the local government area in which the land the subject of a Housing Delivery Authority matter is located.

*Days* means calendar days unless otherwise stated.

*Department* means the Department of Planning, Housing and Infrastructure which provides technical and administrative support to Housing Delivery Authority.

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

*EP&A Regulation* means any regulation made under the EP&A Act.

*EPI* means environmental planning instruments

*LEP* means local environmental plan.

*LGA* means local government area.

*LG Act* means the *Local Government Act 1993*.

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

*Planning proposal* has the same meaning as a ‘planning proposal’ under section 3.33 of the *Environmental Planning & Assessment Act 1979*.

*Planning Systems SEPP* means the *State Environmental Planning Policy (Planning Systems) 2021*.

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# 1. Introduction

The purpose, amongst other things, of the Housing Delivery Authority (HDA) is to implement the new state-led approval pathway for major residential housing projects and process rezonings to stimulate the timely delivery of new homes across Greater Sydney and NSW.

A function of the HDA is to make recommendations to the Minister in respect of EOIs for the new State Significant Development (SSD) approval pathway having regard to the EOI criteria.

It is also a function of the HDA to make recommendations to the Minister in relation to the rezoning of land for residential or other purposes.

These procedures relate to the operation of the HDA.

The HDA is an independent body representing the Crown and is not subject to the direction of the Minister, except on matters relating to procedures or where the Minister issues a formal direction under the EP&A Act.

The Housing Delivery Authority is constituted under s 2.3 of the EP&A Act.

These procedures are the HDA operating procedures and have been developed to explain the objectives, powers, and authorities of the HDA.

The procedures should be read in conjunction with the following:

- Environment Planning and Assessment Act 1979
- EP&A Regulations
- Relevant EPIs s
- Housing Delivery Authority Terms of Reference
- The Department's Privacy Management Plan (August 2023 or as updated)
- Relevant Planning Circulars
- Housing Delivery Authority Code of Conduct

Delegations and Directions are to be published on the Department's website. These procedures will be kept under review and may be amended periodically.

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## 2. The Functions of Housing Delivery Authority

### 2.1 Functions

The principal functions are:

- a) exercising functions under the Act that have been delegated to the Housing Delivery Authority,
- b) providing advice, recommendations or reports to the Minister about the following—
  - i. residential development and housing supply,

- ii. the declaration of specific residential development on specific land as State significant development,
- iii. the rezoning of land for residential purposes or for residential and other purposes,
- iv. a direction that the Planning Secretary, or a panel, person or body, be the planning proposal authority under the Act, section 3.32 for a proposed instrument

(c) providing advice, recommendations or reports to public authorities about residential development, housing supply and the rezoning of land for residential purposes or for residential and other purposes,

(d) liaising with public authorities about the giving of concurrences, approvals, advice and referrals under the Act or other Acts or laws to assist persons to obtain approval to carry out residential development or mixed residential and other development,

(e) preparing guidance materials in relation to the declaration of State significant development under the Act, section 4.36

## 2.2 Legislation

Legislation governing HDA includes Section 2.3 and 2.4 and Schedule 2 of the EP&A Act provides for the constitution of the Housing Delivery Authority, member appointments, functions and general procedures.

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# 3. Membership of Housing Delivery Authority

## 3.1 Chairs and Members

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

HDA members carry out their roles in accordance with the EP&A Act and to work with the Chair to make a recommendation.

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# 4. Code of Conduct considerations

## 4.1 Housing Delivery Authority Code of Conduct

All HDA members must comply with the *Housing Delivery Authority Code of Conduct* when exercising their functions as a member and make impartial merit-based decisions in

accordance with their statutory obligations. The latest version of the Code of Conduct is available online at [HDA website](#). On appointment each member must acknowledge in writing that they will abide by the Code of Conduct.

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## 5. Administration

Administration and support for the HDA is provided by the Department. Support includes:

- scheduling of briefings and meetings,
- preparing and issuing agendas,
- preparing briefing reports,
- preparing records of decision,
- record keeping for the HDA

The contact details for the Department are:

Panels and Housing Delivery, Department of Planning, Housing and Infrastructure  
email: [hda@dphi.nsw.gov.au](mailto:hda@dphi.nsw.gov.au)

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## 6. Government information, privacy and complaints

### 6.1 Right to information and privacy management

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

For applications of this nature visit the Department's website at:

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

### 6.2 Complaints

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

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

To make a complaint, follow the instructions on the Department's website at:

<https://www.planning.nsw.gov.au/Contact-Us>

Complaints made in this way will be recorded in the Department's Complaints Register and forwarded to an independent third party for review.

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Code of conduct complaints will be dealt with under the *Housing Delivery Authority's Code of Conduct*.

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

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## 7. Monitoring, review and reporting

### 7.1 Monitoring and reporting

The Department monitors the progress of EOIs considered and other functions undertaken by the HDA.

The performance of the HDA is monitored and reported in the Department's Annual Report.

### 7.2 Availability of information

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

- records of briefings, decisions and any advice provided by the HDA to the Minister as relevant

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## 8. Roles of the Department and Housing Delivery Authority

### 8.1 Consideration & recommendation on Expression of Interest

The HDA will consider expressions of interest for housing developments to be called in by the Minister to be carried out as SSD, including any state led rezoning to enable this process.

The HDA will review any recommendations from the Department and make its own decisions or recommendations to the Minister after considering this.

### 8.2 Assessment & briefing role

The HDA functions include making a recommendation and providing advice to the Minister. The HDA will rely on briefing papers prepared and provided by the Department in addition to documentation provided by prospective applicants and/or proponents.

The HDA functions do not include determination of applications or proposals.

EOIs that are called in by the Minister as SSD will be assessed by the relevant team within the Department and will be determined (if development application) or made (if requires an EPI) by the Minister or delegate.

### **8.3 Determination role**

The Minister or delegate will determine the applications under the major residential state significant development pathway.

The Minister or delegate will be the local plan making authority for planning proposals made under the major residential state significant rezoning pathway.

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## **9. Declaring major residential SSD and rezoning**

### **9.1 Making of EOIs**

An applicant or proponent will submit their EOI applications to the Department which will be made available to the HDA for consideration in accordance with the process set out below.

### **9.2 Format of the EOI**

Details on how to lodge an EOI is available on the DPHI website. Applicants or proponents are to respond to the EOI criteria and refer to the EOI toolkit for guidance on making an EOI application.

The Department notifies the HDA of the EOI application once it is received and an adequacy check has been undertaken. The EOI application documents are made available to HDA.

### **9.3 Briefings of the Housing Delivery Authority**

Monthly briefings will occur primarily online. An agenda and papers will be provided 7 days prior to a briefing. These briefings will be scheduled and coordinated by the Department. The HDA will receive quarterly reports from the Housing Taskforce.

### **9.4 Requests for additional information**

It is the applicant's responsibility to provide adequate information to support an EOI application.

During the preparation of a briefing report and review by the HDA, the need for additional information on clarification of a matter may be sought. The Department will liaise with applicants for such information.

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## 10. Issuing a decision on an EOI application

### 10.1 Determining an EOI

The Department will prepare on behalf of the HDA a determination report following their decision on an EOI for a major residential development SSD and/or state rezoning. This record will be made publicly available within 14 days of the HDA decision.

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## 11. Reviews

### 11.1 Decision review

The decision of the HDA in relation to an EOI is final. Alternative approval pathways under the EP&A Act may remain open to prospective applicants and proponents depending on the facts.

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## 12. Schedule 1: Procedures for briefings decisions

### 12.1 Briefings

The HDA can call a briefing to support and facilitate discussion by a circulation of papers. Briefings are transactions of the HDA's business by circulation of papers amongst the members of the HDA outside of meetings.

A written record of the briefing or circulation of papers is made including time, date, attendees, any declarations and key issues discussed and is published on the Department's website within 14 days. Briefings are not public meetings and are not recorded by audio/ video record, an audio record or a transcription record.

#### *Declarations of interest procedures*

The declarations of interest procedures set out below follow the requirements of the *Housing Delivery Authority Code of Conduct*:

1. The chair calls on HDA members to complete and sign written declarations of interest forms prior to the briefing for each HDA matter (under clause 3.1 of the Code). Any verbal declarations must be recorded in writing.
2. The chair reviews the written and signed declarations and the management measures put in place for any declared interests.
3. If the chair is satisfied that reasonable and appropriate management measures are consistent with those set out in the Code, then a note to this effect is to be made on the meeting record.
4. The chair is to provide the member an opportunity to respond.

5. The chair is to consider any response prior to making a final decision on the reasonable and appropriate management measures and note the response, the decision, and the chair's reasons for the decision in the meeting record.

### *Decisions*

The HDA will strive to make its decisions by consensus, however, it may be possible for only the chairperson and a non-chair of the HDA to form a quorum to make decisions. This is because the chairperson has a casting vote which could be used to make a decision if:

- all three HDA members are not present, and
- there is no clear majority decision.

### *Quorum for a Housing Delivery Authority decision*

As the HDA consists of three people, there would need to be at least two people present in any meeting to make decisions. Where conflicts of interest are known before a decision is to be made, alternate members will be used to make a quorum.

### *Deferring the decision*

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

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

It is the Department's responsibility to follow up on any requests for additional information and to provide a supplementary assessment report to the HDA.

### *The Housing Delivery Authority's reasons*

The HDA must provide reasons for its decisions, which are to be recorded in the 'record of decision template provided by the department.

The record of decision of reasons must include the following:

- the decision of the HDA,
- the date of the decision,
- the reasons for the decision

The record of decision must be publicly notified.

### *Dissenting views*

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

### *Signatures*

All members of the HDA must sign the record of decision. Where one or two members are in dissent, they must still sign, as the reasons will set out their dissenting views.

## 12.2 Transactions of business outside meetings

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

Following consideration of the briefing report, the HDA advises the Department of its recommendation, and a record of decision is completed and endorsed by all members.

Resolutions approved by a circulation of papers are recorded in writing and made publicly available on the Department's website within 14 days. A circulation of papers is generally done electronically and are not recorded by audio/ video record, an audio record or a transcription record.

## 12.3 Records of proceedings

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

Document templates for written records of proceedings are provided by the Department. The Department will assist in the preparation of draft written records. The Department will publish the confirmed written records on the Department's website, generally within 14 days of the HDA briefing or a circulation of papers.

*Records of briefings are to include:*

- the date and opening and closing times of the briefing
- the format or location of the briefing
- the details of the matter/s the HDA is being briefing on
- the names of all members of the HDA, including the chair, and any other attendees at the meeting
- any disclosure of interest made by a member, the reason for that disclosure of interest and whether the member making the disclosure participated in the discussion or recommendation of the matter
- The key issues discussed

A copy of the unconfirmed written record may be provided to all HDA members who participated in the proceedings. If so, HDA members should submit any proposed corrections to the department for forwarding and confirmation by the chair.

*Records of decision are to include:*

- the date and opening and closing times of any briefing,
- the format or location of the meeting

- the details of the matter considered by the HDA,
- the names of all members of the HDA, including the chair any disclosure of interest made by a member, the reason for that disclosure of interest and whether the member making the disclosure participated in the discussion or determination of the matter,
- any decision of the HDA,
- reasons for the decision,
- the names of each member who voted for or against the decision, and reasons for dissent, where the decision is not unanimous, and
- the signatures of all the members of the HDA that made the decision.

HDA are required to review and endorse the record of decision. This can be done in person or electronically.

HDA are required to provide any notes made during a briefing to the Department for registration as a record. This includes handwritten or electronic notations.