



**ORANGE**  
Australia's Colour City

# **Orange City Council**

## **Declaration of Planning and Development Assessment Procedures and Protocols**

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### 1. INTRODUCTION

This document is provided in accordance with Council's obligation under the *Local Government Act* (LG Act) to inform the community of its operations. Council acknowledges that frustration may arise from both prospective developers and affected community members where misunderstanding of the system occurs. There is a need to provide clear information about the complex planning system. Transparency and accountability in the decision making process is a commonly expressed objective.

Orange City Council undertakes to apply the following procedures and protocols when implementing its planning and development responsibilities derived from the *Environmental Planning and Assessment Act 1979* (EP&A Act). The declaration includes complaint-handling procedures in the event that unreasonable non-compliance with procedures is alleged.

## 2. THE PLANNING AND DEVELOPMENT SYSTEM

### The Issues

*The NSW planning system is bogged down in complicated and overlapping requirements and process (Department of Planning (DoP): "Improving the Planning System").*

*Planning is essentially about the quality of life and the environment in which we live, work and play. Planning is about deciding, or helping elected representatives make decisions on the best use of resources, including land and natural resources, to maximise amenity for all people. It is also about protecting, and where possible, enhancing the biophysical environment (Development Assessment Forum: "Agreed Principles of Leading Practice").*

### The System

The planning system comprises the following main elements listed generally in sequence from developing a planning framework to assessing a specific development within that planning framework and finally certifying that the development is constructed to the required standard:

- Broad-based strategic planning involving strategies, studies and plans (structure plans or master plans that give direction to policy but which may not be subject to statutory procedures).
- Statutory planning establishes development controls over specific areas and provides the legal framework for the way development proposals are assessed. Statutory planning affects private development rights for the public good. Development controls in plans are the primary means of implementing strategic planning objectives.
- Development assessment involves the practical implementation of the statutory planning system whereby an organisation is given responsibility through legislation to assess and determine applications in accordance with established criteria.
- Certification (for building approvals or subdivision releases) provides a mechanism for determining that particular works carried out in accordance with a consent or criteria established under the statutory planning system meet approved standards.

The detail of the investigation increases as the process moves from strategic planning to assessment and certification. Therefore, issues may arise or more information may need to be sought as a proposal moves through the planning process.

A statutory plan may vary in some respects from strategic planning following consultation but a development application must be consistent with the relevant statutory plan.

## 3. PREPARING PLANS

Council acknowledges that the purpose of local planning in Orange is to provide quality, sustainable environmental outcomes which are consistently applied, through transparent and accountable decision making, and which provide for appropriate community involvement.

### 3.1. Strategic Plans

Strategic planning at its simplest can be described as a planning process comprising three main elements: “survey – analysis – plan.” This simple description relates to the collection of information (which may include detailed environmental investigations), analysis of the information to determine development options and the creation of planning policy consistent with the analysed information. Each phase may involve community consultation and liaison with government agencies with specific planning and environmental responsibilities.

The publication *Community Engagement in the NSW Planning System* by Elton Planning for the former PlanningNSW provides various community engagement strategies in planning.

Strategic planning in this case may include the preparation of an environmental study which may be required under the Act and, as such, has some statutory elements too. The EP&A Act requires that an environmental study be prepared for Local Environmental Plans (LEPs). LEPs, however, may be prepared on the basis of former environmental studies and accordingly a new environmental study may not be required for each new plan.

#### DECLARATIONS FOR STRATEGIC PLANNING

Council undertakes:

- to prepare strategic plans where a significant shift in existing planning policy is proposed with potential impacts on the function and form of the City, whether or not such strategies may be required by a State Government Directive.
- that strategic planning will be carried out objectively and impartially taking into account the objectives of the Act and planning principles that relate to the capabilities of the City's resources. To ensure objectivity, Council may utilise professional consultants.
- to establish and articulate the scope of strategic investigations.
- that the principles of ESD will be applied in strategic plans.
- that community representation will be encouraged in the formulation of strategic plans utilising appropriate models as derived from accepted *Community Engagement* strategies.
- that, where practicable, community views will be incorporated into strategic plans. It is acknowledged, however, that community opinions may vary and that some local interests may be inconsistent with recognised planning and ESD principles.

### 3.2. Statutory Plan Making

The Orange Local Government Area is covered by a Local Environmental Plan (LEP) prepared in accordance with the EP&A Act. This plan has legal status and, within a broad framework, governs what type of development may occur, in what form and where.

The local plan is supplemented by a number of State Environmental Planning Policies, Ministerial Directions (s117 of the EP&A Act) and Development Control Plans. While there are currently no regional strategies or plans affecting Orange, the City's planning may also need to relate to these in the future.

Submissions may be made to Council to amend a local environmental plan. Otherwise Council may decide to prepare amendments based on community interest as a

consequence of monitoring planning/development issues and trends associated with assessment of development proposals.

Council will apply charges for considering submissions to amend LEPs relating to site-specific changes (spot rezonings), where such amendments are beyond the terms of strategic plans or where further environmental investigation is required before plan amendments can be considered.

In accordance with section 57 of the EP&A Act, Council is able to seek contributions from the proponent towards the cost of undertaking an environmental study. To eliminate potential probity issues where a developer contributes to the preparation of the study, such agreement shall be sought on the basis that there are no guarantees that the environmental study will be supported and that the developer will not attempt to influence the outcome of the study beyond the opportunities provided through the defined community consultation phase in the same way as any community member may participate in meetings and make formal submissions.

The LEP process is quite lengthy and normally involves:

- notification to DoP of Council's decision
- consultation with State Agencies
- preparation of the draft plan, taking into account Agency requirements
- certification that the plan is consistent with State and regional policies, plans and directions
- public exhibition
- referral to Parliamentary Counsel to ensure that the draft plan meets legal drafting requirements
- adoption of the draft plan by Council
- reporting to the Minister on the draft plan
- making of the plan by the Minister
- gazettal of the plan

For highly controversial matters, Council may determine that a Commission of Inquiry should be held on the whole or part of the draft plan.

### **3.3. Delegations**

As shown above, Council has certain responsibilities in the preparation of local plans but the process involves a partnership between Council, the community and State Government. Certain statutory functions can be delegated to allow Council to certify the plan and prepare a report to the Minister.

### **3.4. Guidelines**

Council has a number of functions including owning land and preparing draft plans which may affect Council land. LEPs that have the effect of bestowing particular benefits on Council land are prone to perceptions of unfair advantage. Because of the situation where Council has potentially conflicting interests, guidelines have been prepared to outline appropriate procedures. The 1997 *LEPs and Council Land - Best Practice Guidelines* prepared by the former Department of Urban Affairs and Planning currently applies.

## DECLARATIONS FOR STATUTORY PLANNING

Council undertakes:

- to prepare statutory plans which are generally consistent with relevant strategic plans and will provide information that explains any variation following additional inquiry and consultation. The ability to proceed with statutory plan amendments may be delayed while strategic planning is undertaken.
- to prepare LEPs affecting Council land in accordance with any guidelines, regulations and directions applicable at the time to ensure planning decisions are open and transparent and free from claims of bias.
- to encourage innovation in development through application of a performance-based approach to regulation.
- to regularly review existing provisions as outlined in Council's operational plans. Council will attempt to provide for a single annual review of the LEP within the capacity of Council's resources. Accordingly, some proposals may be held over pending receipt of others to justify preparing a draft plan. Only where there is a public interest imperative will site-specific LEP amendments be prepared as a single plan. (Note: the introduction of a State-wide planning template may remove the opportunity for site specific LEPs in the future).
- to seek contribution from developers to the cost of preparing environmental studies which relate to proposals on specific land and are otherwise not part of a strategic review. The payment of funds towards studies will not necessarily provide for an outcome favourable to the proponent. Payment is at the full risk of the proponent.
- to charge for LEP amendments for site-specific proposals or proposals beyond the terms of an adopted strategic plan in accordance with Council's Management Plan effective at the time of applications (refunds of up to 75% of the fee will be considered for LEP proposals not supported by Council to progress to notification to DoP).

## 4. DEVELOPMENT ASSESSMENT

### 4.1. Issues

The development assessment system directly affects property rights and accordingly must be based on legislation (refer DAF *Agreed Principles of Leading Practice in Development Assessment*).

*The way that the development assessment process is managed within councils or State agencies can affect the speed under which determinations are made and the quality of outcomes (Local Development Taskforce - "Bird Inquiry": 60).*

*The development assessment system involves complex legislation and a host of complicated planning instruments. The roles that councillors and staff are obliged to fulfil are not always well understood by those involved in the system (ICAC discussion paper - *Taking the Devil Out of Development*: 10).*

## **4.2. Development System**

There are many views on the expectations of the development assessment system but it is commonly agreed that the system should:

- focus on achieving high quality sustainable outcomes
- be cost effective, streamlined, simple and accessible
- promote transparency and accountability in administration
- incorporate performance measurement and evaluation
- promote continuous improvement
- provide for appropriate community involvement in decision making

To achieve this requires appropriate systems and policies, appropriate delegation arrangements, clearly defined and articulated roles and responsibilities at various stages of the development assessment process, improved knowledge of the system and awareness of proposals and consistent application of development rules, dispute resolution techniques and monitoring mechanisms.

## **4.3. Assessment System**

The assessment system comprises the following stages:

- pre-application information gathering
- lodgement
- notification/consultation
- assessment and reporting
- decision making
- appeals and dispute management
- enforcement/compliance

## **4.4. Pre-Application Guidance**

Council provides Council staff to advise on possible issues that may affect a development proposal through the Development Co-ordinating Committee. The DCC comprises staff with skills and experience in the fields of planning, engineering and building control and meets on a daily basis. Appointments to discuss proposals with the DCC can be made through Council's Customer Service to a Committee member.

## **4.5. Lobbying/Preliminary Meetings, etc**

Council has adopted a Code of Conduct that applies to all staff and councillors. The Code of Conduct applies in interactions with council officials. Of particular significance are the Code's requirements in respect to conflict of interest, gifts and bribery, improper or undue influence and conduct of council officials including interactions between councillors and staff.

### **DECLARATIONS FOR DEVELOPMENT ASSESSMENT- PRE LODGEMENT**

Council undertakes:

- to make a panel of relevant staff (currently known as the Development Coordinating Committee - DCC) freely available to discuss issues and outline aspects of development that may require particular attention according to the panel's understanding of the site and development.

### **DECLARATIONS FOR DEVELOPMENT ASSESSMENT- PRE LODGEMENT**

- that the advice from the panel is provided in good faith to inform but the panel is not to be construed as an agent for the proponent and, as such, applicants need to make their own independent decisions of how issues may affect their development and must solely rely on their own investigations and independently utilise or consider advice from their agents and consultants.
- that a Code of Conduct applies in all interactions with staff and councillors and that proponents may need to be advised of aspects of the Code where circumstances require.

#### **4.6. Lodgement**

In receiving development applications, Council is obliged to record certain information. Development application information is recorded on electronic systems. These systems are also used to provide support to the subsequent processing and assessment of the application including preparation of reports and correspondence and defining responsibilities and performance through workflows.

Council has also established computer-equipped interview rooms to allow for convenient perusal of applications at the time of lodgement. Not all areas of compliance are likely to be able to be determined at this point until a thorough review of the application has been undertaken.

The Act also lists the information that is required to accompany an application.

### **DECLARATIONS FOR DEVELOPMENT ASSESSMENT - LODGEMENT**

Council undertakes:

- to accept complete applications and process these as soon as practicable. Statements of environmental effects are required to accompany **all** applications. Such statements are consistent with a performance-based approach to regulation where the applicant demonstrates how the development proposal meets the expected outcomes.
- to only request additional information necessary to reasonably consider the environmental impacts of the development and the suitability of the site for the proposal, in accordance with Council's obligations as a consent authority (a statement of environmental effects is a mandatory requirement) under the Act.
- that, where a more detailed review of the application reveals that more information or clarification is required, Council will endeavour to notify the applicant as soon as possible of the nature of the information required for the application to proceed.
- that a Code of Conduct applies in all interactions with staff and councillors and that proponents may need to be advised of aspects of the Code where circumstances require. In this respect, Council staff will not guarantee a timeframe for determination or be induced to facilitate the progress of an application.



## 4.7. Notification

The Local Government and Shires Associations (LGSA) have held the view that “community control of development assessment is the foundation of local democracy”.

The ICAC has acknowledged that “many complaints are received each year of councils approving developments where people who feel they are affected by the decision say they did not receive notification of the proposed development. Invariably, allegations are made that the failure to notify them is indicative of some maladministration or corrupt behaviour – the public suspects information is being deliberately concealed. When this occurs, considerable resources can be consumed in assessing and responding to such complaints.”

Some years ago, the Land and Environment Court held that notification and consideration of unsolicited submissions beyond the requirements of a planning instrument could raise expectations of rights that were not supported by the legal process and where objections were taken into account that councils could be seen to be considering irrelevant matters. This view has since shifted in line with community expectations and legislative reforms.

A right to make a submission does not necessarily extend to the right to appeal a decision on its merits unless specifically provided for in the Act. Third party appeals (ie, appeals by someone other than the consent authority or applicant) on the merits of a development are limited to designated development. There are no appeals on the merits of a development for “advertised development”. In those cases, submissions assist the consent authority in making a decision by taking into account community views. Council is not however bound by those opinions.

The Act provides procedures for “advertised development” as defined in an LEP and for “notification policies” in Development Control Plans. Council also introduced a policy of notifying all development applications in the local paper on a weekly basis.

The notification procedure simply meets obligations for informing. While interested people may make inquiries and view plans of proposed development, the notification procedure does not provide specifically for any rights to make submissions.

The Act provides specific procedures for “advertised development” and “designated development”. Council’s notification policies in LEPs or DCPs provide additional procedures for notifying applicants.

Council’s practice of notifying development applications is as follows:

- All development applications received are notified in the Council page of the *Central Western Daily* (CWD) in each Saturday’s edition.
- Development listed as “Advertised Development” in the LEP (Orange LEP 2000 Schedule 6) or specifically in a DCP is listed separately in the CWD and letters sent to adjoining and adjacent neighbours in accordance with DCP 2004. Development which is for all intents and purposes dual occupancy or residential unit development is also required to be advertised and notified.
- As a response to community concerns regarding the cumulative impact of dual occupancy development in the newer areas of the City, Council has resolved to treat applications that seek approval to subdivide existing lots and to erect dwellings upon each of those lots - which are, to all intents and purposes, dual occupancy development or residential units - as dual occupancy development or residential units and to advertise those applications similarly to “advertised development”.

- Developments in residential zoned areas deemed by Council's assessment staff to have a potentially significant impact on the neighbours' enjoyment of their residential property in respect to views, privacy, overshadowing and streetscape criteria will be given written notice of the application. The decision to notify in writing (in addition to newspaper notification) is at the discretion of the assessing officer taking into account a professional judgement of impacts according to the criteria in DCP 2004. Please note that while all reasonable attempts will be made to minimise impacts, residents should be aware that some change to the current character of a locality will occur. Council is also not obliged to protect views over vacant or underdeveloped private land.
- People wishing to be heard by the Sustainable Development Committee (SDC) should contact Council's Development Services Division on 6393 8000 by the Friday prior the SDC meeting to arrange an interview.

### **DECLARATIONS FOR DEVELOPMENT ASSESSMENT - COMMUNITY NOTIFICATION**

Council undertakes:

- to publish each Saturday in the *Central Western Daily* and on Council's website ([www.orange.nsw.gov.au](http://www.orange.nsw.gov.au)) lists of all development applications received and registered up until the previous Wednesday.
- that written notification shall be given at the discretion of Council to adjoining owners where Council's professional assessment staff determine that the proposed development is likely to affect views, privacy, overshadowing on adjoining land or streetscape character in accordance with criteria in Council's DCPs. Notification is confined to immediate neighbours. Not everyone in a street or locality can expect to receive a letter. Notification will be based on determinations of the reasonable extent of potential impact. Council will rely on the CWD notification in most cases.
- that applications for "advertised development" shall be notified in a separate notice in the CWD and letters sent to owners of land adjoining or land immediately on the opposite side of the street from the proposed development.
- that people making a submission that includes a request to address Council on a development matter will be invited to attend the relevant meeting. Upon the introduction of DA tracking on the web, everyone will be able to follow the progress of an application and accordingly request to address the Sustainable Development Committee. Otherwise people can make direct contact with the Development Services staff to determine when an application is expected to be determined.
- that submissions received on proposed development and which cannot be readily addressed in a development consent condition (ie, such as fencing, window orientation, landscaping, setbacks, building levels, etc) shall be referred to Council's Sustainable Development Committee for consideration by Councillors.
- that, upon receipt of at least five submissions objecting to a development application and where those issues are considered by Council to be reasonably capable of negotiation, a meeting will be offered to all parties in an attempt to resolve issues and find compromise prior to the matter being determined by the relevant authority.
- that, as part of the planning review and monitoring system, submissions raising issues of planning policy may be used in future reference in considering if amendments are required to planning instruments or policies.

## DECLARATIONS FOR DEVELOPMENT ASSESSMENT - COMMUNITY NOTIFICATION

- to introduce electronic tracking of the progress of all development applications to be accessible to all interested people on the web through the introduction of Civica's e-services system.

### 4.8. Application Evaluation

Council is charged with the responsibility as the consent authority for determining applications that can only be carried out with development consent. The Act outlines the criteria that Council must consider when determining an application as stipulated generally in section 79C. Section 79C reads as follows:

#### 79C Evaluation

##### *(1) Matters for consideration—general*

*In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*

##### *(a) the provisions of:*

*(i) any environmental planning instrument, and*

*(ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and*

*(iii) any development control plan, and*

*(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*

*that apply to the land to which the development application relates,*

*(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

*(c) the suitability of the site for the development,*

*(d) any submissions made in accordance with this Act or the regulations,*

*(e) the public interest.*

In 1997 the former Department of Urban Affairs and Planning (DUAP) released a paper outlining how matters should be considered under section 79C. Despite some changes to the law since, this Table may still be referred to for guidance, as will case law from the NSW Land and Environment Court (LEC) and higher courts of review. The Land and Environment

Court displays planning principals on its website ([http://www.lawlink.nsw.gov.au/lawlink/lec/ll\\_lec.nsf/pages/LEC\\_planningprinciples](http://www.lawlink.nsw.gov.au/lawlink/lec/ll_lec.nsf/pages/LEC_planningprinciples)).

The requirements of section 79C are mandatory factors and failure to consider any of the mandated factors in a reasonable manner “where relevant” may result in the determination being declared invalid by a Court. Although s79C requires that the listed considerations be taken into account in determining an application, the relevance of each of those factors needs to be determined by the consent authority. Section 79C does not require that any particular weight be applied to these factors; however they have to be reasonably considered (Bates, 2002: para 11.7 pp 259-260). Because the provisions of a planning instrument (such as an LEP) are statutory, the first test for Council is to be satisfied that the development the subject of an application may be approved.

Reports by Council’s professional assessment staff are therefore prepared by listing the relevant heads of consideration under section 79C to ensure that the decision making body has information before it relevant to the application.

The ICAC has expressed concern that Council officers can be subject to significant pressure when undertaking their responsibilities in development assessment. Council’s Code of Conduct outlines appropriate interactions between staff and councillors.

The following section from the *Local Government Act* also addresses issues relating to appropriate interactions between councillors and staff.

### **352 Independence of staff for certain purposes**

- (1) A member of staff of a council is not subject to direction by the council or by a councillor as to the content of any advice or recommendation made by the member.*
- (2) This section does not prevent the council or the mayor from directing the general manager of the council to provide advice or a recommendation.*

Council has for many years made reports available for applicants prior to determination. When coupled with pre-lodgement, this can provide for any issues to be addressed prior to determination and thus reduce the need for subsequent applications for modification and review.

### **DECLARATIONS FOR DEVELOPMENT ASSESSMENT - APPLICATION EVALUATION**

Council undertakes:

- to prepare and consider reports for applications in accordance with the section 79C criteria. Reports will include consideration under headings relating to the relevant prescribed matters.
- that, where relevant, applications will be considered in accordance with practice notes and guidelines from DoP and planning principals of the Land and Environment Court ([http://www.lawlink.nsw.gov.au/lawlink/lec/ll\\_lec.nsf/pages/LEC\\_planningprinciples](http://www.lawlink.nsw.gov.au/lawlink/lec/ll_lec.nsf/pages/LEC_planningprinciples)).
- to have reports prepared by staff in the least possible time taking into account the complexity of the development, need for referrals, community submissions, existing workloads and priorities.

## **DECLARATIONS FOR DEVELOPMENT ASSESSMENT - APPLICATION EVALUATION**

- to provide reports to applicants (and to other interested persons upon a specific request) following preparation of the meeting agenda. All other information shall be provided in accordance with section 12 of the *Local Government Act* and the relevant provisions of the *Privacy Act*.
- that impartiality of staff (or consultant) recommendations are respected and maintained in accordance with the Act and Council's Code of Conduct.
- that Council's adopted Code of Conduct applies in all respects to Councillors and staff in performing their respective responsibilities in evaluating and determining development applications.
- that, for potentially controversial development applications affecting Council land, the evaluation may be referred to an independent assessor for recommendation to Council.

### **4.9. Delegations - Decision Making**

#### **Councillor's Role**

Like the assessment system, there are many opinions on the role of Council in development assessment. While some believe that Councillors should only be involved in setting of policy through strategic and statutory planning, others see the Councillor's role in a political setting of representing community aspirations. The ICAC and the Land and Environment Court (LEC) have both encouraged delegations to an appropriate level subject to certain caveats. Issues of transparency and accountability remain.

The Attorney General's Land and Environment Court Working Party in 2000 recommended that councils consider delegating the power to determine applications for development:

1. which complies with all applicable controls and policies; and
2. where no objections have been received, or any objections can be overcome by the imposition of appropriate conditions of consent.

*In order to use delegations effectively, councils will need to ensure that clear and up to date policies are in place and staff receive appropriate guidance.*

The ICAC has held the view that:

*The Council in Chamber is expected to act as a "board" overseeing policy development and regularly monitoring operational decisions. It is the responsibility of the council to have internal control systems in respect of delegations. . .*

Internal control mechanisms include:

- a risk management approach that, where public or political concerns may arise, consideration should be given to referring the matter to a more senior body
- use of delegations when there is no conflict of interest
- appropriate separation of responsibilities between evaluating staff and decision making

The risk management approach is achieved where applications are reviewed in the first instance by the staff panel of the DCC, secondly by Planning Management peer review and thirdly by the General Manager via any determining panel that he may establish.

Management may also be required to review determinations by staff based on receipt of community submissions. With the involvement of the DCC and the abovementioned review procedure, the ICAC's concerns for potential probity issues are lessened.

A hierarchy of delegations operates based on the level of assessment and potential for community involvement (submissions) in the determination.

This hierarchy is identified according to the following list, with number 1 being the highest level of authority:

<b>Decision-making Authority</b>		<b>Delegated to</b>
1	Council in Chamber as the consent authority	No delegation
2	Sustainable Development Committee	Councillors only
3	General Manager/General Manager's Determination Panel	Councillors and senior staff
4	Staff delegation report prepared for review	Staff supervisor/Manager/Director
5	Staff delegation (minor development)	Staff to assess and issue consent

Delegations are based on the following structure based on type of development and potential issues that are likely to arise from the development.

<b>Development Type</b>	<b>(Sub) delegation</b>	<b>Quorum</b>	<b>Review</b>
BCA Class 1 and 10 buildings (dwelling houses and associated outbuildings, swimming pools, garages, garden sheds, patios and pergolas) often as combined DA and CC. For many, the DA could have been submitted as a complying development certificate (CDC) application.	General Manager sub-delegated to <b>EHBS</b> . Where privacy, views, overshadowing streetscape issues, adjoining owners are notified. Checklist assessment only required for s79C.	n/a	General Manager/General Manager's Determination Panel
Strata subdivision	General Manager sub-delegated to <b>Manager Development Assessments</b>	n/a	General Manager General Manager/General Manager's Determination Panel
Class 2 – 9 buildings (not subject to significant submissions) including extensions, changes of use which are not complying or exempt	General Manager sub-delegated to <b>Planning Approvals Committee</b>		Sustainable Development Committee
Land subdivision (consistent with planning policy)	General Manager sub-delegated to <b>Planning Approvals Committee</b>	3	Sustainable Development Committee
Class 2 – 9 buildings (subject to submissions which cannot be resolved by conditions of consent)	Sustainable Development Committee	3	
Land subdivision (SEPP 1 or subject to policy issues)	Sustainable Development Committee	3	Council
Designated Development	Sustainable Development Committee	3	Council
Development recommended for refusal	Sustainable Development Committee	3	Council
Council development applications	Sustainable Development Committee (unless delegation not permitted by legislation. Assessment may be referred to consultant for recommendation where deemed to be a community issue.	3	Council
Council development applications (delegation statute barred)	Council Assessment may be referred to consultant for recommendation where deemed to be a community issue.	8	Council
<b>CERTIFICATION</b>			
Construction (and occupation) Certificate for Class 1 and 10 buildings (dwelling houses and associated outbuildings, swimming pools, garages, garden sheds, patios and pergolas)	General Manager sub-delegated to <b>EHBS</b> , mostly received as a joint DA/CC.	n/a	Manager-Building & Environment
Construction (and occupation) Certificate for Class 2 – 9 buildings	Manager-Building & Environment	n/a	General Manager
Construction Certificate - subdivision works	Director Technical Services	n/a	General Manager
Subdivision Certificate	Director Development Services		General Manager

In exercising his delegated authority, the General Manager may establish a determination panel to assist in the decision-making process. This has been carried out by the Planning Approvals Committee (PAC). The General Manager, usually at the recommendation of Council staff, mostly at the determination panel meeting, reviews DAs received to establish whether the determination of the application should be delegated to the General Manager or to the Sustainable Development Committee (SDC). This decision may be changed depending on whether submissions outlining significant objection are received. The Determination Panel requires three signatures to effect a consent - usually the GM, at least one Councillor (if present) and the Director Development Services will sign. The General Manager and other “lower-level” delegations can only grant consent subject to conditions. The SDC may also refuse applications.

Other delegates may advise applicants that applications are incomplete and cannot be determined.

The DLG Model Code (2004) includes a specific section on “development decisions” as follows:

- 5.7 *It is your duty to ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid impropriety. You must also avoid any occasion for suspicion and any appearance of improper conduct.*
- 5.8 *In determining development applications, it is essential that you are highly conscious of the potential for even the slightest impropriety to lead to suspicion of misconduct. This means you must ensure that no action, statement or communication between yourself and applicants or objectors conveys any suggestion of willingness to provide concessions or preferential treatment.*

### **DECLARATIONS FOR DEVELOPMENT ASSESSMENT - DELEGATION**

Council undertakes:

- to delegate development assessment decisions to the appropriate level of decision making in order to facilitate efficient development assessment systems. The (descending) hierarchy of delegations for development assessment is as follows:
 

1	development prevented from delegation by statute (some specified development on community land)	Council
2a	development specifically resolved by Council/SDC to be determined solely by it	Council/SDC
2b	where an application is recommended for refusal by Council staff	SDC
2c	any DA with a value exceeding \$1.5 million	SDC
2d	where a request to waive development contributions exceeding \$20,000	SDC
2e	any DA with a “significant public interest”	SDC
2f	significant Council development where Council will be financial beneficiary	SDC



## DECLARATIONS FOR DEVELOPMENT ASSESSMENT - DELEGATION

2g	where 3 Councillors have formally approached the General Manager with reasons in writing, the General Manager is to consult the Mayor and the Chairman of the SDC and the group have decided to forward the DA to SDC	SDC
2h	Subdivision DAs with a lot number of greater than 10 lots without an existing DCP	SDC
3a	development which meets the performance outcomes of LEP 2000 and DCP 2004	General Manager
3b	where modification is involved to a DA previously determined by Council or SDC - where not considered a significant modification	General Manager

The above hierarchy depends on the delegate exercising the authority. Where issues arise for the delegate, the matter will be referred to the next higher level (ie, from 3 to 2, 2 to 1, etc).

- to operate formal systems of review applying a risk management approach.
- that Council's adopted Code of Conduct applies to all delegates in performing their respective responsibilities in determining development applications.
- to review delegations according to the requirements of the *Local Government Act*.

*Significant public interest* cannot be defined precisely. As a guide in determining significant public interest, consideration will be given to:

- the number of public submissions received but, more particularly, greater weight will be given to the planning issues raised in those submissions that cannot be addressed by conditions of consent;
- development that is not consistent with the objectives of the LEP or other Environmental Planning Instruments (EPIs);
- development that is not consistent with the objectives of the DCP; and
- applications accompanied by a SEPP 1 objection that aren't supported by Council staff.

Where three Councillors have formally approached the General Manager to request that a development application be referred to the SDC for determination, the reasons in writing should not indicate a position on the merit of the application but should demonstrate why it is considered that the application is not one that should be determined under delegation, having regard to the provisions of the relevant delegation.

### 4.10. Determination of Applications

Once a decision has been made on an application, a signed notice will be sent out to the applicant. Council will also forward a copy of the consent and report on the application to the owner as shown on Council's records. Copies of the determination will also be sent to people who made submissions on an application for "designated development".

The notice will be posted as soon as possible after the determination is recorded at Council. Usually this is the next working day after the meeting but, depending on the number of applications or the number of submissions, the notice may take some days longer to finalise.

A development consent becomes effective from the date that it is signed and posted, not the date of the decision. Consents normally are effective for a period of 5 years.

### **DECLARATIONS FOR DEVELOPMENT ASSESSMENT - NOTIFICATION OF DETERMINATIONS**

Council undertakes:

- to notify applicants, owners and people who have made a submission of the outcome of the decision on the application as soon as practicable after the determination has been made by the appropriate authority. In most cases, that will be by the next working day after the decision.
- that Councillors will be advised in reports to the Sustainable Development Committee of decisions made under delegation.
- to keep a register in electronic format in accordance with section 100 of the Act.
- to notify all consents in accordance with section 101 of the Act.

## **5. COMPLAINT HANDLING PROCEDURES**

The ICAC has expressed the view that:

*A decision that represents a 'loss' in a development control dispute under a system where the applicant or objector feel that they have not had a 'fair go' can lead to an assumption that undue influence or bias may have played a part in the decision making.*

Complaints are occasionally received by Council regarding development decisions.

Council has adopted the following policies/procedures that may be applied in relation to allegations of staff performance in the handling of development applications:

- *Customer Service Guarantee Policy*
- *Disciplinary Procedures Policy*
- *Civic Square Enterprise Agreement*

Council has adopted a Code of Conduct that applies to Councillors and staff in undertaking their responsibilities.

Where Council receives written (and signed) allegations of staff non-compliance with accepted standards of performance, then the matter will be investigated according to the above policies and subject to the following summarised actions.

The allegation will be referred to the staff supervisor. The staff member the subject of allegations will be requested to respond to the allegations and a letter of response will be provided to the complainant from the staff member's supervisor, Director or the General Manager depending on the seriousness of the allegation. In accordance with the disciplinary policy, an investigation of the allegations may be carried out.

Investigations may also be carried out by other organisations such as the Department of Local Government under the terms of the *Local Government Act*, the ICAC, the Ombudsman or the Police.

Procedures for addressing allegations against Councillors are specifically addressed under Division 3 (Misbehaviour) of Chapter 14 of the *Local Government Act - Honesty and Disclosure of Interests*.

Chapter 14 also applies in respect to disclosure of interests and corrupt conduct of staff and councillors.

The *Protected Disclosures Act 1994* provides for facilitating disclosures with protection from reprisal to be made by Council employees for the purpose of reporting allegations of corrupt conduct or maladministration as defined.

All letters of complaint regarding staff or Councillors should be addressed to:

**The General Manager  
Orange City Council  
PO Box 35  
ORANGE NSW 2800**

Respondents must be responsible in making complaints and be aware of any implications of the *Defamation Act 1974*. It is important to express views objectively and accurately.

#### **DECLARATIONS FOR DEVELOPMENT ASSESSMENT - COMPLAINT HANDLING**

Council undertakes:

- to address all reasonable complaints according to Council policies, procedures and legal requirements.
- to respond in writing within a reasonable time to written complaints about staff after the staff member has been given an opportunity to respond to any allegations made and following any formal investigation deemed necessary as a consequence of the complaint.

Originally adopted by Council on 29 August 2005  
(resolution number 05/406).

## **GLOSSARY OF TERMS**

DAF	Development Assessment Forum
DCC	Development Coordinating Committee
DCP	Development Control Plan
DDS	Director Development Services
DoP	NSW Department of Planning
DLG	NSW Department of Local Government
EP&A Act	Environmental Planning and Assessment Act
GM	General Manager
ICAC	Independent Commission Against Corruption (NSW)
LEC	Land and Environment Court
LEP	Local Environmental Plan
LGSA	Local Government and Shires Association (NSW)
MBE	Manager Building and Environment
MDA	Manager Development Assessments
PAC	Planning Approvals Committee
SDC	Sustainable Development Committee