



CUMBERLAND
CITY COUNCIL

July 2022

**CUMBERLAND
DESIGN EXCELLENCE PANEL
PROCEDURES**

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CUMBERLAND DESIGN EXCELLENCE PANEL PROCEDURES

1 INTRODUCTION

Cumberland Council is committed to ensuring the highest standard of architectural and urban design is achieved for the built environment.

The purpose of the Cumberland Design Excellence Procedure is to articulate Council's criteria for the assessment of new prominent buildings within the Cumberland local government area (LGA) as well as any land identified in the Local Environmental Plan (LEP) Design Excellence provisions.

The Cumberland Design Excellence Panel (CDEP or the Panel) comprises professionals in architecture and urban design who will assess and contribute to design outcomes for a range of prominent and significant development proposals. The panel will also certify buildings which exhibit design excellence through the LEP statutory provisions.

2 AIMS OF THE PANEL

This Design Excellence Panel aims to:

- a) Support Council's *Community Strategic Plan* goals for a resilient built environment
- b) Facilitate design excellence in development for Cumberland
- c) Assist in shaping Cumberland's centres into vibrant, attractive and liveable spaces
- d) Promote innovative design solutions that achieve high quality buildings and spaces for key sites
- e) Encourage diverse and innovative design that is both contextually appropriate and makes a positive contribution to the architectural quality of the locality

The Design Excellence Panel is established to:

- a) Act as an advisory panel where applicants for significant development proposals can receive expert design feedback. This includes critical consideration of design elements and, where required, alternative design suggestions and solutions to achieve design excellence. The Panel must not provide advice on planning matters.
- b) Support the statutory Design Excellence provisions within Council's Local Environmental Plan
- c) Provide incentive for the higher standards of architectural excellence and best practice urban design outcomes through building floor space ratio and building height bonuses, where appropriate

3 APPLICATIONS TO BE REFERRED TO THE CDEP

The Panel will assess pre-lodgement applications and/or development applications for the following development types within the Cumberland:

- a) any development subject to the design excellence provision of the LEP;
- b) any buildings with a height greater than 25m; or
- c) any development voluntarily referred to the CDEP.

Modification applications and applications for review of determination may be referred to the CDEP at the discretion of Council officers. For example, where the modifications result in significant changes to the design, Council will refer the application to the CDEP.

If an application has been referred to the CDEP at the pre-lodgement stage, a further referral to the Design Excellence Panel will generally not be required at the development application stage. An exception to this would be in circumstances where the CDEP has rejected a particular proposal and

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requires a complete redesign to be undertaken, or if very substantial changes have been made between the pre-lodgement stage and development application stage, other than changes requested by the CDEP.

Where there have been minor changes from the pre-lodgement stage, especially where it pertains to a development where a Design Excellence Certificate is sought, Council officers will have discretion to undertake a referral to the original panel members to seek their comments on the amendments.

Due to the scale and complexity of assessing major developments and to assist in streamlining the approval process, it is imperative that the principles of design excellence are incorporated at an early stage in the development process, particularly in regards to other relevant technical and merit-based issues that require consideration.

Alterations and additions to approved buildings that do not significantly alter the design of a building do not need to be referred to the Design Excellence Panel.

LEP Design Excellence

Where applicants are seeking variations to the LEP development standards under the LEP Design Excellence provisions for site(s) identified in the LEP Design Excellence maps, a referral to the CDEP must be undertaken through the pre-lodgement application process, prior to lodgement of any formal development application.

4 OPERATIONS

4.1 Documentation Requirements

Submission requirements for all development requiring referral to the CDEP will be reflected in Council's Development Application forms and checklists. Where applications require referral to the CDEP, additional required documentation and any associated fees will be required upon lodgement.

4.2 Application Fees

An application fee will be required to be paid on lodgement of an application requiring referral to the CDEP in accordance with Council's fees and charges and the Environmental Planning & Assessment Regulation.

This fee is in addition to any other fees and charges associated with the development application or pre-lodgement application fee.

4.3 Meeting frequency and capacity

Meetings will be undertaken on an 'as needed' basis following receipt of an application, but will generally not exceed more than one meeting per calendar month (unless there are exceptional circumstances).

Where Council receives an application requiring CDEP advice, the application will be forwarded to the relevant panel members as part of the preliminary assessment process. A Panel meeting will be scheduled as soon as practicable thereafter and Council's Administration officers will advise of the meeting date providing at least seven (7) days notice for the meeting.

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Each meeting will have a minimum of three (3) development proposal and a maximum of four (4) development proposals presented for consideration (unless there are exceptional circumstances).

All CDEP meetings will be held in Cumberland Council offices or through electronic methods.

4.4 Quorum

For design advice, a quorum of three (3) panel members is required.

For LEP Design Excellence advice and where a design excellence certificate is sought for exceedance of development standards, a quorum of four (4) panel members is required, one of whom is to be a representative from the NSW Government Architects office (or their nominee).

4.5 Meeting Procedures

4.5.1 Prior to meeting

Council Administration Officers will provide digital copies of the relevant information to panel members prior to the meeting and as soon as practicable following receipt of an application requiring CDEP advice.

4.5.2 Responsibilities of Panel members

Prior to the meeting occurring, each Panel member is required to have:

- a) Received copies of the development proposal;
- b) Declared any conflict of interest*;
- c) Become familiar with the proposal;
- d) Inspected the site the subject of the proposal.

*A panel member who has a conflict of interest in a matter being presented before the CDEP must not be present at the Panel meeting during the deliberation of that matter.

4.5.3 Meeting

- a) CDEP meetings will not be open to the public. However, proponents for the development (maximum 3 people) will be invited to attend the meeting and present their proposal.
- b) Council officers responsible for the processing and handling of the relevant application will be required to attend the meeting.
- c) Applicants are not permitted to directly contact panel members at any time in relation to an application the subject of a Panel meeting. Panel members are also not permitted to directly contact applicants at any time in relation to an application the subject of a Panel meeting.
- d) The Panel will be chaired by one of its members who has been elected on the day of the meeting by the sitting panellists. The chair cannot be from the NSW Government Architects office or their nominee.
- e) The Panel may invite the applicant to present their proposal to the Panel. Presentations should be no longer than 15 minutes in length (exclusive of question time).
- f) The Panel will deliberate on the design aspects of the development and may choose to ask questions and seek clarification on aspects of the proposal from those present at the meeting.
- g) The Panel may choose to dismiss any external applicants and convene in a closed session to discuss the matter.
- h) Each member is entitled to one vote, and where there are an even numbers of panellists, the chairperson will have the casting vote.

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- i) Each application will be allocated a maximum of 1 hour.

4.5.4 Post meeting

The CDEP chair will be responsible for the preparation of the briefing notes which includes recommendations and where relevant, issuing any Design Excellence Certificates. The briefing notes and certificates (where relevant) are to be endorsed by all panel members in attendance and forwarded to Council's Coordinator, Development & Building Systems within ten (10) calendar days of the meeting date.

If a development was referred to the DEP at the pre-lodgement stage and minor design changes were undertaken to the design for development application submission, Council officers may re-refer the application to the panellist for review to clarify if there are any changes to their initial position/comments on the development. For cases where a Design Excellence Certificate was issued for a development at the pre-lodgement stage and where minor design changes were undertaken to the design for the development application submission, Council officers may re refer the application to the panellist for review to clarify if there are any changes to their initial position/comments on the development. In these circumstances, the chairperson of the original panel will be required to confer with the other panel members and provide comments to Council within five (5) calendar days of the referral.

All communication involving the administration of the CDEP is to be directed to Council's Supervisor Administration or Coordinator, Development & Building Systems.

4.6 CDEP considerations and recommendations

In the Panel's consideration of a proposal, the following design provisions must be taken into account where applicable:

- a) Council's Local Environmental Plans;
- b) Council's Development Control Plans;
- c) State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development;
- d) Apartment Design Guide.

In assessing whether a development achieves design excellence the CDEP may elect to:

- a) Support the design scheme as originally submitted; or
- b) Support the design scheme with amendments, in which case, specific recommendations relating to requested design changes to address any concerns raised must be clearly detailed.
- c) Not support the design scheme, in which case, the Panel may request a full re-design and that the new scheme be referred back to the Panel for further consideration.

The Panel in their minutes must not request that an application be re-referred to the Panel unless a full rejection of the application is recommended on design grounds. The Panel must instead include specific recommendations relating to the changes requested to the design to address any concerns raised. The following criteria need to be met for any deferral or refusal of applications.

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Criteria for deferral:

Deferral of applications are discouraged. Where a deferral of an application is recommended, the following criteria need to be followed:

- A deferral can only be made for design reasons and not for planning reasons,
- An application can only be deferred if design changes cannot be accommodated through recommended conditions/advice,
- An application cannot be deferred without the confirmation of a Senior Council Planning Officer.

A maximum of one deferral is permitted for each application only if all the above criteria for deferral is met.

Criteria for refusal:

Where a recommendation for refusal is made, the following criteria need to be followed:

- The proposed design requires a full redesign as it does not comply with the design provisions in the applicable planning controls, In this regard, detailed reasons need to be stated as to why the proposed design does not comply with the applicable planning controls and advice needs to be provided on how the proposal can comply in any future submission,
- The proposed design does not integrate with the streetscape and the existing and proposed design future character of the area. In this regard, detailed reasons need to be stated as to why the proposed design does not integrate with the locality and advice needs to be provided on how the proposal can comply in any future submission,
- An application cannot be refused without the confirmation of a Senior Council Planning Officer.

The application can only be refused if all the above criteria for refusal are met.

In addition to the above, for sites identified in the LEP Design Excellence maps and where applicants are seeking variations under the associated LEP clause, the panel must be satisfied that the proposal exhibits design excellence as required by the LEP clause. In situations where the CDEP is satisfied that a development proposal exhibits design excellence, the panel will be responsible for issuing a Design Excellence Certificate (Refer to Appendix A) to the applicant with or without recommended amendments. The certificate must then be submitted with the lodgement of a development application to Council.

5 PANEL ADMINISTRATION

5.1 Panel Membership and Terms

The Panel shall comprise of industry experts having demonstrated qualifications and experience in the fields of architecture and/or urban design. A pool of expert members shall be established and each Panel meeting shall comprise of three (3) members or four (4) members in cases involving a LEP design excellence certificate) drawn from the established pool of experts.

Where sites are seeking a Design Excellence Certificate under the LEP provisions, the Panel shall also include a representative from the NSW Government Architect's office or their nominee.

A panel member cannot be an employee or elected representative (Councillor) of Cumberland Council.

A Panel member cannot be a real estate agent or a developer.

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Any member of the CDEP who is also a member of the Cumberland Local Planning Panel (CLPP), must ensure that they do not participate in the determination of any application, as a CLPP member, for which they have already provided design advice as a CDEP member.

Panel members will be appointed by the General Manager in consultation with the Director - Environment and Planning for a two-year term via expressions of interest process administered by the Coordinator, Development & Building Systems.

In the event that a Panel member vacates their membership prior to serving the full term of their membership, an alternate member may be appointed by the *General Manager* where deemed necessary.

5.2 Panel Administrator

Council Administration Officers will be responsible for:

- a) liaising with Panel members in regards to availability and organising Panel meetings;
- b) checking submitted information for referral to relevant Panel members;
- c) setting the meeting date;
- d) liaising with applicants and their architects to arrange and confirm their attendance;
- e) coordinating the circulation of the agenda to Panel members;
- f) arranging distribution of final briefing notes / minutes to Council officers.

5.3 Panel Chairperson

The Chairperson will be nominated by the sitting panel members prior to the meeting. The Chairperson cannot be the NSW Government Architect's office representative or their nominee.

The Chairperson will ensure that the meeting agenda is followed and that allocated timeframes are adhered to. The Chairperson will also ensure that the panel discussion remains focussed on the matter under consideration. The Chairperson will be responsible for preparation of the briefing notes which includes recommendations and issuing any Design Excellence Certificates.

5.4 Meeting Remuneration

Panellist will be remunerated for meeting attendance and associated work. A flat rate (excluding GST) will be set per meeting as agreed upon engagement. The panel chairperson will be paid an additional fee up to a maximum of \$500 in addition to being a panel member. The NSW Government Architect's office or their nominee will be remunerated as per the agreed rate set by the NSW Government Architect's office.

The specified rate is inclusive of all the work a panel member does for a meeting including (but not limited to) preparation, site visits, meeting attendance, deliberation, voting, correspondence and preparation or reviewing of briefing notes.

An agreed set hourly rate will be prescribed for any additional work needed to be undertaken not in relation to meetings as described above.

5.5 Conflict of Interest

Panel members are to ensure the highest ethical standards are maintained in the exercise of their professional duties to ensure the integrity and fairness of the decision making process is maintained.

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Panel members must not unlawfully disclose or misuse any information provided to, or discussed at, the Panel meeting.

A panel member who may have a potential conflict of interest must advise the panel administrator as soon as practicable.

5.6 Code of Conduct

- a) All panel members are required to understand, acknowledge and sign Council's Code of Conduct prior to being appointed.
- b) Panel members must adhere to the Code of Conduct for Local Planning Panel Members and Work Health and Safety requirements, insofar as those provisions are relevantly applicable to the members of the Panel in regards to the performance of their respective duties.
- c) Panel members must act lawfully and with integrity and professionalism.
- d) Panel members must comply with all requirements imposed by the Local Government Act 1993 on persons providing advice to a Council.
- e) Any declarations for a conflict of interest must be disclosed prior to acceptance of meeting attendance.
- f) All matters brought before the Panel are strictly confidential.
- g) No panel member is authorised to make any comment to the media, through social media or to the general public in relation to any matter before the Panel or any decision of the Panel.

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APPENDIX A: DESIGN EXCELLENCE CERTIFICATE



DESIGN EXCELLENCE CERTIFICATE

Certificate No: xxx/2022

Date:

PROPERTY DETAILS

Street Address:

Lot No:

PROPOSED DEVELOPMENT

Description of Proposed Design Scheme:

Document Identification Details:

CERTIFICATION

This certificate hereby certifies that the abovementioned development has satisfied the design excellence assessment criteria detailed in Cumberland Local Environmental Plan 2021 and is worthy of:

1: An increase of [] metres in building height up to a maximum of [] metres ([] storeys)

2: An increase of [] % in floor space ratio up to a maximum of [] :1

Approval:

.....
Chairperson
Cumberland Design Excellence Panel

Date:

APPENDIX B: DESIGN EXCELLENCE FLOWCHARTS

Design Excellence Panel Process Flowchart

