

Role of the community representative

2





Good decision making

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Why is good decision making important?



Importance of good decision making

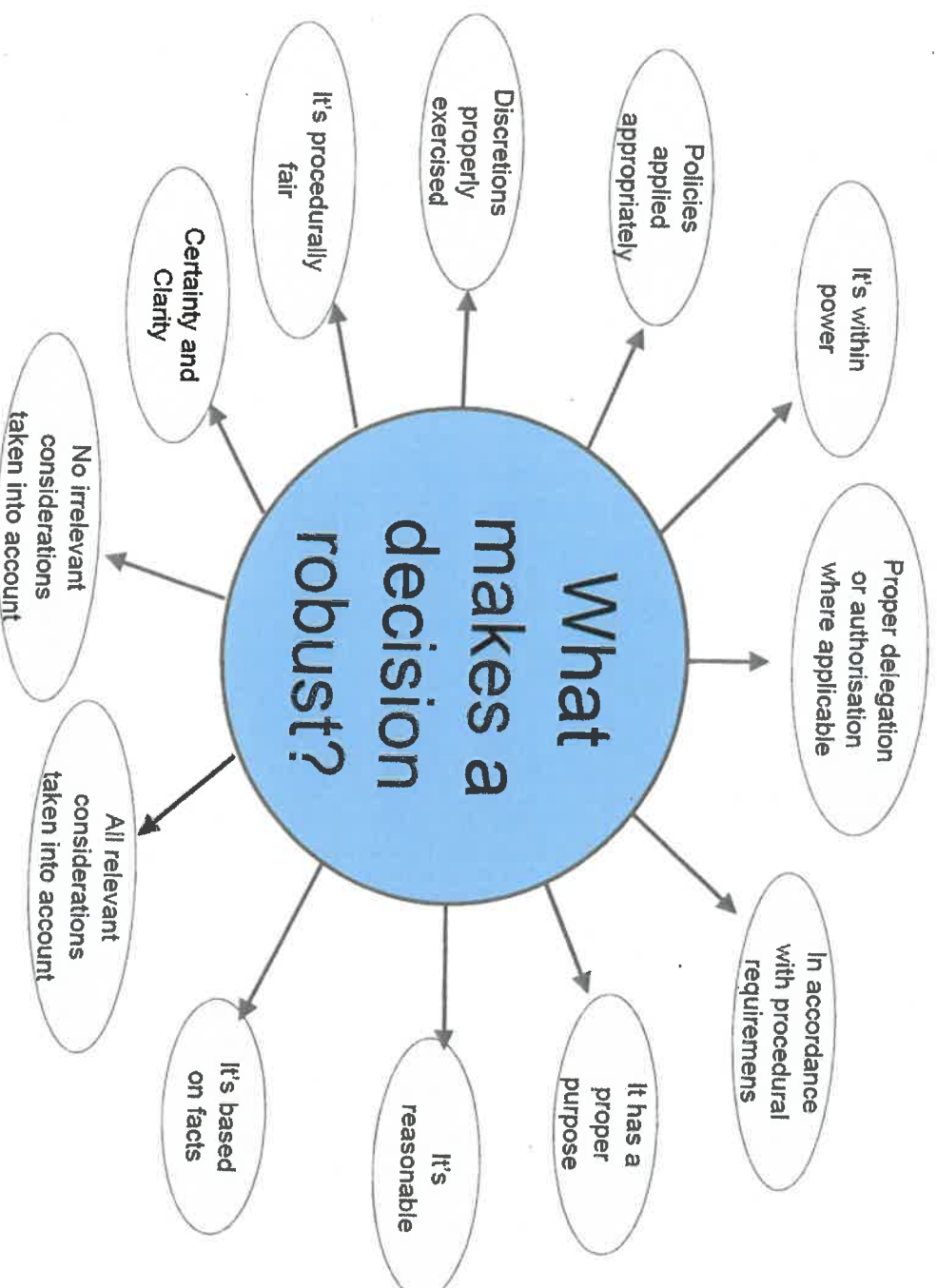
- If a Court finds decision affected by legal error → decision may be invalid
- Invalid decisions have financial, reputational and legal consequences for the Panel, Panel members, the Council and the planning system.
- People affected by a decision bring challenges, even where a decision is validly made, but there are some principles that will assist in resisting challenges



What makes a good decision?

4.2

Good decision making



Environmental Planning and Assessment Act 1979

- Procedural requirements for Panel decisions - Schedule 2
- Minister's Procedural Direction - section 9.1
- Framework for determining development applications - Part 4



Good decision making principles

4.3

A. *Relevant considerations*

Relevant considerations:

- Considerations expressly stated in the legislation
- Some will be mandatory some will be optional

Irrelevant considerations:

- Considerations expressly prohibited in the legislation
- Matters outside or unrelated to the subject matter, scope and purpose of the legislation
- Individual bias of the Panel members

Section 4.15 - Environmental Planning and Assessment Act 1979

- The consent authority should consider the development application and information submitted with the application
- Section 4.15 sets out mandatory relevant considerations for determining a development application
- Generally these include:
 - Environmental planning instruments which apply to the land or the development (including proposed instruments)
 - Development control plan which apply to the land or the development
 - The likely impacts of the development in the locality
 - Suitability of the site for the development
 - Any submissions made in accordance with the Act
 - The public interest

B. Reasonableness

- “So unreasonable no reasonable decision maker could have come to it”

Associated Provincial Picture Houses v Wednesbury Corp (1948)

- “Lacks an evident and intelligible justification”
Minister for Immigration and Citizenship v Li (2013)

Reasonableness

Tips to prevent decision from being 'unreasonable'

- Base the decision on the correct facts and material which logically tend to show the existence or non-existence of facts relevant to the decision to be made
- Suspicion or speculation is not enough
- The material relied on should be from a reliable source:
 - current, not out of date
 - if based on the opinion of another (e.g. planning expert), was the person who gave that opinion suitably qualified and experienced to give that opinion?
- Weigh different factors according to their relative importance

C. Procedural fairness

1. Fair hearing rule
 2. Rule against bias
- Means the decision-maker:
 - gives people who will be affected by the decision the chance to be heard
 - is not biased
 - If the procedural fairness requirements set out in the EP&A Act have not been followed a court may find the decision invalid

D. Documenting decisions

- People who are affected by the decision need to be able to understand the decision you have made
- A good decision is clear, certain and final
- Reasons must be given

Determining a development application



Determining a development application

- Panel exercises the consent authority function of the council of determining development applications for development identified in the Minister's Direction
- May grant or refuse development consent
- May impose conditions if consent is granted
- There are procedural requirements for a Panel decision – set out in the EP&A Act and in the Minister's Direction



Varying development standards

4.5

Department of Planning and Environment

Development standards

- IHAPs are responsible for determining development applications which propose a departure from development standards
- Development that contravenes a development standard imposed by a planning instrument by:
 - more than 10% or
 - non-numerical development standards or
 - more than 25% for dwelling houses, dual occupancies and attached dwellings.

Variations – clause 4.6

- Clause 4.6(3) enables consent to be granted for development that contravenes a development standard upon consideration of a written request from the applicant demonstrating:
 - compliance is unreasonable or unnecessary in the circumstances; and
 - sufficient environmental planning grounds to justify the contravention
- AND the consent authority is satisfied that:
 - the written request adequately addresses those matters; and
 - the development is in the public interest because it is consistent with the objectives of the standard and the objectives for the zone; and
 - the Planning Secretary has given her concurrence

○ Thank you



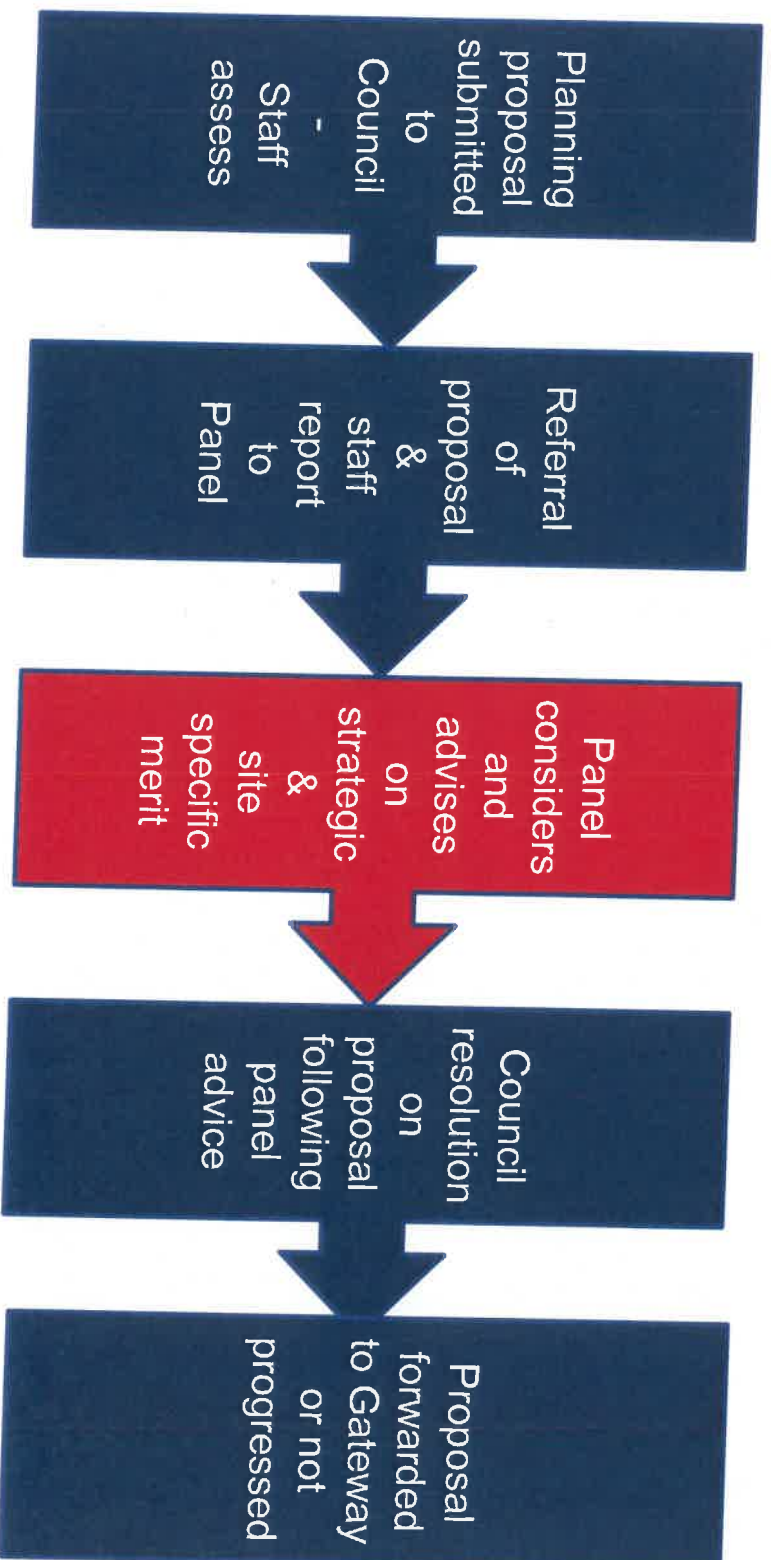
Advising on planning proposals



Local Planning Panels Direction - Planning Proposals

- Requirement for councils to refer all planning proposals to the local planning panel for advice
- Referral must occur before council forwards proposal for a Gateway Determination
- Minor or insignificant matters not captured

Panel consideration



Panel consideration

The Panel should advise if it considers the proposal has strategic merit.

Strategic Merit means consistency with a:

- District Plan or any Corridor/Precinct Plan
- Endorsed local council strategy

Or if the proposal is responding to changing circumstances not recognised by current controls ie:

- New infrastructure investment
- Changing demographic trend

Site Specific Merit Test

For proposals with strategic merit, the Panel should advise if the proposal is suitable, having regard to:

- The natural environment; and
- The existing uses and likely future uses on and surrounding the site; and
- Existing and required services and infrastructure



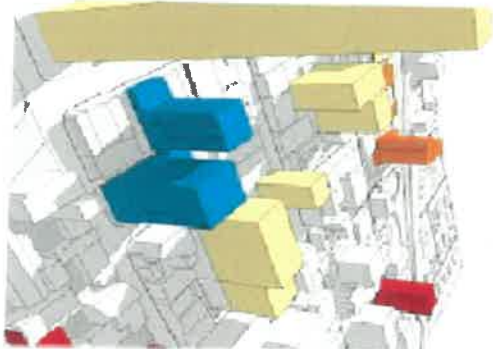
COMPLYING MASSING SCHEME 1



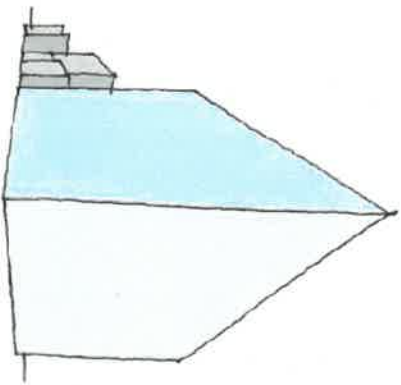
COMPLYING MASS SCHEME 2



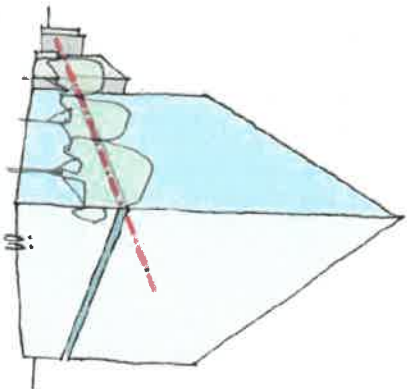
COMPLYING MASSING SCHEME 3



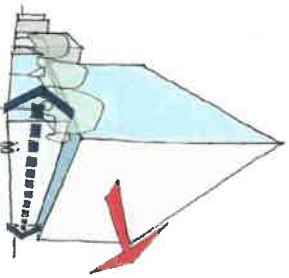
Massing Analysis – Parramatta - Crone Partners



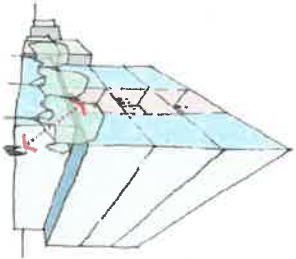
2.2 BASIC MASSING



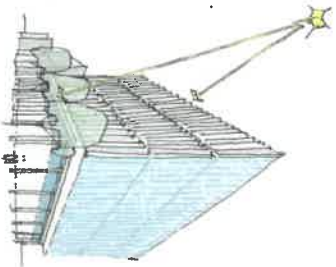
2.3 FORMULA CREATION



2.4 SECTION THROUGH MASSING



2.5 FORM



2.6 FORM

Massing Analysis – Parramatta- BatesSmart



LEP Review Program

- In March 2018, the Greater Sydney Region Plan, District Plans, State Infrastructure Strategy and Future Transport 2056 were released
- Amendments to the *Environmental Planning and Assessment Act 1979* including with LEP updates and Local Strategic Planning Statements supports and promotes upfront strategic planning
- The NSW Government's housing affordability strategy:
 - 18 Greater Sydney Councils commit to review and update LEPs within 2 years to align with the District Plan under an *Accelerated LEP Review Program*
 - Support provided to remaining 15 Greater Sydney councils to review and update LEP within 3 years

Accelerated LEP Review Grants Program

- 13 Priority councils were announced in April 2018 to receive up to \$2.5 million to accelerate the review of the LEP's within a two-year time frame.
- To date, a total 17 councils have been announced (this includes four voluntary councils), as follows:

Bayside	Blacktown	Canada Bay
Canterbury-Bankstown	Camden	Campbelltown
Cumberland	Fairfield	Georges River
Hornsby	Inner West	Liverpool
Parramatta	Ryde	The Hills
Penrith	Wollondilly	

Roadmap for 2 year Accelerated LEP Program

Task	2018												2019						2020						
	June	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
Phase 1 LEP review (Health Check)																									
Technical Working Groups (TWG)																									
Sign Funding Agreement																									
LEP review report																									
Finalise project plan																									
Undertake studies																									
Phase 2 Draft LSPS																									
Prepare and exhibit draft LSPS																									
Phase 3 Final LSPS																									
Review submissions and implementation options Finalise LSPS																									
Phase 4 Gateway																									
Prepare planning proposal																									
Gateway determination																									
Phase 5 Exhibition of draft LEP																									
Prepare consultation material																									
Exhibit planning proposal																									
Finalize planning proposal																									
Phase 6 Plan making																									
Submit final planning proposal to DPE																									

Roadmap for 3 year LEP program

