

Department of Planning, Housing and Infrastructure

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Regional Housing Flying Squad

Program Guidelines

February 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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Regional Housing Flying Squad

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More information

www.planning.nsw.gov.au/regional-housing-flying-squad

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Program Contacts

Rukshan de Silva
Director, Regional NSW
Planning Delivery Unit

0409 076 314
rukshan.desilva@planning.nsw.gov.au

Lydia Markham
Team Leader, Western & Coastal
Regional Housing Flying Squad
Planning Delivery Unit

0405 452 439
lydia.markham@dpie.nsw.gov.au

David Koppers
Team Leader, Northern & Southern
Regional Housing Flying Squad
Planning Delivery Unit

0409 993 698
david.koppers@dpie.nsw.gov.au

Introduction

Through direct engagement with regional councils and analysis of NSW Planning Portal data, the Planning Delivery Unit (PDU) of the NSW Department of Planning, Housing and Infrastructure, has identified an emerging shortage of planners across NSW, particularly within Regional NSW

To support councils and the delivery of housing in Regional NSW, the department has created the Regional Housing Flying Squad (RHFS), which will:

- contribute to the NSW Government and council objective of delivering housing in Regional NSW
- respond to the recommendations of the Regional Housing Taskforce
- provide support to councils to expedite assessments of housing DAs
- help address the planner shortage in Regional NSW.

Program History

In early 2022, the department rolled out its first iteration of the flying squad as a pilot program, which commenced on 1 April 2022. For the pilot program, the PDU engaged a panel of planning consultants to conduct DA assessments for housing on behalf of regional councils.

Regional councils were required to nominate DAs that would deliver housing through a formal expression of interest (EOI) process. Nominations were subsequently reviewed against predetermined criteria by an evaluation panel made up of Department of Planning, Housing and Infrastructure and Department of Regional NSW staff. The planning consultants reported directly to councils while conducting their assessments and, once the assessments were completed to the satisfaction of council, the DAs were determined by council or the regional planning panels as the relevant consent authority.

Through the pilot program, the flying squad conducted 103 DA assessments in 21 regional councils, representing 2,420 dwellings and \$487 million in capital investment value.

RHFS Pilot Program - Lessons Learnt

At the completion of the pilot program, the department sought feedback from councils and the panel of planning consultants to inform future iterations of the flying squad. The key learnings from the pilot program which have been applied to this next iteration of the flying squad, are to:

- enhance the flexibility of the EOI criteria to address the individual assessment needs of regional councils
- streamline the EOI triaging and DA acceptance process to make the process more efficient
- require councils to provide relevant DA documentation via the Planning Portal
- allocate RHFS planners to designated regions and, where possible, individual councils to increase efficiency and ensure local subject matter knowledge/networks
- commence regular active management meetings with councils, applicants, and technical experts to ensure the effective and efficient assessment of DAs.

RHFS 2.0 - Lessons Learnt

Throughout this current iteration of the RHFS, RHFS planners have sought feedback from councils to permit further fine tuning of the program. These minor changes, while beneficial, do not make a significant difference to the objectives or delivery of the program, but enhance program outputs.

Some consistent feedback from councils was in relation to concerns in submitting more straightforward DAs such as single dwellings and dual occupancies, which in some cases took up to three months to complete due to the three-month length of each tranche. As a result, some councils chose not to participate or provided low numbers of DAs to the program.

To support councils who have large volumes of these smaller DA types, the program has amended its schedule to consist of both quarterly tranches and monthly sub-tranches. The addition of monthly sub-tranches will allow for a faster turnaround for single dwellings and dual occupancies within one month instead of three, which will ultimately increase the efficiency of the program and result in a greater number of DAs being assessed. To expedite the timely determination of these DAs the following program amendments have been made, which commenced at the beginning of Tranche 3:

- In addition to the regular quarterly EOIs for each tranche, the Flying Squad now also includes monthly sub-tranches, during which councils can nominate DAs through an EOI process **only** for single dwellings and dual occupancies. All other DAs remain unaffected and will proceed through the normal quarterly EOI process.
- The monthly sub-tranches will consist of a one-week EOI period followed by a three-day evaluation and acceptance period. In order to improve the responsiveness and agility of the program, the Evaluation Committee approved this approach and agreed that these DAs for single dwellings and dual occupancies can be triaged by the RHFS and are not required to proceed to the Committee.

More information is provided in the following section of these guidelines.

Expression of Interest (EOI) Process

Eligibility Criteria

To be eligible to participate in the RHFS, councils must:

- be one of the 96 regional councils in NSW as identified in **Appendix C**
- nominate DAs that will deliver housing
- nominate DAs that have been accepted by council in the Planning Portal prior to the Expression of Interest (EOI) closing date
- commit to employing a student, cadet, trainee, or graduate planner prior to 30 June 2024, as a demonstration of council's commitment to growing their own planners*.

* only applies to councils with three or more full-time equivalent (FTE) planners on payroll.

Evaluation Criteria

There is no limit to the number of DAs that councils may nominate for the RHFS. Each DA that a council nominates will be evaluated against the following program evaluation criteria:

Diverse or Affordable Housing

Delivery of social, affordable, build-to-rent, co-living, key worker housing, group homes, housing for seniors or for people with disabilities, emergency accommodation and secondary dwellings will be prioritised.

Aboriginal Housing

Delivery of Aboriginal housing will be prioritised.

Dwelling Impact

The ratio of the number of dwellings proposed in the DA to the number of dwellings in the respective local government area (LGA).

Dwelling volume

The number of dwellings proposed in the DA.

Council's DA backlogs and timeframes

Consideration will be given to councils experiencing increased DA backlogs and above average DA assessment times.

Geographic considerations

Ensuring that support is provided equitably to all councils across Regional NSW will be considered, as well as councils that have experienced natural disasters such as bushfire and flooding.

This program is intended to offer targeted support to individual regional councils in need of assistance and is not limited to the assessment of large scale and complex residential developments (smaller, simple housing development applications can also be referred). Councils can also propose DAs that are at any stage of the assessment process provided they meet the eligibility criteria. The program will not accept residential DAs such as alterations and additions which do not generate new housing stock, modifications or reviews of DAs, or applications subject to Land and Environment Court proceedings.

How to Apply

The program will be delivered in a series of quarterly and monthly tranches.

For each quarterly tranche, there will be a two-week EOI period during which councils will be able to nominate all types of residential DAs with the exception of single dwellings and dual occupancy DAs. This will be followed by a one-week evaluation period during which DAs will be selected for the program and councils will be notified. Subsequently, the Flying Squad will commence assessment of the DAs over the three-month tranche.

In addition to the quarterly tranches, the program will also include monthly sub-tranches. For each monthly sub-tranche, there will be a one-week EOI period during which councils will be able to nominate *DAs only for single dwellings and dual occupancies*. This will be followed by a three-day evaluation period during which DAs will be selected for the program and councils will be notified. Subsequently, the Flying Squad will commence assessment of the DAs over the one-month sub-tranche period.

For both quarterly tranches and monthly sub-tranches, EOIs for the program can be submitted by councils via the NSW Planning Portal at www.planningportal.nsw.gov.au/regional-housing-flying-squad during the formal EOI submission dates as identified below.

EOIs are to be submitted via the RHFS webform on the Planning Portal and will require councils to provide the Portal Application Number (PAN) to nominate a DA. When a council provides the PAN on the webform, the PDU will then obtain information related to that DA through the Planning Portal. In addition, councils will be required to provide some additional information (see **Appendix A**) on the status of the DA to assist the department in triaging the DAs that councils nominate for the program. The department will not accept DA nominations outside of the EOI period. However, we may contact councils during any stage of the program to accept additional DAs that had been previously submitted

by councils through the EOI process, should the RHFS have surplus capacity. Any additional DAs accepted into the program must also meet the program criteria.

Councils that participate in the program will be required to enter into a Participation and Services Delivery Deed (Deed) with the department before the commencement of any assessments by the RHFS on behalf of council. The department encourages councils to undertake this as soon as possible to prevent delays to assessments commencing. A Deed can be entered into at any stage of the program for councils that intend to submit EOIs for subsequent tranches, including prior to the EOIs. A copy of the Deed is provided in **Appendix D**.

As part of this Deed, councils will agree that the RHFS will be provided with read-only access to the relevant DAs in the Planning Portal which have been accepted as part of the EOI process. The RHFS will only have access for the duration of the assessment. The Deed will also require councils to provide other documentation that is relevant to the assessment of the DA, which may include:

- public submissions
- internal and external agency comments
- any additional information or correspondence between the council and applicant.

EOI Evaluation & Acceptance

The PDU has established a RHFS Evaluation Committee (the Committee) that includes representation from the Department of Regional NSW and other teams within the Department of Planning, Housing and Infrastructure.

For each quarterly tranche, the Committee's role will be to review all DAs nominated by councils against the program evaluation criteria, and to select which DAs will be accepted for assessment by the RHFS. The Committee will also identify any key risks or additional technical expertise that may be required in assessing each DA. The Committee will only conduct an evaluation for quarterly tranches – not monthly sub-tranches.

In conducting the review, the Committee will:

- assess each council-nominated DA against each of the program criteria
- conduct a holistic review to determine the final list of DAs accepted for the program
- identify DAs to be prioritised for future assessment should additional assessment capacity within the RHFS occur.

DAs submitted during the monthly sub-tranches will be evaluated by senior staff within the RHFS against the program criteria. A holistic review of all submitted DAs will then be undertaken before

being accepted in the program. The results of the monthly sub-tranches will be reported to the Committee each quarter.

Following the Committee's evaluation of DAs, councils will be notified of the outcome via email by the relevant RHFS team leader as soon as possible after the close of the EOI period. This will allow councils to continue with their own internal assessments for DAs that are not accepted into the RHFS program.

Successful councils will be paired with a RHFS planner/s and will be asked to share relevant DA documentation that is not located on the Planning Portal. This may occur via email or an agreed file sharing program and must take place within 72 hours of being notified that an EOI has been accepted into the program. This will assist the assessment process in meeting the required statutory timeframes.

During Tranche One it was identified that some councils were able to provide all relevant commencement documentation (Deed and templates) within 24 hours which enabled the assessment of these DAs to commence much sooner than others. It was also noted that some councils provided partial documentation for some DAs with the Deed and templates which created administration delays and double handling of documentation. It is important for the efficiency of the program that documentation is provided per the direction of the RHFS.

Further information on the next stage and the information required is provided below.

DA Assessment

Once the DAs have been allocated to the RHFS planner/s, we will contact councils directly to arrange for the transfer of relevant information and briefings as required. Please do not forward this information until such time as the responsible RHFS planner/s makes contact. This is to prevent the double handling of information at both ends.

Throughout the assessment process, the RHFS planner will report directly to council staff on matters surrounding the respective DA. Council will be responsible for briefing the RHFS planner on the specifics of the DA if requested.

Council should advise the RHFS planner immediately if any issues arise that may result in an increased scope or potential refusal of a DA.

All RHFS assessment reports will be subject to peer review before submission to council. Upon completion of the assessment report, the RHFS planner will send it to council for determination.

The department appreciates that every council will approach issues in a different manner. The department acknowledges that it is only providing a support role to council and that council, as the

consent authority, can amend the RHFS assessment report to address any differing views or local nuances that have not been captured. Furthermore, councils are not obligated to determine DAs in a manner that is consistent with the recommendations of the RHFS assessment report and may determine a DA as they so choose. This also applies to any recommended conditions of consent.

Where disagreements arise between a council and the RHFS planner regarding statutory process or recommendations of the assessment report, the respective RHFS team leader will meet with council and the RHFS planner to review concerns and discuss a way forward.

If the views of council and the RHFS assessment process are fundamentally different regarding whether a DA should be approved or refused or matters considered in the assessment, council can withdraw the DA from the RHFS program at any point. Ultimately, the purpose of the RHFS is to provide support to council, and the respective teams will work closely with council to discuss and resolve any disagreements as they arise.

To assist the operation of the RHFS program, the department has developed several business rules to guide councils and RHFS planners to ensure operational expectations are understood before commitment to the RHFS program. These business rules are provided in **Appendix B**.

Tranches/intakes and Key Dates

In response to council feedback, the RHFS will be rolled out in several quarterly and monthly tranches, or intakes, from October 2022 to June 2024. A new EOI will open for each intake to allow councils to nominate DAs to the RHFS.

Any DA that has been accepted into the RHFS that is not completed during that tranche, will be carried over into the following one. Council will be kept informed about the assessment process.

By dividing the program into quarterly and monthly tranches, it is expected that the majority of DAs for single dwellings and dual occupancies will be undertaken within a one-month period, while larger DAs will be completed within a three-month period. This will allow the RHFS to maintain its agility to reallocate resources to best serve council's needs. Upcoming dates are as follows:

Key Dates	Tranche 7: All residential DAs
EOI Open	09:00, 25 March 2024 – 17:00, 29 March 2024
EOI Evaluation	1 April 2024 – 5 April 2024
Assessment	8 April 2024 – 28 June 2024

Program Review

The department will continually review the outcomes and performance of the RHFS program following completion of each tranche. Participating councils will be invited to provide feedback on the RHFS program to enable the RHFS to review and improve all aspects of the program design to ensure program efficiency and optimal service to councils.

Outcomes from each review will be implemented where possible.

Appendix A: Mandatory webform data required

- What is the Portal Application Number (PAN) for the DA being nominated?
- Are there any known concerns or local issues that might prevent council from supporting the approval of the DA? This does not require a preliminary assessment to be undertaken if not already done so.
- Is the DA site impacted by known hazards, including but not limited to – subsidence, bushfire prone land, flooding (up to and including the Peak Maximum Flood)?
- For dwellings on rural land that do not meet the minimum lot size requirement, does the site enjoy dwelling permissibility? If yes, how?
- Criteria that support your request for housing assessment assistance (choose one or more):
 - Dwelling impact
 - Aboriginal housing
 - Diverse or affordable housing
 - Council's DA backlogs and timeframes
 - Geographic considerations
 - Dwelling volume
- Any additional commentary to support your (council's) request for housing assessment assistance?

Appendix B: RHFS Business Rules

- Councils are requested where possible to respond to RHFS enquiries within **two business days**. The RHFS will endeavour to respond to council enquiries within one business day.
- Once notified of a DAs acceptance into the program, council is to cease the planning assessment of the DA unless otherwise agreed with the RHFS. All other routine processing of the application must still proceed including referrals, advertising/notification and the like. **Councils who continue the planning assessment and determine DAs that have been accepted into the program may have their participation in the RHFS evaluated.**
- Within **three business days** of being notified that a DA has been accepted into the RHFS program, council are to provide the RHFS with Microsoft Word copies of its DA assessment report template. For councils that do not possess its own template, the department will use its own assessment report template (a council version of this template is available from the RHFS). **No other information is required at this time.**
- The RHFS will prepare bespoke conditions for each DA in the program as part of the assessment, including a list of plans/documents to be approved. If required by council, a full development consent can be prepared, however, council will be required to provide a list of conditions which have been updated to reflect current legislative requirements.
- Within **three business days** of being accepted into the RHFS program, council must return to the department the RHFS signed Deed. Failure to do so may result in council being illegible for RHFS program participation. These can be entered into at any stage of the program, including before the EOI stage.
- Once DAs have been allocated, RHFS planner/s will email councils contact person/s to request the following information. This information is requested to be provided within **five business days** of the request being made to enable assessments to commence as efficiently as possible:
 - A copy of all internal referrals (and associated correspondence) and confirmation of when all referrals are due
 - Have any non-compliances (SEPP/LEP/DCP) been identified? If so, are they supported in principle by council? This does not require a preliminary assessment to be undertaken if not already done so.
 - Is council required to notify or exhibit the DA? If yes:
 - Under what plan or legislation is notification or exhibition required?
 - What is the duration and end date of any notification or exhibition?

- Ensure all relevant reports/referrals have been uploaded to the NSW Planning Portal (engineering, flooding, erosion & sediment control etc) or are provided via email or other file sharing platform
- Council mapping including flooding and bushfire and the relevant Deposited Plan including any Section 88B instruments.
- If a site is flood prone – relevant details such as flood heights, hazard categorisation etc are to be provided.
- Council to advise of delegation pathway if known i.e., Officer delegated, elected Council, Regional Planning Panel.
- Details of any additional matters which could impact the assessment of the DA.
- Within **three business days** of the completion of any notification or exhibition, councils must notify the department of the outcome as well as provide any submissions.
- Within **three business days** of receiving an internal or external referral, councils must provide the department with a copy of the referral comments. Councils should not wait for all referrals to be received before forwarding them to the department.
- Councils will ensure that any council files uploaded to the Planning Portal or provided to the RHFS are appropriately named to ensure they can be readily identified. Councils should encourage applicants to do the same. Councils will ensure all relevant DA correspondence and documents are uploaded to the Planning Portal within **three business days** of being received by council in line with councils' internal practice. Any correspondence or documents that are not uploaded are to be provided separately to the RHFS within three business days.
- By participating in the RHFS program, council consents to allowing assigned department planners read-only access to the relevant DA/s on the Planning Portal and any other related documents.
- Where requested by either council or the department, council will provide the department with a briefing on the DA.
- Councils are responsible for their own administration processes, such as, but not limited to, notification/exhibition, collation of submissions, internal and external agency referrals, notifications to regional planning panels, uploading of documents to the Planning Portal, etc.
- Councils are responsible for formally requesting additional information from applicants and internal or external referral agencies on behalf of the RHFS when so requested.
- The department will not conduct site inspections for every DA accepted into the RHFS program and will do so on a risk/needs basis at its discretion. The department will take advice from council on this matter and councils are welcome to conduct their own site inspections where the department elects not to. Where the department does undertake an inspection, councils will be invited but are not required to attend.

- The department will not be involved in any negotiation or agreement activities associated with the development/assessment of a VPA.
- The department will coordinate and organise any necessary meetings with applicants and internal or external referral agencies. Councils will be invited but are not required to attend.
- Councils and the department will commit to a **fortnightly** update meeting. These meetings do not prevent more frequent meetings as may be required by either party. These fortnightly meetings cannot be used as a reason to delay the exchange of information.
- The department will work with councils to determine whether it is appropriate for the RHFS to support the DA assessment with external technical advice to replace internal council referrals, where reduced council capacity is the cause of delays.
- Where a DA is impacted by bushfire prone land and requires assessment by council under s4.14 of the *Environmental Planning and Assessment Act 1979*, council retains responsibility for conducting this assessment unless agreed with the department.
- Where a disagreement arises between the responsible RHFS planner and council, the matter will be escalated for resolution to the relevant RHFS team leader. Should a resolution not be achieved council can withdraw the DA from the RHFS program and proceed with its own assessment.
- DA assessment reports will be provided to councils for determination as soon as the reports are signed off internally.
- Councils, as the consent authority, can amend RHFS assessment reports to address any differing views or local nuances that have not been captured. Furthermore, councils are not obligated to determine DAs in a manner that is consistent with the recommendations of the RHFS assessment report and may determine a DA as they so choose. This also applies to any recommended conditions of consent.
- On receipt of the DA assessment report and/or development consent, we encourage council to provide any comments or suggested amendments to the RHFS planner within **one week** from when council receives the report and/or consent from the RHFS planner. After this point the RHFS will assume their participation in the DA has been completed.

Appendix C: Eligible Councils

Albury City Council	Coonamble Shire Council	Lake Macquarie City Council	Richmond Valley Council
Armidale Regional Council	Cootamundra-Gundagai Regional Council	Leeton Shire Council	Shellharbour City Council
Ballina Shire Council	Cowra Shire Council	Lismore City Council	Shoalhaven City Council
Balranald Shire Council	Dubbo Regional Council	Lithgow City Council	Singleton Council
Bathurst Regional Council	Dungog Shire Council	Liverpool Plains Shire Council	Snowy Monaro Regional Council
Bega Valley Shire Council	Edward River Council	Lockhart Shire Council	Snowy Valleys Council
Bellingen Shire Council	Eurobodalla Shire Council	Maitland City Council	Tamworth Regional Council
Berrigan Shire Council	Federation Council	Mid-Coast Council	Temora Shire Council
Bland Shire Council	Forbes Shire Council	Mid-Western Regional Council	Tenterfield Shire Council
Blayney Shire Council	Gilgandra Shire Council	Moree Plains Shire Council	Tweed Shire Council
Bogan Shire Council	Glen Innes Severn Shire Council	Murray River Council	Upper Hunter Shire Council
Bourke Shire Council	Goulburn Mulwaree Council	Murrumbidgee Council	Upper Lachlan Shire Council
Brewarrina Shire Council	Greater Hume Shire Council	Muswellbrook Shire Council	Uralla Shire Council
Broken Hill City Council	Griffith City Council	Nambucca Valley Council	Wagga Wagga City Council
Byron Shire Council	Gunnedah Shire Council	Narrabri Shire Council	Walcha Council
Cabonne Shire Council	Gwydir Shire Council	Narrandera Shire Council	Walgett Shire Council
Carrathool Shire Council	Hay Shire Council	Narromine Shire Council	Warren Shire Council
Central Coast Council	Hilltops Council	Newcastle City Council	Warrumbungle Shire Council
Central Darling Shire Council	Inverell Shire Council	Oberon Council	Weddin Shire Council
Cessnock City Council	Junee Shire Council	Orange City Council	Wentworth Shire Council
Clarence Valley Council	Kempsey Shire Council	Parkes Shire Council	Wingecarribee Shire Council
Cobar Shire Council	The Council Of The Municipality Of Kiama	Port Macquarie-Hastings Council	Wollongong City Council
Coffs Harbour City Council	Kyogle Council	Port Stephens Council	Yass Valley Council
Coolamon Shire Council	Lachlan Shire Council	Queanbeyan-Palerang Regional Council	Lord Howe Island ¹

¹ Lord Howe Island is administered by the Lord Howe Island Board, a NSW Statutory Authority established under the Lord Howe Island Act 1953. While it is not a council, it is required to adopt the NSW Planning Portal from 1 July 2021 and is not classified as being in a metropolitan area.

Appendix D: Participation and Services Delivery Deed

**Regional Housing Flying Squad Assessments Program –
Participation and Services Delivery Deed**

The Crown in right of the State of New South Wales acting through the NSW Department of Planning,
Housing and Infrastructure (ABN 20 770 707 468))

[Council] (ABN **[insert]**)

Dated **2023**

This Deed is dated 2023

Parties:

The Crown in right of the State of New South Wales acting through the NSW Department of Planning, Housing and Infrastructure (ABN 20 770 707 468) (**Department**), of 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150

and

[Council] (ABN **[insert ABN]**) (**Council**), of **[insert Council's address]**

Recitals:

- (A) Council and the NSW Department of Planning, Housing and Infrastructure (**Department**) are committed to the delivery of housing in NSW, particularly in regional NSW, and seek opportunities to cooperate to achieve common goals in relation to this commitment.
- (B) Through direct engagement with regional councils and analysis of NSW Planning Portal data, the Planning Delivery Unit of the Department, has identified an emerging shortage of planners across NSW, particularly in regional NSW.
- (C) To support councils in the delivery of housing in regional NSW, the Department has created the 'Regional Housing Flying Squad' (**Flying Squad**) to help to expedite assessments of development applications for housing through delivery of the *Flying Squad Assessments Program* (**Program**).
- (D) Council has responded to the Department's Expression of Interest to participate in the Program issued on **[insert date]** and Council and the Department have resolved to enter into this Deed in a spirit of mutual cooperation.

It is agreed:

1. Definitions and interpretations

1.1 Definitions

In this Deed unless the context admits otherwise:

Act means the *Environmental Planning and Assessment Act 1979 (NSW)*.

Assessment Report has the meaning given in clause 2.3(d).

Business Day means a day that is not a Saturday, Sunday, or public holiday throughout New South Wales.

Deed means this *Regional Housing Flying Squad Participation and Services Delivery Deed* entered into between the Parties.

Department means the NSW Department of Planning, Housing and Infrastructure.

Development Application has the same meaning as in the Act.

Participant means any local council participating in the Program under an agreement with the Department to the same effect as this Deed.

Program means the *Flying Squad Assessments Program* established by the Department.

Program Guidelines means the *Regional Housing Flying Squad Guidelines* adopted by the Department dated February 2023 as amended or reissued from time to time.

Regulation means the *Environmental Planning and Assessment Regulation 2021* or if applicable, the Regulation which preceded that and its corresponding provisions.

Services means the preparation and provision to Council of an Assessment Report to Council in accordance with the terms of this Deed.

1.2 Interpretation

The interpretation clauses at Schedule 1 apply.

2. Operation and nature of the Program and Services

2.1 Operation

This Deed commences from the date it is signed by all Parties and, unless terminated earlier, will end once the Services have been provided in accordance with its terms.

2.2 Council Participation in the Program

- (a) Council agrees to participate in the Program.
- (b) The Department agrees that in accordance with the terms of this Deed, it may provide the Services to Council.
- (c) Council agrees that participating in the Program entitles Council to request the Services in accordance with the procedure in clause 3, but that it is at the Department's sole discretion as to whether the Department will provide Services in response to such a request.

2.3 Nature and purpose of the Program and Services

- (a) The purpose of the Program and Services is to provide practical support to Council in the preparation of Assessment Reports for Development Applications to achieve the goals set out in the Recitals.
- (b) Council agrees that it is solely responsible for determining Development Applications in accordance with the requirements of the Act and law, and therefore:
 - (i) is not bound by any conclusion or recommendation included in the Assessment Report; and
 - (ii) may choose to endorse, amend, or disregard the Assessment Report in part or in its entirety.
- (c) The Department will prepare the Assessment Report to the standard that it would prepare such a report if the Department was the consent authority for the Development Application, but the parties agree that in delivering the Services, the Department and its officers are not exercising:
 - (i) any statutory function under the Act or any other law; or
 - (ii) any original or delegated authority or other function of the Minister for Planning, the Secretary of the Department, an officer of the Department, or Council or any of its officers.
- (d) In this Deed, 'Assessment Report' means a report evaluating the impacts of a proposed development the subject of a Development Application, prepared to assist Council to fulfil its obligation to determine the Development Application under the Act and in accordance with law, including evaluation of the matters set out in section 4.15 of the Act, and which may include a recommendation as to whether the Development Application should be approved, and the conditions of approval, or refused.

2.4 No fetter

Nothing in this Deed or provided under this Deed, including the provision of an Assessment Report to Council with or without a recommendation to approve or refuse a Development Application, shall be construed as requiring either party to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the discretion of either party in exercising any of either party's statutory functions, powers, authorities or duties.

3. Determination of requests to receive Services

3.1 Call for expressions of interest to receive Services

- (a) The Department may issue a call for expressions of interest (EOIs) for Participants to request Services from the Department in relation to one or more Development Applications lodged by a Participant.

- (b) For the period March to August 2023, the Department proposes, but is not bound, to call for EOIs under this clause in accordance with the following dates:

Event	Tranche 3	Tranche 4
Quarterly Tranche: EOI Open	13 March 2023	12 June 2023
Quarterly Tranche: EOI Close	24 March 2023	23 June 2023
Monthly Sub-Tranche: EOI Open	Sub-tranche 3A: 13 March 2023 Sub-tranche 3B: 24 April 2023 Sub-tranche 3C: 22 May 2023	Sub-tranche 4A: 12 June 2023 Sub-tranche 4B: 24 July 2023 Sub-tranche 4C: 21 August 2023
Monthly Sub-Tranche: EOI Close	Sub-tranche 3A: 17 March 2023 Sub-tranche 3B: 28 April 2023 Sub-tranche 3C: 26 May 2023	Sub-tranche 4A: 16 June 2023 Sub-tranche 4B: 28 July 2023 Sub-tranche 4C: 25 August 2023

- (c) For the period September 2023 to June 2024, the Department proposes, but is not bound, to call for EOIs under this clause in several tranches and sub-tranches in accordance with dates to be determined by the Department.

3.2 Requesting Services

- (a) Council may respond to an EOI issued under clause 3.1 within the timeframe stated in the EOI, by submitting a request via the NSW Planning Portal at <https://www.planningportal.nsw.gov.au/regional-housing-flying-squad> (or such updated link provided to all Participants) which includes all information required at the link.
- (b) Council may only submit a request under this clause in relation to a Development Application which Council has determined not to reject under section 39 of the Regulation.
- (c) Council may submit a request under this clause in relation to a Development Application even if Council has commenced preparation of its own report assessing the Development Application.

3.3 Determination of requests to receive Services

- (a) Within one week of the close of an EOI for Quarterly Tranches and within three days of the close of an EOI for Monthly Sub-Tranches, or such further time as determined by the Department in its sole discretion, the Department must:
- (i) determine either to accept or reject a request made under clause 3.2; and
 - (ii) notify Council in writing of its determination (which may be provided by email) in relation to each request.

- (b) Council acknowledges and agrees that the Department's determination under clause 3.3(a):
 - (i) is at the Department's sole discretion;
 - (ii) is made having regard to eligibility criteria set out in the Program Guidelines; and
 - (iii) is, for Quarterly Tranches, the result of an evaluation committee process which:
 - (A) may involve input from evaluation committee members who are officers of other NSW Government agencies; and
 - (B) may include evaluation based on a comparison of Council's request against requests for Services made by other Participants.

3.4 Variations to determinations in relation to Services

- (a) At its sole discretion, the Department may seek Council's agreement at any time to withdraw a rejection notified under clause 3.3(a)(ii) and, with Council's agreement, determine to provide Services in relation to that Development Application.
- (b) At any time and at its sole discretion, Council may request that the Department ceases to provide Services in relation to a Development Application and if so requested, the Department must immediately cease.
- (c) Only after consulting with Council, the Department acting reasonably may cease to provide Services in relation to a Development Application for any reason.

3.5 Provision of information to the Department

After being notified that the Department will provide Services in relation to a Development Application, Council must provide the Department with any information required in Annexure B of the Program Guidelines, in accordance with any timeframes set out in the Program Guidelines.

4. Delivery of Services

4.1 Commencing the Services

- (a) Following Council's provision of information to the Department under clause 3.5, the Department will prepare an Assessment Report for the relevant Development Application.
- (b) Council will appoint an officer of Council to be the point of contact responsible for the Development Application and the Department's officer responsible for preparing the Assessment Report will liaise directly with Council officer on any issues relating to the Services.
- (c) At the Department's discretion, but only after consultation with Council, the Department may prepare an Assessment Report with the assistance of peer review from another appropriately qualified person.

- (d) At all times, Council remains responsible for its own administration processes, including but not limited to any notification and exhibition requirements, the collation of submissions, internal and external agency referrals, notifications to regional planning panels, and uploading of documentation to the NSW Planning Portal.

4.2 Provision of additional information

- (a) If requested by the Department at any time, Council must:
 - (i) assist the Department to facilitate a site inspection in relation to the Development Application;
 - (ii) brief the Department or provide any further information requested in relation to any aspect of the Development Application; and
 - (iii) issue a request for additional information to the applicant for the Development Application, in accordance with the Regulation.
- (b) Council must promptly:
 - (i) advise the Department if any issues come to Council's attention that may result in an increased scope for, or a potential refusal of, the Development Application; and
 - (ii) provide the Department with any information it receives or that arises while the Services are being provided that is relevant to the provision of the Services including, but not limited to, any amendments to the Development Application.

4.3 Effect of merit appeal on provision of Services

- (a) If a merit appeal in Class 1 of the Land and Environment Court pursuant to section 8.7 of the Act commences before the Services are completed:
 - (i) Council must inform the Department of the appeal within 2 Business Days of being served the originating process for the appeal; and
 - (ii) upon being notified of the appeal, the Department will cease the Services in relation to the Development Application the subject of the appeal.
- (b) Council may request that the Department continue to provide the Services in relation to the Development Application the subject of the merit appeal and the Department may, at its sole discretion:
 - (i) continue to prepare the Assessment Report; or
 - (ii) cease all work in relation to the Assessment Report.

4.4 Completion of Services

- (a) When the Department considers that an Assessment Report is ready for Council's initial review, the Department will provide Council with a version of the Assessment Report as a 'final draft for review'.

- (b) The Council may engage with the Department in relation to the content of the Assessment Report provided under clause 4.4(a), including requesting information and proposed amendments, and the Department will assist the Council cooperatively in this engagement.
- (c) The Services are taken to be complete in relation to a Development Application when the Department re-issues a 'final' version of the Assessment Report to Council following Council's engagement under clause 4.4(a).
- (d) Upon completion of the Services with respect to a Development Application under this clause:
 - (i) the Department transfers all intellectual property rights in the Assessment Report to Council; and
 - (ii) Council provides a non-exclusive, non-revocable licence in the Assessment Report to the Crown in right of New South Wales, represented by the Department, at no cost.
- (e) To allow Council to fulfil any of its statutory duties relating to the determination a Development Application under the Act:
 - (i) Council may continue to liaise with the Department to seek further information in relation to any aspect of the Assessment Report despite the Services being completed under this clause; and
 - (ii) the Department will assist Council with its requests for further information, to assist in the achieving the purpose of the Program.

4.5 No payment for Services

The Services are delivered by the Department free of charge to Council.

5. Dispute resolution

5.1 Notice of dispute

If any dispute arises in relation to this Deed, including in relation to its interpretation or any aspect of its performance, a party may give written notice of dispute (**notice of dispute**) to the other party which:

- (a) states that a dispute has arisen;
- (b) specifies the nature of the dispute; and
- (c) requests that a meeting of the authorised representative of each party be held within 5 Business Days.

5.2 Meetings between authorised representatives

If a party receives a notice of dispute from any other party in accordance with clause 5.1, that party must cause an authorised representative to attend at the meeting referred to in the notice of dispute, which meeting may be held by contemporaneous linking by telephone or live audio visual transmission (or similar).

5.3 Escalation to senior officers

If, within 10 Business Days of the meeting referred to in clause 5.2 (or such further period as agreed in writing by them), the Parties do not resolve the dispute, then the Parties are to nominate one officer of each party with greater seniority than the authorised representative under clause 5.2 and at comparable seniority to each other, to meet and resolve the dispute.

5.4 Dispute resolution and mediation

If, within 10 Business Days of the meeting referred to in clause 5.3 (or such further period as agreed in writing by them), the Parties do not resolve the dispute, then the dispute will be escalated for resolution by a Director of the Department and an equivalent level of officer at Council, both with greater seniority than the senior officers nominated under clause 5.3.

6. Confidentiality and Privacy

6.1 Confidential information

- (a) In this Deed, 'Confidential Information' means information that is by its nature confidential or which a party ought reasonably to know is confidential, disclosed or provided in any form by any party to the other party in connection with the subject matter of this deed, not including information that is in or enters the public domain through no fault of a party or made available to a party by a person not then under an obligation of confidence to the party in relation to that information.
- (b) Subject to this clause, each party must maintain in confidence all Confidential Information and ensure that the Confidential Information is kept confidential, but may reveal Confidential Information to its professional advisers to obtain professional advice, and also to another party if required by law to disclose the Confidential Information.

6.2 Privacy

Both parties acknowledge that their respective officers will operate in accordance with any policies and protocols adopted by their organisations relating to compliance with relevant privacy laws, including for the Department, Information Protection Principles applying to NSW public sector agencies under the *Privacy and Personal Information Protection Act 1988* (NSW).

7. Indemnities, liabilities and release

- (a) In this clause, 'claim' means any cost, expense, loss, damage, claim, action, proceeding or other liability (whether in contract, tort or otherwise), however arising and includes legal costs on a full indemnity basis.
- (b) Council indemnifies the Department for any costs in relation to any Claim, including merit appeal, or proceedings in class 4 or any other relevant class of the Land and Environment Court's jurisdiction or any relevant Court jurisdiction, in relation to the exercise of Council's statutory functions under the Act in relation to the Development Application in respect of which the Department is providing or has provided Services.
- (c) Council indemnifies and must keep indemnified the Department, the Crown in right of the State of New South Wales and their officers, employees and agents from and against any loss (paid or payable including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by any of those indemnified arising directly or indirectly from any Claim by any person as a result of or in connection with the provision of the Services.
- (d) Council releases and holds harmless the Department from all liability (in contract, tort (including negligence), under statute, or otherwise arising) in relation to any action or other proceeding or claim for damages or other relief for, or in relation to, any act or matter done or omitted to be done in connection with the provision of the Services.

8. General

8.1 Entire Deed

This Deed contains everything to which the Parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this Deed was executed, except as permitted by law.

8.2 No merger

The rights and obligations of the Parties under this Deed do not merge on completion of any transaction contemplated by this Deed.

8.3 Waiver

The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

8.4 Variation

This Deed may be varied by a reissue of an amended version of this Deed executed by both parties.

8.5 Costs and duties

Each party must bear its own costs in relation to the execution of this Deed, including any legal costs.

8.6 Governing law and jurisdiction

This Deed is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

8.7 Representations and warranties

Each party warrants and represents to the other party that:

- (a) they have power or enter into this Deed and comply with their obligations under this Deed and that entry into this Deed will not result in the breach of any law;
- (b) this Deed creates legal, valid and binding obligations, enforceable against the other party in accordance with its terms.

8.8 Severability

If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this deed, but the rest of this Deed is not affected.

8.9 Further assurances

Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to affect, perfect or complete this Deed and all transactions incidental to it.

8.10 Electronic execution

- (a) Each party consents to this Deed and any variations of this Deed being signed by electronic signature by a person authorised to sign this Deed.
- (b) The parties agree that electronic signing of this Deed by or on behalf of a party indicates that party's intention to be bound to this Deed.

- (c) A signed copy of this Deed transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Deed for all purposes.

8.11 Counterparts

This Deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

Executed as a Deed

Signed, sealed and delivered by **[Council]**

(ABN **[insert]**), in the presence of:

.....
Signatory of Authorised Signatory

.....
Name and position of Authorised signatory

.....
Signature of Witness

.....
Name of Witness

.....
Date

Signed, sealed and delivered by the Crown in the right of the State of New South Wales acting through the **Department of Planning, Housing and Infrastructure (ABN 20 770 707 468)** by its authorised signatory but not so as to incur personal liability:

.....
Signature of Authorised Signatory

.....
Name and position of Authorised Signatory

.....
Signature of Witness

.....
Name of Witness

.....
Date

Schedule 1 – Interpretation clauses

In this Deed unless the context otherwise requires:

- (a) a reference to **this Deed** or another document means this Deed or that other document and any document which varies, supplements, replaces, assigns or novates this Deed or that other document;
- (b) a reference to a **Deed** other than this Deed includes an undertaking, Deed, Deed or legally enforceable arrangement or understanding whether or not in writing;
- (c) a reference to a **document** includes any Deed in writing, or any certificate, notice, instrument or other document of any kind and all amendments or supplements to, or replacements or novations of, that document;
- (d) a reference to a **right or obligation** of a party is a reference to a right or obligation of that party under this Deed;
- (e) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (f) a reference to a **statute, regulation, proclamation, ordinance or by-law** includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Government authority with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (g) a reference to a **body or authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing Deed, to a body or authority having substantially the same objects as the named body or authority;
- (h) a reference to a **natural person** includes a natural person, corporation, statutory corporation, partnership, association, trust, joint venture, the Crown or any other organisation or legal entity and any Government authority, and includes their personal representatives, successors and permitted assignees;
- (i) a reference to a **party to a document** includes a reference to the servants, agents and contractors of the party, and the party's successors or assignees;
- (j) a reference to a **corporation** includes its successors and permitted assignees;
- (k) a reference to **Council** includes all successors and permitted assignees;
- (l) a reference to the **recitals**, a **clause**, a **party**, **schedule**, or **annexure** is a reference to the introduction, a clause of, a party to or an annexure to this Deed;
- (m) the **schedules** and **annexures** form part of this Deed, however **clause headings**, **the recitals** and the **table of contents** are inserted for convenience only and do not form part of this Deed;

- (n) **including, includes, for example** or similar expressions are to be construed without limitation unless express wording is used to indicate otherwise;
- (o) a reference to **any thing** (including any right) includes a part of that thing but nothing in this subclause implies that performance of part of an obligation constitutes performance of the obligation, and requirement to do **any thing** includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (p) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (q) a word which denotes the singular denotes the plural, and a word which denotes the plural denotes the singular;
- (r) neither this Deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (s) if there is a conflict between a term of this Deed and a term of the Program Guideline, the terms of this Deed prevail.