



Warringah Council

**INDEPENDENT HEARING
&
ASSESSMENT PANEL (IHAP)**

CHARTER

APRIL 2006



INDEPENDENT HEARING & ASSESSMENT PANEL CHARTER

1.0 Purpose

An independent forum for stakeholders - applicants, the community and objectors - to submit to and discuss issues relevant to the following types of Development Applications:

- a) Those classified as Category Three as required by Clause 15 and other relevant provisions of the Warringah Local Environmental Plan 2000 (WLEP 2000);
- b) Those Class 2 to 9 Buildings under the Buildings Code of Australia (BCA) involving residential flat buildings, retail and commercial, industrial, motels, hospitals, clubs with a construction cost greater than \$1 million where there are more than two unresolved objections with the exception of :-
 - i. subdivision of existing or approved development
 - ii. Occupation, change of use or fitout of a property/tenancy, extension of hours of operations where the proposed activity is Category 1 or 2,
 - iii. Signage applications,
 - iv. Modifications of consent and alterations and additions
 - v. Refusal of an application where the proposal is non-compliant with the WLEP or where fundamental information has been requested and not received.
- c) Subdivision of land creating more than 5 allotments
- d) Those applications the subject of a Section 82A Review of Determination where the original application had been considered by IHAP,
- e) Those applications, site specific rezonings, masterplans or other planning instruments where the Director PAS and Application Determination Panel has determined that the public interest is of such a significant nature to refer the application to an independent body.

The Panel assesses the proposal, then submits a report and recommendation to the Council for decision.

2.0 Objectives

- a) To provide a forum for interested parties to be heard openly in terms of the requirements of Clause 15 of the WLEP 2000 for Category Three Development Applications.
- b) To undertake an independent assessment of the proposed development classified as Category Three under Clause 15 of the WLEP 2000.
- c) To provide increased transparency and an independent assessment of the proposed development relating to buildings classified 2 to 9 of the BCA where there are more than two unresolved objections.
- d) To provide stakeholders with an increased sense of involvement in the outcomes of the assessment process in relation to the types of Development Applications listed in Clause 1.0 above.
- e) To achieve development outcomes consistent with WLEP 2000.

3.0 Outcomes

- a) The process of review complies with the requirements of Clause 15 and other provisions of the WLEP 2000 in regard to Category Three developments.
- b) The development is assessed in accordance with the requirements of the WLEP 2000 and other State planning controls.
- c) The development is consistent with the Desired Future Character described in the relevant Locality Statement of the WLEP 2000.
- d) The development is independently assessed by a Panel of technical experts and community representatives.

4.0 Functions

- a) To consider and make a recommendation to Council on Development Applications classified as Category Three under Clause 15 of the WLEP 2000 following Council assessment
- b) To consider and make a recommendation to Council on Applications as defined in Section 1
- c) To consider and make a recommendation to Council on Development Applications where there is significant public interest.
- d) To openly discuss proposals and hear representations from applicants and objectors.
- e) To independently assess applications submitted by Warringah Council for development on Council land and make recommendations, with supporting reasons, for final determination by the Council.

- f) To consider any independent mediation or negotiation report, if the application has unresolved public objections where that report is not subject to a confidentiality clause.
- g) To take into account any relevant statutory planning instruments specifically WLEP 2000 and/or Council policies and relevant Land & Environment Court Planning Principles.
- h) To comply with statutory provisions, particularly the Local Government Act, 1993 and the Environmental Planning and Assessment Act, 1979, in particular, Section 79C.
- i) To avoid any lobbying or external communication from applicants or objectors outside the forum of Panel hearings.
- j) To provide advice to Council and suggested policy changes in relation to planning controls and operational arrangements to be addressed following determination.
- k) To vary meeting procedures in consultation with the General Manager.
- l) To assess and recommend approval or refusal on information submitted as part of the relevant application or to defer for additional information, if such information is fundamental to the determination of the proposal and such information has not previously been requested by Council staff.

5.0 Panel Appointment and Termination

- a) The Panel shall consist of four (4) members. Three experts shall be drawn from the professional disciplines of law, urban design, town planning, architecture or the environment. The Chairperson of the Panel, shall be the legal professional. Should a legal professional not be present/available for a meeting, Council may:
 - i) When the Panel is being constituted for a meeting and a legal professional is not available the Director PAS may substitute the Chairperson with a professional expert,
 - ii) If the Chairperson is not available at the meeting, the remaining panel members shall elect a Chairperson.
- b) A pool of professional experts will be appointed by the General Manager, and selected for each meeting where possible on a rotational basis. Panel Members will be appointed on the basis of their qualifications and experience, and absence of any real or potential pecuniary or conflict of interest.
- c) A pool of four (4) representatives from the community will be appointed by the General Manager, and the community panel representative for each meeting will be selected on a rotational basis.
- d) If a nominated panel member is not available for a meeting an alternative will be selected by the Director Planning and Assessment. A reference to a member of the Panel includes a reference to the member's appointed alternate.
- e) If a vacancy occurs in the membership of the Panel, the General Manager may appoint a person to fill the vacant position and such person shall hold office for the remainder of the predecessor's term of appointment.

- f) The term of the Panel shall be for a two (2) year period.
- g) All Panel members shall meet every 6 months in December and June, or more regularly as determined by the General Manager to review its meeting procedures, past recommendations and Council decisions to identify any improvements to procedures or decision making. Annually, in July, the Panel shall prepare a report to the General Manager providing an assessment of the operation of the Panel and any suggestions for improvement. All panel members are to be involved in this report. The General Manager shall report the Annual Report to Council.

6.0 Meeting Notification and Reporting

- a) Agendas for meetings of the Panel shall include information on meeting date, venue, business proposed to be conducted at the hearing, the names of the Panel Members for that meeting, and contain reports prepared by Council Assessment Officers or independent consultants.
- b) The number of agenda items will be at the discretion of the Director Planning and Assessment Services having regard to the complexity of items, Land & Environment Court Appeal deadlines and workload requirements of Council.
- c) Agendas shall be made available to Panel Members seven (7) days prior to the meeting in hard copy or electronic format. Agendas will be made available to Councillors and members of the public at the same time.
- d) Additional to the meeting agenda containing the Assessment Officer's Report, Panel members shall be provided with associated documents, including all written submissions.
- e) Panel hearings shall be held as required and at times agreed between the Director Planning and Assessment and Panel Chairperson.
- f) Hearings will be advertised in the Saturday edition of the Manly Daily before the hearing, a notice will appear in the Civic Centre Foyer five (5) days prior to the hearing, and applicants and objectors with an interest in an application will receive prior written notification of the hearing date, time and location.
- g) The Panel shall provide reports generally consistent with Council's report template for Development Applications. This will ensure all relevant aspects of the applicable planning instruments are given appropriate consideration.

7.0 Site Inspections and Public Hearing Procedures

- a) The Panel shall attend at the Council Chambers at 3.00pm, or at a later time determined by Director of PAS, on the day of the scheduled hearing to carry out site inspections of applications to be considered at the public hearing.
- b) Site inspections, including transportation, shall be organised by the IHAP administrative support and a senior council assessment officer will accompany Panel Members on inspections.
- c) Prior to the public hearing, and as part of the site inspection arrangements, the assessment officer will attend to answer and clarify any issues within the assessment report or raised by Panel members from the site inspection.
- d) Following site inspection the Panel shall convene the public hearing. The meeting shall proceed without adherence to formal rules of debate. Questions arising shall be determined by a majority of votes of members present and voting. If votes are tied the Chairperson has a casting vote. The Panel shall regulate its own proceedings subject to the charter provisions.
- e) A minimum of three (3) Panel members shall form a quorum and any duly convened hearing at which a quorum is present shall be competent to perform the Panel's functions.
- f) The first item of business at Panel Inspections and Public Hearings will be Panel members declaring any pecuniary or conflicts of interest that may prevent them from participating in or considering any item on the agenda. The Panel members shall adhere to the memorandum of understanding, Item 4 that relates to the declaration of pecuniary interest and conflict of interest as defined in Council's IHAP Code of Conduct (Annexure 2). A Panel member having declared a pecuniary interest, or a conflict of interest that prevents them from participating in the item, shall not attend the site inspection or public hearing associated with the item or participate in discussion or voting on the item.
- g) Submissions by the applicant and other persons will be considered at the hearing. The Panel shall, upon request, hear submissions from persons who identify prior to a hearing that they wish to make a submission to be considered by the Panel.
- h) Where there are a large number of persons making submissions with common interest either on behalf of the applicant or objectors, the Panel shall have the discretion to hear a representative of those persons. The applicant is the person nominated on the development application form as applicant. Consultant and legal representatives of the applicant will be permitted to address the Panel at the discretion of the Chairperson. Where an issue of legal interpretation arises the chair may refer the matter to Councils Legal Advisors for advice.
- i) Presentations to the Panel by the applicant and objectors shall be restricted to 3 minutes each. The Panel Chairperson has the discretion to extend the period if considered appropriate.

- j) An administrative support officer from Council shall assist the Panel by recording notes and minutes in accordance with the template developed by Council, and advising on organisational and meeting procedures.
- k) A senior council assessment officer nominated by the Director Planning and Assessment will be available at the hearing to provide professional assistance and advice to the Panel members on Council planning provisions and policies.
- l) The Panel shall not receive substantive additional information or amended applications once the Agenda for a meeting has been finalised. If a request to submit substantive additional information is made, the panel shall consult with Council staff as to whether it is appropriate to accept such additional information and if so, the need to re-assess the proposal in its entirety prior to the consideration of the matter. If in the staff view the request does not require re-assessment of the Application the Panel may choose to accept the information and proceed to hear the matter. Should Staff deem that it is appropriate to accept such information and re-assessment is necessary, the matter shall be deferred, re-assessed and reported back to a subsequent panel meeting.

8.0 Assessment Procedures

- a) On conclusion of the public hearing, the Panel will convene in private, agree on its Findings and Recommendation, and record the Findings and Recommendation in a standard format for presentation to Council. The Panel's recommendation shall be finalised by 12.00 pm the Monday following the hearing and returned to Council in the agreed format.
- b) The Panel's Recommendation can be for approval, refusal, or deferral for additional information if such information has not been previously requested by Council's staff.
- c) If the Panel recommends approval of the application, the Panel shall provide consent conditions based on Council's standard list of conditions, as well as any specific conditions considered appropriate by the Panel. The Panel shall also make use of deferred commencement consent conditions to address specific issues of concern to the Panel.
- d) If the Panel recommends refusal of the application, the Panel findings shall clearly indicate the changes in the application necessary to achieve compliance with statutory planning instruments. The Panel shall also provide and justify reasons for refusal - such must be capable of being defended in the Land & Environment Court if an appeal is lodged against a Council refusal.
- e) If the Panel recommends deferral, the Panel findings and recommendation must explicitly state the issues to be addressed by the applicant or the Council, to enable the application to be brought back to the Panel for final consideration. Any deferred application will be further considered by the Panel upon submission of the required information. The Panel must also consider the need to renotify substantially amended proposals and consider a professional officer's revised report.

- f) When additional information is sought by the Panel, upon submission of that information, the application would not be referred back to the Panel, rather, it will be referred to Council for determination or the matter may be recommended for determination under delegation by the General Manager.
- g) Where the applicant lodges a request for a Section 82A review of an application refused by Council resolution, the request shall be assessed and reported to the Panel to enable the Panel to provide a recommendation to the Council.
- h) Panel members will be notified of Council decisions on applications considered by the Panel.

9.0 Panel Members Remuneration

Remuneration payable to Panellists to attend each hearing and assessment meeting, including site inspections prior to meetings, shall be determined by the General Manager on an annual basis as part of the Council Budgetary process. A fixed fee, inclusive of GST, shall be set for each hearing and assessment meeting. An hourly rate shall be set for inspections, meetings, forums, etc separate to the hearing and assessment meeting.

Memorandum of Understanding

Appointment of Panel Members

I -----hereby accept appointment to the Warringah Council Independent Public Hearing Panel ("the Panel") on the following terms and conditions: -

1. I have read and agree with the Independent Public Hearing Panel Charter shown as Annexure "A" to this Memorandum.
2. I acknowledge and agree that my appointment begins on the -----**2007** and ends on -----**2009**, which term is renewable by the Council in its absolute discretion.
3. I understand and accept that each member of the Panel is entitled to receive such remuneration for attending meetings and taking part in the business of the Panel as specified in the attached Charter.
4. I acknowledge and accept that if I have a pecuniary interest in any matter (as defined in sections 442 and 443 of the Local Government Act, 1993), to be considered by a meeting of the Panel, or a Conflict of Interest as defined in the Councils Code of Conduct then:-
 - (i) I will immediately disclose the nature of that interest to the Panel at the meeting prior to any consideration of the matter, and
 - (ii) I will not be present at or in the sight of the meeting of the Panel at any time during which the matter is being considered or discussed by the Panel.
5. I understand and accept that the business conducted by a Panel shall be subject to the provisions of Section 148 of the Environmental Planning and Assessment Act 1979 and I will not disclose or misuse any information provided to me as a Member of the Panel.
6. I acknowledge and agree that the Council may immediately terminate my appointment to the Panel by notice in writing, given to me or posted by pre-paid letter addressed to my last known place of residence or business or post office box, if I act in breach of the requirements of paragraph 5 of this Memorandum of Understanding or if I fail to attend two (2) consecutive meetings of the Panel which I should attend, without a written explanation for my absences given to and accepted by the Council's Director of Planning and Assessment Services.

Panel Member (signed)

Date

General Manager (signed)

Date



INDEPENDENT HEARING AND ASSESSMENT PANEL

CODE OF CONDUCT

Background

In 2003, Warringah Council established an Independent Hearing and Assessment Panel (**IHAP**) (**“the Panel”**). The IHAP Charter outlines the purpose of the Panel:

An independent forum for stakeholders - applicants, the community and objectors - to submit to and discuss issues relevant to the following types of Development Applications:

- a) Those classified as Category Three as required by Clause 15 and other relevant provisions of the Warringah Local Environmental Plan 2000 (WLEP 2000);*
- b) Those Class 2 to 9 Buildings under the Buildings Code of Australia (BCA) involving residential flat buildings, retail and commercial, industrial, motels, hospitals, clubs where there are more than two unresolved objections; and*
- c) Those where the General Manager has determined that the public interest is of such a significant nature to refer the application to an independent body.*

The Panel held its first meeting on 23 April 2003.

Charter

The IHAP Charter outlines the functions, responsibilities and operating procedures. It is regularly reviewed to ensure best practice features are continually applied.

Code of Conduct

The Council seeks the highest ethical standards in delivering services to its community. This Code of Conduct (**“the Code”**) applies to all Panel Members when exercising or purporting, at all times, to exercise their duties, responsibilities and functions under the Charter. It is designed to assist in maintaining the reputation and integrity of the Panel and to provide a basis for fair dealings and reaching findings and making recommendations on matters before it.

This Code is to be read in conjunction with the IHAP Charter.

Panel Members Responsibilities

Panel Members must:

- act in accordance with the requirements of the law, the IHAP Charter and this Code;
- act in an appropriate way toward the public, staff of the Council and other Members of the Panel; and
- act in the best interests of the Warringah community.

Panel Members Interaction with Councillors, Council Staff and Applicants / Representors

Panel Members may approach and liaise with Council staff nominated by the General Manager to assist the Panel to obtain information and clarify matters relating to their duties, responsibilities and functions and matters before them. Panel Members shall not issue directions to or order Council staff to carry out any direction on any matter whatsoever.

Panel Members must not approach an applicant or representor, or if approached by an applicant or representor must not discuss any application which is either before the Panel or will come before the Panel at some future time, except during the course of a panel meeting where the application forms part of the agenda and the applicant or representor has a right to be heard by the Panel.

Panel Members must not approach a Councillor, or if approached by a Councillor must not discuss any application which is either before the Panel or will come before the Panel at some future time, except during the course of a panel meeting where the application forms part of the agenda and the Councillor has a right to be heard by the Panel at the hearing in their private capacity.

Conflicts of Interest and Disclosure at Meetings

Panel Members must;

- consider and comply with all disclosure requirements under this Code including but not limited to disclosing interests arising out of a personal and/or pecuniary nature and of a direct and/or indirect nature and if a conflict exists or arises, shall disclose the nature and extent of such interest and conflict in accordance with the provisions below;
- ensure no conflict exists for Members, or those people closely associated with them, which could lead to a conflict with the impartial performance of the duties;
- consider both perceived and actual conflicts for the purposes of this clause.

Pecuniary interest and non pecuniary conflict of interest are defined as follows:

Pecuniary Interest	an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.
Non-pecuniary interest	a private or personal interest the person has that does not amount to a pecuniary interest as defined in the Act (for example; a friendship, membership of an association, society or trade union or involvement or interest in an activity).

Pecuniary Interest

Panel members shall adhere to the Memorandum of Understanding signed with the Council acknowledging and accepting that if the Panel member has a pecuniary interest in any matter (as defined in sections 442 and 443 of the Local Government Act, 1993) to be considered by a meeting of the Panel, then:

- (i) upon being notified of a draft list of agenda items, if a Panel member identifies a possible or actual pecuniary interest the Panel member shall withdraw as nominated Panel member for that meeting and an alternative shall be invited to attend.
- (ii) at the Panel meeting, if a Panel member identifies a possible or actual pecuniary interest the Panel member will immediately disclose the nature of that interest prior to any consideration of the matter, and
- (iii) will not be present at or in the sight of the meeting of the Panel at any time during which the matter is being considered or discussed by the Panel.

A Panel member having declared a pecuniary interest shall not attend the site inspection or public hearing associated with the item or participate in discussion or voting on the item.

The first item of business at Panel Inspections and Public Hearings will be Panel members declaring any pecuniary interest that may prevent them from participating in or considering any item on the agenda. If at any time during a Panel meeting, either at the pre-hearing inspection, or at the public hearing, or during consideration of the item in closed session, a Panel member identifies a possible or actual pecuniary interest the Panel member shall immediately notify the Chair and withdraw from the meeting during the consideration of that item.

Non Pecuniary Conflict of Interest

If at any time, upon notification of the draft list of agenda items, at pre hearing inspections, public hearing or consideration of an item in closed session, a Panel member identifies a possible or actual non pecuniary conflict of interest the Panel member shall consider whether it is significant enough to withdraw from consideration of the item and if so shall notify and withdraw as nominated Panel member for that meeting or item.

If having declared a non-pecuniary conflict of interest a Panel member has a broad range of options for managing the conflict. The option chosen will depend on an assessment of the circumstances of the matter, the nature of your interest and the significance of the issue being dealt with. Non-pecuniary conflict of interests must be dealt with in at least one of these ways:

- It may be appropriate that no action is taken where the potential for conflict is minimal or can be eliminated by disclosure. However, you should provide an explanation of why you consider a conflict does not exist.
- Limit involvement if practical (for example, participate in discussion but not in decision making or vice-versa). Take care when exercising this option.
- Remove the source of the conflict, for example, relinquishing or divesting the personal interest that creates the conflict.
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue or restrict your access to all relevant information.

Information to Guide decisions about conflict of interests

There are a number of questions that you can ask yourself to help in deciding whether or not you have a conflict of interest or whether your behaviour could create the impression that there is a conflict and so undermine the confidence in the Panel. These questions are:

- *Do I, a relative, friend or associate stand to gain or lose financially from council's decision or action on this matter?*
- *Do I, a relative, friend or associate stand to gain or lose my/our reputation because of council's decision or action?*
- *Have I contributed in a private capacity in any way to the matter before council?*
- *Have I made any promises or commitments in relation to the matter?*
- *Have I received a benefit or hospitality from someone who stands to gain or lose from council's decision or action?*
- *Am I a member of an association, club or professional organisation, or do I have particular ties and affiliations with organisations or individuals, who stand to gain or lose from council's consideration of the matter?*
- *Could there be benefits for me in the future that could cast doubt on my objectivity?*
- *If I do participate in assessment, would I be happy if my colleagues and the public became aware of my association or connection?*
- *Would a fair and reasonable person perceive that I was influenced by personal interest in performing my duty?*
- *Do I need to seek advice or discuss the matter with an objective party?*
- *Am I confident of my ability to act impartially and in the public interest?*
- *Do I understand the possible penalties/sanctions if I go on with the action?*

Other Business or Employment

Public perception of bias/conflict of interest requires that Panel members not engage in any of the following while they are members of IHAP:

- * Appearing for or against Council in development matters, for example, as consultants acting on behalf of applicants or Council, giving evidence in Court for or against Council;
- * Making representations to IHAP on behalf of others, for example, making a submission in support of a development, or on behalf of an objector;
- * Making representations to Council in relation to planning and development matters, for example, supporting an application for a rezoning;
- * Deriving income (other than remuneration for being an IHAP panel member) through contracts with Council.

Any other work conducted within Warringah shall be the subject of a declaration of interest in accordance with this Code.

Gifts & Benefits

Panel Members must never receive, accept, demand, solicit, request or accept a gift or benefit in connection with their duties on the Panel. Facilities, transportation, equipment, meals etc provided by Council as part of panel meetings shall not be considered as gifts or benefits under this part.

Resources

Panel Members must use resources provided by the Council in an effective and efficient manner; and not use such resources for private purposes.

Use of Information /Confidentiality

Panel Members must:

- not use information obtained in the course of carrying out their duties for anything other than for exercising their functions, powers and duties for the Panel.
- keep information obtained or provided confidentially, confidential.
- determine what information and material is to be retained by Members (and the Panel) and how it is to be treated for the purposes of retention.

Public Comment

The Chair of the Panel is not authorised to speak publicly to the media and address the public on behalf of the Panel, except with the permission of the General Manager.

No Panel Member may make any comment to the media or the public in relation to any matter before the Panel or any recommendation of the Panel.

Treatment and Respect of Other Members and Public

Panel Members must:

- act fairly and honestly towards other Members of the Panel and the public;
- show respect for the opinions of other Members of the Panel; and
- show respect and consideration to applicants and members of the public.

Findings and Recommendations

Panel Members shall at all times when assessing matters;

- act in accordance with the law;
- act in accordance with the Charter;
- act reasonably, justly and in a non-discriminatory manner;
- deal with all matters before the Panel in a consistent manner;
- only take relevant information into account; and
- act reasonably and in good faith and not for an improper purpose, ulterior purpose or on irrelevant grounds.

Breach of Code

Misconduct

Where any complaint alleging misconduct by a Panel Member is made, the complaint is to be made in writing to the General Manager and must identify the part of this Code or the Charter alleged to have been breached, including the reasons in support of the alleged breach, and be signed by the complainant.

Anonymous complaints need not be investigated, but the General Manager has the discretion to determine what action if any will be taken.

Upon receipt of a written complaint alleging misconduct, the General Manager shall take such action as appropriate.

Corrupt and Unlawful Conduct

Panel Members must not engage in corrupt or unlawful conduct and must report any actual or potential corrupt or unlawful conduct to the General Manager of the Council in accordance with the procedures set out in this Code.

All deliberations relating to an investigation shall be conducted in strict confidence.

Sanctions for Breach of Code of Conduct

Having regard to the nature of the findings after the investigation, action including but not limited to the following may be taken by the General Manager:

- counselling of the member;
- suspension from the Panel;
- suspension from hearing a particular matter;
- removal from the Panel;
- report to another authority

Review of Code

This Code shall be reviewed annually by the General Manager, with the assistance of the Panel.

(NOTE: This Code was adopted by the Council on 13 September 2005.)