

INDEPENDENT HEARING AND ASSESSMENT PANEL (IHAP)

COUNCIL POLICY

BACKGROUND

Council resolved to adopt an IHAP on 27 May 2008 to provide transparency and probity in the development application assessment process and also provide an independent forum for stakeholders (applicants and objectors) to present and discuss issues relating to controversial development proposals. The IHAP is used in situations where additional rigor in the assessment process would add value and improve decision making without unnecessarily delaying the processing of routine applications which comply with adopted policies.

OBJECTIVE

To provide for the independent, transparent review and assessment of development applications which are consistent with Wollongong's Local Environmental Plans and Development Control Plans and to provide a forum for interested parties to be heard openly.

POLICY STATEMENT

Wollongong City Council is committed to assisting the community with concerns that may arise from development applications where there is potential for the parties to benefit from participating in an open forum. This policy applies to the development application process and establishes the ground rules for IHAP. A formal IHAP process will ensure that all parties can be confident of an impartial, fair and transparent assessment process.

STATEMENT OF PROCEDURES

1.0 Purpose

An independent forum for stakeholders (applicants, the community and objectors) to submit and discuss issues relevant to the following types of Development Applications (except where the JRPP is the determining authority – see notes):

- 1.1 Class 2 to 9 buildings under the Building Code of Australia (BCA) including residential flat buildings, mixed use developments, retail and commercial, industrial, motels, hospitals, clubs etc., with a construction cost greater than \$1 million and where Council has received five or more unresolved objections¹, with the exception of:
 - i. Subdivision of existing or approved development;
 - ii. Change of use or fit out of a property/tenancy;
 - iii. Signage applications;
 - iv. Modifications of consent and alterations and additions (other than Cl 1.9);
- 1.2 Subdivisions of land creating 5 or more lots and where Council has received 5 or more unresolved objections¹.
- 1.3 Multi-dwelling housing including townhouses and villas involving 5 or more dwelling units and where Council has received 5 or more unresolved objections¹.
- 1.4 Applications involving variations to LEP development standards.
- 1.5 Applications involving a use only permitted after satisfying the provisions of clause 11 of Wollongong LEP 1990 and where Council has received 2 or more unresolved objections¹(This clause will cease to have effect upon notification of WLEP2009 on the NSW Legislation Website).
- 1.6 All development applications where Council is the owner of the land or where the Council holds a commercial interest and:
 - i. The application has a construction cost value greater than \$1 million; or
 - ii. Council has received five or more unresolved objections¹
- 1.7 Applications lodged by a Councillor, Administrator, State or Federal Member of Parliament, or Designated Council Officer directly involved in any aspect of development assessment, and also including senior management, and where Council has received two or more unresolved objections¹.
- 1.8 Applications which are the subject of a Section 82A Review of Determination where the original application had been
 - i. considered by IHAP or determined by full Council; or
 - ii. refused by staff under delegated authority and the S82A Review recommendation is also for refusal.
- 1.9 Applications made under S96 where Council was the original consent authority and where five or more unresolved objections¹ were received.

Notes:

- Development applications will not be referred to the IHAP where the proposal is non-compliant with the LEP and DCP(s), or where fundamental information has been requested and not received and the application is determined by refusing consent.

¹ Note: Pro-forma letters, petitions, or multiple letters from a single address for the purposes of referral to the IHAP would be counted as one (1) objection.

- The Joint Regional Planning Panel (JRPP) is the determining authority for development described by State Environmental Planning Policy (Major Development) 2005 (SEPP (Major Development)). If there is an inconsistency between this Charter and the SEPP then the SEPP will prevail to the extent of any inconsistency. For clarification referrals are required by SEPP (Major Development) under Cl 13B(1)(b), (c) (d), (e) and 13(C).

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

2.0 Objectives

- 2.1 To provide a forum for interested parties to be heard openly.
- 2.2 To independently review the assessment of development applications.
- 2.3 To provide increased transparency and an independent assessment of applications listed in Section 1.0 above.
- 2.4 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 Section 1.0 above.
- 2.5 To achieve development outcomes consistent with Wollongong's Local Environmental Plan(s) (LEPs) and Development Control Plans (DCPs).

3.0 Outcomes

- 3.1 The process of review is undertaken in accordance with the requirements of Council's LEPs(s) and DCPs and relevant State planning controls and regulations.
- 3.2 The Panel of technical experts and community representatives independently reviews the assessment of the development.

4.0 Functions

- 4.1 To consider and make recommendations with supporting reasons for final determination by the Council on Development Applications listed in Section 1.0 above following Council assessment.
- 4.2 To openly discuss proposals and hear representations from applicants and objectors during the hearing.
- 4.3 To avoid any lobbying or external communication from applicants or objectors outside the forum of Panel hearings.
- 4.4 To take into account any relevant statutory planning instruments and/or Council policies and relevant Land & Environment Court Planning Principles.
- 4.5 To comply with statutory provisions, particularly the Local Government Act, 1993 and the Environmental Planning and Assessment Act, 1979.
- 4.6 To provide advice to Council and suggested policy changes in relation to planning controls and operational arrangements to be addressed following determination.
- 4.7 To vary meeting procedures in consultation with the Manager City Planning.
- 4.8 To assess and recommend approval, refusal or deferral of applications referred to the Panel. The Panel may request additional information in circumstances where the 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

- 5.1 The Panel shall consist of four (4) members. Three independent experts shall be drawn from the professional disciplines of law, urban design, town planning, architecture or the environment. One member is to be a representative from the Wollongong Community. The Chairperson of the Panel shall be an independent expert from one of the respective professional disciplines.

- 5.2 A pool of independent 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.
- 5.3 A pool of three (3) 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.
- 5.4 If a nominated panel member is not available for a meeting an alternative will be selected by the Manager City Planning. A reference to a member of the Panel includes a reference to the member's appointed alternate.
- 5.5 If a vacancy occurs in the membership of the Panel, the General Manager may appoint a person to fill the vacant position.
- 5.6 The Panel shall meet annually with the Manager City Planning to review its meeting procedures, past recommendations and Council decisions to identify any improvements to procedures or decision making. At that time the Manager City Planning shall prepare a report to the Executive Management Committee providing an assessment of the operation of the Panel and any suggestions for improvement. All panel members are to be involved in this report.

6.0 Meeting Notification and Reporting

- 6.1 Agendas for meetings of the Panel shall include information on meeting date, venue, business proposed to be conducted at the hearing and contain reports prepared by Council Assessment Officers or independent consultants.
- 6.2 Agendas shall be made available to Panel Members five days prior to the meeting in hard copy or electronic format.
- 6.3 Agendas will be made available to Councillors/Administrators and members of the public five days prior to the meeting.
- 6.4 The Manager City Planning shall hold Panel Hearings as required.
- 6.5 The Panel shall provide reports in accordance with the template provided.
- 6.6 The Manager City Planning will provide a Council report summarising the Panel's report and Council Officer's report.

7.0 Site Inspections and Public Hearing Procedures

- 7.1 The Panel shall attend site inspections of applications to be considered at the public hearing, on the day of the scheduled hearing and shall arrive at the Council Administration Building at 3.00pm, or at a later time determined by Manager City Planning, for commencement of those inspections.
- 7.2 Site inspections, including transportation, shall be organised by the Senior Council Assessment Officer and/or Manager who will also accompany Panel members on inspections.
- 7.3 Prior to the public hearing, and as part of the site inspection arrangements, the assessment officer and/or Manager will attend to answer and clarify any issues within the assessment report or raised by Panel members from the site inspection.
- 7.4 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.
- 7.5 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.
- 7.6 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 particular item on the agenda. 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.

- 7.7 Submissions by the applicant and objectors will be considered at the hearing. An objector is deemed to be a person who has made a written submission in respect to the application. 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.
- 7.8 Where there are a large number of persons making submissions with common interests, 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. Consultants 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 the Manager City Planning for advice.
- 7.9 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.
- 7.10 A senior council assessment officer and/or Manager nominated by the Manager City Planning will be available at the hearing to provide professional assistance and advice to the Panel members on Council planning provisions and policies.
- 7.11 The Panel shall not receive substantive additional information that amends the application.

8.0 Assessment Procedures

- 8.1 On conclusion of the public hearing, the Panel will convene in private, agree on its findings and recommendations and record the findings and recommendations in a standard format for presentation to Council.
- 8.2 The Panel's recommendation can be for approval, refusal, or deferral pending the submission of additional information if such information has not been previously requested by Council's staff.
- 8.3 If the Panel recommends approval of the application, the Panel shall either endorse the conditions provided by the Officer or add or delete conditions.
- 8.4 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.
- 8.5 If the Panel recommends deferral to the Manager City Planning, the Panel findings and recommendation must explicitly state the issues to be addressed by the applicant or the Council
- 8.6 Panel members will be notified of Council decisions on applications considered by the Panel.

9.0 Panel Members Remuneration

- 9.1 Remuneration payable to Panelists 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, including travel, reading time, site inspections and the panel meeting.

CODE OF CONDUCT

Council seeks the highest ethical standards in delivering services to its community. This Code of Conduct (**"the IHAP 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 and Council's general Code of Conduct.

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 Wollongong 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; and
- 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.
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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, or otherwise defined in the Council's Code of Conduct) 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; or
- Deriving income (other than remuneration for being an IHAP panel member) through contracts with Council.

Any other work conducted within the Wollongong LGA 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 or Council's Public Officer 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 conduct (as defined in the ICAC Act) or unlawful conduct and must report any actual or potential corrupt or unlawful conduct to the General Manager or Public Officer 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 Manager City Planning, with the assistance of the Panel and reported to the Executive Management Committee.

SUMMARY SHEET

RESPONSIBLE DIVISION	City Planning
MANAGEMENT PLAN FUNCTION	Development Assessment and Compliance
DATE ADOPTED ON BEHALF OF COUNCIL	28 July 2009
DATE OF PREVIOUS ADOPTION(S)	27 May 2008
DATE FOR REVIEW	July 2012