

Independent Hearing and Assessment Panel (IHAPs)

Relevant Provisions under the Environmental Planning & Assessment Act 1979

September 2017

IHAPs under the Environmental Planning and Assessment Act 1979

Provisions relating to local planning panels (i.e IHAPs) can be found within the *Environmental Planning and Assessment Act 1979*. The full Act can be accessed at www.legislation.nsw.gov.au.

The main legislative provisions are provided below to allow quick reference:

Part 2A Other planning bodies

Division 4 Local planning panels and council delegates

23I Exercise of consent authority functions on behalf of councils where local planning panel constituted

- (1) This section applies in respect of an area of a council for which a local planning panel has been constituted under this Division.
- (2) The functions of a council as a consent authority under Part 4 in respect of any such area are not exercisable by the councillors. They are exercisable on behalf of the council by:
 - (a) the local planning panel, or
 - (b) an officer or employee of the council to whom the council delegates those functions, or
 - (c) a regional panel on which those functions are conferred under section 23G.
- (3) The Minister may give directions to councils under section 117 (either to particular councils or to councils generally) on the development applications that are to be determined on behalf of the council by a local planning panel. This subsection does not apply to development applications that are required to be determined by a regional panel.
- (4) For the purposes of this section, the functions of a council as consent authority under Part 4 include:
 - (a) the determination of development applications and applications for the modification of development consents, and
 - (b) without limiting paragraph (a), the functions of a consent authority under Divisions 2 and 2A of Part 4 and sections 89A, 93I, 94, 94A, 94B, 94C, 94CA, 94EF, 94F, 95 (2), 96 (2) and 96AA, and
 - (c) the functions of a consent authority or council under this Act or any other Act that relate to the carrying out of development (including the making of development applications) and that are declared by the regulations to be functions of a council as consent authority,but do not include the functions of a consent authority or council that the regulations declare are not the functions of a council as consent authority.

23J Constitution of local planning panels

- (1) A council may constitute a single local planning panel for the whole of the area of the council.
- (2) The following councils must constitute a single local planning panel for the whole of the area of the council:
 - (a) the council of an area that is wholly within the Greater Sydney Region,
 - (b) the council of the City of Wollongong.
- (3) A single local planning panel may be constituted by 2 or more councils. In that case, any function exercisable by a council in relation to the panel is to be exercised jointly by all those councils.

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- (4) The Minister may, under section 117, direct 2 or more particular councils referred to in subsection (2) to constitute a single local planning panel.
- (5) If a council fails to constitute a local planning panel that it is required to constitute, the Minister may constitute the panel and for that purpose is taken to be the council.
- (6) A local planning panel is subject to any directions of the Minister under section 117.
- (7) A local planning panel is not subject to the direction or control of the council, except in relation to any matter relating to the procedure of the panel (or to the time within which it is to deal with a matter) that is not inconsistent with any directions of the Minister under section 117.

23K Members of local planning panels

- (1) The members of a local planning panel are to be appointed by the relevant council.
- (2) Each local planning panel is to comprise (subject to this section) the following 4 members:
 - (a) an approved independent person appointed as the chairperson of the panel with relevant expertise that includes expertise in law or in government and public administration,
 - (b) 2 other approved independent persons with relevant expertise,
 - (c) a representative of the local community who is not a councillor or mayor.
- (3) A person is not eligible to be a member of a local planning panel constituted by a council if the person is:
 - (a) a councillor of that or any other council, or
 - (b) a property developer within the meaning of section 96GB of the *Election Funding, Expenditure and Disclosures Act 1981*, or

Note. Section 96GB (1) of the *Election Funding, Expenditure and Disclosures Act 1981* provides that *property developer* includes a person who is a close associate of a property developer.

 - (c) a real estate agent within the meaning of the *Property, Stock and Business Agents Act 2002*.
- (4) For the purposes of this section, an *approved independent person* is an independent person approved by the Minister for appointment to the local planning panel or a person selected from a pool of independent persons approved by the Minister for appointment to the local planning panel. The Minister may approve different pools of independent persons.
- (5) If the area of the relevant council is divided into wards, the council is to appoint representatives of the local community for each ward as members of the local planning panel. All those representatives are entitled to attend a meeting of the local planning panel, but only one of them designated by the chairperson of the panel comprises the quorum for the meeting and is entitled to vote and be heard on a matter before the panel.
- (6) The representative so designated by the chairperson for a matter before the panel is to be the representative for the ward that the chairperson considers is most closely associated with that matter.
- (7) Relevant expertise for the purposes of this section is expertise in at least one area of planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, tourism or government and public administration.

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23L Functions of local planning panels

- (1) A local planning panel constituted by a council has the following functions:
 - (a) the functions of the council as a consent authority under Part 4 in respect of the area for which the panel is constituted as provided by section 23I,
 - (b) to advise the council on any planning proposal that has been prepared or is to be prepared by the council under section 55 and that is referred to the panel by the council,
 - (c) to advise the council on any other planning or development matter that is to be determined by the council and that is referred to the panel by the council.
- (2) Subsection (1) (a) does not exclude a delegate of the council or a regional panel exercising functions as a consent authority under this Act.
- (3) The Minister may give directions to councils under section 117 (either to particular councils or to councils generally) on the planning proposals that are required to be referred to a local planning panel for advice.
- (4) This section does not limit the functions that may be exercised by a local planning panel under this Act.

23LA Miscellaneous provisions relating to local planning panels

- (1) Schedule 4B contains provisions with respect to the members and procedure of local planning panels.
- (2) The regulations may make provision for or with respect to the following:
 - (a) the functions conferred under this Act on local planning panels, including the procedures of panels in exercising their functions,
 - (b) without limiting paragraph (a), providing that parties are not to be represented (whether by an Australian legal practitioner or any other person) or are only to be represented in specified circumstances,
 - (c) the provision of information or reports by councils with respect to the exercise of functions by local planning panels.
- (3) The council is to provide staff and facilities for the purpose of enabling a local planning panel to exercise its functions.
- (4) The council is to monitor the performance of local planning panels constituted by the council.
- (5) A council that has constituted a local planning panel must provide a report to the Secretary, each year or other period directed by the Secretary, as to the following:
 - (a) whether a local planning panel had been constituted by the council during the reporting period,
 - (b) the matters referred to the panel in the reporting period,
 - (c) the persons appointed to the panel,
 - (d) any other matters relating to the exercise of functions by the panel as directed by the Secretary.
- (6) Legal proceedings by or against a local planning panel are to be taken in the name of the panel and not by or against the members of the panel.

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(7) A local planning panel may delegate any function of the panel under this or any other Act (other than this power of delegation) to the general manager or other staff of the council. Section 381 of the *Local Government Act 1993* does not apply to any such delegation.

(8) For the avoidance of doubt, a member of a local planning panel is a public official for the purposes of the *Independent Commission Against Corruption Act 1988*.

Schedule 4B Provisions relating to local planning panels

Part 1 Preliminary

1 Definitions

In this Schedule:

member means the chairperson or other member of a panel.

panel means a local planning panel.

Part 2 Provisions relating to members of panels

2 Terms of office of members

(1) A member of a panel holds office, subject to this Act and the regulations, for such period (not exceeding 3 years) as is specified in the member's instrument of appointment.

(2) That period may be determined by reference to the occurrence of a specified event or the completion of the exercise of particular functions of the panel.

(3) A member is eligible (if otherwise qualified) for re-appointment.

(4) A member of a panel may not hold office as a member of that panel for more than 6 years in total.

3 Part-time office

The office of a member of a panel is a part-time office.

4 Remuneration of members

A member of a panel is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

5 Alternate members

(1) A council may, from time to time, appoint a person to be the alternate of a member of a panel appointed by the council, and may revoke any such appointment.

(2) A person is not eligible to be appointed as the alternate of a member unless the person is eligible to be appointed as that member.

(3) In the absence of a member, the member's alternate may, if available, act in the place of the member.

(4) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.

(5) A person may be appointed as the alternate of 2 or more members of a panel, but may represent only one of those members at any meeting of the panel.

(6) A number of persons may be appointed as the alternate of one or more members of a panel. The person who may act in the place of a member on any particular occasion is the person determined by the chairperson of the panel.

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(7) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the council may from time to time determine in respect of the person.

6 Removal from office of members

(1) A council may remove a member of a panel appointed by the council from office at any time for any reason and without notice. However, the general manager of the council must provide a written statement of the reasons for removing the member from office and make the statement publicly available.

(2) The Minister may remove a member of a panel from office if the Independent Commission Against Corruption, in a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988*, recommends that consideration be given to the removal of the member from office because of corrupt conduct by the member.

7 Vacancy in office of member

(1) The office of a member of a panel becomes vacant if the member:

- (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the council that appointed the member, or
 - (d) is removed from office under this or any other Act, or
 - (e) is absent from 3 consecutive meetings of the panel of which reasonable notice has been given to the member, except on leave granted by the panel or unless the member is excused by the panel for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person, or
 - (h) becomes:
 - (i) a councillor of any council, or
 - (ii) a property developer within the meaning of section 96GB of the *Election Funding, Expenditure and Disclosures Act 1981*, or
- Note. Section 96GB (1) of the *Election Funding, Expenditure and Disclosures Act 1981* provides that property developer includes a person who is a close associate of a property developer.
- (iii) a real estate agent within the meaning of the *Property, Stock and Business Agents Act 2002*, or
 - (i) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) If the office of a member becomes vacant, a person may, subject to this Act and the regulations, be appointed to fill the vacancy.

8 Effect of certain other Acts

(1) The statutory provisions relating to the employment of Public Service employees do not apply to the appointment or office of a member of a panel.

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(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member of a panel or from accepting and retaining any remuneration payable to the person under this Act as a member.

Part 3 Provisions relating to procedure of panels

9 General procedure

(1) The procedure for the calling of meetings of a panel and for the conduct of business at those meetings is, subject to this Act, any code of conduct under this Schedule or other directions of the Minister under section 117, to be as determined by the panel.

(2) Subject to this clause, a panel is not bound by the rules of evidence.

10 Quorum

The quorum for a meeting of a panel is 3 members.

11 Presiding member

(1) The chairperson of a panel or, in the absence of the chairperson, the member appointed by the members of the panel is to preside at a meeting of the panel.

(2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

12 Voting

A decision supported by a majority of the votes cast at a meeting of a panel at which a quorum is present is the decision of the panel.

13 Meetings

(1) A panel must give notice to the public of the times and places of its meetings.

(2) A panel must conduct its meetings in public.

(3) A panel must make electronic recordings (whether audio and video or audio only) and the council must make those recordings publicly available on its website.

(4) A panel must give written reasons for its decision and the council must make those written reasons publicly available on its website.

14 Transaction of business outside meetings or by telephone etc

(1) A panel may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the panel for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the panel.

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- (2) A panel may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members
- (3) For the purposes of:
- (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),
- the chairperson and each member of the panel have the same voting rights as they have at an ordinary meeting of the panel.
- (4) A resolution approved under subclause (1) is to be recorded in the minutes of the meetings of the panel.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by electronic transmission of the information in the papers concerned.

15 Disclosure of pecuniary interests

- (1) If:
- (a) a member of a panel has a pecuniary interest in a matter being considered or about to be considered at a meeting of the panel, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the panel.
- (2) A member has a pecuniary interest in a matter if the pecuniary interest is the interest of:
- (a) the member, or
 - (b) the member's spouse or de facto partner or a relative of the member, or a partner or employer of the member, or
 - (c) a company or other body of which the member, or a nominee, partner or employer of the member, is a member.
- (3) However, a member is not taken to have a pecuniary interest in a matter as referred to in subclause (2) (b) or (c):
- (a) if the member is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
 - (b) just because the member is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or
 - (c) just because the member is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the member has no beneficial interest in any shares of the company or body.

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(4) A disclosure by a member at a meeting of the panel that the member, or a spouse, de facto partner, relative, partner or employer of the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person, is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(5) Particulars of any disclosure made under this clause must be recorded by the panel and that record must be open at all reasonable hours to inspection by any person on payment of the fee determined by the panel.

(6) After a member of a panel has disclosed the nature of an interest in any matter, the member must not:

- (a) be present during any deliberation of the panel with respect to the matter, or
- (b) take part in any decision of the panel with respect to the matter.

(7) A contravention of this clause does not invalidate any decision of the panel.

16 Code of conduct

- (1) The Minister may approve a code of conduct that is applicable to members of panels.
- (2) A code of conduct may relate to any conduct (whether by way of act or omission) in carrying out a member's functions that is likely to bring the panel or its members into disrepute.
- (3) The Minister may authorise a panel to vary a code of conduct in relation to the members of that panel.

Schedule 6 Savings, transitional and other provisions

Part 28 Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Act 2017

148 Definitions

In this Part:

amending Act means the *Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Act 2017*.

existing local panel means:

- (a) an independent hearing and assessment panel constituted by a relevant council, as at 1 September 2017, under section 231 (as in force before the substitution of that section by the amending Act), or
- (b) any other panel constituted by a relevant council, as at 1 September 2017, under the *Local Government Act 1993* to advise on development applications or to determine development applications as a delegate of the council.

relevant council means:

- (a) the council of an area that is wholly within the Greater Sydney Region, and
- (b) the council of the City of Wollongong.

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149 Existing local panels to continue as local planning panels

- (1) An existing local panel is taken to have been constituted by the relevant council as a local planning panel under section 23J (as substituted by the amending Act).
- (2) The members of the existing local panel (as at 1 September 2017) are taken to have been appointed by the relevant council as members of the local planning panel. Any such member may not be removed from office by the council without the approval of the Minister.
- (3) Subclause (2) ceases to have effect on 1 March 2018.

150 Interim arrangements for councils that do not have existing local panel

- (1) This clause applies in relation to a relevant council that has not constituted an existing local panel as at 1 September 2017.
- (2) A relevant council is not required to constitute a local planning panel under section 23J (as substituted by the amending Act) until 1 March 2018.

151 Regional panel amendments do not affect pending matters

The amendments made by the amending Act in relation to regional panels do not affect any application pending on the commencement of those amendments or any decision made under the Act before that commencement.

152 Extension of period for instituting local government election offences

The extension from 12 months to 3 years of the period within which proceedings for offences in connection with the conduct of local government elections may be commenced (as a consequence of the amendment to section 693 of the *Local Government Act 1993* made by the amending Act) applies to offences committed after the commencement of the amending Act.

153 Savings and transitional regulations

- (1) This clause applies to regulations made under Part 1 of this Schedule that contain provisions of a savings or transitional nature consequent on the enactment of the amending Act.
- (2) The provisions of those regulations have effect despite anything to the contrary in this Part.
- (3) The regulations may make separate savings and transitional provisions or amend this Part to consolidate the savings and transitional provisions.