

Independent Hearing and Assessment Panels

Fact Sheet – what is an IHAP

September 2017

Under recent changes to the *Environmental Planning and Assessment Act 1979*, independent hearing and assessment panels (IHAPs), will become mandatory for councils in the Greater Sydney Region and for Wollongong City Council from 1 March 2018.

This fact sheet provides guidance on the new requirements.

What are IHAPs?

IHAPs are panels of independent experts that determine development applications on behalf of a council, and provide other advice to council on planning matters.

When designed and implemented in the right way, these panels bring a range of benefits to the planning system, including:

- reducing the risk of conflict of interest and corruption, by ensuring that development decisions are made by people who are independent of developers
- better planning outcomes as development applications are determined on their technical merit by qualified experts, in line with the planning controls that apply in the local area
- elevating the role of the council to focus on strategic planning that delivers on the community's goals and priorities.

Strategic role of councils

A key benefit of the panel model is that it frees local councils to focus its efforts on strategic leadership in the planning system.

This includes delivering great strategic planning that involves the community in establishing the vision, goals and priorities for land use in the local area.

It also includes the critical task of ensuring that local development controls – governing what types of development are permissible in the local area – are up-to-date and in line with the strategic plan.

These controls are found in the local environmental plan and the development control plans prepared by council.

When these strategic functions are performed well, the task of assessing and determining individual development applications becomes a technical matter of assessing the application's merits against the

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rules that the council has set. It is appropriate that technical experts – on panels or the council's planning staff – perform this task.

The new role of IHAPs

Under the new provisions of the Act, councillors in Sydney and Wollongong will no longer be able to determine development applications. This function will be performed by either the IHAP, council staff, or the relevant regional panel (the joint regional planning panel or Sydney planning panel).

The Minister for Planning will make directions that set out the types of development applications to be determined by IHAPs. These applications are proposed to include:

- development applications with a value of over \$5 million (but less than \$30 million, as these will be determined by regional planning panels)
- development applications for which the applicant or owner is the council, a councillor, a member of the councillor's family, a member of council staff, or a state or federal member of parliament
- development applications that receive 10 or more objections from different households
- development applications accompanied by a voluntary planning agreement
- development applications seeking to depart by more than 10% from a development standard
- applications for development that is associated with a higher risk of corruption:
 - residential flat buildings assessed under SEPP 65
 - demolition of heritage items
 - licensed premises of public entertainment and sex industry premises
 - designated development, as set out in the *Environmental Planning and Assessment Regulation 2000*
- modification applications that meet the above criteria.

All other development applications will be determined by council staff, or by the regional planning panel. The vast majority of applications will be determined by council staff, as is currently the case for most councils in NSW. This remains the most efficient and appropriate pathway for most applications.

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The triggers for regional planning panels becoming the consent authority are currently set out in a schedule to the Act, but will move to the State Environmental Planning Policy (State and Regional Development) 2011. The key trigger is that regional planning panels determine development applications valued at more than \$20 million. From 1 March 2018, this threshold will increase to \$30 million, so that more development will be determined at the local level, either by IHAPs or council staff.

IHAPs will also provide advice to council on planning proposals (proposals to change the local environmental plan), such as rezonings. The final decision about whether to proceed with a rezoning will remain with the council, consistent with the council's strategic planning role. The IHAP will help the council make this decision by providing independent, expert advice on the merit of the proposal.

Who will sit on panels?

Each IHAP will consist of a chair, two other expert members and a community representative.

The chair and the other expert members must be qualified in at least one of the following areas: planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, tourism, or government and public administration.

The chair must at least have expertise in law or government and public administration.

The Department of Planning and Environment is establishing a pool of independent, suitably qualified persons from which two other expert members must be drawn. The Minister for Planning will approve the persons in this pool.

The Minister will choose the independent, expert chair of each panel, and the council will choose the two other expert members.

The fourth panel member will be a community representative, to enhance the panel's knowledge of local matters. This person will be chosen by the council and does not have to be an expert in one of the fields listed above.

Where a local government area is divided into wards, the community representative must represent the interests of the ward in which the proposed development would take place.

The diagram below illustrates how the IHAP is appointed.

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Independent planning and assessment panels – how members are appointed

Pool of independent experts

(approved by the Minister for Planning)

Must be expert in one of the following areas: planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, tourism or government and public administration.

Chair must have expertise in law or government and public administration.

Community representative

Represents the ward in which the proposed development would take place.

Chosen by Minister



Chair
(casting vote)



Chosen by council



**2 other experts
from the pool**



**1 community
representative**



**Independent
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Councillors, property developers and real estate agents cannot be IHAP members. If a panel member becomes a councillor, property developer or real estate agent, he or she will cease to be a panel member.

Chairs and other experts can sit on more than one IHAP, as long as they have been selected from the expert pool and there is no conflict of interest.

Councils will be able to appoint alternate expert members, as members will not always be available to participate in the determination process for a variety of reasons, such as a conflict of interest or availability.

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Councils are encouraged to have a pool of community representatives for the IHAP, to ensure ward representation and that there is always a quorum for each meeting.

Recruitment process

A secretariat in the Department of Planning and Environment is recruiting the pool of experts and will support councils in appointing their IHAPs. Councils can seek advice from the secretariat about selecting the expert members at:

Planning Panels Secretariat contact details	
Address	GPO Box 39 SYDNEY NSW 2001
Email	enquiry@planningpanels.nsw.gov.au
Phone	02 8217 2060

The recruitment process is a state-wide, merit-based process. Expressions of interest are sought by 17 September and can be sent to the above email address.

More information about the process and selection criteria can be found on the Department's website at www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Independent-Hearing-and-Assessment-Panels.

What are the terms of appointment for panel members?

Panel members are appointed for up to three years, and can sit on a single panel for a maximum of six years.

Membership of a panel is a part-time role. Remuneration and allowance will be set by the Minister for Planning. Rates are likely to be based on the current rates for chairs and members of regional planning panels.

The council may remove a panel member at any time. However, a written statement of reasons must be made publicly available.

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Panel operations

The Act sets out some key requirements for how panels must operate. For example, the panel must conduct its meetings in public and give written reasons for its decisions. A notice must be published detailing the time and location of meetings.

The Minister will also set more detailed directions about how panels must operate, drawing on the procedures for regional planning panels and existing IHAPs. These will relate to matters such as how meetings and site visits should be conducted, voting procedures and reporting requirements.

There should be four panel members making each decision: the chair, two expert members and the community representative. The quorum for a panel meeting is three members.

The Act requires that IHAP members must disclose any pecuniary interests that arise in relation to a matter referred to the panel, and cannot take part in that decision.

The Minister for Planning will approve a code of conduct for IHAPs. The code will set out the expected standard of behaviour required of panel members, including managing conflicts of interest and reporting any approaches from developers.

Operating costs for IHAPs

The council will be responsible for meeting the operating costs of the panel. This includes sitting fees for members.

The Act requires that the council is to provide staff and facilities to enable the panel to exercise its functions.

The Department estimates the annual costs of operating an IHAP to be around \$100,000 a year for each council. Costs will depend on how often a panel is required to meet, which will differ depending on the number of development applications.

Two or more councils can share a panel if they consider this would be cheaper or more efficient.

What happens to council's existing panels?

Several councils in Sydney and Wollongong already have IHAPs. These panels must remain in place until 1 March 2018, operating generally under their current arrangements.

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A key difference affects councils whose existing IHAPs are advisory rather than determinative (that is, the panel provides recommendations to council on development applications, but council retains the role of making final decisions). From 1 September 2017, these councils will no longer be able to determine development applications. Their IHAPs must take on this role, or else decisions must be delegated to council staff.

From 1 March 2018, councils with existing IHAPs must ensure that the membership and operations of their panels are consistent with the new provisions in the Act. This includes ensuring that panels determine the types of development set out in the Minister's directions.

Councils with well-functioning IHAPs are encouraged to have the current members of their IHAPs apply for inclusion in the pool of experts being established by the Department. If approved, those members will then be available for the council to select for its new IHAP.