



Hawkesbury City Council

# Local Planning Panel Guidelines

September 2019





### Introduction

The Hawkesbury Local Planning Panel (Panel) is a local planning panel established for Hawkesbury City Council (Council) under Part 2, Division 2.5 of the Environmental Planning and Assessment Act 1979 (Act). It is responsible for determining certain development applications (and modifications/reviews) and providing advice on planning proposals (collectively referred to as applications in this guide).

Local planning panels (previously referred to as Independent Hearing and Assessment Panels (IHAPs)) are mandatory for all councils in Sydney and Wollongong. They have been created to ensure that the process of assessment and determination of applications with a high corruption risk, sensitivity or strategic importance is transparent and accountable.

The Panel is comprised of four (4) members:

- Chair
- Two (2) expert members
- A community representative

The members for each meeting will alternate from the pool of members appointed to the Panel. Two alternate chairs have been appointed who will have the same role as the chair when presiding over a Panel meeting or other business. Members are to advise the Council's Manager of Corporate Services and Risk in advance of any periods when they will be not available.

This guide details how the Panel is to operate. It incorporates:

- Procedural requirements from the Act (refer to Division 2.5 and Schedule 2)
- Requirements from the Local Planning Panels Direction – Operational Procedures issued by the NSW Minister for Planning under section 9.1 of the Act; and
- Requirements from the Local Planning Panels Direction – Planning Proposals issued by the NSW Minister for Planning under section 9.1 of the Act; and
- Relevant provisions from the Local Planning Panels Overview and Best Practice Meeting Procedures issued by the Department of Planning and Environment; and
- General requirements to ensure the efficient and effective operation of the Panel. While these requirements will generally be followed, they may be varied by the chair depending on the circumstances of a particular meeting or application.

A local planning panel is not subject to the direction or control of the Council, except on matters relating to panel procedures and the time within which the panel is to deal with a matter, provided they are not inconsistent with the Directions of the Minister under Section 9.1 of the Act.



### 1. Panel composition

#### Chair

- 1.1 The chair is responsible for the management of the Panel's functions and operations, including managing conflicts of interest.
- 1.2 The chair is to ensure the Panel fully discharges its responsibilities under the Act, the code of conduct, and these Guidelines.
- 1.3 The chair is responsible for the good and orderly conduct of the Panel. The chair may do all things necessary to fulfil this responsibility.
- 1.4 The Panel members are on a rotating roster and therefore each meeting has a different Panel from month to month.
- 1.5 The chair and alternate chairs shall rotate presiding over meetings (unless the chair or alternative chairs are unavailable for any reason).

#### Independent expert members

- 1.6 The expert members can be interchanged as needed by the chair for reasons including:
  - a member has a conflict of interest;
  - a member is unable to attend on the day; and/or
  - to periodically rotate the members.

#### Community representatives

- 1.7 The Panel have been appointed on the basis that their skills and attributes. Consequently, whilst the choice of community representative for a meeting will consider the number of items on the agenda for the Hawkesbury Local Government Area, other factors such as availability and rotation may also be considered.

#### Quorum

- 1.8 Where a quorum (3 members) for a meeting is not present, the meeting cannot proceed and will be rescheduled.

#### Review of Panel decisions

- 1.9 All of the processes detailed below for determination of a development application also apply to the determination of a request to review a decision under Division 8.2 of the Act.
- 1.10 The determination of a review application from a Panel decision shall be determined by different members of the Panel to those who made the original determination.



### 2. Conduct of Panel members

- 2.1 All Panel members must comply with the code of conduct approved by the Minister for Planning.

#### Conflict of interests

- 2.2 Panel members must avoid or appropriately manage any conflicts of interests. The onus is on the individual Panel member to identify conflict of interests and take appropriate action.
- 2.3 All Panel members must sign a declaration of interest in relation to each matter on the agenda before or at the beginning of each meeting. These declarations and any management measures put in place are to be published on Council's website as soon as practicable.

**Note:** If a Panel member becomes aware of a conflict of interest after they have signed their declaration of interests form, and the interest appears to raise a conflict with the proper performance of the member's duties, the member must, as soon as possible, disclose the nature of the interest and sign a new declaration of interests form.

- 2.4 After a Panel member has disclosed a pecuniary interest in any matter, the member must not be present during any deliberation of the Panel with respect to the matter, or take part in any decision of the Panel with respect to the matter.

**Note:** A contravention of this requirement does not invalidate any decision of the Panel.

- 2.5 A person who is in the pool of members appointed to the Panel must limit and disclose development/planning related work in the Hawkesbury Local Government Area that they are involved in.
- 2.6 A person who is in the pool of members appointed to the Panel, shall not represent an applicant, Council or submitter at a meeting of the Panel.

#### Interactions with third parties

- 2.7 Panel members are not to discuss any matter that is to be considered by the Panel with councillors, the applicant, their consultants, parties who have made a submission, or any other person with an interest in the matter outside of the Panel meeting.

**Note:** This does not apply to persons employed by the Council to assess the matters to be considered by the Panel.

### 3. Frequency of meetings

- 3.1 The Panel shall meet on the 3rd Thursday of every month (excluding January) unless there are insufficient applications to conduct a meeting.
- 3.2 If no meeting is to be held on the scheduled date, a notice will be posted on the Council's website.
- 3.3 If required, additional meetings may be scheduled at other times subject to compliance with the meeting procedures specified under Section 4 and Section 6.



### 4. Meeting procedures

#### Preparation of agenda & business paper

- 4.1 A draft agenda shall be prepared two weeks prior to the meeting and sent to the Director of City Planning for approval of the final agenda.
- 4.2 Electronic copies of the business paper and associated plans and submissions shall be made available to Panel members at least 6 days prior to the meeting. Hard copies of the agenda and plans are available for nominated Panel members (if required).

#### Notice of meetings

- 4.3 Notice of Panel meetings (time and place) shall be provided through Council's website at least 6 days prior to the meeting.
- 4.4 Applicants and submitters shall be advised (in writing) when an application will be heard by the Panel.
- 4.5 Business papers for meetings shall be made publicly available on Council's website 6 days preceding the meeting.
- 4.6 Any late submissions must be lodged at least 48 hours before the meeting. A late submission must be limited to addressing matters raised in the Business Paper such as responding to conditions or perceived errors of fact. It should not repeat information that has already been lodged. Any new information must be assessed by the relevant council staff prior to the meeting.

#### Notice of intention to address the Panel

- 4.7 To speak at a meeting, a person must first make an application to Council in the approved form. Applications to speak at the meeting must be received by 3pm the day before the meeting, and must identify the item of business on the agenda of the Hawkesbury Local Planning Panel meeting the person wishes to speak on, and whether they wish to speak 'for' or 'against' the item. A person may nominate another person to speak on their behalf at the meeting on the request to speak form if they so wish. There will be no unregistered speakers permitted to speak on any items during the meeting, unless the chair otherwise permits.
- 4.8 Unless the chair otherwise permits, each speaker shall be limited to 3 minutes. Submitters are requested not to repeat matters which have already been raised by any previous submitters. Where there are a large number of speakers, the chair may request that a spokesperson(s) are appointed.
- 4.9 Councillors are able to address the Panel on any items. Any Councillor who wishes to address the Panel must register their intention to do so by 3pm on the day before the meeting. If they have not registered to speak at the meeting, they will not be permitted to do so unless the chair permits it.

#### Site visits

- 4.10 The chair may elect for the Panel to undertake site inspections for applications. Panel members must not undertake site inspections independently. Hawkesbury Local Planning Panel members will carry out site inspections as a group.
- 4.11 Appropriate Council planning staff shall accompany the Panel on site visits.
- 4.12 Site visits should be conducted on the same day as the meeting, or otherwise as arranged.



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- 4.13** Site visits are solely to be used to identify and clarify issues with a proposal. At a site visit, a Panel member must not offer an opinion on the merit of the proposal or ask those involved with the assessment of the proposal for their opinion or recommendation.
- 4.14** Adjoining and/or affected properties may be visited by the Panel at the discretion of the chair. It is not a requirement for the Panel to visit every objector's property; however, it may visit if the chair decides that the Panel's consideration of an application would benefit from viewing an objector's property. If so, the objector will be requested to provide access prior to the site visit.
- 4.15** Site visits are not to be used as a forum for applicants or objectors to address the Panel; however, the Panel may ask questions to clarify issues whilst visiting a site.
- 4.16** If a site visit is undertaken, the minutes of the meeting shall record that the site has been visited.
- 4.17** Site inspections shall normally commence at 9:30am on the day of the meeting, or as otherwise determined by the chair.

### Briefing

- 4.18** At the conclusion of the site visits, Council staff shall brief Panel members on the applications. Panel members are able to ask questions and clarify issues.

### Public meeting

**Note: Planning Proposals are not considered in the public section of Panel meetings - refer to Section 5 for more information**

- 4.19** Following the formal opening of the public meeting, the first item of business will be a declaration from any member with any pecuniary or conflicts of interest and the second item will be procedural matters.
- 4.20** Unless otherwise determined by the chair (to accommodate delays or other circumstances) the public meeting shall commence at the time (but not earlier than the time) published in the business paper for the meeting in the Council Chambers (366 George Street, Windsor).
- 4.21** Electronic audio recordings shall be made of public meetings and these recordings shall be made publicly available on Council's website.
- 4.22** The chair/alternate chair, or in the absence of the chair/alternate chair, a member appointed by the Panel, is to preside at the meeting.
- 4.23** Speakers shall be heard for each item in the agenda in the following order:
- Councillor/s
  - Objector (or representative) speaking against the application;
  - Submitter (or representative) speaking for the application; and then
  - The applicant (or the applicant's representative) speaking for the application.
- 4.24** A person is not entitled to be legally represented at any meeting of the Panel unless the chair grants permission. In granting any such permission, the chair shall have regard to the following matters;
- the nature and complexity of the matter and whether it involves a question of law,
  - whether the person has the capacity to present their submission without legal representation, and
  - such other matters as the chair considers relevant.



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- 4.25** Unless the chair otherwise permits, no speaker may address the Panel for more than 3 minutes in respect of any one matter at any particular meeting. This time is strictly enforced by the chairperson. The chair may allow for an extension of time to enable relevant issues to be adequately addressed.
- 4.26** A person, other than a member of the Panel, shall not speak while another person is speaking or otherwise interrupt that person while speaking.
- 4.27** Panel members may seek to clarify any matter with a speaker or Council officer.
- 4.28** Speakers (and all other people attending the public meeting) must refrain from engaging in disorderly conduct, or making potentially defamatory statements. If this behaviour occurs, the chair may ask the person to stop speaking and/or leave the meeting, or may adjourn the meeting.
- 4.29** The chair may close the meeting if required to hear confidential or sensitive information. Before the adjournment the chair should publicly state the reasons for the adjournment which should be recorded in the meeting minutes.
- 4.30** The Panel is not bound by the rules of evidence and may inquire into and inform itself on any matter, in such manner as it thinks fit, subject to the rules of natural justice and procedural fairness.
- 4.31** The Panel is to act with as little formality as the circumstances of the case permit and according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.
- 4.32** The Panel meeting is for decision making and not an avenue to present new information or plans that may require further assessment by Council staff. The chair has discretion to decide whether to accept material presented at the Panel meeting, however new material will generally not be accepted.
- 4.33** Following the address from Councillors, objectors, submitters and applicants on all matters scheduled for that meeting, the chair may adjourn or close the public meeting unless a decision is made to deliberate in public (Refer to Section 4.34 'Deliberation and Voting'). The Chair will also advise when the minutes will be available to the general public.

### **Deliberation and voting**

- 4.34** In accordance with Part 3 of the Local Planning Panels Direction – Operational Procedures and Section 4.3 of the IHAP Overview issued by the Department of Planning and Environment, the Panel choose how to manage the deliberation and voting process. The options include:
1. Deliberate, vote and make a determination in the public meeting;
  2. Adjourn the public meeting to deliberate and reconvene the meeting for voting and determination; or
  3. Close the public meeting, deliberate, vote and then notify the public of the outcomes outside the public meeting.

The normal procedure for the Panel will be to adopt option 2. However, the chair can exercise discretion to adopt the procedures detailed in options 1 or 3 (above) for any item on the agenda.

The procedures detailed in these guidelines relate to the normal procedures that will be followed (option 2).



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- 4.35** After the public meeting has been closed, the Panel shall remain in the Council Chambers for the closed session to deliberate on each matter. Only voting members of the Panel (and Council staff, for administrative support and if matters require clarification) are able to attend the closed session.
- 4.36** For each item on the agenda, the Panel shall:
- prepare a draft written resolution, including reasons; and
  - vote on the resolution.
- 4.37** A decision supported by a majority of the votes is the decision of the Panel. In the event of an equality of votes, the chair (or presiding member) has a second or casting vote.
- 4.38** If a Panel member has a dissenting view to the majority, this view is to be formally documented and recorded in the Panel's reasons for its decision.
- 4.39** The Council Committee Officer will assist the Hawkesbury Local Planning Panel by recording notes and minutes in accordance with the standard Council template, and advising on organisational meeting procedures.

### **Deferring a decision**

- 4.40** The Panel may defer its determination to a subsequent meeting, or to be determined by circulation of papers outside of a meeting (refer to Section 6 below).
- 4.41** If an application is deferred, the Panel shall provide reasons and advise of the procedures to be followed for determination of the application.
- 4.42** Where possible, a deferred application shall be determined by the same chair and Panel members.
- 4.43** Unless the deferred application requires renotification, it may be determined through the circulation of papers outside of a meeting.

### **Delegating a decision**

- 4.44** The Panel may delegate the determination of an application to Council staff. If determination of an application is delegated to Council staff, the Panel shall provide reasons.

### **Post-meeting procedures**

- 4.45** Minutes of the meeting shall include the decision, the outcome of voting and the reasons for the decision.
- 4.46** A copy of the minutes shall be made publicly available on Council's website within 7 days after the meeting.
- 4.47** All parties that made written submissions shall be advised of the outcome in writing.
- 4.48** The Notice of Determination shall be provided to the applicant.
- 4.49** Should the Panel resolve to defer or delegate determination of an application, the applicant shall be advised (in writing) and requested to provide the required additional information and/or amended plans within the time period specified by the Panel.



- 4.50** The public section of all meetings of the Panel is recorded in accordance with Schedule 2, Part 5, Clause 25(3) of the Act. Council will use those recordings to upload a podcast of each meeting and these podcasts will be made available to the public via its webpage for a period of twelve months. The podcasts are protected by copyright and owned by Hawkesbury City Council. No part may be copied or recorded or made available to others without the prior written consent of the Council's General Manager. The podcast is not the official record of Hawkesbury City Council or of any meeting or discussion depicted therein. Only the official published minutes on Council's website may be relied upon as an official record of the meeting.

## **5. Planning Proposals**

- 5.1** Planning proposals are referred to the Panel for advice only in accordance with the Local Planning Panels Direction - Planning Proposals issued by the Minister for Planning under Section 9.1 of the Act.
- 5.2** As Planning Proposals are referred to the Panel for advice only, consideration of Planning Proposals are not held in public. In other respects the general administrative matters associated with the Panel and Panel meetings shall be the same as for development applications.
- 5.3** When a planning proposal is referred to the Panel for advice, it is to be accompanied by an assessment report prepared by Council staff setting out recommendations in relation to the proposal, including whether or not the planning proposal should be forwarded to the Greater Sydney Commission under section 3.34 of the Act.
- 5.4** The advice from the Panel must be received before Council considers whether or not to forward the planning proposal to the Greater Sydney Commission.
- 5.5** Prior to providing the advice, the Panel may request to be briefed by Council staff, the applicant or other persons the Panel considers to be relevant.
- 5.6** The advice will be recorded in the minutes of the Hawkesbury Local Planning Panel meeting and placed on Council's website.

## **6. Transaction of business outside of meetings**

- 6.1** A Panel may, if it thinks fit, transact any of its business by the circulation of papers (electronically or in hard copy) among all the members of the Panel. A resolution approved in writing by a majority of those members is taken to be a decision of the Panel. The chair and each member of the Panel have the same voting rights as they have at an ordinary meeting of the Panel. The resolution is to be recorded in the minutes of the meetings of the Panel.
- 6.2** 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.
- 6.3** Where business is transacted outside of meetings under Section 6, the advice (for planning proposals) or decision (for development applications) should be forwarded to Council by the chair within 14 days of the Panel transacting its business.

## **7. Obligation to consult with Council**

- 7.1** The Panel must not exercise a function that will result in the making of a decision that would have, or that might reasonably be expected to have, a significant adverse financial impact on Council until after it has consulted with Council. The consultation may be in writing, with Council being given a specified time to respond in writing. Where a meeting with the General Manager (or delegate) is held to discuss the matter, all relevant Panel members should be present and minutes kept of the meeting and its outcomes.