

Charter of the Georges River Council

Independent Hearing and Assessment Panel 2016 (IHAP)

1 Structure of the Georges River Council Independent Hearing and Assessment Panel (IHAP)

The Georges River Council Independent Hearing and Assessment Panel (the Panel) is an entity comprising two (2) separate bodies, being:-

- (a) A Determining Body, with delegated authority to consider and determine development applications, Section 96 modifications and Section 82A and Section 96AB reviews of applications, and consider and make recommendations about Planning Proposals, and
- (b) A Review Body, with delegated authority to consider and determine Section 82A and Section 96AB reviews of determinations made by the Determining Body

For the purposes of the Environmental Planning and Assessment Act, the Determining Body is subordinate to the Review Body.

Any reference in this Charter to the Panel is a reference to either or both of the above bodies comprising the Georges River Council Independent Hearing and Assessment Panel.

2 Functions

The functions of the Determining Body of the Panel are to:

- (a) determine development applications and modification of consent applications that are within the delegations of those functions to the IHAP from the Council;
- (b) consider all Planning Proposals and make recommendations as to whether the matter should proceed to a Gateway Determination (excepting matters related to the classification or reclassification of public land);
- (c) provide an independent and open forum for interested persons and the community to make submissions relevant to the applications before IHAP;

- (d) provide increased transparency for the determination of significant development applications made to the Council; and
- (e) achieve good urban design and development outcomes consistent with the relevant legislation and planning controls.

The functions of the Review Body of the Panel are to:

- (a) Provide an independent and open forum for interested persons and groups to hear and make submissions about Section 82A and Section 96AB reviews of determinations made by the Determining Body;
- (b) Provide increased transparency of process and expert assessment of the Section 82A and Section 96AB reviews of determinations made by the Determining Body;
- (c) Consider and determine Section 82A and Section 96AM reviews of determinations made by the Determining Body
- (d) Achieve development outcomes consistent with the relevant legislation and planning controls.

3 Constitution of IHAP

3.1 Members

Determining Body

The IHAP is a body constituted for the purpose of delegation of functions by the Council under Section 377 of the Local Government Act and consists of the following members:

- (a) a lawyer who is currently admitted to practice law in New South Wales as Barrister or Solicitor; or non-lawyers but professionals with exceptional levels of legal experience such as retired Land and Environment Court Commissioners; and
- (b) a professional expert with a university degree in urban design; and
- (c) a professional expert with a university degree in urban planning or other related field; and

- (d) a pool of five (5) community representatives – one from each Ward of the Local Government Area.

Review Body

The Review Body will consist of four (4) members made up of the following:

- (a) Three (3) members chosen from a field of experts with experience in town planning, architecture, urban design and/or legal professions;
- (b) One (1) member from a pool of five (5) community representatives (one from each Ward of the LGA) on a rotational basis.

The membership of the Review Body shall not include a member of the Determining Body that made the original decision.

3.2 Appointment

Members of the Panel will be appointed by the Council/Administrator or their delegate by a Memorandum of Understanding signed by each member and the General Manager.

3.3 Term

The term of the members of the Panel appointed by the Council/Administrator or their delegate will be for a period of two (2) years with an option to extend the term for a further 2 years, at the discretion of the General Manager.

3.4 Remuneration

A member or an alternate member is entitled to be paid such remuneration as the General Manager will from time to time determine in respect of the member.

3.5 Chairperson

The Chairperson of the Determining Body will be a lawyer member. Should the lawyer not be present/available for a meeting the members attending will elect a Chairperson.

3.6 Alternates

The General Manager may, from time to time, appoint a person to be the alternate to a member, and may revoke any such appointment. While acting in place of a member, the alternate member has all the functions of the member and is taken to be a member.

3.7 Vacancies

The office of a member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office in writing addressed to the General Manager, or
- (d) is removed by the General Manager from office for any or no reason and without notice.

3.8 Filling of Vacancies

If the office of a member becomes vacant, a person may, subject to this charter, be appointed to fill the vacancy.

3.9 Meetings of IHAP

- (a) A meeting of the Panel will generally consist of four (4) members, i.e. the Chair, two (2) professional members and one (1) community representative.
- (a) The Chairperson may request that one or more additional community representatives from the pool of community members be available to attend meetings for controversial or significant items.
- (b) Each additional community representative, at the discretion of the General Manager, will be an additional member of the IHAP with full voting rights. Each member attending a meeting will have one vote.

3.10 Quorum

A minimum of three (3) Panel members will form a quorum for a meeting.

3.11 Meeting and Other Processes

- (a) To maintain the independency of the IHAP (both the Determining Body and the Review Body), the Panel members, including the appointed community representative for the meeting are to ensure that they have no contact with the public (either applicant, objector or their representatives) as an individual or panel outside the IHAP meeting process.

- (b) Proceedings of the Panel will be open to the public. However, the Panel may close part of a public meeting to the public where the Panel is of the opinion that such action is strictly necessary in order to protect commercial information of a confidential nature. In addition, for the purpose of enabling the Panel to convene in private for the express purpose of deciding upon its findings, conclusions and decisions, deliberations and decisions of the Panel will be conducted and made in closed session following the conclusion of the Panel hearing submissions on behalf of the applicant and any other interested parties.
- (c) Where, at any public meeting, there are a large number of objectors with a common interest, the Panel may, in its absolute discretion, hear a representative of those persons with a view to discharging its responsibilities in a timely manner.
- (d) The Panel may, in its absolute discretion, but otherwise fairly and consistently, impose time limits on oral presentations by persons other than members of the Panel with a view to discharging its responsibilities in a timely manner.
- (e) Where a nominated speaker is to represent a group of residents with a common interest or issues, or is to speak on behalf of a community group, the Panel, in its absolute discretion, may allow additional time for an oral presentation of no more than five (5) minutes.
- (f) Each member of the Panel, unless otherwise disqualified to vote, is entitled to one vote. However, the person presiding at a meeting of the IHAP has, in the event of an equality of votes, a second or casting vote.
- (g) The meetings and other process of the Panel will be undertaken in accordance with any guideline issued by the General Manager from time to time. Where there are no such guidelines, or where some matter is not covered by the guidelines, regard will be had to the statutory provisions otherwise relevantly applicable to the conduct of NSW local Council meetings to the extent to which they are deemed by the Chairperson to be appropriate to the conduct of meetings of the IHAP as well as the ordinary law of meetings to the extent to which that law is not inconsistent with the foregoing.
- (h) At its absolute discretion, the Panel may make onsite inspections of properties the subject of applications and/or submissions.
- (i) The Director Environment and Planning or equivalent is available to the Panel for inspections and meetings to answer questions and clarify issues.

- (j) An officer of the Council as appointed by the General Manager will act as secretary to the Panel and may be present at any meeting of the Panel. In addition, the General Manager may, if in the opinion of the General Manager it is necessary or advisable to do so, provide other administrative support to the Panel whether by way of the provision of staff or otherwise.

3.12 Determinations/Decisions

Determinations and any relevant decision of the Panel will be made by a majority of votes of members present at a meeting and voting. If votes are tied the Chairperson or person presiding at the meeting will have the casting vote.

All members of the Panel present at the meeting must sign the Determination and Statement of Reasons (minutes). Where one or two members are in dissent, they must still sign, as the reasons will set out their dissenting views.

3.13 Transactions of Business outside IHAP Meetings

Following consultation with Council's general manager or delegate, the Panel Chair may determine that it is unnecessary to hold a meeting in public to consider a particular application and determine the matter electronically.

Circumstances where a public meeting may not be required includes;

- (a) Where the assessment report recommends approval and there are no submission by way of objection, or
- (b) Where the Panel has considered the matter at a public meeting and deferred its decision to request specific additional information from an applicant or Council (such as amended drawings). In this case, an electronic meeting should only occur if Council, after having accepted the amended drawings, has decided that re-exhibition of the amended drawings is not required.

When an electronic meeting is proposed, the Council report and recommendations must be made available on the Council's website five business days prior to the matter/application being determined.

4 Obligations of Members

All Panel member/s are required to comply with the following conditions of engagement detailed below. These conditions are based on Council's assessment of minimum requirements needed to deliver an appropriate standard of service:

- (a) Panel member/s must perform their obligations under this agreement faithfully and diligently and must, at all times, act in accordance with Council's Code of Conduct and the requirements of the IHAP Charter. If Panel member/s do not comply with the Code of Conduct or the IHAP Charter, the General Manager may terminate the Panel member's appointment without notice.
- (b) Outside of the meeting process, all Panel members, including the appointed Community representative, are not to discuss, meet or have any contact with the public in relation to any item before the Panel. Panel members must immediately report in writing to the General Manager any contact or approach by an applicant, resident, consultant, technical expert or unauthorised staff member in connection with the Panel functions.
- (c) Except as required to properly perform their duties, Panel member/s must not disclose any confidential information (as advised by Council) obtained in connection with the Panel functions.
- (d) Panel member/s will not make verbal or written statements of any description to any newspaper, television station or radio network or to any person associated with such organisations, in connection with any work undertaken in connection with the Panel functions.
- (e) Panel member/s may communicate with senior staff of Georges River Council, or other staff nominated by the General Manager.
- (f) Panel member/s must attend all meetings reasonably required by the General Manager.
- (g) Panel member/s will have read and be familiar with the documents provided by Council prior to attending an IHAP meeting.
- (h) The relationship between the Council and the Panel member/s is that of a client and independent contractor, and nothing will be taken as constituting the Panel member/s or any of their employees as an employee or servant of the Council.

- (i) Each Panel member shall complete their pecuniary Interest Declaration Return (Return) and submit it to the General Manager upon appointment to the Panel and shall also submit an annual return in July each year covering the period to 30 June of the previous 12 months.

Panel member/s (or any of their employees or agents) will not:

- (j) act as a legal representative, agent, joint venturer or partner of the Council; or
- (k) To have authority to assume or create any obligations of any kind or to make any representations or warranties on behalf of the Council or to bind the Council in any respect (unless exercising its delegations in the determination of development applications).

5 Matters that must be referred to the IHAP

The Determining Body

- 5.1 Development applications that are not otherwise determined under the delegation of the General Manager shall be referred to the Determining Body for consideration and determination. These being:
 - (a) Any development application where the applicant or owner is the Council or a member of staff; or
 - (b) Any development application that involves a Clause 4.6 variation of the Local Environmental Plan (LEP), or where a development standard does not exist in the LEP, but a numeric variation to a Development Control Plan (DCP) is proposed that seeks a variation to both the height and floor space ratio (FSR) controls of greater than 10%; or
 - (c) Where objections have been received that are considered valid and that cannot be resolved through the imposition of appropriate conditions, or there is a significant level of community objection; or
 - (d) Any development application that involves the demolition of a heritage item, contributory item within a Heritage Conservation Area or invokes the heritage incentives provisions within an LEP; or
 - (e) Any development application that is accompanied by planning agreements; or

- 5.2 Any section 96 applications to modify a consent where the application is to modify or remove a condition or resolution that was specifically imposed by a previous IHAP or where the modification results in the conditions references in paragraph 5.1 (a)-(e) above applying.
- 5.3 Any development application which the Director Environment and Planning (or equivalent) considers should be considered and determined by the IHAP.
- 5.4 Any Planning Proposals received by a proponent or initiated by Council (except matters related to the classification or reclassification of public land).

The Review Body

- 5.5 All Section 82A and Section 96AB reviews of determinations made by the Determining Body