

Randwick Local Planning Panel Guidelines

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Introduction

The Randwick Local Planning Panel (Panel) is a local planning panel established for Randwick 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) and providing advice on [planning proposals](#) (collectively referred to as applications in this guide).

Local planning panels (commonly 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 be selected by the chair 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.

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 *IHAPs 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 or to respond to changed circumstances such as COVID 19.

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 preside over panel meetings and other business.
- 1.3 The chair is to ensure the Panel fully discharges its responsibilities under the Act, (including the relevant operational procedures), any other directions from Council, the code of conduct, and these Guidelines in a timely manner.
- 1.4 The chair is responsible for the good and orderly conduct of the Panel. The chair may do all things necessary to fulfil this responsibility.
- 1.5 The chair is to decide which panel members (or alternates) are to hear a matter prior to the meeting commencing.
- 1.6 The chair must regularly rotate the independent expert members and the community representatives from the pool of appointed members to reduce opportunities to improperly influence panel members.
- 1.7 The chair and alternate chairs shall rotate presiding over meetings (unless the chair or alternative chairs are unavailable for any reason).
- 1.8 Alternate chairs have the same role as the chair when presiding over a panel meeting or any other business.

Independent expert members

- 1.9 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 ensure there is a level of randomization involved in which expert members and alternates hear a matter, through regular rotation of the members, to reduce opportunities to improperly influence members.

Community representatives

- 1.10 A community representative 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 ensure there is a level of randomization involved in which community representatives and alternates hear a matter, through regular rotation of the representatives, to reduce opportunities to improperly influence representatives.

Note: The representatives on the Panel have been appointed on the basis that their skills and attributes could be equally applied to any of the wards. Consequently, the choice of

community representative for a meeting will consider factors such as: items in a particular ward, availability and rotation.

Quorum

- 1.11 Where a quorum (3 members) for a meeting is not present, the meeting shall be deferred.

Randwick Local Planning Panel members

- 1.12 A list of current Randwick Local Planning Panel members is available on Council's website.

Review of Panel decisions

- 1.13 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.
- 1.14 The determination of a review application from a Panel decision shall be determined by different members (including the chair) 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 a 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 Any disclosure made must be recorded in the Minutes by the panel and be made publicly available upon request.

- 2.6 A person who is in the pool of members appointed to the Panel, must limit and disclose development/planning related work in the Randwick Local Government Area.
- 2.7 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

- 2.8 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. Meetings

- 3.1 The Panel shall meet on the 2nd Thursday of every month (excluding January) unless there are insufficient applications to conduct a meeting.
- 3.2 If required, the Panel shall also meet on the 4th Thursday of the month or any other time as may be agreed by the chair.
- 3.3 The Panel is only required to hold a public meeting (as of August 2020) where the development application has attracted 10 or more unique submissions by way of objection. A unique submission means a submission which is in substance unique, distinctive or unlike any other submission. It does not mean a petition or any submission that contains the same or substantially the same text. Separate unique submissions may be made in relation to the same issue. One individual, or one household, could potentially submit multiple unique submissions.
- 3.4 A public meeting will normally be held via teleconference (i.e. Microsoft Teams) or in certain circumstances in person. Public meetings will be recorded and made publicly available on Council's website (see clause 25(3) of Schedule 2 of the Act).
- 3.5 Other applications that are required to be considered by the Panel that have not attracted 10 or more unique submissions by way of objection are to be determined at a non-public meeting (referred to as an "electronic meeting").

4. Meeting procedures

- 4.1 The Panel has adopted the following procedures for its meetings:

RLPP meetings will be either:

- Public Meeting
- Electronic Meeting

- 4.2 The requirement for either a public or electronic meeting is set out by directions issued by the NSW Minister for Planning and Public Spaces, which are available to view through the NSW Department of Planning, Industry and Environment's [website](#).
- 4.3 Meetings will be held on the same day, commencing at 1.00pm on the Thursday for the public meeting, and the electronic meeting will commence at the conclusion of the public meeting.
- 4.4 At the public meeting, the panel will hear oral submissions from registered speakers and will generally then close the public meeting for deliberation and/or voting and determination (in confidential session).
- 4.5 At the conclusion of the public meeting (and the decision making process), the Panel will consider the matters on the electronic meeting agenda. Members of the public are unable to address the panel in relation to the matters on the electronic meeting agenda, however, may submit correspondence, up to the close of business 2 working days prior to the scheduled meeting date, that raises any additional matters not addressed in previous submissions.

Preparation of agenda & business paper

- 4.6 The agenda shall be prepared two weeks prior to the meeting and sent to the chair for approval.
- 4.7 No later than 10 days prior to the meeting, the chair shall approve the agenda and nominate which panel members (or alternates) are to sit on the Panel for that meeting.
- 4.8 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 business paper and plans shall be couriered to the nominated panel members (if required).

Notice of meetings

- 4.9 Notice of panel meetings (time and place) shall be provided through Council's website at least 6 days prior to the meeting.
- 4.10 Applicants and submitters shall be advised (in writing) when an application will be heard by the Panel.
- 4.11 Business papers for meetings shall be made publicly available on Council's website 6 days preceding the meeting.
- 4.12 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 public meeting

- 4.13 Any person wishing to address the Panel at a public meeting must register their intention to do so with Council by 12 noon on the day before the meeting. If any speaker wishes to use a PowerPoint presentation or the like, it must be received by Council by 12 noon on the day before the Panel meeting.
- 4.14 Unless the chair otherwise permits, the number of speakers shall be limited to one for and one against on each application. A person wishing to speak against an application must have already lodged a written submission on the subject application OR must provide a written summary (no longer than one A4 page) of the matters upon which they wish to address the Panel. Council must receive this summary at least 48 hours before the meeting.

Note: Additional speakers may be permitted if the chair considers that they are raising discrete different issues. Any requests for additional speakers must be received by 12 noon on the day before the meeting and approved by the chair before the meeting commences.

- 4.15 Councillors are able to address the Panel on any items. This is in addition to the other speakers. Any Councillor who wishes to address the Panel must register their intention to do so by 12 noon on the day before the meeting.

Site visits and briefings

- 4.16 The chair may elect for the Panel to undertake site inspections for applications that will be considered at a meeting. The Panel shall inspect the sites together, however in certain circumstances, such as COVID 19, site inspections may need to be undertaken independently and only from the public domain or as determined by the chair.
- 4.17 Appropriate Council planning staff shall accompany the Panel on site visits that are undertaken together.
- 4.18 Site visits should be conducted on the same day as the public meeting and will normally commence at 9.30am or as otherwise determined by the chair.
- 4.19 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.
- 4.20 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.
- 4.21 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.
- 4.22 The panel may be briefed by Council staff and any other person engaged in the assessment

of the matter about the proposal. On request, and at the chair's discretion, the applicant for a development application or planning proposal which is to be considered by the panel may brief the panel prior to its decision. Council staff are to be in attendance and ensure a written record is made of attendees and key issues discussed.

- 4.23 A written record of the site visit or briefing must be publicly available on the panel's website. For the purpose of this requirement, when a site inspection or briefing of the panel by Council Staff or an applicant is undertaken, a reference is included in the Minutes.

Public meeting

- 4.24 The public meeting shall commence at 1pm.
- 4.25 Electronic audio recordings shall be made of public meetings and these recordings shall be made publicly available on Council's website.
- 4.26 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.
- 4.27 Speakers shall be heard for each item in the agenda in the following order:
- Councillor/s
 - Objector (or representative) speaking against the application; and then
 - The applicant (or the applicant's representative) speaking for the application.

Note: The chair may vary the order of presentations if required.

Unless the chair otherwise permits, there shall be no more than one speaker against and one speaker for each application. This is in addition to any councillors who wish to address the Panel.

- 4.28 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.
- 4.29 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. The chair may allow for an extension of time to enable relevant issues to be adequately addressed.
- 4.30 A person, other than a member of the Panel, shall not speak while another person is speaking or otherwise interrupt that person while speaking.
- 4.31 Panel members may seek to clarify any matter with a speaker or Council officer.
- 4.32 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.
- 4.33 The chair may adjourn the public meeting where a Panel briefing is 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.

- 4.34 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.
- 4.35 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.
- 4.36 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.
- 4.37 Following the address from councillors, objectors and applicants on all matters scheduled for that meeting, the chair shall adjourn or close the public meeting unless a decision is made to deliberate in public (Refer to 'Deliberation and Voting' below).

Deliberation and voting

- 4.38 In accordance with Part 3 of the *Local Planning Panels Direction – Operational Procedures* issued by the Department of Planning and Environment, the chair may 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 3 and close the public meeting prior to deliberation and voting. However, the chair has discretion to adopt the procedures detailed in options 1 or 2 above) for any item on the agenda. For example, it may be appropriate to adopt option 2 when dealing with contentious matters with significant impacts on the broader community; or option 1 for simple matters that can be determined without a lengthy deliberation process. Thereasons for varying the normal procedures shall be articulated by the chair and recorded in the meeting minutes.

The procedures detailed in these guidelines relate the normal procedures that will be followed (option 3)

- 4.39 After the public meeting has been closed, the Panel shall attend a closed session to deliberate and vote 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.
- 4.40 For each item on the agenda, the Panel shall:
- prepare a draft written resolution, including reasons; and
 - vote on the resolution.
- 4.41 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.

- 4.42 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.

Deferring a decision

- 4.43 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).
- 4.44 If an application is deferred, the Panel shall provide reasons and advise of the procedures to be followed for determination of the application.
- 4.45 Where possible, a deferred application shall be determined by the same chair and Panel members that presided over the original deferment.
- 4.46 Unless the deferred application requires renotification, it should be determined through the circulation of papers outside of a meeting.

Delegating a decision

- 4.47 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

- 4.48 Minutes of the meeting shall include the decision, the outcome of voting and the reasons for the decision.
- 4.49 All voting Panel members shall review and sign the minutes after the meeting.
- 4.50 A copy of the minutes shall be made publicly available on Council's website.
- 4.51 All parties that made written submissions shall be advised of the outcome in writing.
- 4.52 The Notice of Determination shall be provided to the applicant.
- 4.53 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.

5. Planning proposals

- 5.1 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.
- 5.2 The advice from the Panel must be received before council considers whether or not to

forward the planning proposal to the Greater Sydney Commission.

- 5.3 Prior to providing the advice, the Panel may request to be briefed by Council staff or other persons. If a briefing is conducted, a record of the briefing shall be published on Council's website that includes the time, date, attendees and key issues discussed.
- 5.4 Planning proposals are able to be considered by an electronic circulation of papers.

6. Transaction of business outside 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.

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.

8. Control and Direction of Court Appeals

Pursuant to Section 2.20(8) of the EPA Act, the Panel has delegated to Council's General Manager, Director City Planning and Manager Development Assessment the functions of the Panel under Section 8.15(4) of the EPA Act in respect of the control and direction of Appeals subject to the following:

- I. As required by Section 8.15(4) of the EPA Act, Council is to give notice to the Panel Chair and Alternate Panel Chair (electronically) of all Appeals relating to the determination or decision of the Panel or any deemed refusal within 7 days of the Appeal being served.

- II. In the case of an Appeal relating to a determination or decision of the Panel that is contrary to a Council officer's development assessment report, either the General Manager, Director City Planning or Manager Development Assessment will consult with the Chair of the Panel that made the determination or decision (or the Chair's nominee) as to the conduct of the Appeal within 5 business days of the notice of service of the appeal.
- III. In the case of all Appeals relating to a determination or decision of the Panel, either the General Manager, Director City Planning and Manager Development Assessment will keep the Panel Chair that made the determination or decision (or the Chair's nominee) informed as to major developments in, and the outcome of, the Appeal.
- IV. In the case of an Appeal being lodged relating to a deemed refusal of a development application, that application shall be referred to the first practical meeting, following the date that the Appeal was served, for determination or decision by the Panel. If it is not practical to provide a report, the Chair (or the Chair's nominee) shall be consulted prior to any Statement of Facts and Contentions being filed with the Court. Should there be no opportunity to consult with, or a response to a draft Statement of Facts and Contentions not be received from, the Chair (or the Chair's nominee) at least two business day prior to the date required for the filing of the Statement of Facts and Contentions the General Manager, Director City Planning or Manager Development Assessment shall have delegation to settle the Statement of Facts and Contentions without consultation or a response.
- V. The Council shall circulate a memo to all Panel members quarterly on the status of all Appeals relating to the determination or decision of the Panel and deemed refusals which would, but for the appeal, have come before the Panel. If an agreement under Section 34 of the Land and Environment Court Act has been made, the memo shall include reasons sufficient to demonstrate how the Panel's determination was addressed in the Section 34 agreement.

9. Consideration of advice from Design Review Panel

- 9.1 Council assessment officers and the panel should consider the advice of any design review report in its assessment reports and in making a determination. The design review report may be used in the following ways:
 - a. to support the application of relevant planning controls in a flexible manner where the design review panel has identified this will achieve better outcomes;
 - b. to establish if the reasonable recommendations of the design review panel have been followed;
 - c. as evidence for refusing development consent where the advice of the design review panel has not been adopted.
- 9.2 In some instances, the panel may require additional design quality advice or clarification of design quality matters to finalise their recommendations or to make a determination. In this instance, they may refer the project back to the design review panel. The following criteria can be used to establish when to re-engage with the design review panel:
 - a. the application is poor and has not considered the advice of the design review panel – refusal.

No return to design review panel

- b. Application will require minor modifications – to be managed via conditions of consent.

No return to design review panel

- c. The application will require significant modification, the extent and nature of which requires advice from the design review panel.

Return to design review panel

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