

Waverley Independent Planning Panel

Draft CHARTER

1 FUNCTIONS OF THE PANEL

The functions of the Waverley Independent Planning Panel (the "Panel") are to:

- a) determine applications that are within the prescribed delegations of those functions to the Panel from the Council and/or the General Manager;
- b) provide an independent and open forum for interested persons and the community to make submissions relevant to the applications being considered by the Panel;
- c) provide a professional and technical assessment of significant applications with integrated transparency in the decision making process; and
- d) achieve best practice urban design and development outcomes consistent with the relevant legislation and planning controls.

2 CONSTITUTION OF THE PANEL

2.1 Members

The Panel 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 with the following qualifications and appointed pursuant to this Charter:

- a) A chairperson, being a lawyer who is currently admitted or eligible for admission to practise law in New South Wales as a Barrister or Solicitor; or a non-lawyer but professional with exceptional levels of experience such as a retired Judge or Land and Environment Court Commissioner, and
- b) a professional expert with qualifications and experience in urban design, planning or architecture; and
- c) a professional expert in a relevant environmental field;
- d) a member of the public, being a resident or owner of property in the Waverley Local Government Area, with professional expertise in the areas of urban design, planning or architecture, from which the member of the public shall be meritoriously drawn as and when required.

2.2 Membership pool

A pool of persons that satisfy the criteria in 2.1 above will be maintained and there will be a rotation of members for the purpose of each meeting as dictated by the General Manager or Director of Planning and Environmental Services or delegate.

The pool is to include at least one Heritage Planner / Architect, a disability sector advocate, and a Planner with experience in Aboriginal heritage issues.

The pool will include, as a minimum:

- a) 2 members that satisfy the criteria or 2.1(a);
- b) 3 members that satisfy the criteria or 2.1(b);
- c) 3 members that satisfy the criteria or 2.1(c); and
- d) 4 members that satisfy the criteria or 2.1(d).

To ensure the Panel has the widest available level of expertise, there is no maximum number of persons that may be accepted into the membership pool, provided they are appointed in accordance with the terms of section 2.3 of this Charter below, and satisfy the criteria of 2.1 above.

2.3 Appointment

The Membership Pool shall be selected and appointed by the General Manager after consultation with the Council, with each member having signed the Memorandum of Understanding.

Members of the Panel for each Panel meeting will be selected from the Membership Pool by the General Manager, having regard to the suitability of expertise for the matters being considered by the Panel.

2.4 Term

The term of the members of Panel appointed by the General Manager shall be for a period of two (2) years with an option to extend the term again a further 2 years.

2.5 Remuneration

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

2.6 Chairperson

The Chairperson of the Panel shall be the lawyer member or as otherwise selected by the General Manager. Should the lawyer member not be present/available for a meeting the General Manager shall select an alternate Chairperson.

2.7 Alternates

- a) The General Manager may, from time to time, appoint a person to be the alternate to a member, and may revoke any such appointment, only after consultation with the Council.
- b) While acting in place of a member, the alternate member has all the functions of the member and is taken to be a member.

2.8 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 by instrument in writing addressed to the General Manager, or
- d) is removed from his or her membership of the Panel by Council for breach of any relevantly

applicable requirements of the Panel Code of Conduct, Charter, Guidelines or Memorandum of Understanding, issued by the General Manager in respect of the Panel as in force from time to time, or

- e) without reasonable excuse does not attend a meeting of the Panel in compliance with a call of the Panel or is otherwise absent (without a written explanation for any such absence given to and accepted by the General Manager) from 2 consecutive meetings of the Panel, 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 physically or mentally incapacitated to such an extent that he or she is unable to continue discharging the responsibilities of being a member of the Panel, or
- h) after consultation with the Council, is removed by the General Manager from office for any or no reason and without notice.

2.9 Filling of Vacancies

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

2.10 Meetings

- a) A meeting of the Panel will generally consist of four (4) members, being the chairperson, an urban designer/planner, an environmental or other relevant expert and one (1) community representative.
- b) Meetings shall be held each calendar month except where there are no matters. Additional meetings may be called at the discretion of the General Manager.
- c) At least 6 days notice must be given of any meeting specifying the time and place and date on which the meeting is to be held and the business proposed to be transacted. The applicant and any persons who have made a written submission to the application during the notification period will receive written invitation. Agendas will be made publically available at that time.
- d) Additional to the hearing agenda containing the Assessment Officer's Report, Panel members shall be provided with associated documents, including all written submissions.
- e) Unless otherwise determined by the General Manager, the Panel recesses in the month of January.

2.11 Quorum

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

2.12 Meeting and Other Processes

- a) The Panel may, subject to this Charter and any guidelines issued by the General Manager in respect of the Panel as in force from time to time, determine its own procedure.
- b) 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 (the rules of procedural fairness).
- c) 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.

- d) Proceedings of the Panel shall 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.
- e) The Panel shall not receive substantive additional information or amended applications once the Agenda for a hearing has been finalised. If a request to submit substantive additional information is made, the Panel shall consult with Council staff as to the need to reassess the proposal in its entirety prior to the consideration of the matter. If in the staff view the request does not require reassessment of the Application, the Panel may choose to accept the information and proceed to hear the matter. Subject to the endorsement of the Panel, any instance where staff advises that reassessment is necessary, the matter shall be deferred, reassessed and reported back to a subsequent Panel hearing.
- f) Councillors may attend the Panel meeting in an observer capacity only. Councillors can not make representations to the Panel.

2.13 Determinations/Decisions

- a) Determinations and any relevant decision of the Panel shall be by a majority of votes of members present at a meeting. If votes are tied the Chairperson will have the casting vote.
- b) Voting is to be recorded for the public record.
- c) Where the Panel determines to refuse an application, the reasons for refusal must be given.

2.14 Council Review

- a) The operation of the Panel may, at any time as determined by Council or the General Manager, be ceased without notice.
- b) This Charter (and accompanying documents) may be amended at any time as determined by Council or the General Manager.

3 OBLIGATIONS OF MEMBERS

All Panel members are required to perform their obligations under this agreement faithfully and diligently and must, at all times, act in accordance with the following documents associated with the Panel:

- the Code of Conduct;
- the Charter;
- the Guidelines; and
- the Memorandum of Understanding

If members do not comply the General Manager may terminate the Panel member's appointment without notice.

Panel members must attend all meetings reasonably required by the General Manager or the Director of Planning and Environmental Services or delegate.

Panel members will have read and be familiar with the documents provided by Council prior to attending a Panel meeting.

The relationship between the Council and the Panel member is that of a client and independent contractor, and nothing shall be taken as constituting the Panel members or any of their employees as an employee or servant of the Council.

4 MATTERS TO BE REFERRED TO PANEL

Matters not otherwise delegated to the General Manager will be referred to the Panel for determination where they are:

4.1 Development Applications:

- a) Classes 2 to 9 buildings involving new residential flat buildings, retail and commercial, industrial, motels, hospitals and clubs with a construction cost of \$3 million or more, or where there are six (6) or more objectors with unresolved objections, but with the exception of:
 - i. land or strata subdivision of an existing or an already approved development;
 - ii. change of use or fit out of a property/tenancy;
 - iii. extension of hours of operation; and
 - iv. signage.
- b) Where the applicant or owner is Waverley Council, a Councillor or member of staff;
- c) Which involve an application to vary a development standard pursuant to clause 4.6 of the Waverley Local Environmental Plan 2012, or pursuant to SEPP 1 for any other environmental planning instrument, when there is a significant impact associated with the proposed variation as determined by the Director of Planning or delegate.

4.2 Section 82a Reviews:

- a) Applications for review of determination pursuant to Section 82A of the Environmental Planning and Assessment Act 1979 provided the meeting of the Panel determining any such application for review will consist only of members who did not make the determination the subject of the application for review.

4.3 Section 96 Modifications

- a) Applications to modify development consents under Section 96 (2) and 96AA(1) only, and where the terms of 4.1 above apply.

4.4 Any application or matter which the General Manager considers should be brought before the Panel.

5 EVALUATION OF PANEL PROGRAM

The Panel is proposed for a two year trial period. Council will undertake an annual review of the performance on the Panel program mindful of the following measures of success:

5.1 Direct Customer feedback:

- a) Measure perception on whether “submissions have been properly heard”
- b) Measure perception on whether “Council dealt professionally with complications in DA assessment”

5.2 Direct Feedback from Councillors:

- a) Measure perceptions on whether there was effective consideration of DA policy

5.3 Staff

- a) Measure perceptions that the Panel improves expertise in the DA process
- b) Quantitative measurement of time spent at Panel meetings on DA assessment.

5.4 Land and Environment Court

- a) Reduction in number and costs of appeal
- b) Success rates at appeal.

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