

**ITEM 3. CITY OF SYDNEY LOCAL PLANNING PANEL – APPOINTMENT OF
EXPERT AND COMMUNITY REPRESENTATIVES**

FILE NO: S083226.006

SUMMARY

On 10 August 2017, the Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Bill 2017 was passed. The passing of the Bill followed an announcement earlier that week (Tuesday 8 August 2017) by the Minister for Planning (Anthony Roberts) and Minister for Local Government (Gabrielle Upton) that the NSW government would be mandating the establishment of Local Planning Panels (commonly referred to as 'Independent Hearing and Assessment Panels') for all Sydney councils and Wollongong.

Key aspects of the legislation include:

- Local Planning Panels must commence operations by 1 March 2018.
- Councillors will have no functions to determine development applications or otherwise act as a consent authority – these powers will sit with either the Local Planning Panel or staff. For the City of Sydney, applications with a value greater than \$50 million will continue to be determined by the Central Sydney Planning Committee.
- There will be four members of each Local Planning Panel. A chairperson nominated by the Minister for Planning, two expert members (to be selected by Council from the Minister's pool of experts) and a community representative (to be selected by Council). Members will be on the panel for three years, and can sit on the same panel for a maximum of six years. The Minister has nominated Richard Pearson as the Chair of the City of Sydney Local Planning Panel.
- A draft Ministerial Local Planning Panels Direction has been issued which sets out the types of development applications that are to be referred to the City of Sydney Local Planning Panel. At the time of preparing this report a final Direction has not been made.

This report describes the operational aspects of the Local Planning Panel and recommends the appointment of the Minister's nominated chair (plus two alternate chairs), two expert members (plus at least two alternates) from the Minister's pool of experts, and one community representative (plus one alternate), selected after an Expression of Interest by the City, to the Local Planning Panel for a period of three years. The report also recommends some minor changes to the Planning and Development Committee and amendments to delegations to the Chief Executive Officer arising from the introduction of the Local Planning Panel.

RECOMMENDATION

It is resolved that Council:

- (A) endorse the Minister's nomination of **Richard Pearson** as the Chair of the City of Sydney Local Planning Panel and **Abigail Goldberg** and **Steven Layman** as alternate chairs to the City of Sydney Local Planning Panel for a period of three years;
- (B) endorse the appointment of two expert members and at least two alternate members from the Minister's pool of experts to the City of Sydney Local Planning Panel: **Shaun Carter** (member), **Helen Lochhead** (member), **Steve Kennedy** (alternate member) and **Peter Romey** (alternate member) for a period of three years;
- (C) endorse the appointment of one community representative to the City of Sydney Local Planning Panel: **Amelia Thorpe** (member) and **John McInerney AM** (alternate member) for a period of three years;
- (D) note the legislative and draft operational procedures developed by the Department of Planning and Environment for the City of Sydney Local Planning Panel;
- (E) rename the Planning and Development Committee to be the Transport, Heritage and Planning Committee and endorse the revised Terms of Reference for that Committee as shown at Attachment E to the subject report; and
- (F) in accordance with the requirements of the Environmental Planning and Assessment Act 1979, delegates its functions as a consent authority in relation to matters other than those required to be dealt with by either the Central Sydney Planning Committee or the City of Sydney Local Planning Panel to the Chief Executive Officer.

ATTACHMENTS

Attachment A: Information on Local Planning Panel Chairs

Attachment B: Information on Local Planning Panel Community Representatives

Attachment C: Information on Local Planning Panel Expert Members

Attachment D: Draft operational procedures

Attachment E: Revised Terms of Reference for Transport, Heritage and Planning Committee

Attachment F: Draft referral criteria

Attachment G: Draft Code of Conduct for Local Planning Panel members

BACKGROUND

1. On 10 August 2017, the Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Bill 2017 was passed. The passing of the Bill followed an announcement earlier that week (Tuesday 8 August 2017) by the Minister for Planning (Anthony Roberts) and Minister for Local Government (Gabrielle Upton) that the NSW government would be mandating the establishment of Local Planning Panels (commonly referred to as 'Independent Hearing and Assessment Panels') for all Sydney councils and Wollongong. The stated reason for this decision was to bring expertise, transparency and integrity to the assessment of development applications at the local level (Minister Media Release 8 August 2017).
2. All councils in Greater Sydney are required to establish a Local Planning Panel. Local Planning Panels will have four members, comprising a Chair (nominated by the Planning Minister), two expert members (selected by Council from a pool of experts approved by the Minister for Planning) and a community representative (selected by Council).
3. Local Planning Panels must commence operations by 1 March 2018.
4. On 21 December 2017, the Minister for Planning advised Council that Richard Pearson had been nominated as the Chair for the City of Sydney Local Planning Panel, and that Abigail Goldberg and Steven Layman have been nominated as alternate chairs to the panel. Members will be on the panel for three years, and can sit on the same panel for a maximum of six years. The applications submitted by these candidates can be found in **Attachment A**.
5. Local Planning Panels are independent committees appointed by councils to determine certain development applications. A Local Planning Panel is not subject to the direction or control of the council, except on matters relating to panel procedures or to the time within which the panel is to deal with a matter that is not inconsistent with a Ministerial Direction issued under Section 117 of the Environmental Planning and Assessment Act.

NOMINATION OF COMMUNITY REPRESENTATIVE

6. Nominations for community representatives for the City of Sydney Local Planning Panel were sought from 1 November to 30 November 2017. Advertisements were placed in The Sydney Morning Herald and Central Newspapers on two occasions each, and information was also available on the City of Sydney website.
7. Nominations were received from seven persons who reside in the City of Sydney local government area. The Department of Planning and Environment issued guidelines to local councils regarding the selection of community representatives. These guidelines stated that community representatives are to be selected from the local community and that mayors, councillors, property developers and real estate agents are not eligible to be appointed as community representatives.
8. The guidelines also state that local community representatives should:
 - (a) be current residents within the local government area (LGA);
 - (b) have knowledge and awareness of the LGA and issues of concern to the local community;

- (c) be able to represent and communicate the interests of the local community;
 - (d) have an understanding of the planning process and assessment issues (but are not expected to be experts);
 - (e) commit to attend the meetings and contributing constructively to the determination of applications; and
 - (f) be willing to adhere to the code of conduct and operational procedures.
9. All nominations received were reviewed by the Executive Manager Development and Executive Manager Strategic Planning and Urban Design. Interviews were held with all seven candidates in December 2017 to assist in the shortlisting process and to determine the candidate's suitability for the role. Areas that were explored in the interview included:
- (a) area of expertise that may be relevant to the panel;
 - (b) understanding of issues affecting the City of Sydney and planning/urban development matters;
 - (c) general availability to attend and participate on local planning panel meetings;
 - (d) appreciation of conflicts of interest; and
 - (e) judicious and independent thinking and decision making capabilities.
10. The selection process has resulted in Amelia Thorpe being recommended as the community representative for the Local Planning Panel and John McInerney AM as the alternate community representative. The applications submitted by these candidates can be found in **Attachment B**.

NOMINATION OF EXPERT MEMBERS

11. On 21 December 2017, the Minister for Planning provided the City of Sydney access to the list of independent experts that the Minister has approved. Councils are required to select two members to the panel from the Minister's pool of independent experts. The Minister's list of approved independent experts contains the names of 492 persons, of which 225 nominated for the City of Sydney panel.
12. Experts must have expertise 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.
13. Advice was provided to local councils that an advisory panel consisting of independent persons from the Law Society of NSW and the Planning Institute of Australia, the Government Architect and the Deputy Secretary Department of Planning and Environment reviewed the expert member applications. The panel recommended, for approval by the Minister, persons suitable for chair roles and persons for the independent expert roles. Each expert was approved on the basis of their professional standing, experience, technical ability and broad understanding of the development assessment process.

14. Advice has also been provided to local councils that probity and political donation checks have been undertaken for each approved chairperson and each independent expert has provided a statutory declaration that they have not been bankrupt, do not have a criminal record and are not developers or real estate agents.
15. Senior staff from the City Planning, Development and Transport Division have reviewed the applications for 225 independent experts and recommend Shaun Carter and Helen Lochhead as the expert members of the Local Planning Panel and Steve Kennedy and Peter Romey as alternate expert members for the Local Planning Panel. The applications submitted by these candidates can be found in **Attachment C**.

REFERRAL CRITERIA FOR LOCAL PLANNING PANEL

16. The Environmental Planning and Assessment Act 1979 allows the Minister for Planning to issue directions regarding the type of development applications that are to be determined by Local Planning Panels. The draft referral criteria can be found in **Attachment F**.
17. The City of Sydney has its own unique referral criteria, given the high demand for development and high value of applications. Draft referral criteria released by the NSW Department of Planning and Environment for the City of Sydney is as follows:

General Development

- (a) Development that has an estimated cost of more than \$20 million, but not development comprising only:
 - (i) Internal alterations and additions to retail premises or office premises,
 - (ii) Advertising signage; or
 - (iii) Maintenance of a heritage item.
- (b) Development for which a development application was determined by the local planning panel.

Conflict of Interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) member of council staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979,
- (d) a member of parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the Local Government Act 1993) of a person referred to in (a) to (d)

but not development for the following purposes which require the consent of the owner of the land:

- (f) internal alterations and additions to retail premises or office premises,
- (g) advertising signage,
- (h) maintenance of a heritage item, or
- (i) development for the purpose of end of journey facilities.

Contentious development

Development that:

- (a) in the case of a council having an approved submission policy – is the number of submissions set by that policy, or
- (b) in any other case - is the subject of 25 or more unique submission by way of objection.

An ***approved submissions policy*** is a policy prepared by the council and approved by the Secretary of the Department of Planning and Environment that details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number or nature of submissions received about development.

Note – the City of Sydney does not have an approved submissions policy. This will mean that the 25 unique submissions will apply at the City.

Departure from development standards

For development for the purpose of residential dwellings, development that contravenes a development standard imposed by an environmental planning instrument by more than 25%.

For all other development, development that contravenes a development standard imposed by an environmental planning instrument by 10%.

But not where the Secretary has given concurrence to the contravention, or where the concurrence has been assumed.

Sensitive development

- (a) Designated development.
- (b) Development to which State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development applies.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:

- (i) a club licence under the Registered Clubs act 1976
 - (ii) a hotel (general bar) licence under the Liquor Act 2007, or
 - (iii) an on-premises licence for public entertainment venue under the Liquor Act 2007
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.
18. It is expected that, based on the draft referral criteria, approximately 80-100 development applications will be referred to the Local Planning Panel on an annual basis.
19. Planning Proposals will not be referred to the Local Planning Panel. Planning Proposals will continue to be considered by Council and the Central Sydney Planning Committee. This provision applies only to the City of Sydney.

WHO DETERMINES DEVELOPMENT APPLICATIONS NOT REFERRED TO THE LOCAL PLANNING PANEL OR CENTRAL SYDNEY PLANNING COMMITTEE

20. The *Environmental Planning and Assessment Act 1979* (the EPA Act) requires that the determination of applications that are not referred to the Local Planning Panel or the Central Sydney Planning Committee (CSPC) will be determined by staff under delegated authority.
21. Section 23I of the EPA Act provides that the functions of Council as a consent authority are not to be exercised by councillors and are instead to be exercised by the local planning panel, a regional panel (not applicable to the City) or “an officer or employee of the council to whom the council delegates those functions”. As noted above, the CSPC is already the consent authority for major development applications under the *City of Sydney Act 1988* (section 40).
22. As a result, Council is required to delegate consent authority functions to staff. It is recommended that this delegation be to the Chief Executive Officer. The Chief Executive Officer may then further delegate the function to appropriate staff. The final delegations will be dependent on the scope of the functions of the Local Planning Panel, which will not be known until the final Direction is issued by the Department of Planning and Environment. Councillors will be advised once the final delegations have been determined.

OPERATIONAL PROCEDURES

23. The Department of Planning and Environment has issued draft operational procedures which are designed to ensure that Local Planning Panels meet their obligations in the most efficient and effective manner. These operating procedures are in addition to the legislative provisions of schedule 4B of the Environmental Planning and Assessment Act. The Act requirements and the draft ministerial directions for the operations of the Local Planning Panels can be found in **Attachment D**.

24. The draft operational procedures state that the chair and alternate chairs are to rotate presiding over panel meetings each meeting, unless the chair or alternate chair is unavailable for any reason.
25. Expert members and the alternate members, as well as the community members and alternate members, are to be interchanged if a member has a conflict of interest, is unable to attend or to periodically rotate members.
26. The draft Ministerial Direction related to the operations of the panel state that the panel is to act with as little formality as the circumstance would permit and according to equity, good conscience and the substantial merits of the case without regards to technicalities or legal forms. It also allows the chair of the panel to determine detailed procedures for the execution of efficient and effective meetings. The chair of the City of Sydney Local Planning Panel has foreshadowed that draft meeting procedures will be tabled at the first meeting of the Local Planning Panel for endorsement.
27. The Chair of the City of Sydney Local Planning Panel has determined that the Local Planning Panel will meet fortnightly on a Wednesday. The first meeting of the Local Planning Panel has been scheduled for **Wednesday 14 March 2018**.
28. The commencement time for the public meeting of the Local Planning Panel will be 5.00pm. This is the same as the start time for the consideration of development applications at the existing Planning and Development Committee.
29. The Department of Planning and Environment has drafted a proposed code of conduct for Local Planning Panel members. The draft code adopts the terms of the draft Model Code of Conduct for Local Councils in NSW (October 2017). All members of the panel will be bound by the Code of Conduct.
30. Site visits are at the discretion of the chair.

Meeting procedures

31. The chair of the City of Sydney Local Planning Panel has indicated that specific procedures for the operations of the panel will be presented to the first meeting of the panel for endorsement, however, the operations of the panel will be similar to that of the existing planning committee meeting.
32. In general terms, the following will occur for each DA presented to the panel:
 - (a) the Manager Planning Assessments will present an overview of the DA;
 - (b) interested parties (objectors and applicant) will make representations to the panel members; and
 - (c) panel members will deliberate and vote and make determination.
33. The panel is not bound by the rules of evidence and may inquire and inform itself on any matter, in such manner as it thinks fit, subject to the rules of natural justice and procedural fairness.

34. The panel is to give reasonable notice to the public of the times and places of its meetings. This must be through the website used by the panel and may include other mechanisms as appropriate. The City of Sydney website will be updated with information related to the Local Planning Panel, including membership, time, dates of meetings and meeting agendas.
35. The panel must make electronic recordings and the council must make those recordings publicly available on its website.
36. A panel must give written reasons for its decision and the council must make those written reasons publicly available on its website.

AMENDMENTS TO THE PLANNING AND DEVELOPMENT COMMITTEE

37. In 2017, Council resolved to adopt meeting times, functions, policies and procedures for the Planning and Development Committee, comprising three sub-committees being: the Transport, Heritage and Planning Sub-Committee; the Major Development Assessment Sub-Committee and the Development Assessment Sub-Committee, which commence at the conclusion of the Cultural and Community Committee.
38. With the introduction of the Local Planning Panel, the functions of the Planning and Development Committee will change, as development applications will no longer be considered by the Major Development Assessment Sub-Committee or the Development Assessment Sub-Committee. Given this, the functions of the Committee have been revised and are recommended for endorsement in **Attachment E**.
39. It is also proposed to rename the Committee so that it will be known as the Transport, Heritage and Planning Committee, to better reflect the revised functions of the Committee.

BUDGET IMPLICATIONS

40. The costs associated with the establishment and the running of a Local Planning Panel include:
 - (a) establishment costs, including recruitment;
 - (b) remuneration for panel members; and
 - (c) administrative and support costs.
41. The Minister has determined that the remuneration rates for Local Planning Panel members are as follows:
 - (a) Chairperson - \$2,000 plus GST per meeting;
 - (b) Experts - \$1,500 plus GST per meeting; and
 - (c) Community representative – minimum \$500 to maximum \$1,500 plus GST per meeting

42. This rate assumes a full day (7 hours) and includes time for meeting preparation, site visits and participation at the meeting. It is recommended that the community representative be paid the full rate of \$1,500 per meeting, due to the professional expertise of the recommended candidates.
43. The panel member fees for each meeting of the Local Planning Panel will be \$6,500 plus GST (\$7,100). At this stage, it is anticipated that the panel will need to meet on a fortnightly basis, due to the volume of applications that will be referred to the panel for determination. Indicatively, it is expected that the Panel member fees will be approximately \$171,000 per annum. That may be lower if less meetings are required following the receipt of the final direction from the Department of Planning and Environment as to the scope of matters required to be determined by the panel.
44. The secretariat resources associated with supporting the panel will be provided within the existing resources of the Secretariat within the Office of the CEO, until an assessment can be made of the support required for the operation of the Panel.
45. It is anticipated that the costs of the panel meetings for the remainder of the 2017/18 budget year will be absorbed. An allocation for future funding will be incorporated into the 2018/19 Council budget.

RELEVANT LEGISLATION

46. *Environmental Planning and Assessment Act 1979.*
47. *City of Sydney Act 1988.*
48. *Local Government Act 1993.*

CRITICAL DATES / TIME FRAMES

49. Local Planning Panels are to be established by 1 March 2018. The first meeting of the City of Sydney Local Planning Panel will be Wednesday 14 March 2018.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

(Louise Kerr, Executive Manager Development)