

Cumberland Council
Independent Hearing and
Assessment Panel
(CIHAP) Procedures
Manual

May 2016

PROCEDURE REVISION

DATE	DOCUMENT/REVISION	TRIM REF
May 2016	Original draft document	T047557/2016

1. INTRODUCTION

1.1 Background

On 19 May 2016, the Administrator of Cumberland City Council resolved to establish an independent assessment panel, known as the Cumberland Council Independent Hearing and Assessment Panel (CIHAP), to provide transparency and probity in the assessment of development applications and planning proposals, and to provide an independent forum for stakeholders (applicants, the community and objectors) to present and discuss issues relating to development applications and planning proposals. The CIHAP provides additional and independent rigor in the assessment process without unnecessarily delaying the processing of applications which comply with adopted policies.

1.2 Objective

- To provide for the independent, transparent review, assessment and determination of development applications, consistent with Cumberland City Council local government area that encompasses whole or in part the *Auburn Local Environmental Plan 2010*, *Holroyd Local Environmental Plan 2013*, *Parramatta Local Environmental Plan 2011* and *Auburn Development Control Plan 2010*; *Holroyd Development Control Plan 2013*, *Parramatta Development Control Plan 2011*.
- To provide for the independent, transparent review and assessment of planning proposals, consistent with Cumberland City Council area that encompasses whole or in part the *Auburn Local Environmental Plan 2010*, *Holroyd Local Environmental Plan 2013*, *Parramatta Local Environmental Plan 2011*, and to make recommendations to Council about the determination of these planning proposals; and
- To provide a forum for interested parties to be heard openly.

1.3 Policy Framework

Council's Policy on the Cumberland Council Independent Hearing and Assessment Panel (CIHAP) establishes the policy framework for this procedure.

1.4 Functions

The CIHAP is an independent forum for stakeholders (applicants, the community and objectors) to submit and discuss issues relevant to development applications and planning proposals. The CIHAP shall:

- a. consider and determine all development applications ordinarily referred to the Council for a decision
- b. consider all Planning Proposals and make recommendations to the Council with regard to their merits.

In reviewing and assessing these matters the CIHAP shall:

- openly discuss proposals and hear representations from applicants and objectors during the hearing.
- avoid any lobbying or external communication from applicants or objectors outside the forum of Panel meetings.
- take into account any relevant statutory planning instruments and/or Council policies and relevant Land & Environment Court Planning Principles.

- comply with statutory provisions, particularly the *Local Government Act, 1993*, and the *Environmental Planning and Assessment Act, 1979*.

Note: The Panel may request additional information in circumstances where the information is fundamental to the determination of the proposal and such information has not previously been requested by Council staff.

2. PANEL MEMBERSHIP

2.1 Appointment and termination

The Panel shall consist of four (4) members as follows:

- the Chairperson who is a lawyer who is currently admitted or eligible for admission to practice law in New South Wales as Barrister or Solicitor; or non-lawyers but professionals with exceptional levels of experience such as retired judges or Land and Environment Court Commissioners;
- two independent experts (out of pool of four (4)) shall be drawn from the professional disciplines with a university degree of town planning, urban design, architecture, law and/or the environment; and
- one member is to be a representative from the Auburn City Community (out of pool of three (3) community representatives).

Technical panel members will be appointed on the basis of their qualifications and experience, and absence of any real or potential pecuniary or conflict of interest.

A pool of three (3) representatives from the community will be appointed by the General Manager, and the community panel representative for each meeting will be selected on a rotational basis.

The Panel shall meet annually with the Development Environment & Infrastructure Director to review its meeting procedures, past recommendations and Council decisions to identify any improvements to procedures or decision making. At that time the Development Environment & Infrastructure Director shall prepare a report to the Leadership Team providing an assessment of the operation of the Panel and any suggestions for improvement. All panel members are to be involved in this report.

2.2 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.

2.3 Alternates

If a nominated panel member is not available for a meeting an alternative will be selected by the Development Environment & Infrastructure Director from the pool of alternates, on a rotating basis. A reference to a member of the Panel includes a reference to the member's appointed alternate.

2.4 Vacancies

If a vacancy occurs in the membership of the Panel, the General Manager may appoint a person to fill the vacant position.

3. CIHAP MEETING PROCEDURE

3.1 Meeting notification

Agendas for meetings of the Panel shall include information on meeting date, venue, business proposed to be conducted at the hearing and contain reports prepared by Council Planning Officers or independent consultants.

Agendas shall be made available to Panel Members seven days prior to the meeting in hard copy or electronic format.

Agendas will be made available to members of the public five days prior to the meeting.

The Development Environment and Infrastructure Director shall convene Panel meetings as required.

The Panel shall be provided reports in accordance with the Council's template.

In the case of planning proposals, the Manager Strategy will attach a copy of the minutes of the CIHAP meeting and reference this in the Council report for consideration of, and determination by, Council at the next Ordinary Council Meeting.

3.2 Site inspections and public meeting procedures

The Panel may elect to attend site inspections of development applications and planning proposals to be considered at the public meeting. If required this should be on the day of the scheduled meeting.

Site inspections, including transportation, shall be organised by the Manager Development Assessment and/or Manager Strategy (or their delegate), who will also accompany Panel members on inspections.

Prior to the public meeting, and as part of the site inspection arrangements, the Manager Development Assessment and/or Manager Strategy (or their delegate) will attend to answer and clarify any issues within the assessment report or raised by Panel members from the site inspection.

Following the site inspection the Panel shall convene the public meeting. Refer to the following sections of this procedure for details.

3.3 Quorum

A minimum of three (3) Panel members shall form a quorum and any duly convened meeting at which a quorum is present shall be competent to perform the Panel's functions.

The Chairperson of the Panel shall be the lawyer member. Should the Chairperson not be present/available for a meeting the members attending shall elect a Chairperson.

3.4 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.

3.5 Meeting and other processes

The meeting shall proceed without adherence to formal rules of debate.

The Panel shall not receive substantive additional information that amends the application.

Questions arising shall be determined by a majority of votes of members present and voting. If votes are tied, the Chairperson has a casting vote. The Panel shall regulate its own proceedings subject to the procedural provisions.

The first item of business at Panel Inspections and public meetings will be Panel members declaring any pecuniary or conflicts of interest that may prevent them from participating in or considering any particular item on the agenda. A Panel member having declared a pecuniary interest, or a conflict of interest that prevents them from participating in the item, shall not attend the site inspection or public meeting associated with the item or participate in discussion or voting on the item.

3.4.1 Speakers wishing to address the Panel at the CIHAP meeting

Submissions by the applicant and objectors will be considered at the meeting. An objector is deemed to be a person who has made a written submission about the application.

The Panel shall, upon request, hear submissions from persons who identify prior to a meeting that they wish to make a submission to be considered by the Panel.

Where there are a large number of persons making submissions with common interests, the Panel shall have the discretion to hear a representative of those persons.

The applicant is the person nominated on the development application form as applicant. Consultants and legal representatives of the applicant will be permitted to address the Panel at the discretion of the Chairperson.

Where an issue of legal interpretation arises the chair may refer the matter to the Development Environment & Infrastructure Director for advice.

Applicants, objectors, and other interested parties shall be restricted to 3 minutes each when addressing the Panel. The Panel Chairperson has the discretion to extend the period if considered appropriate.

The Manager Development Assessment and/or the Manager Strategy (or their delegate), nominated by the Development Environment & Infrastructure Director, will be available at the meeting to provide professional assistance and advice to the Panel members on Council planning provisions and policies.

3.5 Assessment procedures

Panel Members shall at all times when assessing matters;

- act in accordance with the law;
- act in accordance with the *Cumberland Council Independent Hearing and Assessment Panel(CIHAP) Procedures Manual* and the *CIHAP Code of Conduct* (attached at Section 4 of this Procedures Manual);
- act reasonably, justly and in a non-discriminatory manner;
- deal with all matters before the Panel in a consistent manner;
- only take relevant information into account; and
- act reasonably and in good faith and not for an improper purpose, ulterior purpose or on irrelevant grounds.

3.5.1 Development Applications

The Panel shall exercise the consent authority functions of the Council to determine development applications, which cannot otherwise be determined by Council staff in accordance with the Council's adopted Delegations Manual and reproduced in the CIHAP Policy.

Where possible, the Panel will make a determination of the development application at the conclusion of the public meeting in an open forum and by consensus. Where a decision cannot be made by consensus, the decision will be made by majority vote. The chair will have a second or casting vote if required because of an equality of votes.

The Panel may, prior to the determination of an application and after hearing all relevant submission made at the public meeting, convene in private to discuss its findings and determination prior to the determination being made in an open public forum.

The Panel's determination can be for approval, refusal, or deferral pending the submission of additional information if such information has not been previously requested by Council's staff.

The Panel is required to provide reasons for its decision, which are to be recorded in the minutes of the meeting. The reasons for the decisions may rely on the conclusions and recommendations(s) within the Council assessment report.

If the Panel recommends approval of the application, the Panel may endorse the conditions provided by the Officer or add or delete conditions as considered appropriate by the Panel.

If the Panel recommends refusal of the application, the Panel shall provide and justify reasons for refusal - such must be capable of being defended if an appeal is lodged with the Land and Environment Court against the Council refusal.

If the Panel recommends deferral the Panel findings and recommendation must explicitly state the issues to be addressed by the applicant.

3.5.2 Planning Proposals

On conclusion of the public meeting, the Panel will convene in private, agree on its findings and recommendations and record the findings and recommendations in a standard format for presentation to Council.

The Panel's recommendation can be for approval, refusal, or deferral pending the submission of additional information if such information has not been previously requested by Council's staff.

If the Panel recommends approval of the application, the Panel shall either endorse the conditions provided by the Officer or add or delete conditions.

If the Panel recommends refusal of the application, the Panel findings shall clearly indicate the changes in the application necessary to achieve compliance with statutory planning instruments. The Panel shall also provide and justify reasons for refusal - such must be capable of being defended if an appeal is lodged with the Department of Planning and Environment against a Council refusal.

If the Panel recommends deferral the Panel findings and recommendation must explicitly state the issues to be addressed by the applicant or the Council.

Panel members will be notified of Council decisions on applications considered by the Panel.

4. CODE OF CONDUCT

Council seeks the highest ethical standards in delivering services to its community. This Code of Conduct (“the CIHAP Code”) applies to all Panel Members when exercising or purporting, at all times, to exercise their duties, responsibilities and functions under the *Cumberland Council Independent Hearing and Assessment Panel (CIHAP) Procedures Manual*.

It is designed to assist in maintaining the reputation and integrity of the Panel and to provide a basis for fair dealings and reaching findings and making recommendations on matters before it.

This Code is to be read in conjunction with the *Cumberland Council Independent Hearing and Assessment Panel (CIHAP) Procedures Manual* and Council’s general Code of Conduct.

4.1 Responsibilities/obligations

Panel Members must:

- act in accordance with the requirements of the law, the *Cumberland Council Independent Hearing and Assessment Panel(CIHAP) Procedures Manual* and this Code;
- act in an appropriate way toward the public, staff of the Council and other Members of the Panel; and
- act in the best interests of the Cumberland community.

4.2 Interaction with Council staff and Applicants (including applicants’ consultants)

Panel Members may approach and liaise with Council staff nominated by the General Manager to assist the Panel to obtain information and clarify matters relating to their duties, responsibilities and functions and matters before them. Panel Members shall not issue directions to, or order Council staff to, carry out any direction on any matter whatsoever.

Panel Members must not approach an Applicant or a consultant representing an applicant, or if approached by an applicant or their consultant, must not discuss any application which is either before the Panel or will come before the Panel at some future time, except during the course of a panel meeting where the application forms part of the agenda and the applicant or their consultant has a right to be heard by the Panel.

Panel Members must not approach a Councillor, or if approached by a Councillor must not discuss any application which is either before the Panel or will come before the Panel at some future time, except during the course of a panel meeting where the application forms part of the agenda and the Councillor has a right to be heard by the Panel at the meeting in their private capacity.

4.3 Conflicts of interest and disclosure

Panel Members must:

- consider and comply with all disclosure requirements under this Code including but not limited to disclosing interests arising out of a personal and/or pecuniary nature and of a direct and/or indirect nature and if a conflict exists or arises, shall disclose the nature and extent of such interest and conflict in accordance with the provisions below;
- ensure no conflict exists for Members, or people closely associated with them, which could lead to a conflict with the impartial performance of the duties; and
- consider both perceived and actual conflicts for the purposes of this clause.

Pecuniary interest and non-pecuniary conflict of interest are defined as follows:

<i>Pecuniary Interest</i>	an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.
<i>Non-pecuniary interest</i>	a private or personal interest the person has that does not amount to a pecuniary interest as defined in the Act (for example; a friendship, membership of an association, society or trade union or involvement or interest in an activity).

4.3.1 *Pecuniary Interest*

Panel members shall adhere to the Memorandum of Understanding signed with the Council acknowledging and accepting that if the Panel member has a pecuniary interest in any matter (as defined in sections 442 and 443 of the *Local Government Act, 1993*, or otherwise defined in the Council's Code of Conduct) to be considered by a meeting of the Panel, then:

- (i) upon being notified of a draft list of agenda items, if a Panel member identifies a possible or actual pecuniary interest the Panel member shall withdraw as nominated Panel member for that meeting and an alternative shall be invited to attend.
- (ii) at the Panel meeting, if a Panel member identifies a possible or actual pecuniary interest the Panel member will immediately disclose the nature of that interest prior to any consideration of the matter, and
- (iii) will not be present at or in the sight of the meeting of the Panel at any time during which the matter is being considered or discussed by the Panel.

A Panel member having declared a pecuniary interest shall not attend the site inspection or public meeting associated with the item or participate in discussion or voting on the item. The first item of business at Panel Inspections and Public meetings will be Panel members declaring any pecuniary interest that may prevent them from participating in or considering any item on the agenda. If at any time during a Panel meeting, either at the pre-hearing inspection, or at the public meeting, or during consideration of the item in closed session, a Panel member identifies a possible or actual pecuniary interest the Panel member shall immediately notify the Chair and withdraw from the meeting during the consideration of that item.

4.3.2 Non Pecuniary Conflict of Interest

If at any time, upon notification of the draft list of agenda items, at pre meeting inspections, public meeting or consideration of an item in closed session, a Panel member identifies a possible or actual non pecuniary conflict of interest the Panel member shall consider whether it is significant enough to withdraw from consideration of the item and if so shall notify and withdraw as nominated Panel member for that meeting or item.

If having declared a non-pecuniary conflict of interest a Panel member has a broad range of options for managing the conflict. The option chosen will depend on an assessment of the circumstances of the matter, the nature of your interest and the significance of the issue being dealt with. Non-pecuniary conflict of interests must be dealt with in at least one of these ways:

- It may be appropriate that no action is taken where the potential for conflict is minimal or can be eliminated by disclosure. However, you should provide an explanation of why you consider a conflict does not exist.
- Limit involvement if practical (for example, participate in discussion but not in decision making or vice-versa). Take care when exercising this option.
- Remove the source of the conflict, for example, relinquishing or divesting the personal interest that creates the conflict.
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue or restrict your access to all relevant information.

4.4 Other Business or Employment

Public perception of bias/conflict of interest requires that Panel members not engage in any of the following while they are members of CIHAP:

- Appearing for or against Council in development matters, for example, as consultants acting on behalf of applicants or Council, giving evidence in Court for or against Council;
- Making representations to CIHAP on behalf of others, for example, making a submission in support of a development, or on behalf of an objector;
- Making representations to Council in relation to planning and development matters, for example, supporting an application for a rezoning; or
- Deriving income (other than remuneration for being an CIHAP panel member) through contracts with Council.
- Any other work conducted within Cumberland City Council shall be the subject of a declaration of interest in accordance with this Code.

4.5 Gifts and benefits

Panel Members must never receive, accept, demand, solicit, request or accept a gift or benefit in connection with their duties on the Panel. Facilities, transportation, equipment, meals, etc., provided by Council as part of panel meetings shall not be considered as gifts or benefits under this part.

4.6 Public Comment

The Chair of the Panel is not authorised to speak publicly to the media and address the public on behalf of the Panel, except with the permission of the General Manager. No Panel Member may make any comment to the media or the public in relation to any matter before the Panel or any recommendation of the Panel.

4.7 Panel Findings and recommendations

Panel Members shall at all times when assessing matters;

- act in accordance with the law;
- act in accordance with the *Cumberland Council Independent Hearing and Assessment Panel(CIHAP) Procedures Manual* and the *CIHAP Code of Conduct* (attached at Section 4 of this Procedures Manual);
- act reasonably, justly and in a non-discriminatory manner;
- deal with all matters before the Panel in a consistent manner;
- only take relevant information into account; and
- act reasonably and in good faith and not for an improper purpose, ulterior purpose or on irrelevant grounds.

4.8 Breach of code

Where any complaint alleging misconduct by a Panel Member is made, the complaint is to be made in writing to the General Manager or Council's Public Officer and must identify the part of this Code or the Charter alleged to have been breached, including the reasons in support of the alleged breach, and be signed by the complainant. Anonymous complaints need not be investigated, but the General Manager has the discretion to determine what action if any will be taken. Upon receipt of a written complaint alleging misconduct, the General Manager shall take such action as appropriate.

Panel Members must not engage in corrupt conduct (as defined in the ICAC Act) or unlawful conduct and must report any actual or potential corrupt or unlawful conduct to the General Manager or Public Officer of the Council in accordance with the procedures set out in this Code. All deliberations relating to an investigation shall be conducted in strict confidence.

4.8.1 Sanctions for Breach of Code of Conduct

Having regard to the nature of the findings after the investigation, action including but not limited to the following may be taken by the General Manager:

- counselling of the member;
- suspension from the Panel;
- suspension from meeting a particular matter;
- removal from the Panel and/or report to another authority.

4.9 Review of Code

This Code shall be reviewed annually by the Development Environment & Infrastructure Director, with the assistance of the Panel and reported to the Leadership Team.