

4.3 New Charter to Replace IHAP

EXECUTIVE SUMMARY

Purpose

The purpose of this report is for Council to adopt the attached charters and give delegations for the assessment panels to determine development applications which replaces the IHAP.

Summary

During April/May 2008 four options regarding IHAP were exhibited along with draft charters for two of the options. A report detailing the public submissions and recommendation for the preferred option was reported to Council on 8 July 2008. At this meeting Council resolved to:

- A. *That Council support the model, known as Option 3, - IHAP, with full delegation to determine applications, and*
- B. *That an amended charter for and IHAP with full delegation to determine applications be presented to the next Council meeting for adoption with the changes outlined in this report.*

This report presents the charters and delegations required for new panels to replace the Independent Hearing and Assessment Panel (IHAP)

Financial Impact

Financial Impacts were addressed on the 8 July in consideration of the new model. The adoption of the attached charter will not change the statements on financial impact previous reported.

Policy Impact

The existing IHAP Charter will be rescinded and replaced with WDAP and WDRP Charters on the designated date.

RECOMMENDATION OF DIRECTOR PLANNING AND DEVELOPMENT SERVICES

- A. The Council for the purpose of delegation of its functions hereby constitutes the Warringah Development Assessment Panel (WDAP) in accordance with the attached *Warringah Development Assessment Panel Charter* to be effective on and from 2 August 2008.
- B. Pursuant to Section 377 of the Local Government Act 1993, the Council upon the appointment of the members of the WDAP hereby delegates to the WDAP the functions of the Council under the Environmental Planning and Assessment Act 1979 (EP&A Act) and any other Act or law to determine:
 1. Development applications for
 - a) The erection of a new building or buildings with an estimated construction cost exceeding \$1,000,000 and where there are more than 2 relevant objections with the exception of:

-
- development classified as Category Three development under WLEP 2000 referred to in paragraph D of these resolutions for which Council has delegated such functions to the General Manager
 - development consisting of one dwelling.
 - development consisting of one dwelling and a granny flat
 - non-habitable buildings being a private garage, carport, shed or the like
 - non-habitable structures being a fence, mast, antenna, retaining or free standing wall, swimming pool or the like
- b) the Subdivision of land (excluding subdivision, community title subdivision or strata-subdivision of an existing building or approved building works) with a net increase of 5 or more allotments, and where there are more than 2 relevant objections.
2. Applications for modifications of consent which, in the opinion of the Director of Planning and Development Services, constitute an application under Section 96(2) of the EP&A Act and where the development application for the consent was determined by the WDAP.

Definitions:

1. The words *building*; *development application*; *function*; and *subdivision of land* have the meanings in Section 4 of the EP&A Act.
2. *dwelling*; *existing building* and *granny flat* have the meanings in clause 6(1) and the dictionary for WLEP 2000.
3. The following words have the following meanings:

approved building works: Development the subject of a valid consent, where construction has not commenced or if commenced has not been the subject of a final occupation certificate

estimated construction cost: The estimated cost, in the opinion of the Director of Planning and Development Services, for any building to be erected including, the costs associated with the construction of the building, costs associated with the preparation of the building for the purpose for which it is to be used (such as the costs of installing plant, fittings and equipment) and the cost of any demolition.

new building or buildings:

- (a) the construction of a building or buildings, or
- (b) the re-building or alteration or addition of a building or buildings which, in the opinion of the Director of Planning and Development Services, provide for an increase of more than 50% of the existing floorspace of the existing building or buildings. This does not include internal alterations and additions the fitout or occupation of an existing building.

relevant objection: written submission in response to Council's notification/exhibition of a development application, which in the opinion of the Director of Planning Development Services raises specific issues for the refusal of the application or would otherwise require significant changes or restrictions to the proposed development.

- C. Pursuant to Section 377 of the Local Government Act 1993 the Council hereby delegates to the General Manager the function under the WDAP Charter to appoint the first WDAP members for a term of 1 Year.

- D. Pursuant to Section 377 of the Local Government Act 1993 the Council hereby delegates to
-

the General Manager the functions of the Council under the EP&A Act and any other Act or law to determine development applications for any development classified as Category Three development under WLEP 2000 (excluding development applications for existing Category Three development which, in the opinion of the Director of Planning and Development Services, are minor) following the receipt by the General Manager of a report from the WDAP providing findings and recommendations after an independent public hearing by WDAP under clause 15 of WLEP 2000.

- E. Pursuant to Section 377 of the Local Government Act 1993 the Council hereby delegates to the General Manager (in addition to the delegation in paragraph D of these resolutions) the functions of the Council under the EP&A Act and any other Act or law to determine development applications for any development with the exception of development applications referred to in paragraph B of these resolutions for which the Council has delegated such functions to the WDAP.
 - F. Pursuant to Section 377 of the Local Government Act 1993 the Council hereby delegates to the General Manager the functions of the Council under the EP&A Act and any other Act or law to determine applications for modifications of consent under Section 96 of the EP&A Act which are not applications referred to in paragraph B 2 of these resolutions.
 - G. In the exercise of the functions delegated to the General Manager in paragraphs D, E and F of these resolutions, the General Manager may sub-delegate a function to the Director of Planning and Development Services, or another employee of the Council.
 - H. In the exercise of the functions delegated to the General Manager in paragraphs E and F of these resolutions, the General Manager may sub-delegate a function to the WDAP.
 - I. In the exercise of the functions referred to in paragraphs E and F, the General Manager or a sub-delegate may refer an application to the WDAP for the WDAP to undertake an independent assessment of the proposed development and to make findings and recommendations to the General Manager or the sub-delegate with respect to that application.
 - J. The Council for the purpose of delegation of its functions hereby constitutes the Warringah Development Review Panel (WDRP) in accordance with the attached *Warringah Development Review Panel Charter* to be effective on and from 2 August 2008.
 - K. Pursuant to Section 377 of the Local Government Act 1993, the Council upon the appointment of the members of the WDRP hereby delegates to the WDRP the functions of the Council under the EP&A Act and any other Act or law to review determinations of development applications made by WDAP or the General Manager or a sub-delegate.
 - L. Pursuant to Section 377 of the Local Government Act 1993 the Council hereby delegates to the General Manager the function under the WDRP Charter to appoint the first WDRP members for a term of 1 Year.
 - M. The IHAP Charter dated April 2006 be rescinded and such to take effect from 2 August 2008
 - N. A notice be placed in the Manly Daily on 2 August 2008 giving notice of the WDAP Charter and WDRP Charter coming into force on that day and the rescission of the IHAP Charter taking effect on that day.
-



REPORT

On 8 July 2008, Council resolved to adopt a model (known as option 3) for a Panel, similar to the current IHAP. Under this model the new panel would have the delegated authority to determine certain development applications. The model, option 3, was labelled '*IHAP with full delegation to determine applications*', however in light of the changes and to avoid confusion, the model is proposed to be named "Warringah Development Assessment Panel (WDAP)".

The draft charter was not presented at the previous meeting for adoption with the model, rather, the draft charter for the adopted model has been subject to thorough reviewed by Council's legal representatives and subsequently re-drafted. The new format of the charter has been derived from the Environmental Planning and Assessments Amendment Bill 2008, specifically the provisions which creates the Joint Regional Planning Panels (JRPP). The JRPP is a panel of the Minister of Planning, and will have a similar functionality to the WDAP but the jurisdiction relates to regional development of a much larger scale.

The following changes have been included in the charters from the principles of the exhibited draft charter:

Section 82A Review of Determinations

An application for Review of Determinations under Section 82A of the Environmental Planning and Assessment Act, can only be determined by a different 'person or body', not subordinate to the 'person or body' that made the original determination. If a Review is lodged against an application determined by the new WDAP, a different Panel will be needed to determine the review. A separate panel will be required should this circumstance arise. A second charter, *Warringah Development Review Panel (WDRP) Charter*, specifically for such circumstances is also attached. This panel, WDRP, would consist of different members to the WDAP.

Category 3 Applications

Legal advice has indicated that Category 3 applications cannot not be determined by the WDAP when that panel undertakes the Independent Public Hearing. In Category 3 applications it is proposed that, following the independent public hearing, the application return, to the General Manager for determination. Should a Category 3 application determined by the General Manager (following WDAP) be subject of a Section 82A Review, the WDRP will have the authority to determine the review.

Modifications of Consent

Whilst the current IHAP charter excludes modifications of consent from being reported to the panel, the WDAP Charter and proposed delegations will require Modifications of consents determined by WDAP, which are considered under Section 96(2) of the EPA Act. These are modifications which will have more than minimal environmental impact.

Notwithstanding the above changes, the charter for both WDAP and WDRP generally contain the same concepts and principles as the exhibited draft charter. The administrative procedures have been removed from both charters and will be contained within a separate document. A Code of Conduct, common to both panels has been included as a schedule to the charters.

Conclusion

The attached *Warringah Development Assessment Panel (WDAP) Charter*, (Attachment 1) and *Warringah Development Review Panel (WDRP) Charter* (Attachment 2) are presented for adoption and proposed to come into force on 2 August 2008. Also included in the recommendation are the delegations required to enact the panels, and to rescind the current IHAP Charter.

Warringah Development Assessment Panel (WDAP) Charter



Warringah Council

Warringah Development Assessment Panel (WDAP) Charter

1 Functions of WDAP

The functions of the Warringah Development Assessment Panel (WDAP) are to:

- (a) determine development applications and modification of consent applications that are within the delegations of those functions to the WDAP from the Council;
- (b) conduct independent public hearings for Category Three development applications under Warringah Local Environmental Plan 2000;
- (c) provide an independent and open forum for interested persons and the community to make submissions relevant to the applications before WDAP;
- (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.

2 Constitution of WDAP

2.1 Members

The WDAP 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; and
- (b) a professional expert with a university degree in urban design; and
- (c) a professional expert with a university degree in environmental science or relevant environmental field;
- (d) a pool of three (3) community representatives

2.2 Appointment

For the initial term the members of the WDAP shall be appointed by the General Manager by the Memorandum of Understanding (Schedule 1) signed by each member and the General Manager. For each subsequent term, members will be appointed by the Council with each member and the General Manager signing the Memorandum of Understanding (Schedule 1).

2.3 Term

The initial term of the members of WDAP appointed by the General Manager shall be for a period of one (1) year, and subsequent terms of the WDAP shall be for a period of two (2) years.

Warringah Development Assessment Panel (WDAP) Charter

2.4 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.

2.5 Chairperson

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

2.6 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.

2.7 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 by instrument 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.

2.8 Filling of Vacancies

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

2.9 Meetings of WDAP

A meeting of WDAP will generally consist of four (4) members, i.e. the lawyer, the urban designer, the environmental expert and one (1) community representative. 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. Each additional community representative, at the discretion of the General Manager, will be an additional member of the WDAP with full voting rights. Each member attending a meeting shall have one vote.

2.10 Quorum

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

2.11 Meeting and Other Processes

Proceedings of WDAP shall be by way of a public hearing for the purposes of hearing submissions on behalf of the applicant and other interested persons. On conclusion of the public hearing, the WDAP will convene in closed session to consider its findings and make a determination.

The meetings and other process of the WDAP will be undertaken in accordance with the WDAP and WDRP Operational Guidelines published by the General Manager from time to time.

Warringah Development Assessment Panel (WDAP) Charter

2.12 Determinations/Decisions

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

3 Obligations of Members

3.1 All WDAP 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) WDAP member/s must perform their obligations under this agreement faithfully and diligently and must, at all times, act in accordance with the Code of Conduct (Schedule 2) and the requirements of the WDAP Charter. If WDAP member/s do not comply with the Code of Conduct or the WDAP Charter, the General Manager may terminate the WDAP member's appointment without notice.
- (b) Except as required to properly perform their duties, WDAP member/s must not disclose any confidential information (as advised by Council) obtained in connection with the WDAP functions.
- (c) WDAP member/s shall 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 WDAP functions.
- (d) WDAP member/s may communicate with senior staff of Warringah Council, including the Director of Planning and Development Services, Manager Development Assessment and with all other staff reasonably required for the performance of their duties.
- (e) WDAP member/s must attend all meetings reasonably required by the General Manager and the Director, Planning and Development Services or delegate.
- (f) WDAP member/s will have read and be familiar with the documents provided by Council prior to attending a WDAP meeting.
- (g) The relationship between the Council and the WDAP member/s is that of a client and independent contractor, and nothing shall be taken as constituting the WDAP member/s or any of their employees as an employee or servant of the Council.

3.2 Nothing causes the WDAP members or any of their employees or agents:

To be the legal representative, agent, joint venturer or partner of the Council; or

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 in exercising its delegations in the determination of development applications).

3.3 WDAP members must act in accordance with Warringah Council Occupational Health & Safety Risk Procedures Manual.

4 Additional Documentation

The following documents are to be read in conjunction with this Charter:

- | | |
|--------------|----------------------------------|
| Schedule (1) | WDAP Memorandum of Understanding |
| Schedule (2) | Code of Conduct – WDAP and WDRP |

Schedule (1) WDAP Memorandum of Understanding



Warringah Council

Memorandum of Understanding: Appointment of Panel Members (WDAP)

I, _____ hereby accept appointment to the Warringah Development Assessment Panel (WDAP) on the following terms and conditions: -

1. I have read and agree to be bound by the WDAP Charter and Code of Conduct – WDAP and WDRP.
2. I acknowledge and agree that my appointment begins on the _____ and ends on _____ which term is renewable by the Council in its absolute discretion.
3. I understand and accept that each member of the Panel is entitled to receive remuneration for attending meetings and taking part in the business of the Panel as specified in the WDAP Charter.
4. I acknowledge and accept that if I have a pecuniary interest in any matter (as defined in sections 442 and 443 of the Local Government Act, 1993), to be considered by a meeting of the WDAP, or a Conflict of Interest as defined in the Councils Code of Conduct then:-
 - (i) I will immediately disclose the nature of that interest to the WDAP at the meeting prior to any consideration of the matter, and
 - (ii) I will not be present at or in the sight of the meeting of the WDAP at any time during which the matter is being considered or discussed by the WDAP.
5. I understand and accept that the business conducted by the WDAP shall be subject to and act in accordance with the delegation granted by Council and provisions of the Environmental Planning and Assessment Act 1979 and I will not disclose or misuse any information provided to me as a WDAP member.
6. I acknowledge and agree that the General Manager may terminate my appointment to WDAP without giving any reason by notice in writing, given to me or posted by pre-paid letter addressed to my last known place of residence or business or post office box.

Name	Signed	Date
------	--------	------

Warringah Development Assessment Panel Member

Name	Signed	Date
------	--------	------

General Manager



Warringah Council

CODE OF CONDUCT

Warringah Development Assessment Panel (WDAP) and Warringah Development Review Panel (WDRP)

1 Functions of WDAP and WDRP

The *Warringah Development Assessment Panel (WDRP) Charter* and *Warringah Development Review Panel (WDRP) Charter*, outlines the functions, constitution and obligations of members of each panel.

2 Operational Guidelines

The *Operational Guidelines - WDAP and WDRP*, to be published from time to time by the General Manager, set out the procedural operations and requirements for the Panel.

3 Code of Conduct

The Council seeks the highest ethical standards in delivering services to its community.

This Code of Conduct (“**the Code**”) applies to all WDAP and WDRP Members (“**member**”) when exercising or purporting, at all times, to exercise their duties, responsibilities and functions under the respective charters. It is designed to assist in maintaining the reputation and integrity of the WDAP and the WDRP and to provide a basis for fair dealings, reaching findings and making recommendations/decisions on matters before it.

This Code is to be read in conjunction with the respective WDAP and WDRP charters.

4 WDAP and WDRP Members Responsibilities

WDAP and WDRP Members must:

- act in accordance with the requirements of the law, the WDAP and WDRP charters and the Code;
- act in an appropriate way toward the public, staff of the Council and other WDAP and WDRP Members; and
- act in the best interests of the Warringah community.

5 WDAP and WDRP Members Interaction with Councillors, Council Staff and Applicants / Representors

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

Schedule (2) Code of Conduct WDAP and WDRP

WDAP and WDRP Members must not approach an applicant or representor, or if approached by an applicant or representor, must not discuss any application which is either before the WDAP and WDRP or will come before the Panel at some future time, except during the course of a WDAP or WDRP meeting where the application forms part of the business paper and the applicant or representor has a right to be heard by the WDAP and WDRP.

WDAP and WDRP Members must not approach a Councillor, or if approached by a Councillor must not discuss any application which is either before the WDAP or WDRP, or will come before the WDAP or WDRP at some future time, except during the course of a public meetings where the application forms part of the business paper and the Councillor has a right to be heard by the WDRP at the hearing.

6 Conflicts of Interest and Disclosure at WDAP and WDRP Meetings

WDAP and WDRP Members must;

- consider and comply with all disclosure requirements under the 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 WDAP and WDRP Members, or those people closely associated with them, which could influence or affect the impartial performance of their duties;
- consider both perceived and actual conflicts for the purposes of this clause.

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

Pecuniary Interest	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.
Non-pecuniary interest	a private or personal interest the person has that does not amount to a pecuniary interest (for example; a friendship, membership of an association, society or trade union or involvement or interest in an activity).

7 Pecuniary Interest

WDAP and WDRP Members shall adhere to the Charter and Memorandum of Understanding signed with the Council acknowledging and accepting that if a Member has a pecuniary interest in any matter (as defined in Sections 442 and 443 of the Local Government Act 1993) to be considered by a meeting of the Panel, then:

- (i) upon being notified of a draft list of agenda items, if a WDAP or WDRP member identifies a possible or actual pecuniary interest the member shall withdraw as nominated member for that meeting and an alternative shall be invited to attend.
- (ii) at the WDAP and WDRP meeting, if a member identifies a possible or actual pecuniary interest the 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 WDAP or WDRP meeting at any time during which the matter is being considered or discussed by the WDAP or WDRP.

A member having declared a pecuniary interest shall not attend the site inspection or public hearings associated with the item or participate in discussion or voting on the item.

Schedule (2) Code of Conduct WDAP and WDRP

The first item of business at WDAP and WDRP Site Inspections and or, WDAP and WDRP meetings will be members declaring any pecuniary interest that may prevent them from participating in or considering any item within the business paper. If at any time during a WDAP or WDRP meeting, either at the pre-hearing inspection, or at the public meeting, or during consideration of the item in closed session, a member identifies a possible or actual pecuniary interest the member shall immediately notify the Chairperson and withdraw from the meeting during the consideration of that item.

8 Non Pecuniary Conflict of Interest

If at any time, upon notification of the draft list of agenda items, at pre hearing inspections, public hearing or consideration of an item in closed session, a member identifies a possible or actual non pecuniary conflict of interest, the member shall notify the Chairperson.

If having declared a non-pecuniary conflict of interest, a 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 the 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, the Member should provide an explanation to the Chairperson and the Chairperson should advise that the explanation is accepted.
- Remove the source of the conflict, for example, relinquishing or divesting the personal interest that creates the conflict.
- Have no involvement by leaving and not taking part in any debate or voting on the issue and not have access to any relevant information.

9 Information to Guide decisions about conflict of interests

There are a number of questions that can help in deciding whether or not there is a conflict of interest or whether behaviour could create the impression that there is a conflict and so undermine the confidence in the WDAP or WDRP. These questions are:

- *Do I, a relative, friend or associate stand to gain or lose financially from Council's decision or action on this matter?*
- *Do I, a relative, friend or associate stand to gain or lose my/our reputation because of Council's decision or action?*
- *Have I contributed in a private capacity in any way to the matter before Council?*
- *Have I made any promises or commitments in relation to the matter?*
- *Have I received a benefit or hospitality from someone who stands to gain or lose from Council's decision or action?*
- *Am I a member of an association, club or professional organisation, or do I have particular ties and affiliations with organisations or individuals, who stand to gain or lose from Council's consideration of the matter?*
- *Could there be benefits for me in the future that could cast doubt on my objectivity?*
- *If I do participate in assessment, would I be happy if my colleagues and the public became aware of my association or connection?*

Schedule (2) Code of Conduct WDAP and WDRP

- *Would a fair and reasonable person perceive that I was influenced by personal interest in performing my duty?*
- *Do I need to seek advice or discuss the matter with an objective party?*
- *Am I confident of my ability to act impartially and in the public interest?*
- *Do I understand the possible penalties/sanctions if I go on with the action?*

10 Other Business or Employment

Public perception of bias/conflict of interest requires that Members not engage in any of the following while they are members of WDAP or WDRP:

- *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 WDAP or WDRP 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;*
- *Deriving income (other than remuneration for being an WDAP or WDRP member) through contracts with Council.*

Any other work conducted within the Warringah Local Government area shall be the subject of a declaration of interest in accordance with the Code.

11 Gifts & Benefits

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

12 Resources

Members must use resources provided by the Council in an effective and efficient manner; and not use such resources for private purposes.

13 Use of Information /Confidentiality

Members must:

- not use information obtained in the course of carrying out their duties for anything other than for exercising their functions, powers and duties for the WDAP or WDRP.
- keep information obtained or provided confidentially, confidential.
- determine what information and material is to be retained by Members (and the WDAP or WDRP) and how it is to be treated for the purposes of retention.

14 Public Comment

The Chairperson of the WDAP and WDRP is not authorised to speak publicly to the media and address the public on behalf of the WDAP and WDRP, except with the permission of the General Manager.

Schedule (2) Code of Conduct WDAP and WDRP

No Member may make any comment to the media or the public in relation to any matter before the WDAP or WDRP or any recommendation/determination of the WDAP or WDRP.

15 Treatment and Respect of Other Members and Public

Members must:

- act fairly and honestly towards other Members of the WDAP and WDRP, Council staff and the public;
- show respect for the opinions of other Members of the WDAP and WDRP; and
- show respect and consideration to Council staff, applicants and members of the public.

16 Findings, Determinations and Recommendations

Members shall at all times when convened as WDAP or WDRP;

- act in accordance with the law;
- act in accordance with the respective charter;
- act reasonably, justly and in a non-discriminatory manner;
- deal with all matters before the WDAP or WDRP 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.

17 Breach of CodeMisconduct

Where any complaint alleging misconduct by a Member is made, the complaint is to be made in writing to the General Manager 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.

Corrupt and Unlawful Conduct

Members must not engage in corrupt or unlawful conduct and must report any actual or potential corrupt or unlawful conduct to the General Manager of the Council.

Sanctions for Breach of Code of Conduct

Upon receipt of advice from the Chairperson of a breach of the Code of Conduct by a Member, the following action may be taken by the General Manager:

- counselling of the member;
- suspension from the WDAP or WDRP;
- suspension from hearing a particular matter;
- removal from the WDAP or WDRP;
- report to another authority

The Code shall be reviewed annually by the General Manager, with the assistance of the
WDAP and WDRP members.



Warringah Development Review Panel (WDRP) Charter

1 Functions of WDRP

The functions of the Warringah Development Review Panel (WDRP) are to:

- (a) review determinations of development applications made by WDAP or the General Manager within the delegation of those functions to the WDRP from the Council;
- (b) provide an independent and open forum for interested persons and the community to make submissions relevant to the review of determination before WDRP; and
- (c) achieve good urban design and development outcomes consistent with the relevant legislation and planning controls.

2 Constitution of WDRP

2.1 Members

The WDRP 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; and
- (b) a professional expert with a university degree in urban design; and
- (c) a professional expert with a university degree in environmental science or relevant environmental field;
- (d) a pool of three (3) community representatives.

2.2 Appointment

For the initial term, the members of the WDRP shall be appointed by the General Manager by the memorandum of understanding (Schedule 1) signed by each member and the General Manager

For each subsequent term, members will be appointed by the Council with each member and General Manager signing the Memorandum of Understanding (Schedule 1).

2.3 Term

The initial term of the members of WDRP appointed by the General Manager shall be for a period of one (1) year, and subsequent terms of the WDRP shall be for a period of two (2) years.

2.4 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.

Warringah Development Review Panel (WDRP) Charter

2.5 Chairperson

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

2.6 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.

2.7 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 by instrument 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.

2.8 Filling of Vacancies

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

2.9 Meetings of WDRP

A meeting of WDRP will generally consist of four (4) members, i.e. the lawyer, the urban designer, the environmental expert and one (1) community representative. 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. Each additional community representative, at the discretion of the General Manager, will be an additional member of the WDRP with full voting rights. Each member attending a meeting shall have one vote.

2.10 Quorum

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

2.11 Meetings and Other Process

Proceedings of WDRP shall be by way of a public hearing for the purposes of hearing submissions on behalf of the applicant and other interested persons. On conclusion of the public hearing, the WDRP will convene in closed session to consider its findings and make a determination.

The meetings and other process of the WDRP will be undertaken in accordance with the WDAP and WDRP Operational Guidelines published by the General Manager from time to time.

2.12 Determinations/Decisions

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

Warringah Development Review Panel (WDRP) Charter

3 Obligations of Members

- 3.1 All WDRP 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) WDRP member/s must perform their obligations under this agreement faithfully and diligently and must, at all times, act in accordance with the Code of Conduct (Schedule 2) and the requirements of the WDRP Charter. If WDRP member/s do not comply with the Code of Conduct or the WDRP Charter, the General Manager may terminate the WDRP member's appointment without notice.
 - (b) Except as required to properly perform their duties, WDRP member/s must not disclose any confidential information (as advised by Council) obtained in connection with the WDRP functions
 - (c) WDRP member/s shall 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 WDRP functions.
 - (d) WDRP member/s may communicate with senior staff of Warringah Council, including the Director of Planning and Development Services, Manager Development Assessment and with all other staff reasonably required for the performance of their duties.
 - (e) WDRP member/s must attend all meetings reasonably required by the General Manager and the Director, Planning and Development Services or delegate.
 - (f) WDRP member/s will have read and be familiar with the documents provided by Council prior to attending a WDRP meeting.
 - (g) The relationship between the Council and the WDRP member/s is that of a client and independent contractor, and nothing shall be taken as constituting the WDRP member/s or any of their employees as an employee or servant of the Council.
- 3.2 Nothing causes the WDRP members or any of their employees or agents:
- To be the legal representative, agent, joint venturer or partner of the Council; or
 - 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 in exercising its delegations in the determination of development applications).
- 3.3 WDRP members must act in accordance with Warringah Council Occupational Health & Safety Risk Procedures Manual.

4 Additional Documentation

The following documents are to be read in conjunction with this Charter:

- Schedule (1) WDRP Memorandum of Understanding
- Schedule (2) Code of Conduct – WDAP and WRDP

Schedule (1) WDRP Memorandum of Understanding



Memorandum of Understanding: Appointment of Panel Members (WDRP)

I, _____ hereby accept appointment to the Warringah Development Review Panel (WDRP) on the following terms and conditions: -

1. I have read and agree to be bound by the WDAP Charter and Code of Conduct – WDAP and WDRP.
2. I acknowledge and agree that my appointment begins on the _____ and ends on _____, which term is renewable by the Council in its absolute discretion.
3. I understand and accept that each member of the Panel is entitled to receive remuneration for attending meetings and taking part in the business of the Panel as specified in the WDRP Charter.
4. I acknowledge and accept that if I have a pecuniary interest in any matter (as defined in sections 442 and 443 of the Local Government Act, 1993), to be considered by a meeting of the WDRP, or a Conflict of Interest as defined in the Councils Code of Conduct then:-
 - (i) I will immediately disclose the nature of that interest to the WDRP at the meeting prior to any consideration of the matter, and
 - (ii) I will not be present at or in the sight of the meeting of the WDRP at any time during which the matter is being considered or discussed by the WDRP.
5. I understand and accept that the business conducted by the WDRP shall be subject to and act in accordance with the delegation granted by Council and provisions of the Environmental Planning and Assessment Act 1979 and I will not disclose or misuse any information provided to me as a WDAP member.
6. I acknowledge and agree that the General Manager may terminate my appointment to WDRP without giving any reason by notice in writing, given to me or posted by pre-paid letter addressed to my last known place of residence or business or post office box.

Name	Signed	Date
Warringah Development Review Panel Member		

Name	Signed	Date
General		Manager



Warringah Council

CODE OF CONDUCT

Warringah Development Assessment Panel (WDAP) and Warringah Development Review Panel (WDRP)

1 Functions of WDAP and WDRP

The Warringah *Development Assessment Panel (WDRP) Charter* and *Warringah Development Review Panel (WDRP) Charter*, outlines the functions, constitution and obligations of members of each panel.

2 Operational Guidelines

The *Operational Guidelines - WDAP and WDRP*, to be published from time to time by the General Manager, set out the procedural operations and requirements for the Panel.

3 Code of Conduct

The Council seeks the highest ethical standards in delivering services to its community.

This Code of Conduct (“**the Code**”) applies to all WDAP and WDRP Members (“**member**”) when exercising or purporting, at all times, to exercise their duties, responsibilities and functions under the respective charters. It is designed to assist in maintaining the reputation and integrity of the WDAP and the WDRP and to provide a basis for fair dealings, reaching findings and making recommendations/decisions on matters before it.

This Code is to be read in conjunction with the respective WDAP and WDRP charters.

4 WDAP and WDRP Members Responsibilities

WDAP and WDRP Members must:

- act in accordance with the requirements of the law, the WDAP and WDRP charters and the Code;
- act in an appropriate way toward the public, staff of the Council and other WDAP and WDRP Members; and
- act in the best interests of the Warringah community.

5 WDAP and WDRP Members Interaction with Councillors, Council Staff and Applicants / Representors

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

Schedule (2) Code of Conduct WDAP and WDRP

WDAP and WDRP Members must not approach an applicant or representor, or if approached by an applicant or representor, must not discuss any application which is either before the WDAP and WDRP or will come before the Panel at some future time, except during the course of a WDAP or WDRP meeting where the application forms part of the business paper and the applicant or representor has a right to be heard by the WDAP and WDRP.

WDAP and WDRP Members must not approach a Councillor, or if approached by a Councillor must not discuss any application which is either before the WDAP or WDRP, or will come before the WDAP or WDRP at some future time, except during the course of a public meetings where the application forms part of the business paper and the Councillor has a right to be heard by the WDRP at the hearing.

6 Conflicts of Interest and Disclosure at WDAP and WDRP Meetings

WDAP and WDRP Members must;

- consider and comply with all disclosure requirements under the 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 WDAP and WDRP Members, or those people closely associated with them, which could influence or affect the impartial performance of their duties;
- consider both perceived and actual conflicts for the purposes of this clause.

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

Pecuniary Interest	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.
Non-pecuniary interest	a private or personal interest the person has that does not amount to a pecuniary interest (for example; a friendship, membership of an association, society or trade union or involvement or interest in an activity).

7 Pecuniary Interest

WDAP and WDRP Members shall adhere to the Charter and Memorandum of Understanding signed with the Council acknowledging and accepting that if a Member has a pecuniary interest in any matter (as defined in Sections 442 and 443 of the Local Government Act 1993) to be considered by a meeting of the Panel, then:

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

A member having declared a pecuniary interest shall not attend the site inspection or public hearings associated with the item or participate in discussion or voting on the item.

The first item of business at WDAP and WDRP Site Inspections and or, WDAP and WDRP meetings will be members declaring any pecuniary interest that may prevent them from participating in or considering any item within the business paper. If at any time during a

Schedule (2) Code of Conduct WDAP and WDRP

WDAP or WDRP meeting, either at the pre-hearing inspection, or at the public meeting, or during consideration of the item in closed session, a member identifies a possible or actual pecuniary interest the member shall immediately notify the Chairperson and withdraw from the meeting during the consideration of that item.

8 Non Pecuniary Conflict of Interest

If at any time, upon notification of the draft list of agenda items, at pre hearing inspections, public hearing or consideration of an item in closed session, a member identifies a possible or actual non pecuniary conflict of interest, the member shall notify the Chairperson.

If having declared a non-pecuniary conflict of interest, a 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 the 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, the Member should provide an explanation to the Chairperson and the Chairperson should advise that the explanation is accepted.
- Remove the source of the conflict, for example, relinquishing or divesting the personal interest that creates the conflict.
- Have no involvement by leaving and not taking part in any debate or voting on the issue and not have access to any relevant information.

9 Information to Guide decisions about conflict of interests

There are a number of questions that can help in deciding whether or not there is a conflict of interest or whether behaviour could create the impression that there is a conflict and so undermine the confidence in the WDAP or WDRP. These questions are:

- *Do I, a relative, friend or associate stand to gain or lose financially from Council's decision or action on this matter?*
- *Do I, a relative, friend or associate stand to gain or lose my/our reputation because of Council's decision or action?*
- *Have I contributed in a private capacity in any way to the matter before Council?*
- *Have I made any promises or commitments in relation to the matter?*
- *Have I received a benefit or hospitality from someone who stands to gain or lose from Council's decision or action?*
- *Am I a member of an association, club or professional organisation, or do I have particular ties and affiliations with organisations or individuals, who stand to gain or lose from Council's consideration of the matter?*
- *Could there be benefits for me in the future that could cast doubt on my objectivity?*
- *If I do participate in assessment, would I be happy if my colleagues and the public became aware of my association or connection?*
- *Would a fair and reasonable person perceive that I was influenced by personal interest in performing my duty?*
- *Do I need to seek advice or discuss the matter with an objective party?*

Schedule (2) Code of Conduct WDAP and WDRP

- *Am I confident of my ability to act impartially and in the public interest?*
- *Do I understand the possible penalties/sanctions if I go on with the action?*

10 Other Business or Employment

Public perception of bias/conflict of interest requires that Members not engage in any of the following while they are members of WDAP or WDRP:

- *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 WDAP or WDRP 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;*
- *Deriving income (other than remuneration for being an WDAP or WDRP member) through contracts with Council.*

Any other work conducted within the Warringah Local Government area shall be the subject of a declaration of interest in accordance with the Code.

11 Gifts & Benefits

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

12 Resources

Members must use resources provided by the Council in an effective and efficient manner; and not use such resources for private purposes.

13 Use of Information /Confidentiality

Members must:

- not use information obtained in the course of carrying out their duties for anything other than for exercising their functions, powers and duties for the WDAP or WDRP.
- keep information obtained or provided confidentially, confidential.
- determine what information and material is to be retained by Members (and the WDAP or WDRP) and how it is to be treated for the purposes of retention.

14 Public Comment

The Chairperson of the WDAP and WDRP is not authorised to speak publicly to the media and address the public on behalf of the WDAP and WDRP, except with the permission of the General Manager.

No Member may make any comment to the media or the public in relation to any matter before the WDAP or WDRP or any recommendation/determination of the WDAP or WDRP.

Schedule (2) Code of Conduct WDAP and WDRP

15 Treatment and Respect of Other Members and Public

Members must:

- act fairly and honestly towards other Members of the WDAP and WDRP, Council staff and the public;
- show respect for the opinions of other Members of the WDAP and WDRP; and
- show respect and consideration to Council staff, applicants and members of the public.

16 Findings, Determinations and Recommendations

Members shall at all times when convened as WDAP or WDRP;

- act in accordance with the law;
- act in accordance with the respective charter;
- act reasonably, justly and in a non-discriminatory manner;
- deal with all matters before the WDAP or WDRP 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.

17 Breach of CodeMisconduct

Where any complaint alleging misconduct by a Member is made, the complaint is to be made in writing to the General Manager 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.

Corrupt and Unlawful Conduct

Members must not engage in corrupt or unlawful conduct and must report any actual or potential corrupt or unlawful conduct to the General Manager of the Council.

Sanctions for Breach of Code of Conduct

Upon receipt of advice from the Chairperson of a breach of the Code of Conduct by a Member, the following action may be taken by the General Manager:

- counselling of the member;
- suspension from the WDAP or WDRP;
- suspension from hearing a particular matter;
- removal from the WDAP or WDRP;
- report to another authority

The Code shall be reviewed annually by the General Manager, with the assistance of the WDAP and WDRP members.