

**NORTHERN BEACHES**  
COUNCIL

**NORTHERN BEACHES  
INDEPENDANT ASSESSMENT  
PANEL (NBIAP)**

**CHARTER**

**June 2017**

# NORTHERN BEACHES INDEPENDENT ASSESSMENT PANEL (NBIAP) CHARTER

## 1. Functions

The functions of the Northern Beaches Independent Assessment Panel - (NBIAP) are to:

- a) consider and make final independent determinations on all development applications that are within the panel's delegations from Council;
- b) review determinations of development applications made by NBIAP or the Chief Executive Officer that are within the panel's delegations from Council;
- c) provide an independent and open forum for interested persons and the community to make submissions relevant to the applications before the NBIAP;
- d) achieve *best practice* environmental, social, economic and urban design outcomes consistent with the relevant legislation and planning controls;
- e) conduct independent public hearings and provide recommendations to Council.

## 2. Constitution of Membership

- a) The NBIAP is a body constituted for the purpose of sub-delegation of the functions by the Council (under Section 377 of the Local Government Act) and consists of the following members:
  - i) lawyers who are currently admitted or eligible for admission to practice law in New South Wales as a Legal Practitioner with expertise in planning and development (who, unless otherwise disentitled), shall preside as Chairperson at all meetings of the NBIAP at which he or she is present;
  - ii) professional experts with a university degree in town planning;
  - iii) professional experts with a university degree in architecture/urban design;
  - iv) professional experts with a university degree in an environmental discipline; and
  - v) representatives from the Northern Beaches community to form a pool of at least 4 persons.
- b) The members of the NBIAP are appointed by the Chief Executive Officer for a term of 2 years with an option to extend the term a further 2 years.
- c) A member of the NBIAP vacates membership of the NBIAP if the member:
  - i) dies, or
  - ii) resigns in writing to the Chief Executive Officer, or
  - iii) completes a term and is not re-appointed, or
  - iv) is removed from his or her membership of the NBIAP by Council for breach of any relevantly applicable requirements of the NBIAP Memorandum of Understanding or the

guidelines issued by the Chief Executive Officer in respect of the NBIAP as in force from time to time, or

- v) without reasonable excuse, does not attend a meeting of the NBIAP in compliance with a call of the NBIAP or is otherwise absent (without a written explanation for any such absence given to and accepted by the Chief Executive Officer) from 2 consecutive meetings of the NBIAP, or
  - vi) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - vii) becomes physically or mentally incapacitated to such an extent that he or she is unable to continue discharging the responsibilities of being a member of the NBIAP, or
  - viii) is removed by the Chief Executive Officer for any or no reason and without notice.
- d) Remuneration of a member of the NBIAP shall be as determined by the Chief Executive Officer.
- e) An alternate member may from time to time be appointed by the Chief Executive Officer.

### **3. Meeting Procedures**

- a) The NBIAP Chairperson may, subject to this Charter and any other operational guidelines issued by the Chief Executive Officer, determine its own procedures.
- b) The NBIAP is not bound by the rules of evidence and may inquire into and inform itself on any matter in such manner as it thinks fit, subject to the rules of natural justice (the rules of procedural fairness).
- c) The NBIAP is to act with as little formality as the circumstances of the case permit and according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.
- d) A meeting of NBIAP will generally consist of four (4) members, i.e. the lawyer as Chairperson, 2 experts and one (1) community representative. The panel may consist of one or more additional experts and/or community representatives from the pool of members, to attend meetings for controversial or significant items. Each additional panel member, will have full voting rights.
- e) Proceedings of the NBIAP 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 NBIAP will convene in closed session to consider its findings and make a determination.
- f) However, the NBIAP may close part of a public meeting to the public where the NBIAP is of the opinion that such action is strictly necessary in order to protect commercial information of a confidential nature.
- g) Where, at any public meeting, there are a large number of objectors with a common interest, the NBIAP may, in its absolute discretion, hear a representative of those persons with a view to discharging its responsibilities in a timely manner.

- h) The NBIAP may, in its absolute discretion, but otherwise fairly and consistently, impose time limits on presentations by persons other than members of the panel with a view to discharging its responsibilities in a timely manner.
- i) The quorum for a meeting of the NBIAP is 3 members of the NBIAP who hold office for the time being and who are not otherwise disqualified from voting on any particular matter before the meeting.
- j) Each member of the NBIAP, unless otherwise disqualified to vote, is entitled to one vote. However, the person presiding at a meeting of the NBIAP has, in the event of an equality of votes, a second or casting vote.
- k) A member of the NBIAP is disqualified to vote on any matter with which the NBIAP is concerned if the person has a pecuniary interest in the matter (as defined in sections 442 and 443 of the *Local Government Act 1993* (NSW)), or a conflict of interest in the matter as relevantly defined in the NBIAP Code of Conduct, and is otherwise present at a meeting of the NBIAP at which the matter is being considered. However, a member of the NBIAP is not disqualified to vote on any matter with which the NBIAP is concerned if, in the absence of any *other* probative material that would give rise to a pecuniary interest or a conflict of interest as referred to above, the person or any member of the person's family has from time to time personal, family, business or professional connections or dealings with persons, organisations or associations or bodies within the Northern Beaches local government area of a kind that could not reasonably be regarded as likely to influence any decision the person might make in relation to the particular matter before the NBIAP.
- l) A decision of the NBIAP shall be by a majority of votes of members present and otherwise entitled to vote at the relevant meeting of the NBIAP.
- m) The meetings and other process of the NBIAP will be undertaken in accordance with the NBIAP guidelines issued by the Chief Executive Officer from time to time. Where there are no such guidelines, or where some matter is not covered by the guidelines, regard shall be had to the statutory provisions otherwise relevantly applicable to the conduct of NSW local council meetings to the extent to which they are deemed by the Chairperson to be appropriate to the conduct of meetings of the NBIAP as well as the ordinary law of meetings to the extent to which that law is not inconsistent with the foregoing.
- n) Officers of Northern Beaches Council shall assist the NBIAP in both professional advice and administrative support. Such officers may be present at any meeting of the NBIAP.
- o) NBIAP shall hold meetings as required, generally meetings should be held in each calendar month.

#### **4. Applications to be referred to NBIAP**

Council, by resolution, shall delegate specific criteria for applications which will be referred to NBIAP for consideration and determination.

In addition, any application, proposal or strategic plan, may be referred to NBIAP at the discretion of the General Manager Planning Place and Community.

A copy of the current criteria is to be attached to the Charter for easy reference.

## **5. Obligation of Members**

All NBIAP members 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. Relevantly, a member of the NBIAP must:

- a) faithfully and diligently perform their respective obligations under this Charter, the *NBIAP Memorandum of Understanding*, and any guidelines issued by the Chief Executive Officer from time to time, and must at all times act in accordance with the *NBIAP Code of Conduct*; and
- b) not disclose any confidential information obtained in the performance of any of the functions of the NBIAP; and
- c) not make oral or written statements of any description to the media in connection with or which touches upon any or all of the functions of the NBIAP; and
- d) inform himself or herself of materials presented before the NBIAP; and
- e) not purport to represent Northern Beaches Council in any other capacity; and
- f) comply with the provisions of the *Work, Health and Safety Act 2011* (NSW), to the extent to which those provisions are relevantly applicable to members of the NBIAP as regards the performance of their respective duties as such, as well as with all occupational health and safety policies and procedures of Northern Beaches Council as in force from time to time; and
- g) each member shall complete a Pecuniary Interest Declaration Return (Return) and submit it to the Chief Executive Officer upon appointment to the Panel and shall also submit an annual Return in July each year covering the period to 30 June of the previous 12 months.

## **6. 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 NBIAP:

- Appearing for, or against, Council in development matters, for example, as consultants acting on behalf of applicants or Council, giving evidence in Court;
- Making representations to any Northern Beaches Council panel on behalf of others, for example, making a submission in support of a development, or on behalf of an objector;
- Making representations to Northern Beaches Council in relation to planning and development matters, for example, supporting or objecting to an application for a rezoning;
- Deriving income (other than remuneration for being an NBIAP member) through contracts with Council.
- Any other work conducted within the Northern Beaches Local Government area shall be the subject of a declaration of interest to the Chief Executive Officer.

## **7. Attachments**

The following attachment does not form part of the adopted charter and may be changed.

## Delegations to NBIAP

- a. The Northern Beaches Independent Assessment Panel for the following:
  - i. Any Development Application with an estimated cost greater than \$2,000,000 (\$2 million) and where there are 3 or more unresolved objections
  - ii. Any application to modify a Development Consent previously determined by NBIAP or Northern Beaches Development Assessment Panel (NBDAP) which involves changes considered to be more than minimal environmental impact (i.e. Section 96(2) of the EPA Act 1979).
  - iii. The subdivision of land (excluding subdivision, community title and strata subdivision of an existing development or approved building works) with a net increase of 5 or more lots, and where there are 3 or more unresolved objections.
  - iv. All applications that were previously determined by NBIAP or NBDAP, and where a Section 82A or Section 96AB Review of Determination has been submitted,
  - v. Any other Development Application, Modification of Consent or Review of Determination, at the discretion of the General Manager Planning Place and Community.
  - vi. Excluding all Category 3 applications under Warringah Local Environmental Plan 2000.

For the purposes of this delegation,

*Unresolved objection* means objections that are considered valid and that cannot be resolved through the imposition of appropriate conditions.

An objection may only be considered resolved, if in the opinion of the General Manager Planning, Place and Community or the Executive Manager Development Assessments, the objection is not valid or has been overcome by conditions of consent.

*\*All submissions received from the same person will be considered a single submission.*

*\*All submissions received by or on behalf of the same dwelling will be considered as a single submission.*

\*Note: extracts from relevant DCPs

Delegations and referral adopted by Council on: 27 June 2017