

Resolution of Council

4 APRIL 2011

ITEM 9.4

SMALL PERMITS APPEALS PANEL – TERMS OF REFERENCE

(S082822)

It is resolved that Council approve the amended terms of reference for the Small Permits Appeals Panel, shown at Attachment A to the subject report.

Carried unanimously.

The Terms of Reference, as adopted by Council, are as follows:

TERMS OF REFERENCE – SMALL PERMITS APPEALS PANEL

1. Preamble

The jurisdiction of the Small Permits Appeals Panel ('the Panel') is limited to:

- (a) determining the review of development applications which have been determined by a delegate of Council or the Central Sydney Planning Committee or Council's Planning Development and Transport Committee; and
- (b) determining requests for review of certain other decisions by a delegate of Council as specified below.

2. Terms of Reference

Subject to 3, upon a request from an applicant and on payment of a fee to Council, the Panel is to review:

Development Applications and s96 Modifications to Development

- (a) Pursuant to the provisions of sections 82(A) and 96(AB) of the Environmental Planning and Assessment Act 1979, determinations of applications made under delegated authority.

Local Government Act matters

- (b) Pursuant to the provisions of section 100 of the Local Government Act 1993, determinations of applications for approval under section 68 of the Local Government Act 1993 made under delegated authority. This includes approvals for temporary structures (hoardings) and approvals for filming.

Other Matters

- (c) The Panel shall also consider items referred to it by the Lord Mayor, Council or the CEO, within the scope of its delegations.

Amended applications

- (d) When exercising their power under s 82A above, where amendments are made to the original application, the Panel must be satisfied that the application before it is substantially the same as that the subject of the original application in accordance with s 82A of the Act.

3. Matters ineligible for review

The Panel is not to deal with the following matters:

- (a) Applications that are Integrated Development, Designated Development or Complying Development Certificates.

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- (b) Waiver of statutory charges, for example under Section 61 of the City of Sydney Act 1988 or Section 94 of the Environmental Planning and Assessment Act 1979 or to waive or vary Council's fees or other financial matters.
- (c) Any matter dealt with by Council or the Central Sydney Planning Committee.
- (d) Dealings with Council Property.
- (e) Matters which, by law, cannot be delegated.
- (f) The Panel will not be able to review and re-determine an application such that the applicant is given approval for more than that originally applied for.

4. Other matters dealt with by the Panel

The Panel should draw to the attention of Council any policies or controls that, in its opinion, need review.

5. Panel Membership

The Panel generally shall comprise:

- (a) The Chairperson of the Planning Development and Transport Committee or the Lord Mayor (or an alternate approved by the Lord Mayor); and
- (b) A further member, being the Director or a senior council officer appointed by the CEO who has the delegation to deal with the matters the subject of the application to the Panel (or alternate approved by the CEO); - the Council officer must not be subordinate to the original decision maker, nor be the actual decision maker; and
- (c) A member of an approved list of external persons comprising not more than eight persons, to be determined by the Lord Mayor in consultation with the CEO; and
- (d) In addition, the Lord Mayor and General Manager are ex officio members of the Panel and may choose to join Panel meetings.

6. Frequency of Panel Meetings

The Panel will meet as and when required.

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7. Notification and Advertising of DA matters for review

In the case of development applications that were notified and/or advertised and where there were submissions that are related to the subject of the review, or when (in the opinion of the Director City Planning & Regulatory Services) the subject of the review so warrants, persons who previously made a relevant submission and/or any other persons (as decided by the Director City Planning & Regulatory Services), are to be notified in writing of the lodgement of the review application and advised of the date and time of the Panel meeting, so that they may make a representation and/or address the Panel.

8. Fee

The fee for review shall be determined by Council as part of the annual review of Council's fees and charges.

9. Site Visit

Site visits may be undertaken by the Panel, at the discretion of the Chairperson, before the Panel meeting.

10. Determination of Applications

- (a) Applications are to be determined by the Panel in accordance with the delegations made by the CEO under s 378 of the Local Government Act.
- (b) Wherever possible, decisions of the Panel are to be made within 14 days of a request for review and are to be conveyed to the applicant and to any person who made a submission or addressed the Panel, within three (3) working days of the Panel determination.
- (c) The Panel may resolve to adjourn its consideration and final determination of an application to a later date.
- (d) After consideration of an application the Panel may:
 - (i) determine the application by refusal;
 - (ii) determine the application by approval (including approval subject to conditions); or
 - (iii) make a recommendation regarding the application. Where the Panel makes a recommendation, the determination of the application is to be made by an appropriately delegated officer of Council, being an officer not subordinate to the original decision maker.

11. Term of Office

Panel members (other than ex officio members) shall be appointed for a period of up to three years.

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12. Panel Meetings

- (a) The CEO is responsible for the conduct and administration of the Panel.
- (b) The relevant Council Unit will provide the necessary resources as required.
- (c) The Panel shall meet as and when required. The meetings shall be open to the public and agendas will be produced and minutes taken by Secretariat staff.
- (d) Applicants and persons who previously made a submission on a development application or adjoining owners/occupants will be invited to attend and make submissions. The purpose of the Panel is to expeditiously review actions and decisions made by Council staff and to assess the merits of an issue. Legal representation is not encouraged. The Panel will not have its own legal representative.

13. Appeal Rights

Appeal rights to the Land and Environment Court are notified to all applicants as part of the normal determination of DAs.

14. Quorum

A quorum of the Panel shall be two, comprising:-

- (a) the Chairperson of the Planning Development and Transport Committee, or the Lord Mayor, or the alternate approved by the Lord Mayor; and
- (b) the external member, except where that member is unable to attend in exceptional circumstances, in which case a senior Council officer shall attend.

15. Conflict of Interest

Panel Members will be required to declare any conflict of interest in relation to any matter that comes before them. In such instances, that member will be ineligible to participate in that particular review matter.

16. Fees for Panel Members (other than the Chairperson and Council Officers)

An hourly rate shall be paid to the external Panel members. The amount of the hourly rate shall be determined by the CEO in consultation with the Lord Mayor.

17. Reporting of Decisions to Council

The Panel will submit quarterly reports to Councillors and annual reports to Council summarising the decisions and operation of the Panel during the relevant period.

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18. Process

The applicant shall lodge their Request for Review by the Panel in the approved form with the One Stop Shop. The Secretariat then commences the process to bring the matter before the Panel.

19. Review

The functions of the Panel will be reviewed within twelve months following a general election of Council.
