



MEMORANDUM

The attention of the panel is drawn to s8.15 of the Environmental Planning and Assessment Act, which relates to appeals to the Land and Environment Court. In particular, s8.15(4) states:

“If the determination or decision appealed against under this Division was made by a Sydney district or regional planning panel or a local planning panel, the council for the area concerned is to be the respondent to the appeal but is subject to the control and direction of the panel in connection with the conduct of the appeal. The council is to give notice of the appeal to the panel.”

The problem which arises is that the court imposes tight timeframes once an appeal is lodged. Decisions have to be made regarding the preparation and filing of statements of facts and contentions, the selection of expert witnesses, determining whether to engage counsel, and the conduct of good faith negotiations during s34/34AA conferences, often on an urgent basis. It will be difficult for the panel itself to determine such matters in a timely manner, even electronically.

On 23rd May I attended a roundtable conference of the various Chairs of local planning panels with representatives of the Department of Planning (Marcus Ray, Steve Murray, Cassandra Cosgrove and Stuart Withington), at which this matter was discussed. It was agreed that it is not inappropriate for a panel to delegate the conduct of such matters, as permitted by s2.20(8) of the Act.

Some panels have already delegated this function. Delegations have variously been made to the general manager, to the council's in-house solicitor, or to the panel chair. Any delegation must have the approval of the council and the general manager: s381(3) Local Government Act 1993.

The council has a competent team of three in-house lawyers, all of whom have had extensive experience in conducting planning appeals. The following form of delegation has been suggested by the council's General Counsel and which I recommend that the panel adopt:

“Subject to the approval of the Inner West Council and the General Manager thereof, the panel individually delegates to Mr Joe Strati, Mr Mark Bonanno and Mr Simon Turner, for so long as they are employees of Inner West Council and hold a practising certificate that permits them to practice as a legal practitioner in New South Wales, the functions of the panel under section 8.14(4) of the Environmental Planning and Assessment Act 1970.”

Adjunct Professor David Lloyd QC
Chair, Inner West Local Planning Panel
25 May 2018