

# **HOLROYD INDEPENDENT HEARING AND ASSESSMENT PANEL GUIDELINES (SEPTEMBER 2013)**

1. These guidelines are issued pursuant to clause 2(f) of the Charter of the Holroyd Independent Hearing and Assessment Panel (the “HIHAP”) and shall remain in force in their present form unless and until any one or more of these guidelines is altered, amended, varied, replaced or superseded by some subsequent guideline or set of guidelines.
2. Unless the HIHAP otherwise determines either generally or in respect of any particular meeting of the HIHAP, there shall be no more than 5 items on the agenda for any one meeting of the HIHAP with approximately 30 minutes to be devoted per item (unless the item can be properly dealt with in less than 30 minutes).
3. Unless otherwise determined by the HIHAP either generally or in respect of any particular meeting of the HIHAP, submissions, reports and speakers shall be in the following order in respect of any matter before the meeting: the Council officer, any objectors or other persons who wish to make submissions or representations in relation to the matter, then the applicant.
4. Any resident, objector, applicant or supporter wishing to address the HIHAP at any meeting of the HIHAP must register in advance their intention so to do in a form and manner approved by the HIHAP. Further, unless the HIHAP otherwise permits, any such person must have already lodged a written submission on the subject development application or must no later than 24 hours prior to the meeting provide a written summary (no longer than one A4 page) of the matters upon which the person wishes to address the HIHAP. Finally, unless the Chairperson or otherwise rules in any particular case, no resident, objector, applicant or supporter who addresses the HIHAP at any meeting of the HIHAP may speak for more than 3 minutes in respect of any one matter before any particular meeting of the HIHAP.
5. The Chairperson shall be responsible for the good and orderly conduct of the HIHAP meetings and may do all the things and take all the steps necessary to control the good and orderly conduct of any meeting of the HIHAP or site inspection carried out by the HIHAP in the performance of its functions.
6. A person, whether a member of the HIHAP or a member of the public, shall not speak while another person is speaking or otherwise interrupt that person while speaking. Nothing in this guideline prevents a member of the HIHAP from raising a point of order in the manner otherwise relevantly applicable to meeting of the Council.

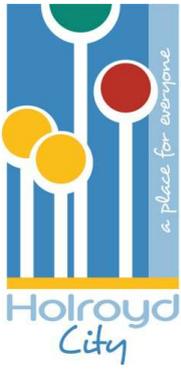
7. A person shall not be entitled to be legally represented at any meeting of the HIHAP unless the Chairperson grants permission in any particular case. In granting any such permission the Chairperson shall have regard to the following matters:
  - a. The nature and complexity of the matter and whether it involves a question of law;
  - b. Whether the person has the capacity to present his or her submission without legal representation; and
  - c. Such other matters as the Chairperson considers relevant.
8. Site inspections are able to held ordinarily in respect of each matter that is to come before any meeting of the HIHAP or when otherwise considered necessary by the HIHAP. Site inspections shall not take place except as a panel, and shall, so far as practicable, be held on the same day as the meeting of the HIHAP at which the particular matter is to be considered. Unless otherwise determined by the HIHAP in any particular case, any one site inspection shall ordinarily be held and concluded within 20 minutes. Appropriate planning staff of Council shall accompany the panel on site inspections. Site inspections are not to be used for lobbying, but as means of procuring probative material for the purpose of good administrative decision making.
9. Whether a matter would otherwise fall for determination by the HIHAP is before the NSW Land and Environment Court on appeal:
  - a. Council shall take whatever action is prudent so as to preserve and not otherwise prejudice its position including but not limited to seeking consent orders where there is no disagreement as to conditions of consent.
  - b. The matter shall not be submitted to HIHAP (or, if already before the HIHAP shall not be determined by the HIHAP) where, due to time constraints or other extenuating circumstances the matter cannot reasonably be referred to or otherwise dealt by the HIHAP.

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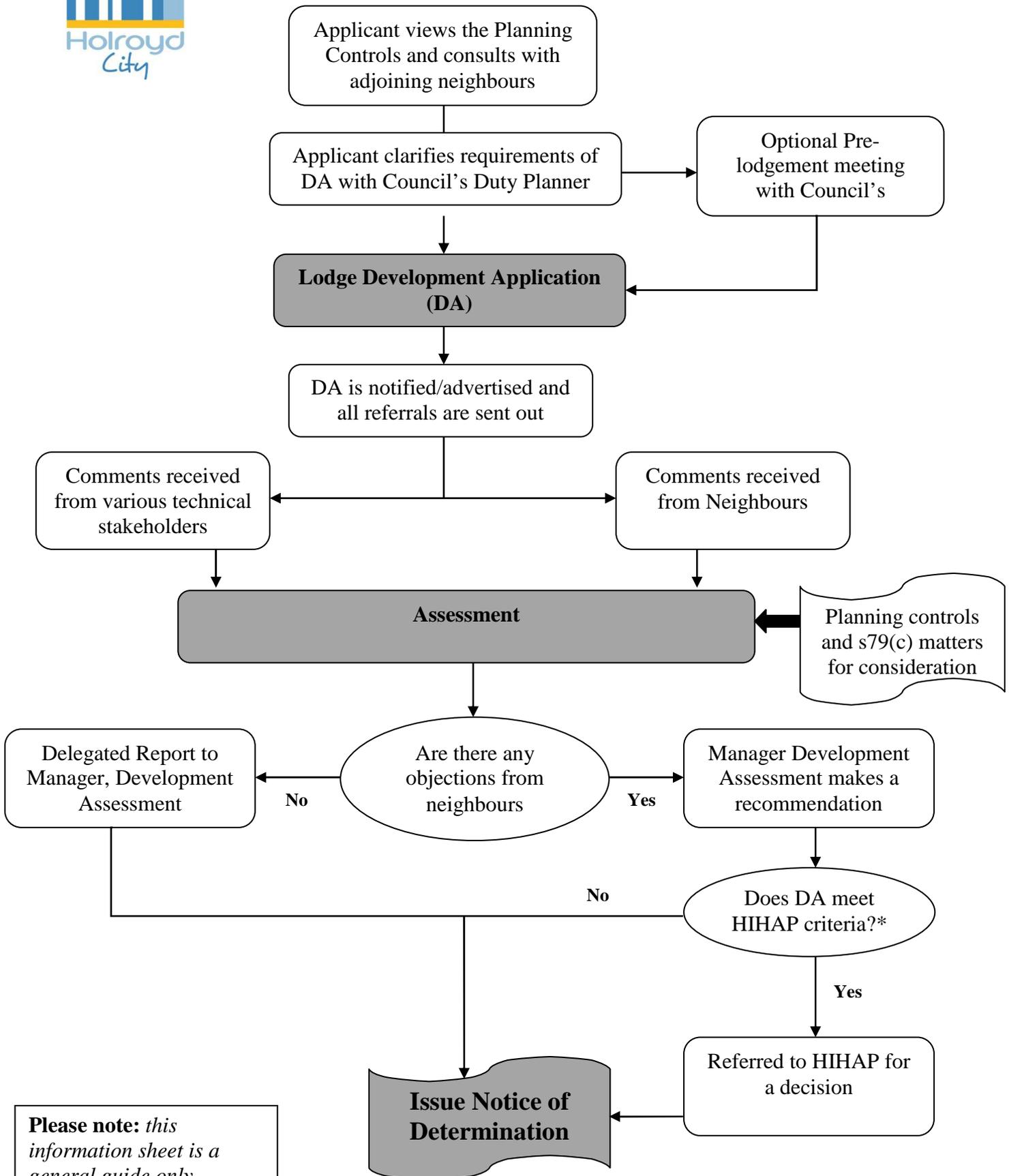
General Manager

Holroyd City Council

Dated:

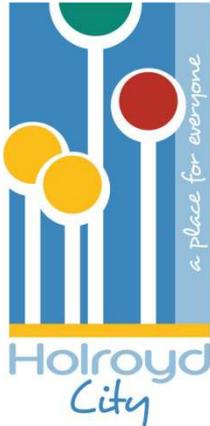


## DA Information – Flowchart of the DA Process



**Please note:** *this information sheet is a general guide only. Processes may vary slightly on a case by case basis*

\* For the current HIHAP criteria visit [www.holroyd.nsw.gov.au](http://www.holroyd.nsw.gov.au) or phone 9840 9840



# HOLROYD INDEPENDENT HEARING AND ASSESSMENT PANEL CHARTER

## 1. Functions

The functions of Holroyd Independent Hearing and Assessment Panel (HIHAP) are to:

- a. Consider and make final independent determinations on all development applications that are referred to it by the General Manager under this Charter (refer to clause 3);
- b. Provide an independent and open forum for interested persons and the community to make submissions relevant to the applications before the HIHAP;
- c. Achieve best practice urban design and development outcomes consistent with the relevant legislation and planning controls.

## 2. Constitution

- a. The HIHAP is a body constituted for the purpose of sub-delegation of the functions by the General Manager and consists of the following members:
  - i. a lawyer who is currently admitted or eligible for admission to practice law in New South Wales as a Legal Practitioner (who, unless otherwise disqualified, shall preside as Chairperson at all meetings of the HIHAP at which he or she is present);
  - ii. a professional expert with a university degree in a planning or architecture discipline;
  - iii. a professional expert with a university degree in an environmental discipline; and
  - iv. a member of the public/community representative from a panel of at least 2 persons to be rotated as required
- b. The Members of the HIHAP are appointed by the General Manager in line with council's resolution that HIHAP be on a trial basis

- c. A member of the HIHAP vacates membership of the HIHAP if the member:
  - i. dies; or
  - ii. resigns in writing to the General Manger; or
  - iii. completes a term and is not re-appointed; or
  - iv. is removed from his or her membership of the HIHAP by Council for breach of any relevantly applicable requirements of the HIHAP Memorandum of Understanding or the guidelines issued by the General Manager in respect of the HIHAP as in force from time to time; or
  - v. without reasonable excuse does not attend a meeting of the HIHAP in compliance with a call of the HIHAP or is otherwise absent (without a written explanation for any such absence given to and accepted by the General Manager) from 2 consecutive meetings of the HIHAP; 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 IHAP or;
  - viii. is removed by the General Manager for any or no reason without notice.
- d. Remuneration of a member of the HIHAP shall be as determined by the General Manager.
- e. An alternate member may from time to time be appointed by the General Manager.
- f. The HIHAP may, subject to this Charter and any guidelines issued by the General Manager in respect of the HIHAP as in force from time to time, determine its own procedure.
- g. The HIHAP 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).
- h. The HIHAP 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.
- i. The quorum for a meeting of the IHAP is 3 members of the HIHAP who hold office for the time being and who are not otherwise disentitled from voting on any particular matter before the meeting.
- j. Proceedings of the HIHAP shall be open to the public. However, the HIHAP may close part of a public meeting to the public where the HIHAP is of the opinion that such action is strictly necessary in order to protect commercial information of a

confidential nature. In addition, for the purpose of enabling the HIHAP to convene in private for the express purpose of deciding upon its findings, conclusions and decisions, deliberations and decisions of the HIHAP shall be conducted and made in closed session following the conclusion of the HIHAP hearing submissions on behalf of the applicant and any other interested parties.

- k. Where, at any public meeting, there are a large number of objectors with a common interest, the HIHAP may, in its absolute discretion, hear a representative of those persons with a view to discharging its responsibilities in a timely manner.
- l. The HIHAP may, in its absolute discretion, but otherwise fairly and consistently, impose time limits on oral presentations by persons other than members of the panel with a view to discharging its responsibilities in a timely manner.
- m. Each member of the HIHAP, unless otherwise disentitled to vote, is entitled to one vote. However, the person presiding at a meeting of the HIHAP has, in the event of an equality of votes, a second or casting vote.
- n. A Member of the HIHAP is disentitled to vote on any matter with which the HIHAP 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 Holroyd Code of Conduct, and is otherwise present at a meeting of the HIHAP at which the matter is being considered. However, a member of the HIHAP is not disentitled to vote on any matter with which the HIHAP 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, familial, business or professional connections or dealings with persons, organisations or associations or bodies within the Holroyd 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 HIHAP.
- o. A decision of the HIHAP shall be by a majority of votes of members present and otherwise entitled to vote at the relevant meeting of the HIHAP.
- p. The meetings and other process of the HIHAP will be undertaken in accordance with the HIHAP guidelines issued by the General Manager 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 HIHAP as well as the ordinary law of meetings to the extent to which that law is not inconsistent with the foregoing.
- q. An officer of Holroyd City Council appointed by the General Manager shall act as secretary to the HIHAP and may be present at any meeting of the HIHAP. In addition, the General manager may, if in the opinion of the General Manager it is necessary or advisable so to do, provide other administrative support to the HIHAP whether by way of the provision of staff or otherwise.

- r. HIHAP shall schedule to hold, if required, at least 11 meetings in each calendar year. Each meeting shall ordinarily be held in a different calendar month. However, an additional meeting may be called at the discretion of the Chair, and any such meeting may at the discretion of the Chair be held in any calendar month even if a meeting has already been held or is otherwise scheduled to take place in that month.
- s. Unless otherwise determined by the Chair, HIHAP recesses in the month of January.
- t. Each HIHAP member shall complete their Pecuniary Interest Declaration Return (Return) and submit it to the General Manager upon appointment to the Panel and shall also submit an annual Return in July each year covering the period 30 June of the previous 12 months.

### **3. Development Applications to be Referred to HIHAP**

The General Manager will refer to the HIHAP the following types of development applications:

- a. Classes 2 to 9 buildings involving tattoo parlours, brothels and places of public worship where unresolved objections have been received, with the exception of:
  - i. Signage
  - ii. Modification of consent involving alterations and additions or extension of hours of operation
  - iii. Applications recommended for refusal under delegated authority.
- b. Section 82A review of determinations in relation to tattoo parlours, brothels and places of public worship

3.1 Where HIHAP meets under clause 3(b) of this Charter, the Panel shall consist only of members who have not been previously involved in the determination of the applications before them.

### **4. Obligation of Members**

All HIHAP 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 HIHAP must:

- a. Faithfully and diligently perform their respective obligations under this Charter, the HIHAP Memorandum of Understanding, and any guidelines issued by the General Manager from time to time, and must at all time act in accordance with the Holroyd Code of Conduct (to the extent, if any, modified by this Charter);
- b. Not disclose any confidential information obtained in the performance of any of the functions of the HIHAP;

- c. Not make oral or written statements of any description to the media or to the HIHAP Panel in connection with or which touches upon any or all of the functions of the HIHAP;
- d. Inform himself or herself of materials presented before the HIHAP;
- e. Not purport to represent Holroyd Council in any capacity; and
- f. Comply with the provisions of the Occupational Health and Safety Act 2000 (NSW), to the extent to which those provisions are relevantly applicable to members of the HIHAP as regards the performance of their respective duties as such, as well as with all occupational health and safety policies and procedures of Holroyd Council as in force from time to time.