

General Manager's Instrument of Delegation

Delegation of Functions delegated to the General Manager of Georges River Council on 17 May 2018 from Georges River Local Planning Panel

With immediate effect and pursuant to s378 of the *Local Government Act 1993*, I, Gail Connolly, General Manager of Georges River Council, delegate the following functions to the persons identified in Schedule 1 of this instrument of delegation ('**Instrument**')

- those functions of the Georges River Local Planning Panel ('**Panel**') under Part 8 Division 8.3 s8.15(4) of the *Environmental Planning and Assessment Act 1979* delegated to the General Manager by resolution of the Panel on 17 May 2018.

Dated: 4.6.18



Signed: Gail Connolly, General Manager

Schedule 1

For the purposes of this Instrument, a delegate includes each person holding the position within Georges River Council set out below, together with any person appointed by the General Manager to act in that position:

- Director, Environment and Planning.
- Manager, Development and Building.
- Coordinator Development Assessment.
- General Counsel.
- Senior Solicitor.
- Solicitor.

Instrument of Delegation

Environmental Planning and Assessment Act 1979

Delegation of Functions from Georges River Local Planning Panel to General Manager

Pursuant to s2.20(8) of the Act and a resolution passed at a duly convened meeting of the Panel held on 17 May 2018, the Panel delegates to the General Manager of the Council, in accordance with this instrument of delegation, the Functions specified or described in Schedule 1, subject to the conditions and limitations specified or described in Schedule 2.

.....
By resolution of the Panel dated 17 May 2018.

1 Definitions

1.1 In this instrument:

Act means the *Environmental Planning and Assessment Act 1979*.

Council means Georges River Council.

Function means a function of the Local Planning Panel within the meaning of the Act.

General Manager means the person appointed by the Council pursuant to s334 of the Act to the position of general manager, and a person appointed by the Council pursuant to s336 of the Act to act in the vacant position of general manager.

Panel means Georges River Local Planning Panel.

Planning Appeal means an appeal commenced pursuant to ss 8.7, 8.8, 8.9 of the Act and any subsequent appeal arising from a decision in those proceedings.

2 Commencement

2.1 The delegations conferred on the General Manager by this instrument of delegation commence immediately.

ACKNOWLEDGEMENT

I, Gail Connolly, General Manager of Council, acknowledge receipt of, and understand, the terms of this instrument of delegation.



.....
Signature

GENERAL MANAGER

Dated: 4.6.18

Schedule 1

Functions Delegated

- 1 The function of the Panel as referred to in Part 8 Division 8.3 Section 8.15 (4) of the Act.

Note: This Schedule must be read in conjunction with Schedule 2.

Schedule 2

Conditions & Limitations Applying to Delegated Functions

- 1 In the case of a Planning Appeal relating to a decision of the Panel that is contrary to a development assessment report, the General Manager will within seven (7) days of Council being served with the appeal, consult with the Chair of the Panel that made the relevant decision, as to the conduct of the Planning Appeal.
- 2 The Council is to give notice of a Planning Appeal (to which section 8.15(4) of the Act applies) to the Panel within seven (7) days of being served with the appeal.



GEORGES RIVER COUNCIL

LOCAL PLANNING PANEL

MINUTES OF MEETING
Thursday, 17 May 2018

COMMITTEE MEMBERSHIP

Panel Members:

Mr Adam Seton (Chairperson)
Ms Juliet Grant (Expert Panel Member)
Mr Michael Leavey (Expert Panel Member)
Mr Henry Wong (Community Representative)

Council Staff:

Meryl Bishop (Director Environment and Planning)
Chris Young (Team Leader Development Assessment)
Cathy Mercer (Team Leader DA Administration)
Monica Wernej (DA Admin Assistant)

1. APOLOGIES AND DECLARATIONS OF PECUNIARY INTEREST

There were no apologies received

There were no declarations of Pecuniary Interest

2. PUBLIC SPEAKERS

The meeting commenced at 4.00pm and at the invitation of the Chair, registered speakers were invited to address the Panel on the items listed below.

The public speakers concluded at 4.05pm and the LPP Panel proceeded into Closed Session to deliberate the items listed below.

3. GEORGES RIVER LOCAL PLANNING PANEL REPORTS

LPP015-18 Delegation of functions from Georges River Local Planning Panel to General Manager in Planning Appeals
(Report by Solicitor)

Speakers

Not applicable

Voting of the Panel Members

The decision of the Panel was unanimous.

Determination

That the Georges River Local Planning Panel delegates the function in Part 8 Division 8.3 Section 8.15(4) of the Environmental Planning and Assessment Act 1979 to the General Manager of Georges River Council in accordance with the draft instrument of delegation attached to the LPP Report No. LPP015-18 dated 17 May 2018.

LPP016-18 1/72 Carwar Avenue Carss Park
(Report by Independent Assessment)

The Panel visited the locality of the site prior to the meeting.

Speakers

No speakers

Voting of the Panel Members

The decision of the Panel was unanimous.

Determination

Approval

Pursuant to Section 4.16(1) of the Environment Planning and Assessment Act, 1979, as amended, Development Application No. DA2017/0537 for the construction of a fixed awning above existing verandah at Part Lot 376 in DP 1118749 and known as 1/72 Carwar Avenue, Carss Park, is determined by granting consent to the application subject to the conditions recommended in the report submitted to the LPP meeting of 17 May 2018 except:

1. Delete the words "which is listed as a heritage item" in condition 3(a).
2. Delete conditions 3(f), 3(g), 3(h), 11, 14 and 15.
3. Delete the three paragraphs under the heading "Schedule B – Prescribed Conditions".
4. Delete the two paragraphs under the heading "Schedule C – Operational & Statutory Conditions".

Statement of Reasons

1. The proposed development is appropriate having regard to the relevant provisions of the applicable environmental planning instruments and will not have an unacceptable impact on the environment in the locality.

2. The proposed development will not have an unacceptable impact on the heritage significance of Carss Bush Park or the heritage listed cottage.
3. The proposed development is suitable for the site and approval is in the public interest.
4. The recommended conditions that have been deleted are not relevant to this application.

LPP017-18 282-290 Forest Rd Hurstville
(Report by Director Environment and Planning)

Speakers

No speakers

Voting of the Panel Members

The decision of the Panel was unanimous.

Resolution

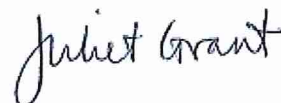
1. The Panel notes that it does not have jurisdiction to determine this modification application because the development consent was granted by the Sydney South Planning Panel and only the consent authority who granted the development consent may modify the consent under Section 4.55 of the Environmental Planning and Assessment Act 1979.

4. CONFIRMATION OF MINUTES

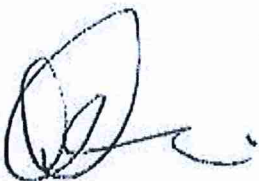
The meeting concluded at 4.28pm.



Adam Seton
Chairperson



Juliet Grant
Expert Panel Member



Michael Leavey
Expert Panel Member



Henry Wong
Community Representative

AGENDA - LPP

- Meeting:** Georges River Local Planning Panel (LPP)
- Date:** Thursday, 17 May 2018
- Time:** 4.00pm
- Venue:** River Room, Georges River Civic Centre, corner MacMahon and Dora Streets, Hurstville
- Panel Members:** Adam Seton (Chairperson)
Juliet Grant (Expert Panel Member)
Michael Leavey (Expert Panel Member)
Henry Wong (Community Representative)
- Council Staff:** Meryl Bishop (Director Environment and Planning)
Tony Ristevski (Team Leader Development Assessment)
Cathy Mercer (Team Leder DA Administration)
Monica Wernej (DA Admin Assistant)
-

1. On Site Inspections - 2.00pm – 3.30pm

- a) 282 Forest Road Hurstville
- b) 1/72 Carwar Avenue Carss Park

Break - 3.30pm

2. Public Meeting – Consideration of Items 4.00pm– 6.00pm

Public Meeting Session Closed - 6.00pm

(Break – Light Supper served to Panel Members)

3. Reports and LPP Deliberations in Closed Session - 6.30pm

- LPP015-18** **Delegation of functions from Georges River Local Planning Panel to General Manager in Planning Appeals**
(Report by Solicitor)
- LPP016-18** **1/72 Carwar Avenue Carss Park – DA2017/0537**
(Report by Independent Assessment)
- LPP017-18** **282-290 Forest Rd Hurstville – MOD2018/0038**
(Report by Director Environment and Planning)

4. Confirmation of Minutes by Chair

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REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 17 MAY 2018

LPP Report No	LPP015-18	Development Application No	N/A
Proposal	Delegation of functions from Georges River Local Planning Panel to General Manager in Planning Appeals		
Report prepared by	Solicitor		

Recommendation	That the LPP delegate its functions as referred to in Part 8 Division 8.3 Section 8.15(4) of the EPA Act to the General Manager in accordance with the instrument of delegation annexed at " Attachment 2 ".
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Introduction

- On 23 February 2018, the NSW Minister for Planning issued the *Local Planning Panels Direction - Development Applications* pursuant to section 9.1 of the Environmental Planning and Assessment Act 1979 (**the EPA Act**) (**the Direction**).

The Direction identifies the type of development applications that must be considered by Council's Local Planning Panel (**LPP**). A copy of the Direction is annexed at "**Attachment 1**".

Following the amendment to the EPA Act of 1 March 2018, the LPP has the control and direction of the conduct of an appeal commenced pursuant to ss 8.7, 8.8, 8.9 of the EPA Act and any subsequent appeal arising from a decision in those proceedings (**Planning Appeals**) that relates to an application that was determined by the LPP pursuant to the Direction.

Prior to the amendments to the EPA Act, senior Council staff were delegated with the authority to manage Planning Appeals and to give instructions with respect to resolving or defending matters. This report requests that the LPP delegate their functions of control and direction of Planning Appeals to the General Manager to allow for the efficient and cost effective conduct of proceedings.

Issues

- Section 8.15(4) of the EPA Act now provides that:

- (4) *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.*

Council's position is that section 8.15(4) of the EPA Act does not apply to deemed refusals because a Local Planning Panel is not defined as a consent authority under section 4.5 of the EPA Act. Furthermore, following consultation with the Department, Council's view is that Planning Appeals relating to decisions made by the LPP before 1 March 2018 are saved and are not subject to section 8.15(4) of the EPA Act.

Although Council is the respondent in any appeal to the Court, in Planning Appeals that relate to a determination of the LPP, Council's conduct of the class 1 proceedings is subject to the control and direction of the LPP. This means that appeals to which section 8.15(4) applies will need to be reported to and instructions obtained from the LPP. By reason of section 2.20(8) of the EPA Act, the LPP cannot delegate its functions to a single Panel member and therefore a decision of the full Panel is required before solicitors are provided with any instructions.

Such a process is cumbersome and unlikely to work in practice. Furthermore, the provision makes it difficult for Council to comply with the Court's requirements that:

The parties are to participate, in good faith, in the conciliation conference (see s34(1A) of the Land and Environment Court Act 1979), including preparing to be able to fully and meaningfully participate, having authority or the ready means of obtaining authority to reach agreement and genuinely endeavouring to reach agreement at the conciliation conference (Paragraph 47 Practice Note – Class 1 Development Appeals).

In order to ensure that Council can continue to conduct Planning Appeals in the most efficient manner, it is appropriate that the LPP delegate its functions under section 8.15(4) to the General Manager, with the condition that in the case of a Planning Appeal relating to a decision of the Panel that is contrary to a development assessment report, the General Manager will consult with the Chair of the Panel that made the relevant decision, as to the conduct of the Planning Appeal within seven (7) days of Council being served with the appeal.

Section 2.20(8) of the EPA Act allows Local Planning Panels to delegate any of their functions to the General Manager. Such a delegation does not require a resolution of the Council under section 381 of the Local Government Act 1993.

It is proposed that following the Panel's delegation, that the General Manager sub-delegate the Functions under the delegation to senior Council staff including the Director of Planning, the General Counsel, the Manager for Development and Building, the Coordinator Development Assessment, and the Senior Solicitor.

The requirement for the General Manager (or the delegate of the General Manager) to consult with the Chair of the Panel about the conduct of the appeal means that the Panel can be satisfied that Council will conduct the appeal with the LPP's decision in mind. If the LPP was concerned that an appeal was not being conducted in a manner consistent with its determination, the LPP could resolve to revoke the delegation in that specific matter.

A copy of the proposed delegation for the adoption by the LPP is annexed at "**Attachment 2**".

Any judicial review proceedings relating to a determination of the Panel are not the subject of section 8.15(4) of the EPA Act and Council will have the control and direction of such proceedings. Nevertheless, Council intends to notify the LLP in the event that judicial review proceedings of an LLP decision are commenced.

Financial impact

3. Should the delegation not be provided to the General Manager, then there are likely to be additional legal costs associated with the management of legal proceedings.

Conclusion

4. Due to the recent amendments of the EPA Act the LPP currently has the control and direction of the conduct of the proceedings in any Planning Appeals relating to a determination of the LPP. In view of the practical realities of conciliation conferences and the need for instructions at short notice, together with the clear advantages of having an officer present at the conciliation with delegation to give instructions with respect to settlement or the defence of a Planning Appeal, it is appropriate for the LPP to delegate its functions under 8.15(4) of the EPA Act, to the General Manager.

Recommendation

5. That the LPP delegate its functions as referred to in Part 8 Division 8.3 Section 8.15(4) of the EPA Act to the General Manager in accordance with the instrument of delegation annexed at "**Attachment 2**".

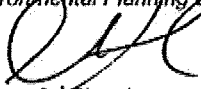
ATTACHMENTS

- Attachment [↓](#)1 Local Planning Panels Direction - Development Applications
Attachment [↓](#)2 Proposed form of delegation

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LOCAL PLANNING PANELS DIRECTION – DEVELOPMENT APPLICATIONS

I, the Minister for Planning, give the following direction under section 9.1 of the *Environmental Planning and Assessment Act 1979*.



Minister for Planning

Dated: 23/2/2018

Objective

The objective of this direction is to identify the development applications that are to be determined by local planning panels on behalf of councils in the Greater Sydney Region and Wollongong.

Application

This direction applies to councils in the Greater Sydney Region and Wollongong. It also applies to any other council that constitutes a local planning panel under the *Environmental Planning and Assessment Act 1979*.

Interpretation

A word or expression used in this direction has the same meaning as it has in the standard local environmental planning instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* made under the Act, unless it is otherwise defined in this direction.

Direction

Local planning panels of councils in the areas identified in the Table below are to determine development applications involving development of a kind specified in the Schedule to this direction that is identified in the Table below.

Note: Councils can make arrangements for the determination of applications for the modification of development consents by either the local planning panel or council staff.

Table

Council	Development
Bayside, Blue Mountains, Burwood, Camden, Campbelltown, Canada Bay, Georges River, Hawkesbury, Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Randwick, Ryde, Strathfield, Waverley, Wiltoughby, Wollondilly, Woollahra, and any other council that constitutes a local planning panel constituted under the EP&A Act	Schedule 1
Blacktown, Canterbury-Bankstown, Cumberland, Fairfield, Inner West, Liverpool, Northern Beaches, Parramatta, Penrith, Sutherland, The Hills, Wollongong	Schedule 2
City of Sydney	Schedule 3

This direction takes effect on 1 March 2018 and applies to development applications made but not determined before 1 March 2018.

If a council to which this direction applies has not delegated the function of determining a development application to an officer or employee of the council, then the local planning panel is to determine the development application.

SCHEDULE 1

1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

2. Contentious development

Development that:

- (a) in the case of a council having an approved submissions policy – is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning and Environment which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number and nature of submissions received about development.

3. Departure from development standards

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

Note: If the Secretary allows concurrence to be assumed by council staff for contravening development standards, the panel can delegate these applications to council staff to determine.

4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licenced premises, that will require one of the following liquor licences:
 - (i) a club licence under the *Registered Clubs Act 1976*,
 - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
 - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

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SCHEDULE 2

1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

2. Contentious development

Development that:

- (a) in the case of a council having an approved submissions policy – is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 10 or more unique submissions by way of objection.

An *approved submissions policy* is a policy prepared by the council and approved by the Secretary of the Department of Planning and Environment which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number or nature of submissions received about development.

3. Departure from development standards

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

Note: If the Secretary allows concurrence to be assumed by council staff for contravening development standards, the panel can delegate these applications to council staff to determine.

4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies and is 4 or more storeys in height.

- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licenced premises, that will require one of the following liquor licences:
 - (i) a club licence under the *Registered Clubs Act 1976*,
 - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
 - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

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SCHEDULE 3

1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item,
- (d) development for the purpose of end of journey facilities, or
- (e) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

2. Contentious development

Development that:

- (a) in the case of a council having an approved submissions policy – is the subject of the number of submissions set by that policy, or
- (b) in any other case – is the subject of 25 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning and Environment which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number or nature of submissions received about development.

3. Departure from development standards

For development for the purpose of dwelling houses, dual occupancies and attached dwellings, development that contravenes a development standard imposed by an environmental planning instrument by more than 25% or non-numerical development standard.

For all other development, development that contravenes a development standard imposed by an environmental planning instrument by 10% or non-numerical development standards.

Note: If the Secretary allows concurrence to be assumed by council staff for contravening development standards, the panel can delegate these applications to council staff to determine.

4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licenced premises, that will require one of the following liquor licences:
 - (i) a club licence under the *Registered Clubs Act 1976*,
 - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
 - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

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Instrument of Delegation

Environmental Planning and Assessment Act 1979

Delegation of Functions from Georges River Local Planning Panel to General Manager

Pursuant to s2.20(8) of the Act and a resolution passed at a duly convened meeting of the Panel held on 17 May 2018, the Panel delegates to the General Manager of the Council, in accordance with this instrument of delegation, the Functions specified or described in Schedule 1, subject to the conditions and limitations specified or described in Schedule 2.

.....
By resolution of the Panel dated 17 May 2018.

1 Definitions

1.1 In this instrument:

Act means the *Environmental Planning and Assessment Act 1979*.

Council means Georges River Council.

Function means a function of the Local Planning Panel within the meaning of the Act.

General Manager means the person appointed by the Council pursuant to s334 of the Act to the position of general manager, and a person appointed by the Council pursuant to s336 of the Act to act in the vacant position of general manager.

Panel means Georges River Local Planning Panel.

Planning Appeal means an appeal commenced pursuant to ss 8.7, 8.8, 8.9 of the Act and any subsequent appeal arising from a decision in those proceedings.

2 Commencement

2.1 The delegations conferred on the General Manager by this instrument of delegation commence immediately.

ACKNOWLEDGEMENT

I, **Gail Connolly**, General Manager of Council, acknowledge receipt of, and understand, the terms of this instrument of delegation.

.....
Signature

GENERAL MANAGER

Dated:

Schedule 1

Functions Delegated

- 1 The function of the Panel as referred to in Part 8 Division 8.3 Section 8.15 (4) of the Act.

Note: This Schedule must be read in conjunction with Schedule 2.

Schedule 2

Conditions & Limitations Applying to Delegated Functions

- 1 In the case of a Planning Appeal relating to a decision of the Panel that is contrary to a development assessment report, the General Manager will within seven (7) days of Council being served with the appeal, consult with the Chair of the Panel that made the relevant decision, as to the conduct of the Planning Appeal.
- 2 The Council is to give notice of a Planning Appeal (to which section 8.15(4) of the Act applies) to the Panel within seven (7) days of being served with the appeal.