

# LG 'Hot' Matters



WALLMANS  
LAWYERS

## UPDATE

### Council Development Assessment Panels – the periodic election and membership issues for elected members

This year will be the first time since the introduction of independent Development Assessment Panels that a periodic election will be held.

Councils appoint Council Development Assessment Panel ("CDAP") members for a term not exceeding 2 years. The appointment of a CDAP member may be extended for no more than 6 months after the end of their term. This rule applies to independent members **and** elected members of CDAPs and is relevant to provide a "holding over" period until the Council re-appoints or makes new appointments to the CDAP.

For most Councils, CDAP member appointments do not coincide with the periodic election – with many CDAP appointments ending months (or even over a year) after the election. However, for where an appointment expires during the election period, the members of the CDAP may continue in office in accordance with this "6 month" provision.

A hot issue which has recently come to the fore is not that concerning expiry of appointments in this sense, but whether the appointment of an elected member to the CDAP remains valid, should that elected member not be returned to office after the election.

Our view is that it is inherent in the appointments of elected members to the CDAP that their appointments expire (regardless of the term of their appointment), if they are not returned to office.

Section 56A(3)(c)(i) of the *Development Act* makes it very clear that elected members are eligible for CDAP membership by virtue of their public office as members of the Council.

It then follows that the appointment of an elected member, as an elected member, to the CDAP is dependent on them holding public office as an elected member of the Council.

Therefore, if an elected member loses their office, they are no longer a member of the CDAP.

The Council can choose to reappoint CDAP members who have lost their office as independent members, provided that they meet the requirements of section 56A(3)(c)(ii) which apply specifically to independent CDAP members. Such appointments, however, must be Gazetted to be effective.

Should one or more elected members not be returned to office, we advise that the CDAP may still meet, and its decisions will still be valid, provided that the quorum is achieved.

As a precautionary measure however, we recommend that CDAP meetings scheduled for mid-late November and December be examined and, if necessary, rescheduled, to ensure that sufficient time is provided to appoint replacement elected members. In this way, Councils will avoid the risk that their CDAP cannot operate after the election.

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