Powers of a Sydney District or Regional Planning Panel to "direct and control" a Council under the new amendments to the Environmental Planning and Assessment Act in a Class 1 Appeal:

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Recently the Land and Environment Court has considered the newly introduced provision of the *Environmental Planning and Assessment Act* which enables planning panels involved in application decisions to "direct and control" the Council involved.

In this landmark case, the Court found the Council was indeed subject to both the direction and control of the Planning Panel, but furthermore that when the application goes before the Court in order to enter into an agreement to solve proceedings, that the Panel also becomes joined as a party in this process.

The Decision in *M.H Earthmoving Pty Ltd v Cootamundra-Gundagai Regional Council (No 2)* [2018] NSWLEC 101:

By way of a brief background, this case involved a Class 1 Development application to expand an existing landfill in the Cootamundra-Gundagai Local Government Area.

As per the old EPA Act, the development application was required to be heard at the time by the Southern Joint Regional Planning Panel (**the JRPP Panel)**, and at the time the panel determined the application by way of refusal. Upon this decision, the Applicant then filed an appeal with the LEC and the Planning Panel was informed as per the requirements under the EPA Act.

The proceedings were set down for a conciliation conference between the Applicant and Council. At this conference, the parties were able to reach an agreement for consent to be granted to the development subject to specific conditions. At this point in the proceedings, the amendments to what is now the new EPA act had come into action and the relevant planning panel for the LGA area changed from the JRPP Panel to the Southern Regional Planning Panel (**New Panel**).

As well as the change in panel, the new amendments added in specific provisions stating that Planning Panels could now "direct and control" Councils with regard to determinations in Class 1 Appeals.

Due to these changes that happened during the course of the proceedings, the Applicant argued that this new panel was a completely different entity to the original JRPP that heard the application in the first instance. They further argued that the new panel was not given the appropriate time to 'direct and control' the Council with regard to this application as per the new amendments to the EPA. To this point, the Court disagreed with the applicant's argument

saying that the New Panel was not a different entity to the JRPP as the statutory scheme embodied in the EPA allowed an alternative consent authority for certain types of development. In this case the Court interpreted that the New Panel had direction and control over the Council would be consistent with the object and purposes of the scheme set out in the EPA.

The judge further emphasised that the functions of the New Panel were the same as those of JRPP as it was made up of the same members, suggesting that the New Panel was just a continuation of the JRPP.

Important Precedent:

While the Court did not find in favour of the applicant in this case, it delivered some important precedent which will shape future litigation involving planning panels under the EPA.

1. Where a decision is made by a Sydney district or regional planning panel prior to 1 March 2018, a council will be subject to the direction and control of the newly constituted panel
2. Councils are subject to the direction and control of planning panels in respect of decisions they make after 1 March 2018
3. In circumstances where the panel and council have conflicting views on a DA, the best approach would be for the panel to apply to be joined as a party to the proceedings. The judge in this case suggests that this is the most appropriate course of action, but that it also may be needed in the interests of the just, quick and cheap resolution of the appeal.