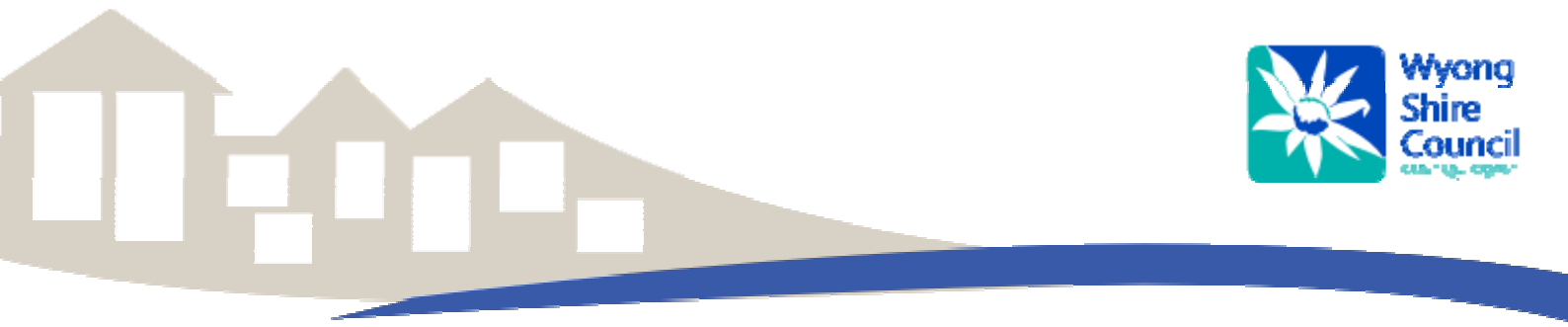


Wyong Shire Council
ORDINARY MEETING

ENCLOSURES

Wednesday, 9 June, 2010



WYONG SHIRE COUNCIL
ENCLOSURES TO THE
ORDINARY MEETING
TO BE HELD IN THE COUNCIL CHAMBER,
WYONG CIVIC CENTRE, HELY STREET, WYONG
ON WEDNESDAY, 9 JUNE 2010 ,
COMMENCING AT 5:00:00 PM

INDEX

GENERAL REPORTS

4.1 Government Review of Joint Regional Planning Panels

Attachment 1: Letter from the Minister dated 19 May 2010 including
the JRPP Review of Operations..... 3



19 May 2010

Mr Kerry Yates
Wyong Shire Council
PO Box 20
Wyong NSW 2259

Dear Mr Yates

Joint Regional Planning Panels – Review and Procedure Amendments

I am writing to you to let you know that the Department of Planning has recently completed the Interim Review of Operation for the Joint Regional Planning Panels (the Review). The findings of the Review are encouraging and I would like to thank you and your staff for your co-operation in implementing this important Government initiative.

I would also like to take this opportunity to update you on a range of operational changes that have recently been made.

The Review has shown that together we are successfully implementing a rigorous, accountable and transparent process for determining regionally significant development. However, as a result of the Review and feedback from the Panel members and participants to Panel meetings, the Minister has made a number of changes to the Regional Panel's Operational Procedures and the Code of Conduct. The Minister has also approved a new Complaints Handling Policy.

Some minor amendments have been made to the *State Environmental Planning Policy (Major Development) 2005* (MD SEPP), regarding the determination of modification applications and the definition of Capital Investment Value (CIV). The Department has also prepared two planning Circulars about these matters.

I attach copies of the following documents:

- The Review
- The revised Operational Procedures
- 'Application Status Report' template
- The revised Code of Conduct
- The new Complaint Handling Policy,
- Four Fact Sheets, and
- Planning Circulars PS 10_008 (New definition of Capital Investment Value) and PS 10_009 (Joint Regional Planning Panels - Review and changes)

The Review

The Review shows that the total value of all Development Applications (DAs) lodged with the Regional Panels in the first 9 months is \$2.69 billion. The average time for determinations by Regional Panels for the period of the Review was 114 days, which is a significant improvement on 2008-09 State-wide average of 249 days for development over \$5 million. While early positive results are encouraging, the Review has identified a growing number of DAs currently under assessment for 6 months or more. These figures highlight the need for the Panel Secretariat and Panel Chairs to work proactively with local councils to ensure assessment reports are submitted for determination in a timely way.

Revised Operational Procedures

The Department has updated the Operational Procedures to further detail specific operational requirements, particularly in regard to monitoring of applications, briefing meetings, reporting and decision making. The Review indicated that the Department, the Panel Secretariat and Regional Panels must better manage delays in the assessment process by being more active in monitoring applications and assisting councils to resolve problems hindering the finalisation of the assessment report.

The updated Operational Procedures provide a new toolbox of measures to better manage delays in the assessment of applications. Councils will be asked to provide an 'Application Status Report' for all DAs that have been lodged for 70 days (template attached). The Status Report will detail the progress on the processing of the DA to date, with a commitment to a final reporting time frame. The Department will also arrange for one of its project delivery managers to liaise directly with State agencies where a delay in obtaining agency concurrence or advice is identified as an impediment to a council completing an assessment report

Changes to the Code of Conduct

The revised Code of Conduct clarifies that, where appropriate reporting arrangements are in place to ensure there is no conflict in the staff member's duties, it is possible for council staff to be members of a Regional Panel. Furthermore, the Code of Conduct reiterates Regional Panel members are required to disclose all interests that may be relevant to the activities of the Regional Panel.

Complaints Handling Policy

Following consultation with the Independent Commission Against Corruption and the New South Wales Ombudsman, the Minister has approved the Complaints Handling Policy for the Joint Regional Planning Panels. This document is attached and is available on the Department's and the Regional Panel's websites.

Updated Frequently Asked Questions

The Frequently Asked Questions (FAQs) on the Regional Panels website have been updated and expanded to produce a series of four Fact Sheets.

Improved website

The Department is also committed to ongoing improvements in communication with Panel Members, councils and other stakeholders. The Regional Panel website is currently being upgraded to provide enhanced facilities for Panel members and to provide greater useability for the public and Council. I will write to you with further details of this initiative when it is brought online.

I would like to thank you again for being part of these important Government reforms and in anticipation of your continuing efforts and support in the future.

If you have any further questions please contact the Panel Secretariat on (02) 9383 2121.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Pearson', written in a cursive style.

Richard Pearson
Deputy Director-General
Development Assessment and Systems Performance



Joint Regional Planning Panels

May 2010

1. **Interim Review of Operation**
2. **Operational Procedures**
3. **'Application Status Report' template**
4. **Code of Conduct**
5. **Complaints Handling Policy**
6. **Planning Circular PS 10-009 – Regional Planning Panels Review and Changes**
7. **Planning Circular PS 10-008 – New Definition of Capital Investment Value**
8. **Fact Sheets**
 - i) What are the functions and roles of Regional Planning?
 - ii) Where do Regional Panels operate?
 - iii) How are development applications assessed for Regional Panels?
 - iv) What are the procedures for a Regional Panel to determine an application?



Joint Regional Planning Panels Interim Review of Operation

APRIL 2010



Purpose of review

The Joint Regional Planning Panels were formally established on 1 July 2009 in five regions of New South Wales. A sixth Regional Panel, and an Interim Panel were both established on 1 September 2009. All are now functioning as part of the New South Wales Planning System. The NSW Government has allocated \$2.4 million in the 2009/10 budget to establish, operate and administer the Joint Regional Planning Panels.

The Regional Panels determine regionally significant developments, which include:

- Development with a Capital Investment Value (CIV) over \$10 million, and less than \$100 million
- The following development with a CIV over \$5 million and less than \$100 million:
 - Crown development
 - Development where council is the proponent or has a conflict of interest
 - Certain public and private infrastructure
 - Ecotourism
- Designated development
- Certain coastal developments previously assessed as Major Projects to be determined by the Minister under the *Environmental Planning & Assessment Act 1979* (EP&A Act).
- Subdivision of land into more than 250 lots

Regional Panels also have the function of determining modification applications under section 96(1) and (2) of the EP&A Act to DAs originally determined by the Regional Panel, and also have functions in relation to Crown development with a CIV under \$5 million which are referred under section 89 of the EP&A Act.

Regional Panels do not determine proposals for the above classes of regional development if they are:

- Development that are Major Projects to be determined by the Minister (that is, under Part 3A of the EP&A Act)
- Complying development
- Development that does not require consent (including exempt development and development under Part 5 of the EP&A Act)
- Development where the consent authority is not the council (including where the Minister is the consent authority)
- Development within the City of Sydney local government area.

The Regional Panels offer greater transparency, independence and professional rigour in determining applications on their merits.

When the Regional Panels system was established the former Minister for Planning announced that there would be an interim report on the first months of the Regional Panels operating. This review of the initial set up phase has been prepared in line with that commitment.

1. Implementation

The following five Joint Regional Planning Panels were constituted by the Joint Regional Planning Panels Order on 1 July 2009:

- Northern Region Joint Planning Panel;
- Hunter and Central Coast Joint Planning Panel;
- Southern Region Joint Planning Panel (excluding Wagga Wagga local government area);
- Sydney East Region Joint Planning Panel (excluding City of Sydney local government area); and
- Sydney West Joint Planning Panel

Following representations from councils in the western region of the state and Wagga Wagga council, the following Panels were constituted by amending the Panels Order on 1 September 2009:

- The Western Region Joint Planning Panel; and
- Wagga Wagga Interim Joint Planning Panel (which covers the Wagga Wagga local government area only).

Information sessions for councils, agencies & industry bodies were held in 14 regional locations across NSW; Ballina, Coffs Harbour, Dubbo, Gosford, Griffith, Hurstville, Liverpool, Newcastle, North Sydney, Queanbeyan, Parramatta, Tamworth, Wagga Wagga, and Wollongong. These were attended by over 300 local councillors, General Managers and senior council staff.

Selection of State and Council members

- Each Regional Panel has three State appointed-members and two members appointed by each council for decisions in their local council area. The 29 State appointed members and alternate members were the subject of an extensive selection process in accordance with the Department of Premier and Cabinet *Guidelines for NSW Board and Committee Members*. Generally, selection followed a comprehensive expression of interest process and consideration of applications by a panel of senior practitioners which included a representative from local government. Each State member has expertise in one or more of the areas specified in clause 2(1) of Schedule 4 of the EP&A Act.
- The appointment of council members is a matter for each of the relevant councils. Two council members are appointed to each Regional Panel; at least one council member is required to have expertise in one or more of the areas specified in the EP&A Act. The Department of Planning reviews nominations to ensure the provisions of the EP&A Act are met. The recommended term for council members to a Regional Panel is three years.
- Only seven of 151 councils have yet to provide their nominees to the Regional Panels. Reasons given for not nominating include being opposed to the Regional Panels; however some councils have stated that they see no need to provide nominees as they are unlikely to have applications which need to go before a Regional Panel.

If a regional development application is lodged in an area where the council has not nominated its members, the Department will request nominations for the Regional Panel. The application will be assessed by the local council planners, however should a council not provide nominations, the application will be determined by the three State appointed members of the Regional Panel.

The Department will continue to work closely with councils who have yet to nominate to resolve any outstanding concerns, and to ensure all local communities are represented in the decision making process on matters before their Regional Planning Panel. The Panel Secretariat has put a procedure in place to ensure that these councils are given every opportunity to nominate members when a regional development application is lodged.

Orientation sessions across NSW & attendees

- Following the selection of State members and nomination of most Council members, orientation and education sessions were held across New South Wales in the same locations as the information sessions. These were attended by 250 Council appointed panellists representing 116 councils. This ensured the panels were adequately informed and resourced to make decisions on regionally significant development.
- The Department will monitor the need for further training, and continue to work with councils to identify training opportunities such as preparing new nominees for their role as a Panel member.

2. Issues Raised During Implementation

The Department received and considered a substantial amount of feedback from the orientation sessions. Over the course of the initial eight months of operation, the Department also noted feedback from councils, the queries hotline and matters arising from individual regional development applications. Matters that have been regularly brought to the Department's attention have largely been:

Fees for Panel members

In June 2009, the Minister for Planning announced that the funding of the Regional Panels would be shared between the State Government and local councils, with the NSW Government meeting the cost of establishing and operating the panels, including the employment costs for the three State members and alternates for each Regional Panel. Councils continue to receive Development Application fees in full and are responsible for the processing, notification or advertising and assessment of individual applications as they ordinarily would. Councils are also responsible for the payment of fees to their members.

The EP&A Act requires that the Minister determine the rate of remuneration for all members of Regional Panels. Given the funding arrangements announced, the Minister determined it was appropriate to allow each council to determine rates of remuneration for its members. Accordingly Councils were advised of the approach in July 2009 and guidance was provided as to what could be considered appropriate rates of remuneration. The determination of appropriate rates and the payment of any remuneration for Council nominated members remains a matter for local councils.

Pecuniary interest

The EP&A Act requires that each panel member declares any pecuniary interest that arises. These declarations will also be made by Panel members on an annual basis. This information is also publicly available in the minutes of meetings on the Regional Planning Panel website: www.irpp.nsw.gov.au

Panel members do not carry out any functions under the *Local Government Act* and as such the disclosure requirements under that Act do not apply. Local councillors have a far broader range of responsibilities including financial responsibilities and functions under the Local Government Act than Regional Panel members under the EP&A Act.

Expertise of council nominees and conflict of duties

While each council is required to provide its panel nominees in accordance with the requirements of the EP&A Act, the Department has reviewed nominations to ensure the provisions of the Act were met. Where nominees were also staff members, the Department reviewed information provided by councils to confirm consistency with the Code of Conduct, and in particular that these staff members were not involved in the development assessment process at Council.

Time and location of Panel meetings

Panel meetings are held in the council area where the DA is located or as close by as possible to ensure all interested parties are able to attend. When meeting time and locations are being organised, the Panel Secretariat is mindful of the needs and distances travelled by Panel members and members of the public who may wish to attend a Panel meeting.

Delays in determining some types of applications

Some types of applications, including modification applications, will be straightforward and may not receive any community objection. Additionally, larger development applications may have a significant number of minor modification applications. Both have the potential to bring about unnecessary delays or costs to determinations of these types of applications through the Regional Panels system. It is proposed to address this issue by returning section 96(1A) modification applications to councils and delegating certain applications to council.

3. Development Application Data and Performance

Monthly reports are prepared by the Secretariat which monitors data such as the key data in the following three tables. The number of DAs lodged to date (196) across the various regions is generally consistent with the relative split of DA volumes per region as anticipated by the Department. The DAs for Regional Panels have been lodged with 64 councils across NSW.

From the numbers of DAs registered for determination by Regional Panels to date it is expected that approximately 270 applications are likely to be registered by 1 July 2010. This is approximately 20% less than the 320 initially expected based on 2007/08 data available prior to the Panels commencement, and may be largely due to the change in economic circumstances across the comparable periods.

Table 1: All DAs registered by region and application type (as at 31 March 2010)

Application Type	Hunter & Central Coast	Northern	Southern	Sydney East	Sydney West	Western	Wagga Wagga Interim	TOTAL
CIV > \$10M	7	11	12	33	39	2	1	104
Crown dev't >\$5M	1			1	3	1		6
Council dev't or interest > \$5M	1	2	4	1	3	1		12
Public & private infras'ture >\$5M	2	1		1	2		1	7
Ecotourism >\$5M								-
Designated Development	8	3	4	2	3	3		23
Coastal Development	2	7	5	1				15
Subdivision > 250 lots	1							1
Wagga Interim development							22	22
S.96 modifications		1	2		1			4
Crown DA – s89 referral				2				2
TOTAL	22	24	27	41	51	7	24	196

Each DA registered with the Panel Secretariat is counted in only once. For example, Designated Development with a CIV over \$10million will be counted as 'CIV over \$10million' and not the secondary category. The identification of the development type follows the order in the above table.

Table 2: Summary of decisions and assessment time by application type (as at 31 March 2010).

Application Type	Approved	Refused	Total Applications Determined	Average determination (Days)	CIV of approvals	No. of lots approved
CIV > \$10M	16	6	22	111.6	\$359M	
Crown dev't >\$5M	3		3	120	\$24.2M	
Council dev't or interest > \$5M	4		4	88	\$19.6M	
Public & private infras'ture >\$5M	3		3	103	\$30.8M	
Ecotourism >\$5M			-			
Designated Development	5	1	6	146	\$8.8M	
Coastal Development	4		4	89	\$6M	40
Subdivision > 250 lots			-			
Wagga Interim development	5	4	9	102.6*	\$2.7M	
S.96 modifications	2		2	55	\$0	
Crown DA – s89 referral	1		1	128	\$5M	2
TOTAL	43	11	54	113.9**	\$454M	42

* Excluding s.96 modification applications

* Excluding 3 Wagga Interim DAs lodged prior to 1 July 2009

Notes: 13 DAs registered for determination by a Regional Panel have been withdrawn by the applicant
5 DAs registered have been referred back to council as they were not 'Regional Development'

The majority of applications registered and determined to date are those having a CIV over \$10 million, with Crown, council and social infrastructure DAs with a CIV over \$5 million also well represented in the numbers of DAs registered. These were the principal categories of development intended to be dealt with by Regional Panels. The numbers of DAs for designated development are as anticipated, however it is notable that the value of most of these DAs is generally low, with the majority of applications being under CIV of \$1 million.

Performance

Table 3: Average number of days for key stages (as at 31 March 2010).

	Total No. of determinations	Council Processing (lodgement to start of exhibition)	Public Exhibition Period	Council Assessment (start of exhibition to submission of report)	Panel Referral (Report received by Secretariat to Panel meeting)	Total Assessment (DA lodged at council to Panel determination)
Hunter & Central Coast	4	9.7	20	121.3	12	141.8
Northern	8	17.4	20.9	60.9 ⁺	10.4 ⁺	91.3 ⁺
Southern	10	9.5	27.6	92.7	11	112.4
Sydney East	12	12.3	21.3	72.7	17.3	102.3
Sydney West	9	23.1	18.9	101 ⁺	12.3 ⁺	134.8 ⁺
Western	2	14.5	14	59.5	6.5	80.5
Wagga Wagga Interim	9	33.8	19.3	N/A	N/A	119.7*
YTD AVERAGE	54	18.3	20.9	84.6⁺	12.8⁺	113.9^{**}

* Excluding s.96 modification applications

* Excluding Wagga Interim DAs lodged prior to 1 July 2009

Some internal assessment times are not available for Wagga Wagga applications as these aspects of the process are undertaken by Council and not currently monitored by the Panel Secretariat.

Merit decision making

To date, only one determination has not been consistent with the recommendation contained in council's assessment report, to either approve or refuse the application. That application was recommended for refusal; however the panel voted 3:1 to approve the DA subject to conditions.

In addition to the 54 determinations there have also been 5 applications that have been considered by Regional Panels and these remain deferred for the submission of additional information.

Decisions are being made consistently with professional merit-based planning advice, consistent with the clear intent behind the introduction of Regional Panels.

Community interest

The types of development to be dealt with by Regional Panels are those expected to attract higher levels of community input by way of submission, partly due to the dollar values and usual scale of these projects and also due to potential environmental impacts, such as for designated development. Excluding 'Wagga Interim Development', which includes a number of small scale projects that do not meet development standards, there have been 45 determinations by Regional Panels, and 19 of these (42%) received no submissions and were subsequently approved.

Time frames

Early signs are that the overall assessment and determination time at an average of 105 days is acceptable. This represents a significant improvement on the 2008-09 State-wide average for all DAs valued over \$5 million, which was 249 days, and the average for DAs valued over \$20 million, which was 324 days.

The average time councils took to publicly exhibit the applications which have been determined by Regional Panels is 18.3 days, which is considered a reasonable time period to undertake the range of tasks required. However the time taken to exhibit matters which are yet to be determined is 24.1 days, which indicates there is a build up of DAs where notification has been delayed by requests for further information. It is considered essential that applications which require public exhibition should be notified within 14 days of receipt, unless there are exceptional circumstances.

The time for councils to complete their assessment of these applications and provide their reports to the Panel Secretariat, is at 85 days or almost 3 months, considered excessive for most applications. Again for applications yet to be considered by Regional Panels this time period will increase. In most circumstances it is considered that the period from the commencement of exhibition to completion of assessment should not be greater than 60 days, or approximately 8 weeks.

The average time for a completed assessment report to be referred to a panel meeting is within the internal benchmark, which is an average of 14 days. This is being met through coordination with councils and setting aside potential meeting dates for each Regional Panel.

While early positive results are encouraging, there is a significant growing build up of applications which are awaiting determination by the Regional Panels, and these determinations are dependant on the completion of an assessment report by council. A formal follow up process is being developed to ensure that the Regional Panels deliver on the Government's commitment to ensure a significant reduction in DA processing times is achieved.

4. Review of Policy

As a result of considering issues raised during implementation, monitoring matters arising from individual applications, and considering feedback, there are a number of early changes proposed to Regional Panel operations. These changes are not significant and are mainly of a procedural nature or to provide clearer explanation of procedural requirements. The changes have also been discussed with a number of stakeholders, including the Department of Local Government and the Local Government and Shires Association.

Operational Procedures & Code of Conduct

The Operational Procedures and Code of Conduct have been reviewed in response to questions from orientation sessions and matters arising from operational experiences. Generally the Procedures have been updated to more clearly detail specific actions required for the successful operation of panels, particularly in the areas of monitoring of applications, briefing meetings, reporting, and decision making.

The principal change to the Code of Conduct is to clarify that it is acceptable for Council staff to be members of a Regional Panel where appropriate reporting arrangements are in place to ensure there is no conflict in the staff member's duties. The Procedures and Code will continue to be kept under review and may be amended as required.

Complaints Handling Policy

In mid 2009 a draft Complaints Handling Policy was prepared to provide an explanation of the process for dealing with complaints about Panel operations and Panel members.

The draft Policy was issued to the Independent Commission Against Corruption and the New South Wales Ombudsman for comment, and these were taken into consideration in finalising this Policy. The Complaints Handling Policy was also prepared in consideration of the Department's Lobbying Guidelines and the Department's own policy for handling complaints, and guidelines from the Ombudsman. This Policy will be released with the revised Code of Conduct.

Updated Frequently Asked Questions for Regional Panels website

Some matters which were raised at the orientation and training sessions raised important questions which were not appropriate to be included in the Operational Procedures and Code of Conduct.

To address all matters raised in Regional Panel it is proposed to update the existing FAQs on the Regional Panels website, and the existing Fact Sheet on the establishment of Regional Panels, by expanding these to a series of 4 Fact Sheets, providing FAQs based around the three areas: Panel operations; Panel Regions; DA lodgement and assessment; and DA determination. The updated Fact Sheets will be released with the revised Procedures and Code of Conduct.

Determinations back to councils

The Department has investigated opportunities which will expedite determination times of straightforward applications which require determination by a Regional Panel, without compromising assessment processes. Councils will determine minor modifications to applications determined by Regional Panels, this is being implemented by an amendment to the Major Development SEPP.

Further to this, delegations for other application types are currently being explored, such as some designated development, DAs within particular areas, and precincts and straightforward applications where the assessment report recommends approval and there have been no objections in submissions lodged on the application. In the interests of expediting determination times, and depoliticising the planning system, these delegations would only be applied to those councils who confer the authority to an appropriate officer level. These changes will be brought about by an Instrument of Delegation prepared under the EP&A Act.

Major Development SEPP Amendment

In 2009, amendments to the Major Development SEPP established which Council consent functions would be exercised by the Regional Panels, and what development Regional Panels would determine. Following implementation of Regional Panels it has been identified that a number of minor matters need to be dealt with through amendments to the Major Development SEPP. Minor amendments are proposed to:

- Make Councils the consent authority for modification applications involving minimal environmental impact, ie section 96(1A) modification applications
- Confirm Regional Panels are the consent authority to section 96AA modification applications, where the original DA was determined by a Regional Panel.
- Clarify that subdivision applications of land where a certain number of lots will not be connected to a sewerage treatment system are to be determined by Regional Panels, and
- Clarify that Regional Panels are the consent authority where a local council is the proponent for staged development with a CIV of \$5 million.

Capital Investment Value SEPP & EP&A Regulation Amendment

The Capital Investment Value (CIV) of a proposed development determines whether or not a Regional Panel will be the consent authority for particular classes of development.

The definition of CIV in the EP&A Regulation will be amended to clarify what constitutes CIV. The CIV of a development includes all costs necessary to establish and operate the project, including the design and construction of buildings, structures, associated infrastructure and fixed or mobile plant and equipment, but does not include such costs as land costs, GST, costs relating to any part of the development that is the subject of a separate development consent, costs payable under a condition of consent, eg section 94 contributions. The revised definition clarifies that developer levies and work subject to another consent are not to be included in the calculation of CIV.

The proposed SEPP will replace all the existing definitions of CIV in other *State Environmental Planning Policies* and in doing so provide a standard definition throughout the New South Wales planning system.

5. Looking Ahead

The Department will continue to monitor and review the operation of the Regional Panels, with annual performance reporting to be conducted and included in the local government monitoring report. Further data is required before other operational matters can be reviewed, for example;

- Monitoring the volume and processing times for applications which are proposed to delegated to councils, (ie DAs with no submissions), and whether there is scope for further delegation to councils.
- Monitoring the volume and number of types of development applications and their determination times may justify further delegation of some types of regional development applications to councils for determination.
- Monitoring the volume and number of development applications in each region will allow the Department to assess the appropriateness of Regional Panel boundaries and/or number of regions.

There will be regular updates for all Regional Panel members, including orientation and resource packs for new members, and identifying other training opportunities. Regional Panels are now an integral part of the NSW planning system, providing a strong, efficient, and transparent decision making body. Decisions are being made on merit by the Regional Panel members having expert and local knowledge.

Feedback

The Panel Secretariat, the administrative body established to provide support to the regional Panels, is the first point of contact for any enquiries or comments. Members of the public may wish to contact the Secretariat to:

- Request to make a submission at a Regional Panel Meeting
- Provide feedback to the Regional Panels
- Make a complaint or provide a compliment about a Regional Panel's policy, procedure or quality of service
- Make a general enquiry about Regional Panels' operations.

There are a number of ways to contact the Secretariat;

Email jrppenquiry@jrpp.nsw.gov.au

Phone 1300 948 344
(02) 9383 2121

Website www.jrpp.nsw.gov.au



Joint Regional Planning Panels Operational Procedures

APRIL 2010



These procedures are provided for general guidance and information only. The Procedures are made available on the understanding that the NSW Department of Planning ('Department') is not providing legal advice. The Department has compiled the Procedures in good faith, exercising all due care and attention.

The Procedures do not affect or replace relevant statutory requirements. Where an inconsistency arises between the provisions of the Procedures and relevant statutory provisions, the statutory requirements prevail.

While every reasonable effort has been made to ensure that this document is correct at the time of printing, the State of New South Wales, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document. The Procedures are not intended to give rise to any rights, claims, benefits, privileges, liabilities or obligations with respect to matters the subject of the Procedures.

It should be noted that the Procedures may be affected by changes to legislation at any time and/or be subject to revision without notice.

It is recommended that independent advice be sought in respect of the operation of the Procedures and the statutory requirements applying to Joint Regional Planning Panels under the *Environmental Planning and Assessment Act 1979*.

Joint regional planning panels operational procedures
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Contents

1. Introduction	1
2. Functions of Regional Panels	2
2.1 Functions	2
2.2 Membership of Regional Panels	2
2.3 Defining the regions	4
2.4 Classes of Regional Development and Regional Panel functions	4
2.5 Administration	5
2.6 Monitoring of applications	5
3. Roles of councils and other panels	6
3.1 Role of Councillors and council staff	6
3.2 Support provided to Regional Panels by councils	6
3.3 Role of Design Review Panels	7
3.4 Role of Independent Hearing and Assessment Panels	7
3.5 Role of Planning Assessment panels (s.118 panels)	8
4. The Assessment Process	9
4.1 Pre-development application meetings	9
4.2 Representations to Regional Panel members	9
4.3 Making of development applications	9
4.4 Notification to Panel Secretariat	10
4.5 Public notification of development applications by council	10
4.6 Requests for additional information	11
4.7 Status reports	11
4.8 Assessment of the development application	12
4.9 Panel briefings or site visits during the assessment phase	13
4.10 Public meetings about the proposed development	14
4.11 Council representation to the Regional Panel	14
4.12 Submission of assessment report to Panel Secretariat	15
4.13 Re-zoning, master plans and voluntary planning agreements	16
4.14 Crown Development Applications	16
5. The Determination Process	17
5.1 Panel meeting	17
5.2 Meeting date and agenda	17
5.3 Meeting venue	17
5.4 Notice of meeting	18
5.5 Distribution of meeting agenda and business papers	18
5.6 Site visits	18
5.7 Quorum for a Regional Panel meeting	19
5.8 The Regional Panel meeting	19
5.9 Presentations at Regional Panel meeting	20
5.10 Transaction of business outside formal panel meetings	21
5.11 Obligation to consult council – if adverse financial impacts	22
5.12 Adjourning and deferring the panel meeting	22

5.13 Making the determination	22
5.14 Crown development applications	23
5.15 Recording of meeting minutes	23
5.16 Delegation to council to determine applications	24
6. Post Meeting Procedures	25
6.1 Issuing the notice of determination	25
6.2 Monitoring of and compliance with conditions of approval	25
6.3 Appeals against determination of Regional Panel.	25
6.4 Appeals against determination where council is applicant	25

1. Introduction

Joint Regional Planning Panels (Regional Panels) were introduced in NSW on 1 July 2009 in order to strengthen decision making on regionally significant development applications (DAs) and certain other planning matters.

These procedures have been developed to explain the means of operating Regional Panels and to clarify the roles of various parties in the process.

The Procedures should be read in conjunction with the Joint Regional Planning Panel's Code of Conduct which explains the standard of conduct expected of Regional Panel members.

These procedures are in relation to the operation of Regional Panels under the *Environmental Planning and Assessment Act 1979* (EP&A Act), and extend to Regional Panels if they are undertaking any functions conferred on them under the EP&A Act or any other Act.

These procedures will be kept under review and may be amended from time to time as needed following the experience of implementing and operating Regional Panels.

2. Functions of Regional Panels

2.1 Functions

The principal function of Regional Panels is to determine regionally significant DAs. Additional functions of Regional Panels include:

- acting as the relevant planning authority for the purpose of preparing a local environmental plan when appointed to do so by the Minister for Planning;
- determining Crown DAs that have been referred to the Regional Panel by the council or the applicant, after having not been determined by the council within the time prescribed in the Environmental Planning and Assessment Regulation 2000 (the EP&A Regulation);
- determining applications to modify a consent for regionally significant development under s.96(2) of the EP&A Act; and
- providing advice on planning or development matters when requested to do so by the Minister.

The EP&A Act provides that if a Regional Panel has not been appointed for a particular part of the State, any function that is conferred on a Regional Panel is to be undertaken by the Planning Assessment Commission (PAC).

2.2 Membership of Regional Panels

Regional Panels consist of five (5) members, comprising three (3) State-appointed members and two (2) council-appointed members.

At a meeting of a Regional Panel, matters in a number of different council areas may be considered. The members of individual councils will join the State members to comprise the Regional Panel whenever the Regional Panel is considering a matter that is located in that council's area.

- **State members:** Three State members appointed by the Minister, each having expertise in one or more of the following areas: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration.
- **Council members:** Two council members appointed by each council that is situated in a part of the State for which a Regional Panel is established. At least one council member is required to have expertise in one or more of the following areas: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism. Expertise may be demonstrated by having formal qualifications in the nominated fields, or by having relevant skills, knowledge and practical experience in these areas.

- Selection of council members

It is a matter for each council to identify how the members are selected. In selecting members, however, Councils should have regard to the conflict of duties that would be created for a person nominated to the

Regional Panel if they were in any way responsible for or involved in the assessment and recommendation of a matter to be determined by the Regional Panel.

When deciding nominees to the Regional Panel, a council is not restricted to people being from the council's local area.

Councils can appoint, terminate, and reappoint, members at anytime, and can determine how long it appoints its members for. Generally councils should consider appointing members for the maximum term of three years provided for under the EP&A Act, to ensure the greatest degree of continuity of expertise for Regional Panels. However councils should also reconsider whether their nominations to Regional Panels are appropriate within 12 months following a council election.

If a council within the area of a Regional Panel fails to nominate one or more council members, a Regional Panel may still exercise its functions in relation to the area of the council concerned.

- Payment of council members

The Minister for Planning has determined that councils are free to determine the fees they pay their Regional Panel members. The Minister has however provided guidance to all councils on appropriate rates of remuneration for travel and subsistence allowances for their members.

It is the responsibility of each council to make these payments to their Regional Panel members when they attend Regional Panel meetings.

- **Chairperson and Deputy Chairperson:** The Minister will appoint one of the State members as the Chairperson for the Regional Panel.

The members may determine to elect a State member to be Deputy Chairperson. The role of a Deputy Chairperson is to act as the Chairperson at anytime the Chairperson is absent from the meeting.

A Deputy Chairperson can be elected for the duration of their term of office as a member or for a shorter term. A State member can be elected as Deputy Chairperson by members of the Regional Panel at anytime.

The Chairperson (or, in the absence of the Chairperson, a person elected by the members) presides at meetings of Regional Panels. The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

- **Alternates:** The Minister may, from time to time, appoint a person to be the alternate of a State member, and may revoke any such appointment.

A council may also, from time to time, appoint a person to be the alternate of a member nominated by the council, and may revoke any such appointment. The alternate will act in the place of the member with all the powers of the member.

A person may be appointed to be the alternate of two (2) or more members, although they can only have one (1) vote at a meeting.

The Panel Secretariat is responsible for the maintenance of a register of Regional Panel members comprising State members as appointed by the Minister and council members as nominated by the council.

The EP&A Act stipulates the circumstances when a vacancy in office of a Regional Panel member occurs. The Minister in the case of a State member, and the council in the case of a council member, would fill such a vacancy in accordance with the EP&A Act.

Council should notify the Panel Secretariat as soon as practicable following a change to its nominees. The new member's personal details form should be forwarded to the Panel Secretariat within 7 days of the change.

2.3 Defining the regions

Joint Regional Planning Panels are constituted by the Minister for Planning by order published in the Gazette. The local government areas covered by each Regional Panel are also identified in the order. The Minister may revoke an order and make new orders at any time.

The Regional Panel provisions do not apply in the City of Sydney, where the Central Sydney Planning Committee continues to operate, and the Planning Assessment Commission will function in lieu of a Regional Panel in the case of Crown DAs not determined by the council within the time prescribed in the EP&A Regulation.

2.4 Classes of Regional Development and Regional Panel functions

Part 3 (Regional development) of *State Environmental Planning Policy (Major Development) 2005* (MD SEPP) identifies the types of development that Regional Panels are responsible for determining.

Division 2 of Part 3 of the MD SEPP uses "capital investment value" (CIV) to determine certain developments which will be "Regional Development". CIV is defined in clause 3 of the EP&A Regulation 2000. The Department of Planning has issued a Circular to assist applicants and councils in the calculation of CIV, which is based on this definition.

If there is doubt about the CIV of an application, Councils should consider requesting the applicant to provide a quantity surveyors certificate or similar expert assessment that addresses the definition of CIV.

Division 3 of Part 3 of the MD SEPP sets out the functions to be exercised by Regional Panels, including determination of specified:

- classes of development applications;
- staged development applications; and
- section 96(2) modification applications (but only where the Regional Panel granted consent to the development).

Section 96(1) and 96(1A) modification applications to development consents granted by the Regional Panel, are to be determined by the council.

2.5 Administration

Administration and support for Regional Panels is provided by the Panel Secretariat. Such support is in relation to preparation and issue of meeting agendas, arrangements for travel to meetings and accommodation (if required), and support to Panel members.

Councils are responsible for the usual notification process for applications, preparing the assessment reports (including the consideration of submissions) and the post-determination functions.

Councils may be requested to assist Regional Panels with the provision of meeting venues, arrangements for site visits and briefings (where appropriate), which may also include the provision of a minute taker.

The Panel Secretariat deals with FOI applications, however a council may also be required to respond to an FOI application in relation to information it may have in accordance with the FOI legislation.

The Panel Secretariat is the first point of contact for all Regional Panel matters. Its contact phone number is (02) 9383 2121 or email jrppenquiry@jrpp.nsw.gov.au.

2.6 Monitoring of applications

The Panel Secretariat will monitor the progress of regional applications referred to the Regional Panels to ensure panel meetings are scheduled as soon as practicable following the submission of an assessment report.

Councils should actively monitor regional applications they have received to ensure they meet expected timeframes for the processing and determinations of these applications. The Panel Secretariat will also monitor the progress and reporting of applications to ensure timeframes are met.

The performance of Regional Panels in relation to their handling of DAs and other matters will be monitored and reported on in the Department's annual monitoring report of local councils which will include a section about Regional Panels and their overall performance.

The publication of regular performance statistics for Regional Panels on a council by council basis will also occur.

2.7 Liability and indemnification

Section 158 of the EP&A Act provides that Panel members are excluded from personal liability as long as the act or omission was done in good faith for the purpose of carrying out their duties as panel members under the EP&A Act.

The NSW Government extends insurance indemnity cover to Panel members. The usual provisions for indemnification apply i.e. that persons subject to that cover must at all times act honestly and in accordance with the Code of Conduct in the performance of their responsibilities.

3. Roles of councils and other panels

3.1 Role of Councillors and council staff

Councillors (as the elected Council) and council staff have distinctly different roles in the handling of DAs. The separation of these roles is reinforced in s.352 of the *Local Government Act 1993* (LG Act) which provides for the independence of council staff in the preparation of advice and recommendations. The LG Act provides that a member of staff is not subject to direction by the council or by a councillor as to the content of any advice or recommendation made by the staff member. Equally, a council or councillor is not bound by the advice or recommendation made by a member of staff.

Assessment Role

The role of council staff is to undertake the assessment of the DA. The assessment of a DA requires undertaking various statutory requirements such as public notification, advertising, consultation, concurrence and obtaining general terms of approval from an agency if required, and consideration of the matters set out in the EP&A Act including s.79C. The assessment is documented in an assessment report with recommendations. The report is subsequently considered by the person or body whose role it is to determine the application.

The “Model Code of Conduct for Local Councils in NSW” (the Model Code) requires that council staff act lawfully, ethically and fairly. In relation to development decisions, council staff must ensure decisions are properly made and parties involved in the development process are dealt with fairly. The Model Code requires that persons to which it applies do not use their position to influence other council officials in the performance of their duties to obtain a private benefit for themselves or for somebody else.

Determination Role

The role of the elected council is to determine, or make decisions on, DAs in their capacity as consent authority. There are occasions, however, where the determination role is undertaken by other persons or bodies either because the council has delegated that function, or because it has been conferred upon another person or body.

Section 23G of the EP&A Act has conferred upon Regional Panels the function of elected councils to determine regionally significant, and certain other types of DAs. As such, applications for regionally development are not determined by councils although the council retains responsibility for its other functions as consent authority.

3.2 Support provided to Regional Panels by councils

The EP&A Act provides that Regional Panels are entitled to the use of the staff and facilities of the relevant council for the purpose of carrying out its functions, and that a General Manager of a council must carry out any reasonable direction of a Regional Panel when it is carrying out any of the functions of that council.

It is expected that the use of council facilities such as meeting rooms would be arranged prior to meetings of Regional Panels. From time to time support such as the taking of minutes for Panel meetings, copying of documents and the provision of professional advice may also be required.

The Chairperson and members of a Regional Panel will need to be mindful of the regular duties and responsibilities of council staff when requests for assistance are made.

Requests by members of Regional Panels for support and assistance from councils should be made through the Chairperson to the General Manager (or other person nominated by the General Manager) of the council concerned.

3.3 Role of Design Review Panels

Design Review Panels are established by councils either formally, under the provisions of State Environmental Planning Policy No. 65 - Quality of Residential Design (SEPP 65) with the approval of the Minister, or informally, in order to bring special design expertise to the assessment of certain types of DAs.

Design Review Panels that are properly integrated in the assessment process are an effective tool helping to improve the quality of design. The quality of design has a bearing on many, but obviously not all, of the matters considered in the assessment of a DA.

The role of Design Review Panels in the assessment of applications is not changed by the fact that the application is to be determined by a Regional Planning Panel. It is generally more effective in terms of design quality outcomes and timeliness, however, if the Design Review Panel is convened at the pre-development application stage or early in the assessment phase.

3.4 Role of Independent Hearing and Assessment Panels

A number of councils have voluntarily established Independent Hearing and Assessment Panels (IHAPs). Their purpose is to provide an independent review of the DAs referred to the IHAP as well as an opportunity for people with an interest in DAs to raise and discuss issues in a public forum before a decision is made on the application.

The roles of IHAPs and the role of Regional Panels overlap in so much as Regional Panels provide the opportunity for people with an expressed interest in a DA to be properly heard. Regional Panels also bring independent expertise to the assessment process.

As such, applications to be determined by a Regional Panel are not to be referred to Independent Hearing and Assessment Panels (IHAPs) or any other similar type of public review and consideration of the regional application and/or assessment report. The only exception to this is IHAPs which are established under s.23 I(2) of the EP&A Act, where the applicable environmental planning instrument requires assessment by an IHAP.

Note: Section 23 I(2) of the EP&A Act requires councils to constitute IHAPS if an assessment by a panel is required by an environmental planning instrument.

3.5 Role of Planning Assessment panels (s.118 panels)

Under the provisions of section 118 of the EP&A Act the Minister is able to appoint Planning Assessment Panels to exercise all or any particular function or class of functions of the council as a consent authority or in relation to the making of environmental planning instruments.

The *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) includes transitional provisions to clarify that where a planning assessment panel has been established (s.118 panels), such panels may not exercise the council consent authority function that have been conferred on them where development is of a class to be determined by a Regional Panel. However, all other classes of applications will continue to be determined by the Planning Assessment Panel.

4. The Assessment Process

4.1 Pre-development application meetings

Pre-development application (pre-DA) meetings between applicants and assessment officers are commonly used to resolve the assessment requirements for applications before they are submitted to the consent authority.

For the purpose of anticipating future workloads, councils are however requested to notify the Panel Secretariat via email through the Regional Panel web-site when pre-DA meetings take place on proposed applications for regional development.

To avoid any apprehension of bias, it is not appropriate for determining bodies, such as Regional Panels or their members to participate in pre-DA meetings or any other meetings with applicants or objectors, other than at proper meetings of the Regional Panel in accordance with these procedures.

4.2 Representations to Regional Panel members

Regional Panel members approached by any person about a DA that has been made and is to be determined by the Regional Panel, should politely advise they are a member of the Regional Panel that is to determine the DA and, as such, it is not appropriate that they have discussions about the development.

Any persons approaching a Regional Panel member should be encouraged to make a written submission about the proposal to the council planning staff during the notification period, who will assess all submissions in the assessment report to be provided to the Regional Panel. Additionally, panel members could also advise that there will be the opportunity for the applicant and any persons who make a submission to address the Regional Panel at its meeting.

4.3 Making of development applications

Development applications, including staged DAs, are made in the ordinary manner to the council that would otherwise have had the function of determining the application. However, in addition to council's general requirements for lodging a DA, applicants should also be requested to submit 2 additional hard copies and 1 CD copy of the application and supporting material for referral to the Panel Secretariat.

The MD SEPP provides that a Regional Panel is to determine the separate DAs that form part of a staged DA if the estimated capital investment value of the whole of the development meets the threshold specified, or if any of the DAs involve designated development or subdivision to create more than 250 lots. This information on staged development must be included with the Stage 1 DA.

In the case of development located in two (2) or more local government areas, a separate DA must be lodged with the councils of each local government area. Additionally:

- each DA should only address that part of the development located on land in the relevant local government area (LGA)
- neighbouring councils may wish to consider setting up joint assessment procedures, if appropriate
- the Regional Panel will determine each DA separately (although the determinations may be made concurrently), and
- the council for each local government area is able to make a submission to the Regional Panel in accordance with Section 4.9 of the Operational Procedures, and register to address the Regional Panel at its meeting if it wishes to do so.

4.4 Notification to Panel Secretariat

Within seven (7) days of receiving a DA for regional development for which the Regional Panel is the determining body, the council is to notify the Panel Secretariat.

The notification is to be made via the Regional Panels web-site (www.jrpp.nsw.gov.au). The notification is to include all the information specified on the web-site page, which must be provided to the Panel Secretariat with the registration.

The Panel Secretariat will forward, via email, the referral notification to panel members as soon as the referral is accepted. The DA and relevant documents in CD form will be sent to panel members when received, or panel members advised of how these documents can be viewed through the Regional Panel's website. These documents are provided to allow panel members to become familiar with the development and background information, prior to their review of the assessment report and before attending the panel meeting to consider the application in public.

No decisions about the proposed development are to be made until the Regional Panel meeting to determine the application is held.

4.5 Public notification of development applications by council

Public notification of the application, and re-notification if required, is undertaken by the council staff in accordance with the requirements of the EP&A Act and Regulation, including the provisions of any development control plan the council has for the notification or advertising of DAs.

Public notification, including letters and advertisements, should contain appropriate statements to advise:

- that the {name of relevant} Council is the consent authority, and the {name of relevant} Region Joint Planning Panel has the function of determining the application
- that submissions made in respect of the application should be made to {name of relevant} Council, but will be provided to the Joint Regional Planning Panel and may be viewed by other persons with an interest in the application, and

- such other information as may be required for the particular application by the EP&A Act or Regulation.

4.6 Requests for additional information

It is the applicant's responsibility to provide adequate information and technical reports on potential impacts of the proposed development. The holding of a pre-DA meeting with council staff is usually the best way to ascertain council requirements for the lodgement of an application.

However the applicant may be requested by council staff to provide further information or reports to properly address all relevant aspects of the development, or to enable an assessment report to be completed.

Where council requests additional information, the council must inform the Panel Secretariat of the request. Council should also ensure that such a request:

- be in writing to the applicant, with a copy to the Panel Secretariat
- be made as early as possible after lodgement, or in the case of a request for amendments, as early as possible after the end of the exhibition period
- identifies all matters in the one request for information or amendments
- be for information that is essential for the assessment of the application and not for matters that can be dealt with by condition or after the application has been determined
- specify a clear and reasonable time frame (date) for the submission of the information or amendments to council, and
- indicate that should the applicant not meet the deadline, the council will proceed to assess the application in its current form and/or without the requested information.

Applicants are able to submit amended drawings prior to determination, to respond to council's concerns or issues raised in submissions. Applicants should ensure that they submit all amendments and any additional information together.

Applicants who believe requests for additional information are excessive should advise the council in writing indicating which part of the request is unreasonable and request council to finalise its assessment report for submission to the Regional Panel without the information.

If it becomes apparent after lodgement that significant additional information will be required to assess the application, the applicant may seek to withdraw the DA and re-lodge when all required documentation has been prepared.

4.7 Status reports

Council must advise the Panel Secretariat as soon as it becomes aware of any expected difficulties in assessing the application or if the assessment

report will not be completed within the timeframe indicated in the referral notification. The Panel Secretariat should be notified of the reasons for the delay so that panel members can be advised accordingly.

Councils will be required to provide the Panel Secretariat with a pro-forma Application Status Report for all applications that have been lodged for 70 days or more.

The Status Report will be required to detail the processing of the applications to date, and provide a commitment to a final reporting time frame. The council may be requested to provide further formal or informal updates as necessary, on the progress of the application and the resolution

Where a response or concurrence from public agencies is delaying the assessment of the application, the Panel Secretariat will seek assistance from the Project Delivery Unit of the Department of Planning to ensure a timely response is provided by the agency to council.

Where there is an on-going and unreasonable delay in the processing of an application, council may be requested by the Regional Panel to complete its assessment without further delay.

4.8 Assessment of the development application

The council that received the application (including applications for staged development and to modify a consent) is responsible through its staff for undertaking the assessment of the application in accordance with the provisions of the EP&A Act.

It is the council's responsibility to prepare a proper assessment report addressing all statutory requirements and properly considering all issues. Usually councils would rely on their own professional staff, however where they do not have the technical expertise required in-house, they may engage external expertise in the assessment of aspects or the whole DA. All costs associated with the preparation of the assessment report are to be covered from application fees, which are retained by the council.

The assessment report must clearly identify that the proposal meets the relevant requirements for Regional Development under the MD SEPP, and that the Regional Panel is therefore the consent authority responsible for determining the application.

The assessment report must include a recommendation on the proposed development. If the recommendation is for approval of the application the report must include recommended conditions of consent, or if it is for refusal include reasons for refusal based on the assessment in the report. The assessment report should clearly identify if there are any outstanding issues and steps to be taken to address such issues.

In considering an application a Regional Panel may request additional information to assist in its determination of the application. If the request requires additional assessment where expertise is not available within the council, the question of cost to prepare this assessment material will be determined by the Panel Secretariat after consultation with the Chairperson and the council's general manager.

- **State Environmental Planning Policy No 1**

Where a DA includes a non-compliance with a development standard as defined in the EP&A Act, an objection under State Environmental Planning Policy No 1—Development Standards (SEPP 1), is required. The assessment report submitted for the consideration of the Regional Panel must address the matters raised in the SEPP 1 objection, and provide an assessment against the provisions of SEPP 1.

The function of obtaining concurrence from the Director-General is a matter for the council. However where concurrence is assumed, then there are no additional procedural requirements for council.

The function of determining that a SEPP 1 objection is well founded, and forming the opinion that granting consent is consistent with the aims of SEPP 1, will be a matter for the Regional Panel as the consent authority, under clause 7 of SEPP 1.

- **Section 94 contributions**

The assessment report should address the matter of section 94 contributions in accordance with the council's adopted section 94 plans that are applicable to the proposed development. The Regional Panel cannot impose any additional section 94 charge that is not consistent with a section 94 plan adopted by the council.

4.9 Draft conditions of consent

Applicants should review any recommended conditions in the report, and provide any feedback on the workability of the conditions to the council officer within three days of the report being made available. This will enable the council officer to present any revised conditions to the Regional Panel at the Panel meeting.

Council should endeavour to ensure that conditions are:

- appropriate for and proportionate to the development
- not repetitive, and
- legally enforceable.

4.10 Panel briefings or site visits during the assessment phase

Prior to an assessment report for a DA being submitted to a Regional Panel to be determined, the Chairperson may agree to a site visit or a briefing meeting on the matter by the council staff, or by other persons undertaking the assessment.

The purpose of a briefing would be for the information of the Regional Panel, and would take the form of a presentation by council staff of the proposed development, its key elements and the planning controls that affect it (zoning and the like), with an overview of issues of concern arising through the assessment process or raised in submissions. In addition, the timing of the submission of the assessment report and tentative date for a panel meeting to consider the application may also be discussed.

The Regional Panel is not able to offer an opinion on the overall merits of the proposal or direct the persons undertaking the assessment in relation to the

content of any advice or recommendation provided in their report. However the Panel may identify issues that they expect to be addressed or clarified in the assessment report.

It is not mandatory that the Regional Panel be briefed prior to considering the matter. Where there is a briefing, it is preferable that it takes place during the public notification of the matter, or immediately following the close of the public notification period. The assessment of the application should not be delayed in order to conduct a briefing.

To avoid any apprehension of bias, no other parties can be involved in the briefing. However there may be situations where it is desirable for a panel to meet with key stakeholders to discuss unresolved issues and where it is appropriate to facilitate a resolution of outstanding issues.

In such circumstances these meetings are to be held in public, and the applicant and all persons who have made a submission are to be invited to attend, as observers.

In circumstances where the application attracts significant community interest, the Panel may consider holding a pre-determination meeting to hear submitters in a public forum prior to considering the application in the panel meeting. Other interested parties, such as the applicant are to be invited to attend.

4.11 Public meetings about the proposed development

Regional Panel members should avoid attending public meetings about a proposed development organised by members of the community. It would be difficult for Panel members to attend a public meeting and to avoid a perception that they have been influenced by the meeting.

Panel members should decline the invitation and advise the meeting organisers to make a submission to council and seek to address the Panel at its meeting, so that all members of the Panel can hear all concerns as part of the determination of the application.

All members of the Regional Panel are required to observe the "Joint Regional Planning Panels Code of Conduct" which requires determinations to be made impartially and based on merit.

4.12 Council representation to the Regional Panel

A council may make a submission on a DA that is to be determined by a Regional Panel during and up to seven (7) days before the Panel meeting. The applicant may consider it appropriate to provide a briefing to council prior to the council framing its submission to the Panel.

After the assessment report prepared by the council's planning officer has been completed and forwarded to the Panel Secretariat, it may be provided to the council to assist council in determining if it wishes to make its own submission to the Regional Panel.

The council's submission should not be prepared by persons involved in the assessment of the application, but may be prepared by another council officer, or alternatively the council may engage a consultant.

The council submission should be forwarded to the Panel Secretariat. A Regional Panel will give consideration to a council submission in its determination of the application. A council submission, however, is not a matter that must be specifically addressed in the assessment report or recommendations prepared by the council staff.

If council makes a submission it may also register to address the Regional Panel to express its view before the Panel makes a determination on the application. Individual Councillors can also register to speak to the Panel at its meeting.

Councillors who are also Panel Members have an independent role because they have been nominated by their council as its nominee to the Regional Panel. It is suggested that they should declare an interest in any DA for regional development that comes before their council and not participate in the deliberations or voting on the matter at the council (or council committee) meeting. They should also not remain in the council chamber during the council's deliberations.

4.13 Submission of assessment report to Panel Secretariat

The completed assessment report and recommendation, signed by the officer responsible for the report, is to be forwarded electronically (in Microsoft word format) to the Panel Secretariat immediately upon completion.

The assessment report is not required to be endorsed or presented to the council before being forwarded to the Panel Secretariat.

The following items are to be forwarded in a digital format to the Secretariat:

- assessment Report, any attachments and the Recommendations (including conditions)
- a copy of the DA, and Statement of Environmental Effects or Environmental Impact Statement along with any plans, drawings or other material submitted with the application if it has not previously been submitted to the Panel Secretariat, and
- copies of each submission (and a summary of submissions) received in respect of the application along with a table containing the names and addresses (preferably email addresses) of every person or body who made a submission. In the case of petitions, only the name and address of the head petitioner, if that person can be identified. A hard copy as well as a digital copy should be submitted.

Note: Copies of submissions are requested in order to enable the Regional Panel to consider the submissions for the purposes of s.79C of the EP&A Act and to enable the Panel Secretariat to notify persons who made submissions of the time, date and venue of the Panel meeting at which the relevant application will be considered. Councils should also provide the Panel Secretariat with copies of any late submissions received as soon as possible so that they can be provided to Panel members.

4.14 Re-zoning, master plans and voluntary planning agreements

If a proposed development requires the approval of a “re-zoning application”, it is the responsibility of the council to consider and process any such re-zoning proposal. Although an applicant may lodge a DA prior to the completion of the re-zoning process, it is recommended that the DA not be lodged until the re-zoning has been finalised. The Regional Panel will not determine the DA until the re-zoning process has been completed, i.e. the rezoning has been gazetted.

Where the provisions of an environmental planning instrument requires a master plan to be adopted by the council before the grant of a development consent, it is the responsibility of the council to adopt such master plan prior to providing the assessment report to the Regional Panel. In such circumstances, the Regional Panel will not determine the application until the master plan is adopted by the council.

If a Voluntary Planning Agreement (VPA) is proposed, it should be negotiated by council staff in the normal way. VPAs may only be entered into by the council and the assessment report would normally make reference to any VPA and its relationship to the proposed development.

4.15 Crown development applications

For Crown DAs with a CIV less than \$5 million, council remains the consent authority. However section 89(2) of the EP&A Act provides that where council has not determined the matter within the prescribed period, the DA may be referred to the relevant Regional Panel for determination.

Where a council seeks to refuse consent or impose a condition to which the applicant has not provided their agreement, the application is also to be referred to the Regional Panel under section 89(2) of the EP&A Act.

An application can only be referred to the Regional Panel after the prescribed period under clause 113B of the EP&A Regulation has been reached.

- The referral to the Panel Secretariat should take the form of a letter, with a request that under section 89(2) of the EP&A Act the matter be referred to the Regional Panel for determination. Sections 89(6) and (7) then set out additional procedures for the referral, including the requirement to notify the council in writing that the application has been referred.
- Following the receipt of the letter, the Panel Secretariat will review the documentation. If accepted, the applicant or council will be requested to lodge the referral on the notification page on the Regional Panel’s website.
- Where a report or other documentation has been prepared by council, this is to be provided to the Regional Panel for consideration. The Panel Secretariat will undertake a review of that report or otherwise prepare an assessment report for the Regional Panel.

5. The Determination Process

5.1 Panel meeting

The Panel meeting is a meeting where the Regional Panel meets in public to consider the DA that has been referred to it. The purpose of the meeting is for the Regional Panel to hear those who wish to express their view on the DA before the Panel makes a decision. Following hearing of public submissions, the Panel may proceed to determine the application or decide another course of action, where appropriate.

5.2 Meeting date and agenda

A regular schedule of proposed meeting dates is determined in advance by the Panel Secretariat in consultation with the Chairperson. The schedule is likely to be on a 2 or 3 week cycle depending on the particular region and the likely volume of applications. The meeting dates listed on the Regional Panels website are dates panel members have reserved for panel business. On these dates, there may be briefing meetings, and/or site visits, and/or panel meetings. If there are no items listed for a scheduled Panel meeting date, that meeting will not take place.

Additional meetings of a Regional Panel may be organised at the discretion of the Chairperson subject to the notice requirements discussed later. These additional dates will be posted on the website as soon as they become available.

The agenda for each meeting is approved by the Chairperson of the Regional Panel, who may consult with the General Managers (or their nominee) of the councils with items for the Regional Panel as necessary.

The council is to notify the Panel Secretariat of the revised date for completion of the assessment report as soon as it is aware of such delay and the reasons for the delay.

5.3 Meeting venue

The meeting venue is determined by the Chairperson in consultation with the General Managers (or their delegates) of the councils with items for the particular Regional Panel meeting having regard to:

- the location of the proposed developments to be considered at the Regional Panel meeting,
- the number of persons who have expressed an interest in the different matters to be considered at the Regional Panel meeting,
- the availability of a suitable venue and the accessibility of the proposed venue for those persons, and
- local considerations and logistics.

It is anticipated that meetings will be held at the offices of a council or at a community meeting room near where the development is proposed. The aims are to:

- maximise accessibility to people who have expressed an interest in the matters to be considered at the meeting,

- rotate meetings between different local government areas, and
- facilitate the open exchange of information between the Panel members and other parties.

In metropolitan areas, items from a number of different local government areas might be considered in the one meeting provided the venue is reasonably accessible to most interested parties.

In regional areas, where there are likely to be fewer applications to consider but over a wider area, the Chairperson may need to convene meetings in a number of locations to ensure they are accessible to the greatest number of people with an interest in the application being considered.

5.4 Notice of meeting

Notice of a Regional Panel meeting is to be given by the Panel Secretariat seven (7) days before the meeting. The notice is to be provided to the Regional Panel members, the General Managers (or their nominee) of the Councils in that region, every person who made a submission to the council in respect of an item to be considered at the meeting and the applicants for those items. The notice is also to be included on the Regional Panels website and on the web-site of the councils with items to be considered at the meeting. The notice is to include details of:

- the time and date of the meeting;
- the venue for the meeting;
- the development applications;
- the availability of agenda and business papers, which will include the assessment report and recommendations; and
- other matters to be considered at the meeting.

5.5 Distribution of meeting agenda and business papers

The meeting agenda, business papers/assessment reports and attachments including any representations made by councils are to be distributed to members of the Regional Panel by the Panel Secretariat no less than seven (7) working days prior to the meeting.

A hard copy of the agenda and business papers are to be posted via overnight express post to Panel members who will have a decision making role on the DA.

5.6 Site visits

Formal visits by the Regional Panel to the site of a DAs being considered may be arranged prior to the meeting at the discretion of the Chairperson. The Chairperson will also invite the council assessment officer and other persons engaged in the assessment of the matter to attend a site visit. The Regional Panel may conduct the site visit on the same day as the Regional Panel meeting or at some other time, determined on a "case by case" basis with regard to circumstances such as location and available time.

Other parties to the matter, including the applicant and persons who made submissions on the application, may also be invited to attend a site visit provided all parties are invited. Whether other parties are invited is at the

discretion of the Chairperson, having regard to the number of parties involved and other practical considerations.

In deciding to conduct a site visit, the Chairperson should take into consideration the availability of all members of the Regional Panel and any other persons also invited to attend the site visit.

Entry on to any private land may only take place with the express permission of the owner of the land, and it is the responsibility of the council to seek owners consent when required.

At site visits, Regional Panel members may identify issues for which they require clarification or further information. However Panel members should not make any comment that would indicate pre-judgement of the application.

5.7 Quorum for a Regional Panel meeting

A quorum for a meeting of a Regional Panel is a majority of its members (including the Chairperson).

5.8 The Regional Panel meeting

Regional Panel meetings are to be conducted in public, unless otherwise directed by the Minister, or unless the Chairperson is of the opinion there are justifiable reasons to conduct any part of the meeting in closed session.

Justifiable reasons to conduct any part of the meeting in closed session may include the Regional Panel's consideration of:

1. commercial information of a confidential nature that would, if disclosed:
 - a) prejudice the commercial position of the person who supplied it, or
 - b) reveal a trade secret, or
2. advice concerning litigation, or Regional Panel advice that would otherwise be privileged from production in legal proceedings or for other purposes on the ground of legal professional privilege, or
3. information concerning the nature and location of a place or an item of Aboriginal significance on community land, or
4. a potential conflict of interest of a member, or
5. to transact business outside of a formal meeting as provided in Section 5.11 of these Procedures.

Before the Chairperson decides to conduct any part of a Regional Panel meeting in closed session, the Chairperson may allow members of the public to make representations as to whether that part of the meeting should be closed.

Where a Chairperson decides to close any part of a Regional Panel meeting, the reasons for closing that part of the meeting must be recorded in the minutes of the meeting.

The Chairperson should where possible, seek to create a meeting environment that does not discourage or inhibit persons that wish to make a presentation to the Panel meeting.

In consultation with the council General Manager, and all Regional Panel members, the Chairperson may also determine that is unnecessary to hold a meeting in public to consider an application, where that application has received no submissions and/or there are no parties requesting wishing to present to the Panel meeting. In such cases the council report and recommendation must be made available to all parties 7 days prior to the application being determined, and the procedures of Section 5.10 below are to be followed.

5.9 Presentations at Regional Panel meeting

The Chairperson will determine the order of presentations to the panel. The panel members may ask questions of those making presentations. The amount of time afforded to persons being heard will be at the discretion of the Chairperson.

(a) Presentation by the applicant

Prior to considering an item, the applicant will be given the opportunity to outline the proposal and, with the approval of the Chairperson, respond where appropriate to any issues raised during public notification or the assessment of the application.

(b) Presentation by persons or bodies who made submissions

Persons (or persons on behalf of bodies) who made a submission on a matter before the Regional Panel may request to address the Panel. Requests can be made to the Panel Secretariat prior to the meeting.

Where a large group of people have common issues, the Chairperson may ask that a spokesperson be appointed to speak on behalf of the group. The Chairperson will seek, where practicable, to ensure that all groups or individuals who request to address the Panel are heard.

(c) Presentation by persons or bodies that have not made a submission

The Chairperson has the discretion to allow any member of the public to address the Regional Panel, even if they have not made a submission or register to speak in relation to the proposed development. Considerations may include the number of persons that made submissions and have requested to address the meeting and the available time.

(d) Presentation by person responsible for assessment

A person responsible for the assessment report and recommendations is to be present at the Regional Panel meeting during consideration of that item. Other technical experts from the council as appropriate may also be present having regard to the nature of the matter before the Regional Panel (e.g. traffic engineers and the like).

The panel may request assistance from that person or persons clarifying issues regarding the assessment or matters raised by the applicant or persons who made submission.

In attending the Panel meeting the person responsible for preparing the assessment report should inform the Chairperson of any “late” submissions received, or any other matters arising, and of any issues raised which may not have been addressed in the Assessment report.

Note: A person responsible for the assessment report can be either the person who prepared the assessment report, or a person in a supervisory position who accepts responsibility for the report and its recommendations.

(e) Presentation by a panel appointed expert

For the purpose of determining a DA, or an application to modify a development consent, a Regional Panel may obtain independent assessment reports, advice and assistance as the panel thinks fit, particularly in relation to complex technical matters. This would be in addition to any assessment report or other information provided by the relevant council in assessing the application. Depending on the circumstances, the expert may submit a report with recommendations directly to the Regional Panel. In addition, the expert may be invited to present the outcomes of their report at the panel meeting.

5.10 Transaction of business outside formal panel meetings

A Regional Panel can transact any of its business, if it thinks fit, at a meeting at which members participate by electronic means including telephone and closed circuit television. The occurrence of such meetings is likely to be limited to extraordinary circumstances, and is likely to be in order to conclude business transacted substantially in a public meeting.

Clause 268I of the EP&A Regulation provides that:

1. A planning body (which includes a Regional Panel) may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the planning body for the matter for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the planning body.
2. The planning body may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
3. For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),The chairperson and each member of the planning body have the same voting rights as they have at an ordinary meeting of the planning body.
4. A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the planning body.
5. Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

5.11 Obligation to consult council – if adverse financial impacts

A Regional Panel must not make a decision that will have, or that might reasonably be expected to have a significantly adverse financial impact on a council until after it has consulted with the council. These costs may be associated with the need for additional infrastructure or services.

The consultation may be in writing, with the council being given a specified time to respond in writing. Where a meeting with the General Manager (or nominee) is to be held to discuss the matter, all panel members should be present and minutes kept of the meeting and its outcomes.

5.12 Adjourning and deferring the panel meeting

A Panel may adjourn the meeting after hearing from parties to confer among themselves before reconvening to make their decision. A Panel may also decide to defer its determination of the matter for a subsequent meeting.

If there are matters raised by submitters in the panel meeting that were not addressed in the assessment report, these will be recorded in the minutes of the Panel meeting, and the Panel may refer the matter to the Council's Officer for a supplementary report.

The Regional Panel may engage experts to obtain independent advice and assistance as the panel thinks fit, to ensure adequate and appropriate information is available for consideration in making a determination.

A decision may be deferred for any reason including the obtaining of additional information or advice. In these circumstances, the decision may be made at a subsequent meeting; including a meeting conducted by the circulation of papers or by electronic means in accordance with clause 2681 of the EP&A Regulation.

Where possible, the Chairperson should inform the meeting of the reason(s) for the deferral of a decision and provide advice of proposed further meeting(s) of the Regional Panel to determine the application, including whether this may be by electronic means.

5.13 Making the determination

After hearing from parties who requested to make a verbal submission, the Panel is to make its decision in an open forum and by consensus where possible.

Where a decision cannot be made by consensus, the decision of the Regional Panel is to be made by majority vote. The presiding member will have a second or casting vote if required because of an equality of votes.

Where the determination is not consistent with the recommendation by the relevant council officers in the assessment report, the Regional Panel is required to provide reasons for its decision, which are to be recorded in the minutes of the meeting.

If the Regional Panel resolves to approve an application that is recommended for refusal, the Panel may seek a further report from the council's planning officer providing recommended conditions of consent.

The decision of the Regional Panel is not subject to a “Rescission Motion” as in local government.

Section 82A reviews are not available in respect of determinations by Regional Panels.

An applicant who is dissatisfied with the Regional Panel’s determination of an application may appeal to the Land and Environment Court within 12 months as provided in the EP&A Act.

5.14 Crown Development Applications

A consent authority for Crown Development cannot refuse its consent to a Crown DA, except with the approval of the Minister of Planning, or impose a condition on its consent to a Crown DA, except with the approval of the applicant or the Minister of Planning.

This requirement applies to Crown Development that is to be considered by a Regional Panel, whether the application is for ‘Regional Development’, in terms of clause 13B(1)(c) of the MD SEPP, or where it is an application referred to the Panel by an applicant or the council under section 89(2) of the EP&A Act.

Where the Regional Panel wishes to refuse an application, impose conditions not agreed to by the applicant, or where a Regional Panel fails to determine the DA within the prescribed period, the applicant or the Regional Panel may refer the DA to the Minister.

In these instances a further report will be prepared by the Department for the Minister’s consideration.

5.15 Recording of meeting minutes

The Chairperson is responsible for ensuring that full and accurate minutes are kept of the proceedings of each meeting of a Regional Panel.

A copy of the unconfirmed minutes will be provided to all panel members who participated in the Regional Panel meeting. Panel members may submit any proposed corrections to the unconfirmed minutes to the Panel Secretariat for confirmation by the Chairperson.

When the minutes have been confirmed and endorsed by the Chairperson of that meeting, the confirmed minutes will be placed on the Regional Panel website and provided to council to issue the Notice of Determination.

The confirmed minutes must be available within five working days of the Regional Panel meeting which determined the application. The minutes must record:

- (a) the opening and closing times of the meeting,
- (b) the names of State members (or their alternates) present at the meeting,
- (c) the names of the council members (or their alternates) in respect of each item,

- (d) any disclosure of interest made by a member and the reason for that disclosure of interest and whether the member making the disclosure participated in the discussion or determination of the matter,
- (e) the names of each person heard by the Regional Panel in respect of an item,
- (f) the decision of the Regional Panel for each item. Where the determination is not consistent with the recommendations by the relevant council officers, the following must be provided:
 - (i) Reasons for the decision, and
 - (ii) Any conditions of consent or changes to the recommended conditions of approval, and
- (g) the names of: each member who voted for; and of each member who voted against, where the decision is not unanimous.

The Panel Secretariat with assistance from the relevant council is responsible for arranging for the taking of meeting minutes and for keeping records of the Regional Panels.

5.16 Delegation to council to determine applications

The provisions of the EP&A Act allow for Regional Panels to delegate the determination of applications to councils. Delegation may be for development in a specified area, for a class of application or be made on case by case basis.

In situations where the determination may be delegated, councils are still required to:

- register the application on the Regional Panel website,
- inform and update the Panel Secretariat on the processing of the application as requested, and
- provide a copy of all determination documents, including the assessment report and Notice of Determination to the Panel Secretariat.

A council may be requested by the Chair of the relevant Regional Panel not to exercise any delegation in certain circumstances for any reason.

Any determination made by council under delegation remains a decision of the Regional Panel.

6. Post Meeting Procedures

6.1 Issuing the notice of determination

The notice of determination is issued by the council that received the DA following the decision of the Regional Panel and in accordance with the EP&A Act and Regulation and the council's normal procedures.

Enquiries about the determination should be dealt with by the council planning officer responsible for the assessment report.

6.2 Monitoring of and compliance with conditions of approval

The council as the consent authority will continue to be responsible for the monitoring of, and enforcing compliance with, any conditions of the development consent.

Where an application has been approved subject to a 'deferred commencement' condition under section 80(3) of the EP&A Act, the council is responsible for determining whether the requirements of the condition have been met, however under clause 123E(2) of the EP&A Regulation is required to advise the Chair of the Regional Panel in writing.

6.3 Appeals against determination of Regional Panel.

An applicant who is dissatisfied with the determination of an application may appeal to the Land and Environment Court within 12 months as provided in the EP&A Act.

Appeals against the determination of a Regional Panel are to be defended and managed by the council that received the DA as though the determination was made by the council.

Early advice of any appeals against a determination made by a Regional Panel should be provided to the Panel Secretariat together with details about the council's proposed defence of such appeal.

6.4 Appeals against determination where council is applicant

The EP&A Regulation provide that where a council is the applicant and makes an appeal or otherwise commences Land and Environment Court proceedings concerning a Regional Panel determination in respect of the Council's application, the Regional Panel will be the relevant respondent in such proceedings.

**REGIONAL DEVELOPMENT
APPLICATION STATUS REPORT**

Please return completed report to the Panel
Secretariat (rppenquiry@rpp.nsw.gov.au) by:

____/____/____

Have all required fees been received?

Yes No

Have all required land owners consent been
received?

Yes No

Is the development permissible?

Yes No

Is an LEP amendment for rezoning or a
Masterplan required?

Yes No

Is the proposal the subject to a Voluntary
Planning Agreement or draft agreement

Yes No

Date lodged at Council:

____/____/____

Council DA No.:

Date registered with Panel Secretariat:

____/____/____

Panel Secretariat Ref No.:

Region:

SYE SYW HCC WES NTH STH

Type of Development:

If there were any pre-DA or other briefing meetings held, provide dates, attendees and list issues discussed.

____/____/____

-

-

-

If there were any requests for further
information, what date/s was the information
requested and when was a response received?

Requested

____/____/____

Received

____/____/____

Adequate

Yes No

____/____/____

____/____/____

Yes No

Provide a brief summary of information requested and received. If inadequate, what follow-up action has been
taken?

-

-

-

-

-

-

-

-

When was the notification period?

Or

When will the application be notified?

____/____/____ to ____/____/____

If notification period has closed, how many submissions were received?

_____ (_____ objections)

If comment, concurrence or General Terms of Approval are required from any State agency, list those agencies, when request was issued and received.

Agency

Requested

Received

Agency	Requested	Received
_____	____/____/____	____/____/____
_____	____/____/____	____/____/____
_____	____/____/____	____/____/____
_____	____/____/____	____/____/____

Have all required referrals been received?

Yes

No

For each agency yet to respond, please provide agency contact and anticipated date of response. Please provide details of why response is not received. If there are unresolved issues, please outline the issues and the process that Council has undertaken to resolve the issues.

-
-
-
-
-
-
-
-

Is the proposal Crown Development

Yes

No

If yes, which agency?

When will/ did the prescribed period end?

____/____/____

If the prescribed period has ended, please provide any details on unresolved issues.

-
-
-

Are unresolved issues expected to be resolved?

-
-
-
-

Please indicate the key reason/s for the delay of the assessment report:

- | | | |
|---|------------------------------|-----------------------------|
| Rezoning / permissibility | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Inadequate information | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Notification | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| State agency referral | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Crown development | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Voluntary Planning Agreement - or draft | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Major design issues | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Other (please specify) _____ | <input type="checkbox"/> Yes | |

Please provide details on matter that may delay the progress of the assessment report and any outstanding issues.

Date Council is committed to submitting the completed assessment report to the Panel Secretariat

____ / ____ / ____

Name

E-mail

Position

Telephone

Date

 / / 2010



Joint Regional Planning Panels Code of Conduct

APRIL 2010



Joint regional planning panels code of conduct
© State of New South Wales through the NSW Department of Planning
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JOINT REGIONAL PLANNING PANELS

Code of Conduct

Introduction

This Code of Conduct (Code) applies to all members of Joint Regional Planning Panels (Regional Panels), including:

- State appointed members
- council nominees
- alternates acting for Regional Panel members.

The Code outlines the standards of conduct expected of Regional Panel members. It is the personal responsibility of each Regional Panel member to comply with this Code.

The Code will be kept under review and will be subject to changes that may be required to reflect the experience of the implementation and operation of the Regional Panels.

Purpose of the Code

This Code sets out the minimum requirements of behaviour for Regional Panel members in carrying out their functions. The Code has been developed to assist Regional Panel members:

- a) understand the standards of conduct that are expected of you
- b) enable you to act honestly, ethically and responsibly
- c) enable you to exercise a reasonable degree of care and diligence; and
- d) act in a way that enhances public confidence in the integrity of role of the Regional Panels in the planning system.

Application of the Model Code of Conduct for Local Councils in NSW (Model Code)

Councils are required under the *Local Government Act 1993* to adopt a Code of Conduct. Such Codes must incorporate the provisions of the 'Model Code' prescribed under the *Local Government (General) Regulation 2005*.

The Council's adopted Code applies to, amongst others, councillors, the General Manager and Council staff. The Model Code does not apply to Regional Panel members. However parts of the Model Code have been used to assist in the development of this Code, along with other relevant Codes of Conduct applying to members of State Boards and other statutory bodies.

It is recognised that councillors and council staff may undertake functions as a member of a Regional Panel separate to their ordinary functions as a councillor or member of council staff. When exercising functions as a Regional Panel member councillors and council staff must ensure that they comply with this Code.

Council staff responsible for dealing with development matters under the *Environmental Planning and Assessment Act 1979* (EP&A Act), preparing assessment reports and/or otherwise assisting a Regional Panel in the exercise of its functions are not subject to this Code.

Other obligations

Regional Panel members are subject to the *Independent Commission Against Corruption Act 1988* and the *Ombudsman Act 1974*.

Code of Conduct

1. Key principles

Integrity

- 1.1 You must not place yourself under any financial or other obligation to any individual or organisation that might be reasonably thought to influence you in the exercise of your functions as a Regional Panel member.

Leadership

- 1.2 You have a duty to promote and support the key principles of this Code by demonstrating leadership and maintaining and strengthening the public's trust and confidence in Regional Panels and their role in the planning system.

Selflessness

- 1.3 You have a duty to make decisions in the public interest. You must not make a decision or take action that causes or results in you obtaining:
- a financial benefit (including avoiding a financial loss)
 - other benefits for yourself, your family, friends or business interests.

Impartiality

- 1.4 You should make decisions on merit and in accordance with your statutory obligations when carrying out your functions as a Regional Panel member.

Accountability

- 1.5 You are accountable to the public for your decisions and actions and should consider issues on their merits, taking into account the views of others.

Openness

- 1.6 You have a duty to be open as possible about your decisions and actions.

Honesty

- 1.7 You have a duty to act honestly and in good faith for the proper purpose.

Respect

- 1.8 You must treat others with respect at all times.

2. General conduct obligations

General conduct

- 2.1 You must not conduct yourself in carrying out your functions as a Regional Panel member in a manner that is likely to bring the Regional Panel into disrepute. Specifically, you must not act in a way that:
- a) contravenes the EP&A Act¹
 - b) is improper or unethical
 - c) is an abuse of power
 - d) causes, comprises or involves intimidation, harassment or verbal abuse
 - e) causes, comprises or involves discrimination, disadvantage or adverse treatment.
- 2.2 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions as a Regional Panel member, having regard to the statutory obligations under the EP&A Act.

¹ A reference to the *Environmental Planning and Assessment Act 1979* (EP&A Act) includes a reference to the *Environmental Planning and Assessment Regulation 2000*.

Fairness and equity

- 2.3 You must consider issues consistently, promptly, conscientiously and fairly.
- 2.4 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.

Making decisions and taking actions

- 2.5 You must ensure that decisions and actions are reasonable, fair and for the proper purpose and that parties involved in the development process are dealt with fairly.
- 2.6 You must ensure that no action, statement or communication between yourself and others (such as applicants, objectors and councillors) conveys any suggestion of willingness to provide improper concessions or preferential treatment.
- 2.7 You should attend all meetings of the Regional Panel as far as is possible, and allow the necessary time to prepare for meetings.

3. Conflicts of interests

General

- 3.1 A conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your functions as a Regional Panel member.
- 3.2 You must avoid or appropriately manage any conflicts of interests. The onus is on you to identify a conflict of interest and take appropriate action.
- 3.3 Any conflicts of interests must be managed to up-hold the probity of Regional Panel decision making. When considering whether or not you have a conflict of interests you should consider how others would view your situation.
- 3.4 Private interests can be of two types: pecuniary or non-pecuniary.

Disclosure of pecuniary interests

- 3.5 A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person².
- 3.6 A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision that person might make³.
- 3.7 A member has a pecuniary interest in a matter if the pecuniary interest is the interest of the member, the member's spouse or de facto partner or a relative⁴ of

² The term 'pecuniary interests' adopted by this Code is based on the definition of that term in s.442(1) of the *Local Government Act 1993*.

³ See s.442(2) *Local Government Act 1993* or if it is an interest referred to in s.448(a), (b), (e) or (g) of the *Local Government Act 1993*.

⁴ The term 'relative' adopted by this Code is the definition of that term under s 3 of the *Local Government Act 1993*.

the member, or a partner or employer of the member, or a company or other body of which the member, or a nominee, partner or employer of the member, is a member.

- 3.8 The obligation on Regional Panel members with respect to pecuniary interests are set out in clause 12 of Schedule 4 of the EP&A Act (attached at **Appendix A**). All Regional Panel members must comply with the requirements set out in this provision. In particular:
- (a) If a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of a Regional Panel and the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter the member must, as soon as possible after the relevant facts have come to the member's attention disclose the nature of the interest at a meeting of the regional panel.
 - (b) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Regional Panel otherwise determines:
 - be present during any deliberation of the panel with respect to the matter, or
 - take part in any decision of the panel with respect to the matter.

- 3.9 As a member of a Government Board or Committee, all Regional Panel members are also required to adhere to the Department of Premier and Cabinet's Guidelines '*Conduct Guidelines for Members of NSW Government Boards and Committees*', ("the DPC Guidelines").

In accordance with the DPC Guidelines, Regional Panel members are required to disclose interests which include positions and pecuniary interests in corporations, partnerships or other businesses that may be relevant to the activities of the Regional Panel.

These declarations will be required to be made by Panel members on an annual basis.

Disclosure of non-pecuniary interests

- 3.10 A non-pecuniary interest is a private or personal interest that a person has that may, for example, be based on a family or personal relationship, membership of an association, society or trade union or involvement or interest in an activity which may include an interest of a financial nature⁵.
- 3.11 You should consider possible non-pecuniary interests that may arise while carrying out your duties as a Regional Panel member. Where possible, the source of potential conflict should be removed.
- 3.12 However, where this is not possible, if a member has a non pecuniary interest in a matter and the interest appears to raise a conflict with the proper performance of the member's duties, the member must follow the procedures set out in clause 12 of Schedule 4 of the EP&A Act in the same manner as if the interest was a pecuniary interest.

⁵ The term 'non-pecuniary interest' as adopted by this Code is based on the meaning of that term under the Local Government Model Code of Conduct.

Register of declarations of interest

- 3.13 Where any pecuniary or non-pecuniary interest in a matter before the Regional Panel has been disclosed by a member, whether declared before or at the commencement of the Panel meeting, it will be noted in the minutes of the relevant Panel meeting even when the member is not in attendance.

The minutes of all Panel meetings will be made available on the Regional Panel website.

- 3.14 A register of the annual declarations made by Regional Panel members under clause 3.9 of this Code and in accordance with the DPC Guidelines, will be maintained by the Panel Secretariat.

The register of declarations, including all other declarations made by Panel members will be available for inspection at the Panel Secretariat during normal office hours.

Political Donations

- 3.15 Regional Panel members should be aware that political contributions or donations may give rise to a pecuniary or non-pecuniary interest. It is the responsibility of Regional Panel members to determine in each instance whether such an interest arises and whether the provisions of this Code and clause 12 of Schedule 4 of the EP&A Act applies.

- 3.16 Where a Regional Panel member makes a disclosure under clause 12(1)(b) of Schedule 4 to the EP&A Act with respect to an interest which arises because of a political donation, the regional panel is required to take this into consideration in determining under clause 12(6) whether it is appropriate for the member to be present during any deliberations or take part in any decision with respect to the matter.

Other business or employment

- 3.17 You must ensure that any outside employment or business you engage in will not:
- a) conflict with your functions as a Regional Panel member
 - b) involve using confidential information or resources obtained through your role as a Regional Panel member
 - c) discredit or disadvantage the Regional Panel.

Personal dealings with council

- 3.15 You may have reason to have private dealings with a council that is within the Regional Panel region where you are a Regional Panel member (for example as a ratepayer). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your role as a Regional Panel member. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

4. Personal benefit

Gifts and benefits

4.1 You must not:

- a) seek or accept a bribe or other improper inducement
- b) seek gifts or benefits of any kind
- c) accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty
- d) accept any gift or benefit of more than token value
- e) accept an offer of money, regardless of the amount.

4.2 Generally speaking token gifts and benefits include:

- a) free or subsidised meals, beverages or refreshments provided in conjunction with:
 - the discussion of matters before the Regional Panel
 - conferences
 - social functions organised by groups.
- b) invitations to and attendance at local social, cultural and sporting events.
- c) gifts of single bottles or reasonably priced alcohol at end of year functions and public occasions.
- d) ties, scarves, coasters, tie pins, diaries, chocolates or flowers.

4.3 Gifts and tokens that have more than a token value include, but are not limited to, tickets to major sporting events, corporate hospitality at a corporate facility at major sporting events, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel.

4.4 As a general rule, any gift from an applicant, objector or associate of an applicant or objector in relation to a matter to be determined by a Regional Panel would fall into a category referred to in paragraph 4.1(c) above and therefore should not be accepted.

4.5 The Panel Secretariat is to maintain a Register of Gifts for each Regional Panel to ensure the receipt and disposal of gifts is conducted in an open and transparent manner. When offered a gift or benefit Regional Panel members must inform the Panel Secretariat of the following information for the purposes of making a recording on the Register of Gifts:

- the person who made the offer and the date on which the offer was made
- whether or not you accepted the gift/benefit
- whether the gift or benefit was allocated to another person or body, and
- the value of the gift or benefit.

You should also advise the Regional Panel Chair of any such notification to the Panel Secretariat.

5. Relationship between Regional Panel members, council and council staff

Obligations of Regional Panel members

5.1 Section 23N of the EP&A Act provides that a Regional Panel is entitled to:

- a) to have access to, and to make copies of and take extracts from records of a council relevant to the exercise of the Regional Panels' functions, and
- b) to the use of staff and facilities of a relevant council in order to exercise the Regional Panels' functions.

All such requests for assistance will be made by the Regional Panel Chair to the General Manager (or such other staff member as nominated by the General Manager).

5.2 You have a responsibility to promote and support an effective and co-operative working relationship with the council, General Manager and council staff and contractors.

Inappropriate interactions

5.3 You must not engage in inappropriate interactions when exercising your functions as a Regional Panel member.

5.4 In relation to council staff⁶ you must not:

- a) approach, make requests of, make enquiries or issue instructions to council staff other than through official channels and in accordance with this Code
- b) be overbearing or threatening to council staff
- c) make personal attacks on council staff in a public forum
- d) direct or pressure council staff in the performance of their work or recommendations they make
- e) influence or attempt to influence staff in the preparation of assessment reports or other information to be submitted to the Regional Panel.

5.5 The 'Procedures for the Operation of Joint Regional Planning Panels' in section 4.7, recognises that there may be circumstances where it is appropriate for panel members to attend meetings with applicants, objectors or other third parties with an interest in a proposed development. However, you:

- a) must not hold private meetings, briefings or discussions in respect of the matter; and
- b) must not attend site visits unless they have been formally arranged by or on behalf of the Panel Chair.

Where formal Panel meetings, briefings or site visits occur:

- a) you should not express any views that would indicate pre-judgement of the matter; and
- b) a written record of any discussion with, or presentation by the applicant or members of the public, will be made.

⁶ A reference in this clause to council 'staff' includes a reference to council contractors or consultants.

Council staff - avoiding the potential for a conflict of duties

- 5.6 In selecting its members to a Regional Panel, council should have regard to the conflict of duties that may be created for a person nominated to the Regional Panel if they were in any way responsible for or involved in the assessment and recommendation of a matter to be determined by the Regional Panel.

Should a council nominate staff to be members of a Regional Panel, the following provisions of the Code of Conduct must be taken into consideration to ensure any potential conflict of duties between being a council staff member and fulfilling the obligations of a Panel member are avoided.

- 5.7 Council employees (including general managers and other senior staff) who are nominated to sit as a member of the Regional Panel should carefully consider what measures must be put in place to ensure they will be able to comply with the requirements of this Code.⁷
- 5.8 A conflict of duties may arise for Council employees (including general managers and other senior staff) who are nominated to sit as a member of the Regional Panel. A conflict of duties is a conflict between competing and incompatible public duties. For example, a conflict of duties arises where public officials hold more than one official position which requires them to address competing objectives or interests. Conflicts of duties should be avoided in most circumstances. Therefore Council employees who are nominated to sit on a Regional Panel must ensure that appropriate measures are in place to ensure potential conflicts are appropriately managed.
- 5.9 Council employees who are nominated to sit as Regional Panel members must also seek to avoid situations in which their interests as a Council employee might reasonably be perceived by members of the community to conflict with the impartial fulfilment of their functions as a Regional Panel member either because:
- a) they have been directly or indirectly involved in the preparation of the assessment report for the Regional Panel, or
 - b) they adopt a view, without providing independent reasoning, that is perceived to be consistent with the view of the elected council in its submission to the Regional Panel.

6. Relationship between Regional Panel members and others

- 6.1 You must adhere to the Key Principles and General Conduct Obligations contained in this Code when dealing with others, including council staff, councillors, Department of Planning staff and the Panel Secretariat.

7. Protecting and using information

- 7.1 Information must be handled in accordance with section 148 of the EP&A Act.
- 7.2 In addition to the obligations under section 148 of the EP&A Act you must:
- a) protect confidential information
 - b) only release confidential information if you have authority to do so
 - c) only use confidential information for the purpose it is intended to be used

⁷ In particular Part 5 of the Code.

-
- d) not use confidential information gained through your position as a Regional Panel member for the purpose of securing a private benefit for yourself or for any other person
 - e) not use confidential information with the intention to cause harm or detriment to the Regional Panel or any other person or body
 - f) not disclose any information discussed during a confidential session of a Regional Panel.

7.3 When dealing with personal information you must comply with the *Privacy and Personal Information Protection Act 1998*.

8. Use of public resources

8.1 You may be provided with equipment and other resources to perform Regional Panel functions. All such resources are to be used only for Regional Panel purposes and in accordance with any guidelines or rules about the use of those resources.

9. Public Comment/Media

9.1 The Regional Panel Chair is responsible for speaking to the media on behalf of the Regional Panel, to allow its decisions to be properly represented and communicated. The Chair can authorise another Regional Panel member to speak to the media on behalf of the Regional Panel at any time. Other non-authorised members can speak to the media about Regional Panel matters however, in doing so, this does not represent the views of the Regional Panel.

10. Reporting breaches

10.1 Regional Panel members are required to report suspected breaches of the Code to the Regional Panel Chair. If the suspected breach is by the Regional Panel Chair, you should report the suspected breach to the member of the Planning Assessment Commission (PAC) nominated for this purpose. If the Regional Panel Chair suspects a breach of the Code s/he should report the suspected breach to the nominated PAC member.

10.2 The Regional Panel Chair or nominated PAC member, as the case may be, may take such steps as s/he thinks appropriate to investigate and take action in respect of the alleged breach.

10.3 A person who is alleged to have breached the Code must be given:

- a) the full particulars of the alleged breach⁸;
- b) an opportunity to respond to the allegations; and
- c) the right to have a legal or other representative present during any meetings/discussions in respect of the matter.

10.4 Serious breaches of the Code may be referred to the Minister in respect of State Members or the relevant council with respect to council nominees. Proven breaches of the Code may warrant removal from office (see Section 12 below).

⁸ These particulars should not include the details of the person who made the allegation.

11. Reporting possible corrupt conduct

- 11.1 The *Protected Disclosures Act 1994* provides protection to public officials who voluntarily report suspected corrupt conduct. Regional Panel members can make reports concerning suspected corrupt conduct⁹ to the Regional Panel Chair.¹⁰ The Regional Panel Chair is under a duty to report to the Independent Commission Against Corruption any matter that they suspect on reasonable grounds concerns or may concern corrupt conduct¹¹.
- 11.2 Regional Panel members can also report directly to the following investigative bodies. Disclosures concerning:
- Corrupt conduct should be made to the Independent Commission Against Corruption¹²
 - Maladministration¹³ should be made to the NSW Ombudsman
 - Serious and substantial waste of public money should be made to the NSW Auditor General.

12. Removal from office

- 12.1 The Minister may remove State members from office at any time and without notice.
- 12.2 The relevant council may remove its nominee/s from office at any time and without notice. If so, the Council must notify the Panel Secretariat.
- 12.3 The Minister may remove any member if the Independent Commission Against Corruption recommends that consideration be given to the removal of the member because of corrupt conduct by the Member.

13. Complaint handling

- 13.1 Complaints against Regional Panel members are to be handled in accordance with the Joint Regional Planning Panels Complaints Handling Policy.

⁹ Corrupt conduct has the meaning given to that term under the *Independent Commission Against Corruption Act 1988* ('ICAC Act').

¹⁰ or nominated PAC member if the suspected conduct is by the Regional Panel Chair or the Chair is reporting suspected corrupt conduct.

¹¹ Section 11, ICAC Act.

¹² Section 10 of the ICAC Act allows any person to make a complaint to the Independent Commission Against Corruption about a matter that concerns or may concern corrupt conduct.

¹³ Maladministration is defined in s 11(2) of the *Protected Disclosures Act 1994*

Appendix A

Extract from Schedule 4 of the *Environmental Planning and Assessment Act 1979*

12 Disclosure of pecuniary interests

- (1) If:
- (a) a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of the regional panel, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the regional panel.
- (2) A member has a pecuniary interest in a matter if the pecuniary interest is the interest of:
- (a) the member, or
 - (b) the member's spouse or de facto partner or a relative of the member, or a partner or employer of the member, or
 - (c) a company or other body of which the member, or a nominee, partner or employer of the member, is a member.
- (3) However, a member is not taken to have a pecuniary interest in a matter as referred to in subclause (2) (b) or (c):
- (a) if the member is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
 - (b) just because the member is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or
 - (c) just because the member is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the member has no beneficial interest in any shares of the company or body.
- (4) A disclosure by a member at a meeting of the regional panel that the member, or a spouse, de facto partner, relative, partner or employer of the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (5) Particulars of any disclosure made under this clause must be recorded by the regional panel in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the regional panel.
- (6) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the regional panel otherwise determines:
- (a) be present during any deliberation of the panel with respect to the matter, or
 - (b) take part in any decision of the panel with respect to the matter.

-
- (7) For the purposes of the making of a determination by the regional panel under subclause (6), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the panel for the purpose of making the determination, or
 - (b) take part in the making by the panel of the determination.
- (8) A contravention of this clause does not invalidate any decision of the regional panel.



Joint Regional Planning Panels Complaint Handling Policy

APRIL 2010



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JOINT REGIONAL PLANNING PANELS

Complaint Handling Policy

The Joint Regional Planning Panels (Regional Panels) are committed to addressing and resolving any enquiries and complaints that may be raised in regard to their operation. This Policy aims to promote an accessible, fair and equitable complaints handling process that will:

- help resolve customer dissatisfaction,
- reduce dissatisfaction and complaints about procedural aspects of the Regional Panels in the future, and
- identify procedural aspects of the Regional Panel operations that may need improvement.

The Regional Panels will ensure (where possible) that every complaint is received courteously, investigated and acted on quickly and appropriately.

The role of the Regional Panels

Regional Panels were introduced in NSW from 1 July 2009 in order to strengthen decision making on regionally significant development applications and certain other planning matters.

The Regional Panels will:

- exercise certain council consent authority functions for the classes of development identified in the *State Environmental Planning Policy (Major Development) 2005*,
- exercise other consent authority functions in respect of certain Crown development applications under Part 4 Division 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act),
- exercise other functions of council where appointed to do so under s 118 of the EP&A Act,
- advise the Minister in relation to planning and development matters or environmental planning instruments where requested.

Regional Panels are statutory bodies and operate independently of the councils. This Policy applies to all Regional Panel members. In some instances councillors may be nominated to sit on a Regional Panel. Council nominated Regional Panel members (whether or not they are councillors) have a duty to the Regional Panel when they are performing the role and functions of a Regional Panel member.

You may use this Policy to make a complaint about a Regional Panel member (including a member who is a councillor) in the exercise of their Regional Panel functions. This Policy **does not** apply to councillors acting in their capacity as an elected councillor or to council staff. Complaints about a council, councillor or council staff should be made to the relevant council or other relevant body (such as the Department of Local Government, Ombudsman and/or Independent Commission Against Corruption).

The types of complaints covered by this Policy are outlined below.

What is a complaint?

The Regional Panels and the Panel Secretariat are required to respond to complaints from people who are dissatisfied with the Regional Panels policies, procedures or quality of service.

This Policy applies to:

- a) the actions of (or a failure to act by) the Regional Panel Chair, Regional Panel members and Panel Secretariat staff at Regional Panel meetings, in written communications from Regional Panel members or Panel Secretariat or in telephone calls. Examples of complaints may include rudeness or a lack of response.
- b) the policies and procedures applying to Regional Panel members.
- c) circumstances where a member of the public suspects that a Regional Panel member has breached the Regional Panel Code of Conduct and/or Procedures for Operation.

What will not be regarded as a complaint?

This Policy does not extend to complaints about:

- dissatisfaction with determinations of the Regional Panels.
- Government policy and legislative powers.
- decisions of Government.

It is noted that complaints may arise from simple misunderstandings about the role of the Regional Panels. Where possible the resolution of these types of complaints may involve providing information about the role of Regional Panels or directing complainants to the relevant council or other body.

General enquiries and suggestions

The JRRPs are also interested in hearing from you in relation to general enquiries and suggestions.

If you:

- would like to make a general suggestion about the Regional Panels, or
- have a request for information, or
- would like an explanation of Regional Panel policies or procedures.

The Panel Secretariat is the first point of contact for all regional panel matters. Its contact phone number is (02) 9383 2121 or email jrppenquiry@jrpp.nsw.gov.au.

The mutual obligations of the Panel Secretariat, Regional Panel Chairs, and complainants in respect of this Policy are outlined below.

Obligations of Panel Secretariat and Regional Panel Chairs

The Panel Secretariat and Regional Panel Chairs should:

1. respond to the complaint promptly and where appropriate promptly refer the matter in accordance with this Policy,
2. keep the complainant informed of what is happening with the enquiry or complaint,
3. record in detail all actions and outcomes relating to the complaint,
4. treat all complainants with respect, courtesy and sensitivity.

Obligations of complainants

In order for the Regional Panels to provide an accessible, fair and equitable complaints handling process, complainants have the following obligations:

1. to not make complaints that are frivolous, vexatious, not in good faith or concerning a trivial matter,
2. to provide adequate and accurate details about the complaint,
3. to follow the procedural steps in this Policy on how to make and progress a complaint (including informing the Regional Panels of what action has already been taken in response to the matter),
4. to allow the person considering the complaint adequate time to address the enquiry or complaint,
5. to provide the person considering the complaint with suggestions or views as to any actions or outcomes they believe will assist in resolving the issue.

How to make a complaint?

Step 1

If you have already been in contact with somebody in relation to the complaint, try and resolve the issue with the relevant person you have been in contact with (or their immediate supervisor), if it is appropriate to do so.

Step 2

If you are not satisfied, or if Step 1 is not applicable, write to the Panel Secretariat and clearly identify the nature of the complaint (for example an alleged breach of the Code of Conduct or Procedures for Operation). The Panel Secretariat may be contacted by email at jrppenquiry@jrpp.nsw.gov.au; by mail, addressed to the Regional Panel Secretariat, GPO Box 3415, Sydney NSW 2001 or by fax on (02) 9299 9835

- The relevant contact person or Panel Secretariat will:
 - acknowledge receipt of your complaint promptly,
 - ensure that they understand the complaint. If there is any doubt at all, they will contact you and seek clarification.
 - inform you what will happen next and who will be dealing with the matter and how they may be contacted.
- Where the complaint relates to the services of the Panel Secretariat itself, the Panel Secretariat will refer the complaint to the relevant person in accordance Step 3 below.

-
- If the complaint is in relation to a matter that falls outside of this Policy, the Panel Secretariat will try and address the issue where it can be satisfied by providing information. The Panel Secretariat will advise you of this in writing, including advice on the other options that may be available to you.

Step 3

If the Panel Secretariat is not able to resolve the complaint, the Panel Secretariat will refer the matter to:

- a) the relevant Regional Panel Chair - if the complaint is about a Regional Panel member (other than the Chair) or the Panel Secretariat, or
- b) another relevant body for action (such as the Ombudsman and/or Independent Commission Against Corruption).

If the complaint is referred to the relevant Regional Panel Chair, the person to whom the complaint is referred will contact you, and:

- a) try and resolve the issue, or
- b) where appropriate, try to conciliate the matter by arranging a meeting between you and the person against whom the complaint has been made, and
- c) confirm the outcome of any meeting or discussions with you in writing.

Step 4

If the complaint is unresolved, you can write to the Ombudsman or the Independent Commission Against Corruption requesting further action. Complaints may also be lodged with external bodies (the Ombudsman, the Independent Commission Against Corruption, or the Department of Local Government) without a prior referral of the complaint to the Panel Secretariat (see below – *Complaints Alleging Corrupt Conduct*).

General principles

It may be appropriate for the person dealing with the complaint to engage an external mediator or agency to assist in the resolution or investigation of the complaint.

Outcomes may include an apology, review of the matter generally or of a particular decision, provision of further information, a suggested change to policy or procedure to improve services, or referral to either an appropriate agency or integrity body for appropriate action.

Complaints alleging corrupt conduct

You may make allegations of corrupt conduct in accordance with this Policy or directly to the Independent Commission Against Corruption.

The Regional Panel Chairs are under a duty to report any matter, that they suspect on reasonable grounds, concern or may concern corrupt conduct, to the Independent Commission Against Corruption.¹

¹ Section 11, Independent Commission Against Corruption Act 1988

Affording procedural fairness

When considering complaints the relevant Regional Panel member and Panel Secretariat will adhere to the principles of procedural fairness. The person considering the complaint will:

- inform the person of the complaint made against them,
- give that person a right to be heard,
- not have a personal interest in the outcome or have been involved in handling the complaint, and
- act only on the basis of logically probative evidence.

Confidentiality

Confidentiality can be a very important issue in dealing with complaints. Depending upon the circumstances of each case there may be a need for confidentiality in relation to some or all of the following:

- the fact that a complaint has been made,
- the nature of the allegations,
- the identity of the complainant,
- the identity of any persons the subject of a complaint;
- the identity of any witnesses; and
- any evidence gathered.

In some instances, confidentiality may be maintained for a finite period or it may be important that it is maintained absolutely. For example, the nature of allegations may be kept confidential initially but not forever.

Who the information should be kept confidential from may also be a consideration. Information may be kept confidential from the public generally, or from particular individuals.

In making decisions about confidentiality, the person handling the complaint is obligated to consider a range of circumstances where it would, or may be inappropriate, to disclose information. These circumstances may include:

- to minimise detrimental impact on individuals;
- to minimise detrimental impact on current or future investigations;
- to minimise prejudice to the future supply of information to the agency or government;
- to minimise or prevent substantial adverse impact on the management or assessment of an agency's personnel;
- to minimise prejudice to occupational health and safety;
- in various circumstances (in relation to complaints by third parties) whether there are specific considerations such as disciplinary proceedings; and child protection;
- to comply with privacy requirements under the *Privacy and Personal Information Protection Act 1998*; and
- to maintain confidentiality and complying obligations under the *Protected Disclosures Act 1994* (see discussion below).

There may be specific circumstances where protected disclosure applies. For example, a Regional Panel Chair is the head of a statutory body, therefore a complaint against a Chair

made by council staff or councillors will have protected disclosure and the confidentiality guidelines in section 22 of the *Protected Disclosure Act 1994* will apply.

Acknowledgement and resolution of complaints

Each complaint will be acknowledged in writing within 7 days of receipt of the complaint by the Panel Secretariat. Where, possible all complaints will be resolved within three weeks of this acknowledgement. If this is not possible, the complainant will be informed of an estimated resolution date.

Register of complaints

The Panel Secretariat is required to maintain a register of complaints including the following information:

- date the complaint was made;
- the nature of the complaint including the issues or allegation by the complainant and the names of any persons the subject of the complaint;
- whether the complaint was referred on and if so, to whom;
- how it was dealt with and by whom;
- the time taken to resolve the complaint; and
- the outcome of the complaints handling process.

Applications from the public to access or view the register will be considered on their merits against the relevant legislation (the *Freedom of Information Act 1989* or the *Government Information (Public Access) Act 2009*, upon commencement of the relevant provisions).

PLANNING SYSTEM

Local planning

Circular	PS 10-009
Issued	18 May 2010
Related	PS 09-016 and PS 09-017

Joint Regional Planning Panels - Review and Changes

This circular is to advise councils and the community of the release of the *Review of Initial Operation of the Joint Regional Planning Panels* (the Review). It also sets out the changes that have been made to the Joint Regional Planning Panels' Operational Procedures and Code of Conduct, and *State Environmental Planning Policy (Major Development) 2005* (MD SEPP). It focuses on new measures to ensure assessment reports are provided to the joint regional planning panels (regional panels) on a timely basis.

Introduction

The Department of Planning has recently completed the Review of Initial Operation of the Joint Regional Planning Panels, which considered the operation of the regional panels since their introduction in July 2009. The Review is available on the websites of the Department (www.planning.nsw.gov.au) and the Panel Secretariat (www.jrpp.nsw.gov.au).

The findings of the Review have led to a number of amendments to the Regional Panels' Operational Procedures, the Code of Conduct and minor amendments to the MD SEPP. A series of new fact sheets have also been released.

The Review

The Review identifies matters that have arisen in the initial operational phase and the manner in which the issues have been addressed or are to be dealt with. It also identifies matters which will be the subject of on-going monitoring as part of regional panel operations.

A snapshot of development application (DA) data and performance as at 31 March 2010 shows the value of DAs lodged with the regional panels in the first nine months of operation is \$2.69 billion. The average determination time for DAs by regional panels of 114 days is a significant improvement on the 2008-09 state-wide average of 249 days for development over \$5 million.

While these early determination figures are pleasing, the Department is aware that there is a significant growing body of undetermined DAs which has the potential to inflate determination times moving forward.

The Review has also identified opportunities to delegate certain applications back to councils which

are currently determined by regional panels. For example, a number of DAs have received no submissions and were subsequently approved by regional panels. It is considered appropriate to delegate these types of DAs to councils to determine, but only where councils delegate the determination of these matters to council officers.

Consideration is also being given to delegating some types of designated development and certain development located in particular areas and precincts where detailed planning controls have been established. The Department will seek advice from councils prior to finalising any delegation.

Changes to Operational Procedures

The Operational Procedures have been updated to further detail specific actions required for the successful operation of the regional panels, particularly in the areas of monitoring of applications, briefing meetings, reporting and decision making.

In particular, the Operational Procedures now contain a detailed process for communicating to the Panel Secretariat any anticipated delays or difficulties in assessing a DA and for requesting further information from applicants.

DA monitoring and follow up

While the early positive results are encouraging, the Review has identified a growing number of DAs currently under assessment for six months or more.

The Review highlights the need for the Department to work proactively with the Panel Secretariat, panel chairs and local councils to ensure assessment reports are submitted for determination without unnecessary delay. It is important that councils clearly communicate the timeline for finalising an assessment to the Panel Secretariat and any reasons

for delay so that panel chairs and the Secretariat can take appropriate action.

These revised Operational Procedures detail a formal follow up process whereby:

- The Panel Secretariat and panel chairs will liaise directly with councils to discuss status updates and timeframes for certain applications
- Councils will be asked to provide a formal 'Application Status Report' for all applications that have been lodged for 70 days. The status report will detail the progress on the processing of the application to date, with a commitment to a final reporting time frame. Further formal or informal updates may also be required by the chairs
- Application status reports will only be required for all DAs lodged after 1 April 2010
- These reports and other DA processing information will be made publicly available on the regional panel website
- Where a response or concurrence from a State agency is delaying the assessment of the application, the Project Delivery Unit of the Department of Planning will ensure a timely response is provided by the agency to council staff
- Where there is an on-going delay without reasonable explanation in the processing of an application councils may be requested by the regional panel to complete and submit its assessment
- The regional panel Chair may direct the General Manager of a council to complete and submit the assessment where council has not complied with an earlier request
- In exceptional cases where the council is unwilling or unable to complete and submit a report after reasonable requests, the Chair of the regional panel may request the council to provide all relevant documentation for an independent consultant to complete the report.

Best practice assessment

Councils are encouraged through pre-DA and lodgement processes to ensure that the information lodged with the DA is sufficient to enable it to be assessed without requesting additional information.

The Operational Procedures now require councils to inform the Panel Secretariat of requests for additional information or amendments to DAs, and provides best practice guidelines for council to follow in making such requests.

Requests for information

Requests should:

- be in writing and be made as early as possible after lodgement
- include all matters in the one request and only be for matters essential for the assessment of the application
- not include matters that can be dealt with by condition or after the application has been determined

- specify a clear and reasonable time frame (including a date) for the submission of the information or amendments to council, and
- indicate that should the applicant not meet the deadline, the council will proceed to assess the application in its current form and/or without the requested information.

Applicants are able to submit amended drawings prior to determination, to respond to council's concerns or issues raised in submissions. Applicants should ensure that they submit all amendments and any additional information together.

Applicants who believe requests for additional information are excessive should advise the council in writing indicating which part of the request is unreasonable and request council to finalise its assessment report for submission to the regional panel without the information.

If it becomes apparent after lodgement that significant additional information will be required to assess the application, the applicant may seek to withdraw the DA and re-lodge when all required documentation has been prepared.

Draft conditions of consent

Council reports are made available on the regional panel website seven days prior to a panel meeting.

Applicants should review any recommended conditions in the report, and provide any feedback on the workability of the conditions to the council officer within three days of the report being made available. This will enable the council officer to present any revised conditions to the regional panel at the panel meeting.

Councils should endeavour to ensure that conditions are:

- appropriate for and proportionate to the development
- not repetitive, and
- legally enforceable.

SEPP No.1 objections

The Operational Procedures now include information on the consideration of SEPP 1 objections which are made to DAs which are to be determined by a regional panel.

Obtaining concurrence from the Director General to the SEPP 1 objection is a matter for the relevant council. However, where concurrence is assumed there are no additional procedural requirements for council to follow.

As the consent authority, it will be a matter for the regional panel to determine that a SEPP 1 objection is well founded and to form the opinion that granting consent is consistent with the aims of SEPP 1.

Crown Development

The Operational Procedures includes information on the processing of Crown DAs, and the process for the referral of undetermined Crown DAs to the Panel under section 89 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Where a DA is to be referred to a regional panel for determination and the report recommends refusal of the DA or to impose a condition to which the applicant has not agreed, the council should complete its assessment report and refer the application to the regional panel with this information.

Where a DA is not regional development under the MD SEPP, but the council seeks to refuse the DA or impose a condition to which the applicant has not agreed, in accordance with section 89(2) of the EP&A Act the council or the applicant may refer the matter to the regional panel after the prescribed period specified in the EP&A Regulation has elapsed.

Changes to the Code of Conduct

The Code of Conduct now clarifies that appropriately experienced council staff can be members of a regional panel, but only where appropriate reporting arrangements are in place to ensure there is no conflict in the staff member's duties.

Furthermore, the Code of Conduct reiterates that regional panel members are required to disclose all interests that may be relevant to the activities of the regional panel. Declarations are required on an annual basis, and a public register of declarations is maintained by the Panel Secretariat.

Following consultation with the Independent Commission Against Corruption and the NSW Ombudsman, the Complaints Handling Policy for the Regional Panels has been released and is available on the Department and Panel Secretariat websites.

Amendments to the MD SEPP

As a result of feedback received during the initial nine months of operation, the following amendments to the MD SEPP were made on 18 May 2010:

- Local councils will now determine modification applications under section 96(1A) of the EP&A Act rather than the Regional Panel (refer to clause 13F of the MD SEPP)
- Clarification that regional panels will determine:
 - modification applications under section 96AA of the EP&A Act where the original development application was determined by a Regional Panel (refer to clause 13(F) of the MD SEPP)
 - DAs creating more than five lots but not more than 100 lots, where more than five of those new lots being created will not be connected to an approved sewage treatment work or system (refer to clause 13(C)(c) of the MD SEPP)

- staged development applications where a local council is the proponent (refer to clause 13(G) of the MD SEPP).

Updated frequently asked questions

The existing frequently asked questions on the regional panels have been updated and expanded to produce a series of four fact sheets: Panel operations; Where the panels operate; DA lodgement and assessment; and DA determination.

These fact sheets are available on the joint regional planning panel regional panel website.
<http://www.jrpp.nsw.gov.au>

Further information

The Joint Regional Planning Panels' Interim Review of Operation is available on the Department of Planning and joint regional planning panel websites.

NSW Department of Planning
 23–33 Bridge Street, Sydney NSW 200
 GPO Box 39, Sydney NSW 2001
 Tel: 02 9228 6111
 Fax: 02 9228 6455
 Email: information@planning.nsw.gov.au
 Or

The Panel Secretariat;
 Email jrppenquiry@jrpp.nsw.gov.au
 Phone 1300 948 344
 (02) 9383 2121
 Website www.jrpp.nsw.gov.au

Note: This circular and others issued by the Department of Planning are available online at:
<http://www.planning.nsw.gov.au/circulars>

Authorised by:

Sam Haddad
 Director-General
 NSW Department of Planning

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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Circular	PS 10-008
Issued	10 May 2010
Related	

New definition of capital investment value

This circular is to advise councils, developers and the community of a new definition of 'capital investment value' under the *Environmental Planning and Assessment Regulation 2000* and certain State Environmental Planning Policies.

Introduction

A new definition of 'capital investment value' (CIV) has been included in the *Environmental Planning and Assessment Regulation 2000* (the Regulation) to provide greater certainty as to what items should be included and excluded when calculating the CIV for a project.

From 7 May 2010, this definition is to be used when considering whether Schedule 1 of the State Environmental Planning Policy (Major Development) 2005 (MD SEPP) identifies a proposal as a project to which Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) applies or if it is an application to be determined by a Joint Regional Planning Panel (Regional Panel). The definition is also to be used to determine the fees payable for an application under Part 3A of the EP&A Act. It is also relevant to certain other types of development and actions covered by SEPPs that reference the term.

However it does not apply for the purpose of calculating an application fee for a Part 4 development application, which continues to use 'cost of works' (see Clause 246 of the Regulation).

On 7 May 2010, the *State Environmental Planning Policy Amendment (Capital Investment Value) 2010* (the CIV SEPP) amended several State Environmental Planning Policies (SEPPs) to ensure the definition of CIV is consistent throughout the NSW planning system.

Changes relating to the Regulation

The amended definition is included in clause 3 of the Regulation, as follows:

Capital investment value of a development or project includes all costs necessary to establish and operate the project, including the design and construction of buildings, structures, associated infrastructure and fixed or mobile plant and equipment, other than the following costs:

- amounts payable, or the cost of land dedicated or any other benefit provided, under a condition imposed under Division 6 or 6A of Part 4 of the *Environmental Planning and Assessment Act* or a planning agreement under that Division
- costs relating to any part of the development or project that is the subject of a separate development consent or project approval
- land costs (including any costs of marketing and selling land)
- GST (as defined by *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth).

The main change to the definition is a clear direction that the following items should be excluded when calculating the CIV for a development:

- Development contributions - it is not appropriate to include development contribution charges in calculating the capital investment value. These charges are considered an external cost that should not contribute to the value of the development or be included for the purpose of calculating the project fees or other developer charges.

- Costs relating to any part of the development or project that is, or will be, the subject of a separate development consent or project approval – the capital investment value of the development must only include those works that are subject to the current application, not prior or subsequent applications.

CIV made consistent in all SEPPs

The CIV SEPP amends:

- MD SEPP
- Statement Environmental Planning Policy (Sydney Regional Growth Centres) 2006
- State Environmental Planning Policy (Infrastructure) 2007, and
- State Environmental Planning Policy (Western Sydney Parklands) 2009.

These instruments are amended to ensure CIV has the same meaning as in the Regulation (as above).

Recent court case on CIV

The recent Land and Environment Court judgment, *Calardu Penrith Pty Ltd v Penrith City Council* [2010] NSWLEC 50 Pty Ltd was partly concerned with the calculation of CIV. Although the judgement did not consider the amended definition of CIV, it provides relevant principles when calculating CIV, as follows:

- The included costs must relate to works contemplated in the application
- The CIV of a proposed development is to be calculated at the time of lodgement of the application for the purposes of determining whether an application should go to a Regional Panel
- CIV is expressly concerned with “costs” that are of a capital nature
- Those costs do not need to be incurred by the proponent/ applicant
- There must be sufficient evidence to support the amounts, and considerable weight should be given to amounts that have been contractually agreed upon
- Finance costs should not be included.

Determination of CIV

- The calculation of CIV under clause 13B of the MD SEPP is one of fact; it is not subject to the ‘opinion’ of either the Council or the Regional Panel. Any disagreement about the CIV should be resolved objectively by a quantity surveyor.
- The Minister has the sole responsibility for forming the opinion if a development is a project to which Part 3A applies. Once such an opinion is formed, the project remains a Part 3A project regardless of any subsequent variations to CIV (or other relevant factor).

Staged development

When calculating the CIV for a staged development, the CIV of the separate applications comprising the overall staged development must be considered in determining the CIV for that development. However,

an application can only be ‘staged’ at the request of the applicant.

Calculating CIV

The following information is provided as a guide to assist in establishing the types of costs that should be included and excluded when calculating CIV. The following information is not exhaustive and should be considered as a general guide based on the amended definition and the relevant matters raised in the recent court case.

Design and construction

The calculation of CIV should include the amount required to design and construct all buildings and other facilities that are part of/ included in the application, including any temporary buildings that will be used during the construction phase.

Structures and infrastructure

CIV should include all costs incurred from the construction of associated structures and infrastructure that are the subject of the current application. These costs include any supplementary or site preparatory works such as remediation, demolition, excavation and filling, that are required for the construction of buildings, provided these works are needed to make the site suitable for construction and for the operation of the project.

Site services

CIV should include the costs of providing electrical services, water, gas, sewerage and stormwater drainage, including any temporary diversions and/ or arrangements during construction, and should form part of the application.

The costs of fire protection and communications services that are reasonably required to construct and operate the project should also be included.

Site works such as landscaping, car parking, roads and footpaths should also be included.

Plant and equipment

CIV should include standard building plant, such as lifts and air-conditioning, and all specialist and specific equipment related to the operation of the project, provided these are specifically included as part of the application.

Fit-out costs of a building may be included in the calculation of CIV where the costs are subject to the application. In such cases, the application would need to include specific tenancy use, and would be defined by specific reference to description in the application. Where such tenancy is not referred to or will be subject to further applications, the fit out costs should not be included.

Labour fees

All labour and personnel costs, including the payment of long service levies and other associated construction and labour costs should be included in the calculation of the CIV.

Other fees

Costs such as finance application fees, mortgage stamp duty, fees paid to register strata titles or to amalgamate land prior to development, and interest payable on the loans associated with the development should be excluded in the calculation of CIV.

Further information

A copy of the amended Regulation and relevant SEPPs are available on the NSW legislation website:

<http://www.legislation.nsw.gov.au>

If you have further enquiries, please contact:

NSW Department of Planning
23–33 Bridge Street, Sydney NSW 2000
GPO Box 39, Sydney NSW 2001
Tel: 02 9228 6111 Fax: 02 9228 6455

Email: information@planning.nsw.gov.au

Note: This and other Department of Planning circulars are published on the web at <http://www.planning.nsw.gov.au/PlanningSystem/Circularsandguidelines/tabid/69/language/en-US/Default.aspx>

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What are the functions and roles of Joint Regional Planning Panels (Regional Panels)?

Why were Regional Panels introduced?

Regional Panels were established to determine regionally significant development applications.

The NSW Government aims to provide greater transparency, objectivity and independence in the planning process through merit-based decision making. This builds community confidence in the planning system that the environment will be protected and that community concerns are addressed. It also provides industry with the confidence that their applications are being dealt with promptly, fairly and professionally.

Regional Panels provide greater expertise and independence than local councils on regional planning issues by bringing together local representatives and experts in development disciplines (e.g. heritage, tourism, urban design, environmental or traffic issues) free of any political or other influence, to determine development applications strictly on their merits.

Regional Panels have been formed to enhance the integrity of the decision-making process through:

- Transparency** → Decisions made on merit and in full view of the public
- Rigour** → Qualified experts determining applications, bound by legislation, Operational Guidelines and a Code of Conduct
- Accountability** → Independent bodies which are not directed about their determinations by the Minister or the Council
- Efficiency** → Fully resourced Panels to cut red tape and application waiting periods

How will Regional Panels make the DA process more efficient?

The Regional Panels will make the process more efficient by:

- depoliticising the planning process and reducing the bureaucracy in the decision making process.
- creating good working partnerships by combining State expertise with local knowledge
- actively managing the assessment process through regular follow-up with Council officers and other agencies, particularly where delay is experienced.
- instilling a project management approach and setting clearer time frames.

What is a Regional Panel?

A Regional Panel is an independent body comprising three State appointed and two council appointed members which determine development applications for a range of regionally significant developments in New South Wales.

Following a widely advertised expression of interest process, the Minister for Planning appointed independent professionals with required expertise as State members for each region. The council members are appointed by each local council, of which one needs to meet the expertise requirements. Each council determines its two members and can nominate people from the community or outside its area if it wishes. Council representatives sit on the Regional Panel when a proposed development within their council area is being decided.

If a council does not provide its two members, the Regional Panel is still able to exercise its functions in relation to the area of the council concerned, provided a quorum of three members is achievable.

The Minister and each council may appoint alternates with the same powers as a member to act in the place of a member.

The Minister has appointed a chairperson for each region and a deputy chairperson can be selected by each Regional Panel from one of the State members.

Regional Panels operate under the *Environmental Planning and Assessment Act 1979* (EP&A Act). The Joint Regional Planning Panel Operational Procedures and Code of Conduct approved by the Minister of Planning guide Regional Panels operation and govern the conduct of panel members.

What is the function of a Regional Panel?

Regional Panels have a number of functions – the most important to determine regionally significant developments.

Regional Panels determine regionally significant developments with a Capital Investment Value (CIV) between \$10 million and \$100 million (and between \$5 million and \$100 million for

specific development types such as eco-tourism proposals and proposals for public and private infrastructure e.g. community facilities) or developments where the council is involved or has an interest. An 'interest' is defined in Clause 13B of the Major Development SEPP.

Regional Panel applications also include certain coastal developments, particularly in sensitive areas, subdivisions of more than 250 lots and developments that need particular scrutiny because of their nature or potential environmental impacts (these developments are called "designated development").

Capital Investment Value (CIV) is defined in the EP&A Regulation. For more information on CIV, refer to Planning Circular PS 10_008.

Additional functions of Regional Panels can include:

- acting as the relevant planning authority for the purpose of preparing a local environmental plan when appointed to do so by the Minister for Planning;
- determining Crown DAs that have been referred to the Regional Panel by the council or the applicant, when not determined by the council within the time prescribed in the Environmental Planning and Assessment Regulation 2000 (the EP&A Regulation);
- determining applications to modify a consent for regionally significant development under s.96(2) of the EP&A Act; and
- providing advice on planning or development matters when requested to do so by the Minister.

How do the Regional Panels work?

The Panel Secretariat is responsible for providing technical administrative support to the Regional Panels. The Regional Panels also receive support, where required, from regional Department of Planning offices. The Department's Project Delivery Unit can assist council staff if State agency concurrences or referrals are involved in the application.

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The EP&A Act places obligations on councils in their work with the Regional Panels such as the use of council staff and facilities to carry out the Regional Panel's functions. General Managers of councils are required to comply with any reasonable direction of the Regional Panel.

The Panel Secretariat works with the Chairperson of the Regional Panel to help organise meetings, agendas and other administrative functions. The Secretariat makes arrangements for site visits and briefings (where appropriate), travel and accommodation arrangements (where required) and provides support to Panel Members.

The Panel Secretariat also monitors the progress of regional applications referred to Regional Panels.

The Panel Secretariat is the first point of contact for all Regional Panel matters. Its contact number is (02) 9383 2121 or email jrrpenquiry@jrrp.nsw.gov.au.

Who pays for Regional Panels?

The NSW Government covers the costs of State members and the Panel Secretariat. Individual councils cover the cost of Council Members and other council costs from the development application fees received and retained by councils.

What is the role of the Council staff?

Applications are lodged with the council in the area where the proposed project is located. Staff of the local council undertake all of the assessment process for Regional Panels (refer to Fact Sheet No. 3).

Council staff may be requested to assist Regional Panels with the provision of meeting venues, arrangements for site visits and briefings, provision of copies of documents and to provide a minute taker.

Council staff follow established procedures regarding development assessment, including public notification and consultation with government agencies. They are required to undertake the assessment of the development application. This requires carrying out various statutory requirements and consideration of matters set out in the EP&A Act. The assessment is documented in an assessment report and provided to the Regional Panel for determination.

The assessing officer is required to attend the Regional Panel meeting to outline the assessment report and provide information to the Regional Panel if required. Legally, councils cannot direct planning staff as to the content of any advice or recommendation made by the staff member in the assessment report.

The Regional Panel may also seek further professional advice from a council. Following the Regional Panel meeting, councils are responsible for the post-determination functions.

What is the role of other Planning Panels?

A number of councils have established planning panels to provide additional advice to assist in determining certain development applications. These panels include Independent Hearing and Assessment Panels (IHAP's), Design Review Panels and Planning Assessment Panels (s.118 Panels).

The role of other panels will vary depending on the type of panel that has been formed:

- IHAPS generally have no role in respect to Regional Panel matters. They are established by a council to provide an independent review of developments referred to them and to provide the opportunity for people with an interest in an application to raise and discuss issues in a public forum before a decision is made on the application.
- Design Review Panels are established by councils to bring special design expertise to the assessment of certain types of development applications. These panels may still be utilised by council assessing officers in respect of certain developments and would generally be more effective regarding design quality outcomes and timeliness if convened at the pre-development application stage or early in the assessment phase.

How are local communities involved with Regional Panel decisions?

The views of the community are considered throughout the assessment and decision-making processes.

Firstly, the proposed development is placed on public exhibition and the community is encouraged to comment on the proposal by way of a submission lodged with the local council. The council's planner will undertake an assessment of the development application, and include comments on submissions received for consideration by the Regional Panel in its determination of the application.

As part of the determination process members of the public can appear before the Regional Panel with their comments being considered as part of the information which assists the Regional Panel to make its final determination.

Will objectors have an automatic right to address a Regional Panel Meeting?

Every effort will be made to provide the opportunity for applicants of a proposed development and people/ groups who made a submission to address the meeting of the Regional Panel.

Where there are a significant number of people from an organisation that wishes to address the Panel, the Chairperson can direct large groups to nominate a spokesperson.

How are Regional Panel Meetings held?

Meetings are held regularly, depending on the volume of matters to be determined.

Every effort is made to have Regional Panel meetings held in the local community in the council area where the application is lodged or in a location that is convenient for those that wish to attend the meeting.

The Panel Secretariat consults with the Chairperson about the venue of regional meetings. The chairperson may decide to also consult with the council's general manager.

How are conflicts of interest handled by Regional Panel members?

All Regional Panel members are required to comply with the Code of Conduct for Regional Panels which outlines the standard of conduct expected of them and which includes specific requirements on how members are to deal with conflicts of interest.

Generally, Regional Panel members are required to disclose any conflicts of interest and not participate in decisions about the matter. The Code of Conduct requires that particulars of all disclosures are to be recorded and made available for inspection.

Will Regional Panels be monitored?

The overall performance of Regional Panels will be monitored and reported in the Department of Planning's annual monitoring report of local councils which will include a section about Regional Panels and their performance.

Commencing in a May 2010, the Department will also publish a monthly report about the applications received and determined by the Regional Panels.

Complaints about Regional Panels

A Complaints Handling Policy has been established to address any complaints about a Regional Panel. The Policy is available from <http://jrpp.nsw.gov.au>

Further Information

- Regional Panel website – <http://jrpp.nsw.gov.au>
- Joint Regional Planning Panels – Operational Procedures (available on the Regional Panel website – these provide the principles to direct every aspect of Regional Panel activities)
- Joint Regional Planning Panels - Code of Conduct (available on the Regional Panel Website – The Code outlines the standards of behaviour which all members of a Regional Panels must comply with)

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Where do Regional Panels operate?

Panel Regions

Joint Regional Planning Panels are constituted by the Minister for Planning by order published in the Gazette. The local government areas covered by each Regional Panel are also identified in the order.

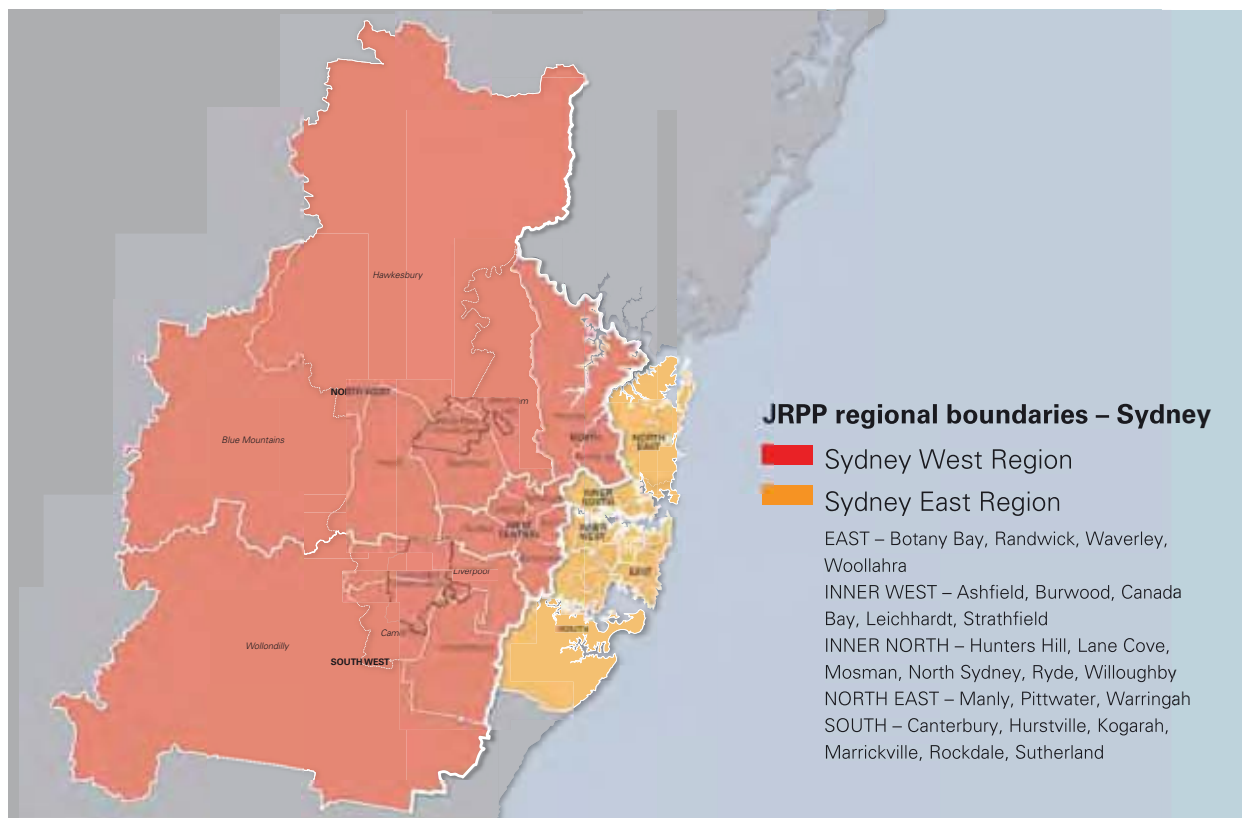
There are six Joint Regional Planning Panels (Regional Panels) operating in NSW, each covering a region within the State. The boundaries of the regions were drawn following an assessment of historical development application trends and after considering various communities of interest between different areas of the State.

On 1 July 2009, Regional Panels commenced operations for the Northern, Hunter and Central Coast, Southern, Sydney Metropolitan East and

Sydney Metropolitan West regions. A Regional Panel for the Western region commenced on 1 September 2009.

The two Sydney Metropolitan regions align with the subregional boundaries within the Department of Planning's Sydney Metropolitan Strategy. The Sydney Metropolitan East region comprises the East, South, Inner West, Inner North, North East and Sydney subregions whilst the North West, South West, West Central and North subregions make up the Sydney Metropolitan West region.

The City of Sydney is not covered by a regional panel. The existing Central Sydney Planning Committee continues to operate and provide consent functions for major development applications within the City of Sydney.



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The other four regions align with the Department of Planning's regional planning boundaries. The Hunter region comprises the Central Coast and the Hunter, the Northern region is comprised of the North Coast and New England, the Southern region is made up of the Illawarra, South Coast, Murray and the Sydney-Canberra Corridor whilst the Western region covers the remainder of the State.

Additionally, an Interim Joint Regional Planning Panel was formed for the Wagga Wagga local government area on 1 September 2009. This Planning Panel was established on an interim basis to complement the work of the existing Wagga Wagga planning panel. The interim panel will continue until the work of the existing Planning Assessment Panel is complete in Wagga Wagga. At that time the interim panel will be incorporated into the Southern Regional Panel.

Further Information

- Regional Panel website – <http://jrpp.nsw.gov.au>
- Joint Regional Planning Panels – Operational Procedures (available on the Regional Panel website – these provide the principles to direct every aspect of Regional Panel activities)
- Joint Regional Planning Panels - Code of Conduct (available on the Regional Panel Website – The Code outlines the standards of behaviour which all members of a Regional Panels must comply with)



JRPP regional boundaries – NSW (excluding Sydney)

■ Hunter Region
 ■ Southern Region
 ■ Northern Region
 ■ Western Region

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How are development applications assessed for Regional Panels?

How are development applications lodged?

Development applications are lodged with the council of the area where the development is proposed.

An applicant should consult with the respective council as to any specific requirements for lodgement.

If a development is to be located in two (2) or more council areas, a separate development application must be lodged with each council. Each development application should only address that part of the development located on land in the relevant council's area. Neighbouring councils may decide to establish a joint assessment process. The Regional Panel will determine each development application separately.

The Joint Regional Panel Operational Procedures should be consulted if further information is required.

Can a pre-development application meeting be held?

Pre-development application meetings between applicants and council assessment officers about regional developments should be held to clarify and resolve assessment requirements. Often such meetings are of benefit prior to the lodgement of the application.

Members of Regional Panels should not attend pre-development application meetings with applicants or objectors to avoid any apprehension of bias, unless such meetings have been specifically arranged as part of a Regional Panel meeting or process.

What are the notification requirements for regional development applications?

Councils are required to:

1. Provide public notification of the application, and re-notification if required, in accordance with the requirements of the EP&A Act and regulation and any other council requirements.
2. Notify the Panel Secretariat within seven (7) days of receiving a development application that is required to be referred to the Regional Panel so that progress of the assessment of the application can be properly tracked.

Does the Political Donations Legislation apply?

Yes. The requirements of the EP&A Act for the disclosure of political donations apply to Regional Panel applications. An applicant, a person making a submission and a member of a Regional Panel must declare a reportable political donation or gift.

The Code of Conduct for Regional Panels provides guidance to members of Regional Panels if a political donation creates a conflict of interest.

Can representations (or lobbying) be made to Regional Panel Members – and private meetings be held with applicants or objectors?

Private meetings with Regional Panel members should not be held.

Regional Panel members approached about a proposed development by **any** person should advise they are a member of the Regional Panel that is to determine the development application

and it is not appropriate to have discussions about the development outside the formal Regional Panel process.

Any person approaching a Regional Panel member should be encouraged to make a written submission about the proposal to the council planning staff during the exhibition period. The Council planning staff will assess all submissions received in the assessment report, which will be provided to the Regional Panel. They should also be advised that there may be an opportunity to address the Regional Panel meeting if they wish, and that way all Regional Panel members will be aware of their concerns about the development.

Similarly, the applicant will have the opportunity, if required, to address the Regional Panel meeting.

What are applicants required to provide with their application?

At the time of lodgement, the Applicant must provide adequate information and sufficient technical reports on potential impacts of the proposed development to enable the application to be assessed. Council staff may request the applicant to provide further information or reports.

Requests should:

- be in writing and be made as early as possible after lodgement;
- include all matters in the one request and only be for matters essential for the assessment of the application;
- not include matters that can be dealt with by condition or after the application has been determined;
- specify a clear and reasonable time frame (including a date) for the submission of the information or amendments to council; and
- indicate that should the applicant not meet the deadline, the council will proceed to assess the application in its current form and/or without the requested information.

How are regional development applications assessed?

Local councils are responsible for the assessment of all applications to be referred to the Regional Panels for determination.

Council's planning staff prepare an assessment report in accordance with the EP&A Act and EP&A Regulation addressing all statutory requirements and properly considering all issues. Where a council does not have the required technical expertise, it may engage external expertise in the assessment of aspects or the whole development application. Council nominees to the Regional Panel should not be involved in the assessment process. Councils cannot direct planning staff as to the content of any advice or recommendation made by the staff member in the assessment report.

The assessment report will include a recommendation on the proposed development. If the recommendation is for approval of the application the report is to include recommended conditions of consent. If it is for refusal, the report will include reasons for refusal based on the assessment in the report. The assessment report should also clearly identify if there are any outstanding issues and steps to be taken to address such issues.

When completed, the assessment report and relevant attachments are sent to the Panel Secretariat for provision to the Regional Panel for determination of the application.

The person responsible for the assessment report is required to attend the Regional Panel meeting to outline the assessment report and provide information to the Regional Panel if required.

All costs associated with the preparation of the assessment report are to be covered from the relevant application fees which are paid to and retained by the council.

Does the elected council deal with the assessment report?

The elected council has no role in approving, authorising or endorsing the assessment report.

The Council's planning staff prepares the assessment report for provision to the Panel Secretariat. The *Local Government Act 1993* provides that Council staff cannot be directed about the content of any advice or recommendation.

How does the elected council provide its input about a development to the Regional Panel?

The elected Council has the opportunity to provide a submission to the Regional Panel on matters being determined in its area. Councillors (except any councillors that have been appointed to the Regional Panel) as members of the council, can determine to provide a submission to the Regional Panel about the matter to be determined. The Council is able to be represented at the Regional Panel meeting to address the meeting about its submission.

The assessment report, after it has been provided to the Panel Secretariat, may be provided to the elected council to assist it in its deliberations about its submission to the Regional Panel. Any council submission on behalf of the elected council should not be prepared by any person that was involved in the assessment of the application.

How do councillors that are members of the Regional Panel deal with any regional significant development proposals that are considered at a council meeting?

Any councillors that are members of the Regional Panel should refer to the Joint Regional Planning Panels Code of Conduct to address this situation. Generally, they should declare an interest in the matter at the council meeting and step aside from the council's decision making process so that they are independent when considering the development application at the Regional Panel meeting.

An alternative option is for the councillor to stand down from the Regional Panel in relation to the proposed development and have an alternate Regional Panel member appointed by the council. If the alternate member is a councillor, that person would also be required to similarly address the above situation by declaring an interest and stepping aside from any council decision about the development.

When will the assessment report be available to the applicant and others?

Once it is provided to the Panel Secretariat, the assessment report is placed on the council's website and the Regional Panel website prior to the Regional Panel meeting.

Does the Regional Panel consider the payment of development contributions (section 94 and 94A)?

The Council's Assessment Report should address any required contributions in accordance with the council's adopted section 94 and 94A plans applicable to the proposed development.

The Regional Panel cannot impose any additional section 94 charges or 94A levy that is not consistent with a plan adopted by the council.

When will site visits occur?

Formal site visits by the Regional Panel may be arranged prior to a Regional Panel meeting at the discretion of the Chairperson. The Chairperson will also invite the council assessment officer and other persons engaged in the assessment to attend. The site visit may be conducted on the same day as the Regional Panel meeting or at some other time depending on circumstances such as location and available time.

Other parties, including the applicant and persons who made submissions, may also be invited to attend at the discretion of the Chairperson. At site visits Regional Panel members may identify issues that require clarification or further information, however, Panel Members should not make any comment that would indicate pre-judgement of the application.

What are briefing meetings?

The Chairperson may authorise the holding of a briefing about a regional application for the information of the Regional Panel. At a briefing, Council staff will provide a presentation of the proposed development, its key elements and the planning controls that affect it, together with an overview of issues of concern arising through the assessment process or raised in submissions.

At this stage, the Regional Panel should not offer an opinion on the overall merits of the proposal or direct the persons undertaking the assessment in relation to the content of any advice or recommendation provided in the report. The Regional Panel may identify issues that they expect to be addressed or clarified in the assessment report.

To avoid any apprehension of bias, generally no other parties should be involved in the briefing. However, there may be situations where it is desirable for a Regional Panel to meet with key stakeholders to discuss unresolved issues and where appropriate to facilitate resolution of outstanding issues. If these meetings are held in public, the applicant and all persons that have made a submission are invited to attend the meeting as observers.

Can Regional Panel Members attend any public meetings held about the proposed development?

Regional Panel members should avoid attending public meetings about a proposed development to avoid a perception that they have been influenced by the meeting.

Regional Panel members should advise meeting organisers to make a written submission to the council during the exhibition period so that their position is included in the assessment report. Members should also advise that there may be an opportunity to address the Regional Panel meeting to ensure that all members of the Panel can hear their concerns as part of the determination of the application.

In circumstances where the application attracts significant community interest, the Regional Panel may consider the holding of a pre-determination meeting to hear submitters in a public forum prior to considering the application in the Regional Panel meeting.

What happens if the development requires a rezoning of the land?

It is the responsibility of the council to process any proposed rezoning of land should a proposed development require the approval of a "rezoning application".

Applicants may lodge a development application prior to the rezoning process, however, it is recommended that the development application not be lodged until there is adequate certainty about the likely outcome of the rezoning process. The Regional Panel will not determine the development application until the rezoning process has been completed and gazetted.

Further Information

- Joint Regional Regional Panel website – <http://jrpp/nsw.gov.au>
- Joint Regional Planning Panels – Operational Procedures (available on the Regional Panel website -these provide the principles to direct every aspect of Regional Panel activities)
- Joint Regional Planning Panels Code of Conduct (available on the Regional Panel website – the Code outlines the standards of behaviour which all members of a Regional Panel must comply with)
- Joint Regional Planning Panels Complaints Handling Policy
- Joint Regional Planning Panel Facts Sheets: No.1, No.3 and No. 4



How does the Regional Panel determine an application? What is the procedure after the regional panel meeting?

How are regional development applications determined?

Regionally significant development applications are determined by the Regional Panel, as the consent authority. Regional Panels operate under the *Environmental Planning and Assessment Act, 1979* (EP&A Act) and must determine an application in accordance with that Act. Prior to determination, the relevant local council planning staff assesses the development application and submits its assessment report to the regional panel.

The purpose of the determination meeting is for the Regional Panel to hear from people that wish to express their view on the development application prior to determination. After hearing public submissions, the Regional Panel may decide to determine the development application or it may defer the determination and/ or request further information.

The Joint Regional Panels Operational Procedures and Code of Conduct are important documents that guide Regional Panels and should be consulted if further information is required.

How will we know when a Regional Panel Meeting is to be held?

Notice of the meeting is provided to the Regional Panel members, the relevant councils in that region, the applicant and every person who made a submission to the council about an item to be considered at the Regional Panel meeting.

The meeting notice is also included on the Regional Panel website and on the web-site of the councils that has matters to be considered at the meeting. The notice will advise of the venue, time and date of the meeting, details of the development application, the availability of the agenda and business papers and will list the matters to be considered at the meeting.

Where possible, in determining a suitable meeting venue the objective is to allow persons that made a submission on the development an opportunity to voice their concerns. At times, items from a number of council areas may be considered at the one meeting provided the venue is reasonably accessible to most interested parties.

How are Regional Panel meetings conducted?

Regional Panel meetings are to be held in public, unless otherwise directed by the Minister, or unless the Chairperson believes there are justifiable reasons (such as litigation, commercial considerations etc) to hold a meeting or any part of a meeting in closed session.

Before the Chairperson decides to conduct any part of a Regional Panel Meeting in closed session, the Chairperson may allow members of the public to make representations as to whether that part of the meeting should be closed. If the chairperson decides to close any part of a Regional Panel meeting, the reasons for closing that part of the meeting will be recorded in the minutes of the meeting.

Who is able to provide a submission or presentation to the Regional Panel?

The Chairperson is responsible for deciding the order of presentations at a Regional Panel meeting and the amount of time for persons to be heard. The following presentations may be made:

- The Applicant to outline the proposal and respond to any issues raised.
- Persons (or persons on behalf of bodies) who made a submission.
- The elected council of the area where the development is proposed to outline its submission.
- At the Chairperson's discretion, any member of the public.
- The person responsible for preparing the council's assessment report is to be present at the Regional Panel. Other technical experts from the council as appropriate may also be present. Assistance may be sought from such persons to clarify issues regarding the assessment report or matters raised.
- Independent assessment reports, advice or assistance may be sought so the Panel can determine a development application. Persons that prepared the report or advice may be invited to present to the Regional Panel meeting.
- Regional Panel members may ask questions of those making a presentation to the meeting.

What if a councillor wishes to make a submission representing the community and is also a Regional Panel Member?

If a councillor is a member of the Regional Panel, he or she would be bound by the Joint Regional Panel's Code of Conduct. In such cases, the councillor could not make a submission on behalf of the community member or other person(s) to the Regional Panel that is responsible for determining the development application.

The councillor should advise the community members or other person that as a member of the Regional Panel, he/she is not able to make a submission on behalf of the community or any individual. The community member should make a written submission to the council during the exhibition period, which will then be considered in the assessment report and provided to the Regional Panel. Also the community member/s may request to address the Regional Panel meeting directly on the proposed development.

Alternatively, if the councillor would still like to make a submission on behalf of the community group the councillor would need to stand down from the Regional Panel in relation to the proposed development and have an alternate Regional Panel member appointed by the council. In this way, the councillor would not be in a conflict of interest position and could make a submission to the Regional Panel meeting on behalf of the relevant party.

Consultation with council.

A Regional Panel is required to consult with the council if it might reasonably be expected that the proposed development may have a significantly adverse financial impact on a council. These costs may be associated with the need for additional infrastructure or services.

Does the Political Donations Legislation apply?

Yes. The requirements of the EP&A Act for the disclosure of political donations apply to Regional Panel application. An applicant, a person making a submission and a member of a Regional Panel must declare a reportable political donation or gift.

The Code of Conduct for Regional Panels provides guidance to members of Regional Panels if a political donation creates a conflict of interest.

Can a Regional panel decide to adjourn or defer a meeting?

After hearing from parties, a Regional Panel may adjourn a meeting for the members to confer before reconvening the meeting to make its decision. A Regional Panel may also decide

to defer its determination of the matter to a subsequent meeting.

If there are matters raised in the Regional Panel meeting by submitters that were not addressed in the assessment report, these will be recorded in the minutes of the meeting, and the Regional Panel may refer these matters to the Council's officer for a supplementary report.

A decision may be deferred for any reason including the Regional Panel obtaining additional information or advice to assist in its determination. In these circumstances, the decision may be made at a subsequent meeting.

The Chairperson should inform the meeting of the reason(s) for the deferral of a decision and provide advice of the proposed further meeting(s) of the Regional Panel to determine the application.

If a Regional Panel's request is for an additional report, the question of cost to prepare the required report will be determined by the Panel Secretariat after consultation with the Chairperson and the council's general manager.

When does the Regional Panel actually make the determination?

After hearing from parties who addressed the meeting, the Regional Panel is to make its decision on the development in an open forum and by consensus where possible. If a consensus decision is not possible, the decision of the Regional Panel is to be made by majority vote. If voting of the Regional Panel members is equal, the chair person will have a second or casting vote.

A quorum for a Regional Panel meeting is 3 members.

A Regional Panel may hold a meeting by electronic means such as a telephone or video meeting. Such meetings will be few, and are likely to be in order to conclude unfinished business from a previous public meeting. At these meetings, the Chairperson and other Regional Panel members have the same voting rights as for any other Regional Panel meeting

Where the determination of an application by a Regional Panel varies from the recommendation by the relevant council officer in the assessment

report, the Regional Panel is required to provide reasons for its decision, which are recorded in the minutes of the meeting together with any changes to the recommended conditions of consent. The meeting minutes will record how each panel member voted on the development application, any declarations of interest made at the meeting and the names of persons that made a presentation.

How do councillors that are Regional Panel members deal with the situation where their council opposes the proposed development – is there a conflict of interest?

Any councillors that are members of the Regional Panel should refer to the Joint Regional Planning Panels Code of Conduct to address this situation. Generally, they should declare an interest in the matter at the council meeting and step aside from the council's decision making process so that they are independent when considering the development application at the Regional Panel meeting.

An alternative option is for the councillor to stand down from the Regional Panel in relation to the proposed development and have an alternate Regional Panel member appointed by the council. If the alternate member is a councillor, that person would also be required to similarly address the above situation by declaring an interest and stepping aside from any council decision about the development.

What happens after the Regional Panel meeting?

The minutes of the Regional Panel meeting are required to be finalised within five (5) working days. Minutes, which include details of any determination and other relevant information, when confirmed and endorsed, will be available on the Regional Panel website. The details of any determination will be provided to the council to issue the Notice of Determination.

The Notice of Determination is issued by the council that received the development application in accordance with the EP&A Act and Regulation and the council's normal procedures.

Enquiries about the determination should be dealt with by the council planner that prepared the assessment report.

The council is responsible for the monitoring and enforcement of the conditions of development consent.

Can the decision of a Regional Panel be appealed?

Appeal rights are unchanged by the introduction of the Regional Panel process.

Dissatisfied applicants may appeal to the Land and Environment Court within 12 months as provided in the EP&A Act.

Where a development application is for designated development an objector who is dissatisfied with the determination of the Regional Panel to grant consent may appeal to the Court within 28 days after the date on which notice of the determination is given.

Appeals against Regional Panel determinations are to be defended and managed by the council that received the development application. Early advice of any appeals should be provided to the Panel Secretariat together with details about the council's proposed defence.

Can a council appeal a decision of a Regional Panel if the council is against the decision?

A council is not able to appeal a determination of a Regional Panel, unless the application is for designated development to which third party appeal provisions apply under the provisions of the EP&A Act and Council objected to the proposed development.

The EP&A Regulation provides the Regional Panel will be the respondent where a council is the applicant for the development and appeals against a determination of the Regional Panel, or otherwise commences Land and Environment Court proceedings concerning a Regional Panel determination in respect of the Council's application.

Crown Development Applications

The EP&A Act provides that, in certain circumstances, a Crown development application may be referred to a Regional Panel for determination.

A council or a Crown applicant may refer a development application to the Regional Panel if the council fails to determine a development within the prescribed period in the EP&A Regulation. If the DA is referred to the Regional Panel and the Regional Panel fails to determine the development application within the prescribed period, the development application may then be referred to the Minister.

Further Information

- Regional Panel website – <http://jrpp.nsw.gov.au>
- Joint Regional Planning Panels – Operational Procedures (available on the Regional Panel website – these provide the principles to direct every aspect of Regional Panel activities)
- Joint Regional Planning Panels Code of Conduct (available on the Regional Panel website – the Code outlines the standards of behaviour which all members of a Regional Panel must comply with)
- Complaint Handling Policy (available on the Regional Panel website)