



Hon Tony Kelly MLC
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 Minister for Infrastructure
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 Deputy Leader of the Government in the Legislative Council
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TWEED SHIRE COUNCIL
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18 MAY 2010
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Clr Warren Polglase
 Tweed Shire Council
 PO Box 816
 Murwillumbah NSW 2484

Dear Clr Polglase

I am pleased to advise that the Joint Regional Planning Panels (Regional Panels), established on 1 July 2009, are now a successful part of the New South Wales planning system. The Government is committed to working collaboratively with Council, industry and the community to build a better planning system for New South Wales.

I am writing to ask your Council to join in a further initiative that will see a range of applications currently dealt with by the Regional Panels, determined by council officers under delegation.

The Department of Planning recently completed an Interim Review of Operation for the Regional Panels, which can be found on the Regional Panels website at www.jrpp.nsw.gov.au. As part of the review, the Department is considering opportunities to improve determination times of certain types of applications which currently require determination by a Regional Panel, without compromising the need for an assessment processes based entirely on merit.

RECEIVED-RECORDS

Date

Return of Modification Applications to Council

Time

I am pleased to advise that amendments are currently underway for State Environmental Planning Policy (Major Development) 2005, to return to Councils the consent authority role for section 96(1A) modification applications under the EP&A Act, where the relevant development consent has been determined by a Regional Panel. The Department will advise you when this amendment takes place.

Proposed Delegations

I am also proposing that the Regional Panel Chairs delegate Regional Panel applications in three circumstances where your Council has agreed that these applications will be determined by appropriate senior staff and not by the full Council or Council committee, consistent with the theme of depoliticising the planning system.

see doc: 16758050 .

EMT
 MKE Vince
 GM

- **Straightforward Applications**

The proposed delegation will allow Council to determine regionally significant applications where there have been no objections received, and the assessment report recommends approval (either with or without conditions). The delegation will not apply to applications where the Panel Chair advises Council in advance that the delegation will not apply to a particular application.

- **Designated Development**

The proposed delegation will allow Council to determine designated development with a Capital Investment Value of \$5 million or less, which is currently determined by a Regional Panel. The delegation would apply regardless of whether there have been objections received, provided the assessment report recommends approval (with or without conditions). The delegation will not apply to applications where the Panel Chair advises Council in advance that the delegation will not apply to a particular application.

- **Areas and precincts**

The proposed delegation will allow Council to determine regionally significant applications located in particular areas and precincts where detailed planning has occurred, regardless of whether there have been objections received, provided the proposed development is strictly in accordance with identified key planning controls, and where the assessment report recommends approval (with or without conditions). The delegation will not apply to applications where the Panel Chair advises Council in advance that the delegation will not apply to a particular application.

The Department requests Council to identify and provide details on areas within Council's local government area, such as Business Parks, which have detailed planning controls that clearly outline what development is appropriate. Where such controls are in place, the Department will consider delegating regionally significant applications to Council to determine. Council should include details of past and possible future applications in these precincts or areas to illustrate the utility of this delegation.

All regionally significant applications must be registered with the Panel Secretariat within seven days of lodgement at Council. The Panel Secretariat would still need to be informed of notification dates and of any submissions received. The Panel Secretariat would continue to coordinate Panel briefing meetings in some instances.

Delegation to Officer Level

In order to effectively utilise the proposed delegations, consistent with the common goals of depoliticising the planning system and improving determination timeframes, the delegations will only apply to councils which have themselves delegated the authority to make decisions for these classes of applications to an appropriate officer of the Council.

Determination

The delegated Council officers will be able to refuse an application even though the assessment report recommends approval, however a refusal in such circumstances is unlikely and would need to be supported by sound planning reasons. The delegations will apply to Development Applications and section 96(2) modification applications under the Environmental Planning and Assessment Act 1979 (EP&A Act).

Trial Period

It is envisaged that the proposed delegations will be in operation for a 12 month trial period, after which they will be reviewed to determine what further opportunities and measures may be justified and put into place.

Implementation

A written commitment to confer the delegations to an appropriate level of officer, and information on applicable precincts and areas as outlined above, is requested by the Department within 21 days of the date of this letter.

The Chair of Council's Regional Panel will then write to Council with further details on the delegations, such as commencement date.

The Department is seeking to work with Council throughout the finalisation and preparation of these delegations. I look forward to a continued strong working relationship between your Council the Regional Panel, and the Department.

You may call Mr Shayne Watson, Director Assessment Systems and Strategies, directly on (02) 9228 6302 or by e-mail shayne.watson@planning.nsw.gov.au should you require any further information.

Thank you for your co-operation on this important initiative.

Yours sincerely,

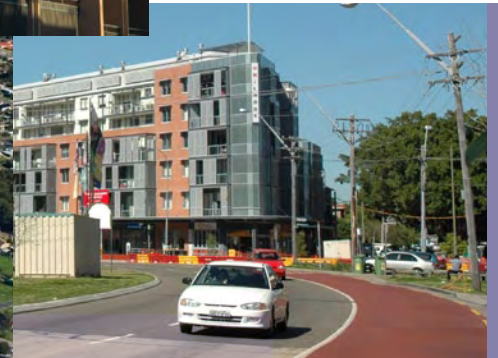


Tony Kelly MLC
Minister for Planning



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*.

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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.