

GENERAL MANAGER'S REPORT TO COUNCIL

(continued)

SECTION:	Planning
ITEM NUMBER:	Item 2
SUBJECT:	Appointment of Council Representatives of Joint Regional Planning Panel
File Reference:	U07/171
Reason:	Appointment of Council representatives on Joint Regional Planning Panel
Objective:	Appointment of Council representatives on Joint Regional Planning Panel
Budget Implication:	Nil
Operational Plan:	Principle Activity 5.1

Information:

The Joint Regional Planning Panels were introduced in NSW on 1 July 2009 to strengthen decision making on regionally significant development applications (DAs) and certain other planning matters. The regional panels are independent bodies representing the Crown and are not subject to the direction of the Minister, except on matters relating to regional planning panel procedures.

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,
- Determining Crown DAs that have been referred to the regional planning panel by the council or the applicant which have not been determined by council within the time prescribed in the *Environmental Planning & Assessment Regulation 2000*,
- Determining applications to modify a consent for regionally significant development under section 96(2) of the *Environmental Planning & Assessment Act 1979*, and
- Providing advice on planning or development matters when requested to do so by the Minister.

The *Environmental Planning & Assessment Act 1979* 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 Commissions.

Regional Panels determine regionally significant developments with a Capital Investment Value between \$10 million and \$100 million (and between \$5 million and \$100 million for proposals and proposals for public and private infrastructure e.g. community facilities) or developments where the council is involved or has an interest. An 'interest' is defined in clause 13B of the *Major Development State Environmental Planning Policy*. Capital Investment Value is defined in the *Environmental Planning & Assessment Regulation 2000*.

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

Membership

Regional panels consist of five members, comprising one chair appointed by the Minister with the concurrence of the Local Government and Shires Associations of NSW, two other members appointed by the Minister and two council appointed members.

GENERAL MANAGER'S REPORT TO COUNCIL

(continued)

Selection of Council Appointees

At least one 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.

Each Council identifies how their members are selected. In selection members, 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 or involved in the assessment and recommendation of a DA to be determined by the panel.

Councils are not restricted to nominating people from the council's local area. They can appoint, terminate, and reappoint members at any time, and can determine the duration of each appointment. Generally, so as to ensure the greatest degree of continuity for the regional panels, councils should consider appointing members for the maximum term of three years provided for under the *Environmental Planning & Assessment Act 1979*.

Remuneration

Councils are free to determine the fees paid to their appointed members, but enquiry with Armidale Dumaresq Council and Tamworth Regional Council who have had Joint Regional Planning Panels for their local government areas advise that the Minister upon request from Council has advised that:

- *Council staff members:* No fee should be paid, as participation in the Regional Panel would form part of the employee's regular duties, consistent with the *Department of Premier and Cabinet Guidelines for NSW Board and Committee Members: Appointment and Remuneration* (the DPC Guidelines) on payment to Public Sector Employees.
- *Elected councillors:* As councillors already receive an annual fee set by the Local Government Remuneration Tribunal each year for performing their councillor duties, an additional per meeting fee of no more than \$600 appears reasonable, recognising that membership of the Regional Panel will bring additional responsibility.
- *Community members:* Each council may determine an appropriate level of remuneration for that person, by arrangement with that member, but that a meeting fee not exceeding \$1400 should be considered as a guide when determining appropriate remuneration rates. This is commensurate with the fee proposed for State appointed members.
- *Alternates:* Alternate members, when serving on the Regional panel, should receive fees commensurate to those paid to comparable council-appointed members.
- Councils are also advised to refer to the DPC Guidelines when calculating travel and subsistence allowances for their nominees.

Current Appointees

Council's current representatives are the former Cr Ron Filmer and Paul McFarland from the University of New England. Their term expired just prior to the Council elections.

Council has had no development referred to the Joint Regional Planning Panel at this stage.

Prepared By: Libby Cumming, Manager of Planning
Prepared For: General Manager

Recommendation:

That Council determine:

1. The two Council appointees including an alternate appointee,
2. Suitable remuneration for Council appointed panel members.

GENERAL MANAGER'S REPORT TO COUNCIL

(continued)

Attachments to the Item 2 Report

INDEX OF ATTACHMENTS

The Following Documents are Included as Attachments to the Preceding Report:

Attachment Name	Pages
A: Letter – Department of Planning & Infrastructure dated 25 September 2012	2
B: Joint Regional Planning Panels – Operational Procedures – September 2012	35
C: Joint Regional Planning Panels – Code of Conduct – September 2012	14
D: Joint Regional Planning Panels – Complaints Handling Policy – September 2012	8



The Hon Brad Hazzard MP
Minister for Planning and Infrastructure
Minister Assisting the Premier on Infrastructure NSW

09 001 2312

12/09629

Mr Tom O'Connor
General Manager
Uralla Shire Council
PO Box 106
URALLA NSW 2358

Dear Mr Tom O'Connor,

I am writing to thank you and your staff for the important role you have played to date in the operation of the Joint Regional Planning Panels (regional panels). I have recently approved revised Operational Procedures, Code of Conduct and Complaints Handling Policy for the regional panels. The revised documents are available on the Department of Planning and Infrastructure's website at www.planning.nsw.gov.au and on the regional panels' website at www.jrpp.nsw.gov.au

The changes to the policies and procedures have been informed by submissions received in March 2012 following public exhibition of the draft policies and procedures. A summary of submissions received and the action taken in response is available with the revised documents on the department's website and the regional panels' website.

I have also established a regional panels users group of key stakeholders, including the Local Government and Shires Associations, to act as a reference group for regional panel chairs so that regional panel operations are made as transparent and efficient as possible.

The key changes made to the three guideline documents are:

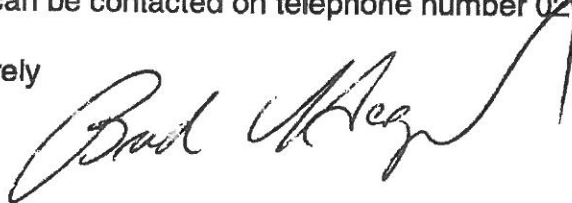
- **Council nominations** – Councils are to notify the secretariat of any changes to council members as soon as possible. Council nominees need to be appointed for a minimum of 14 days before attending a panel meeting at which they will act as a panel member. This is particularly important given recent local government elections, and I would like to remind you of the need to review and confirm your members to the regional panel before their current terms expire.
- **Registration of DAs with a CIV between \$10 million and \$20 million** - Councils were previously asked to register all development applications (DA) with the regional panels secretariat which had a capital investment value (CIV) between \$10 million to \$20 million. The procedures now provide that council should only register these DAs after 120 days and when a request has been received from an applicant to refer the DA to the regional panel for determination.
- **Expected assessment timeframes** - The procedures now specify that councils are expected to complete their assessment reports 60 days after the close of the public exhibition period.

- **Briefings with applicants** – In exceptional circumstances and after consulting with council's planning director, applicants may be given the opportunity to brief the regional panel.
- **Submissions and amended plans** – All submissions from members of the public and amended plans or additional information from the applicant are to be sent to council. Council is required to make sure their assessment report includes a summary of submissions and an assessment of key issues raised. Any material submitted to the regional panel for them to consider in making a determination will be provided to council.
- **Draft conditions of consent** – Where council's assessment report recommends a DA be refused, the regional panel chair in consultation with other panel members, may request without prejudice draft conditions of consent before or during the panel meeting.
- **Code of conduct for panel members** – Regional panel members must not represent an applicant or a submitter at a regional panel meeting for a regional panel of which they are a permanent member or have been used regularly as an alternate member.
- **6 monthly reporting on complaints** – The regional panels secretariat will prepare a 6 monthly report on complaints and make this publicly available.

A detailed summary of all changes made to these three guidelines is provided at **Attachment 1**.

If you have any further enquiries, I have arranged for Shayne Watson, Director Assessment Systems of the Department of Planning and Infrastructure to assist you. Mr Watson can be contacted on telephone number 02 9228 6302.

Yours sincerely



HON BRAD HAZZARD MP
Minister

25 SEP 2012

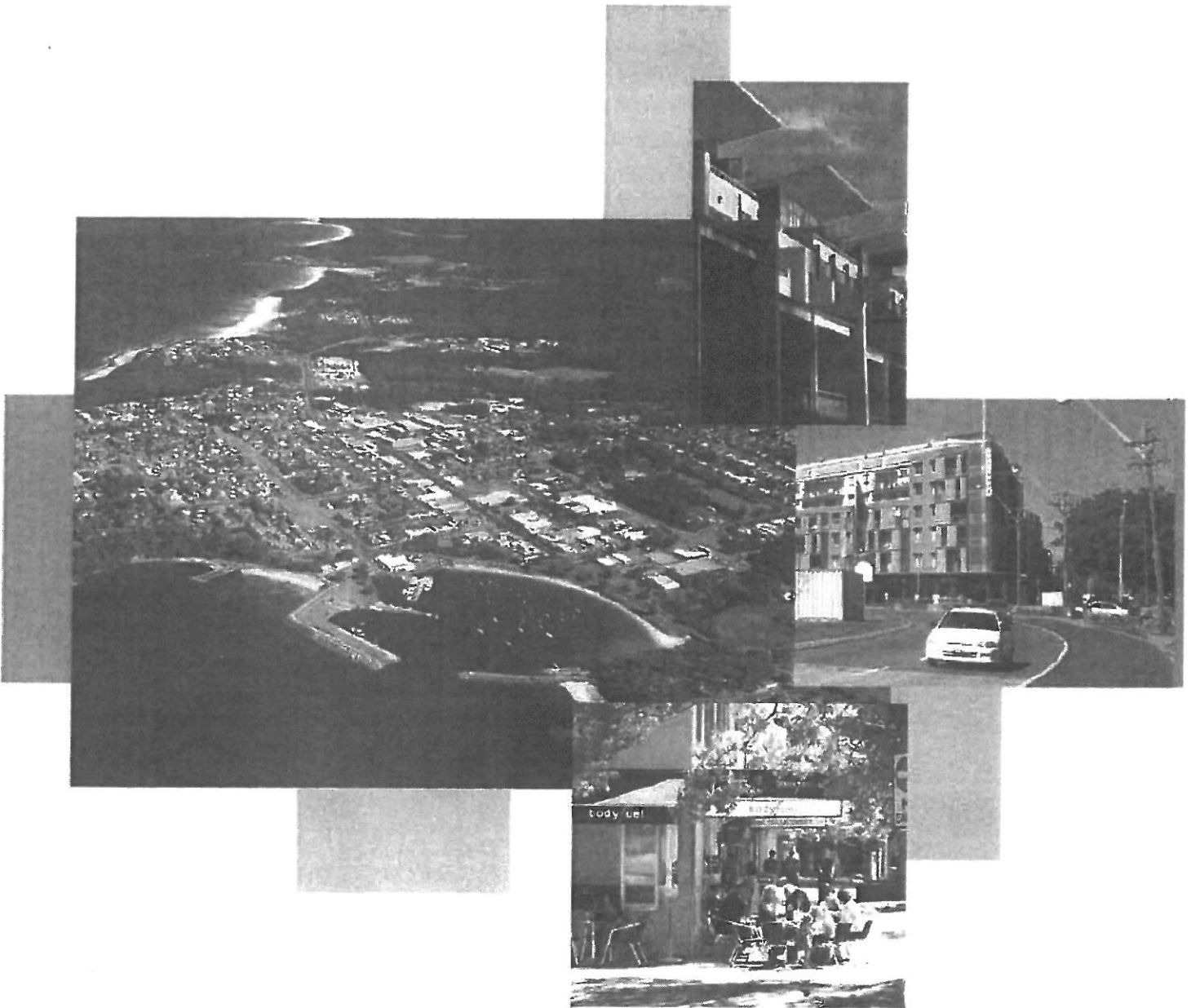
08/09/2012



Joint Regional Planning Panels

Operational Procedures

September 2012



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

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

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

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

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

Joint Regional Planning Panels Operational Procedures
© State of New South Wales through the NSW Department of Planning and Infrastructure
September 2012
NSW Department of Planning and Infrastructure
23-33 Bridge Street Sydney NSW Australia
www.planning.nsw.gov.au

ISBN 978-0-7313-3590-9

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Definitions

Council means the council for the local government area in which the development the subject of an application is located and any other council whose area is potentially significantly impacted by the proposal

Department means the Department of Planning & Infrastructure

Development Application (DA) means an application for consent under Part 4 to carry out development but does not include an application for a complying development certificate

EP& A Act means *the Environmental Planning & Assessment Act 1979*

EP& A Regulation means *the Environmental Planning & Assessment Regulation 2000*

LGSA refers to the Local Government and Shires Association

Minister means the Minister for Planning and Infrastructure

Regional Panel means the Joint Regional Planning Panel

Secretariat refers to the Regional Panels Secretariat which provides technical and administrative support to the Joint Regional Planning Panels

SRD SEPP refers to the State Environmental Planning Policy (State and Regional Development) 2011

1. Introduction

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

The regional panels are independent bodies representing the Crown and are not subject to the direction of the Minister, except on matters relating to regional panel procedures.

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 regional panels' Code of Conduct which explains the standard of conduct expected of panel members.

These procedures relate to the operation of the 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 periodically.

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,
- determining Crown DAs that have been referred to the regional panel by the council or the applicant which have 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 section 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 members, comprising one chair appointed by the Minister with the concurrence of the Local Government and Shires Associations of NSW (LGSA), two other members appointed by the Minister and two council-appointed members. The Regional Panels Secretariat (secretariat) is responsible for the maintenance of a register of all panel 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 members appointed by the Minister to comprise the regional panel whenever it is considering a matter that is located in that council's area.

Panel members can be appointed to more than one region, either as a panel member and/or as an alternate member.

When a vacancy in office of a regional panel member occurs, the Minister in the case of a member appointed by the Minister, and the relevant council in the case of a council member, would fill such a vacancy in accordance with the EP&A Act.

Chair and deputy chair

The Minister will appoint one member as the chair for each regional panel. The Minister is required to obtain the concurrence of the LGSA to the appointment unless the LGSA:

- do not notify their concurrence or refusal within 21 days of being requested to do so, or
- have previously refused to give concur for two different persons nominated by the Minister for the appointment.

At any time, the members may determine to elect a member appointed by the Minister to be deputy chair for any term. The role of a deputy chair is to act as the chair at any time the chair is absent from the meeting.

The chair (or, in the absence of the chair, 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.

Expertise requirements for members appointed by the Minister

All regional panel members, including alternates, appointed by the Minister are 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, tourism or government and public administration.

Two members are appointed by the Minister, each having expertise in one or more of the areas mentioned above.

Council members

Two council members are appointed by each council. 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.

- **Selection of council members**

Each council identifies how their members are selected. In selecting members, 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 or involved in the assessment and recommendation of a DA to be determined by the panel.

Councils are not restricted to nominating people from the council's local area. They can appoint, terminate, and reappoint members at any time, and can determine the duration of each appointment. Generally, so as to ensure the greatest degree of continuity for the regional panels, councils should consider appointing members for the maximum term of three years provided for under the EP&A Act. However, councils should reconsider if the nominations to the regional panels are appropriate within 12 months following a council election.

Following a change to its nominees, council is to forward the new member's personal details to the secretariat as soon as possible and this must be a minimum of 14 days before any meeting at which they will act as a panel member.

If a council 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**

Councils determine the fees they pay their panel members. The Minister has provided guidance to all councils on appropriate rates of remuneration for travel and subsistence allowances for their members.

Each council is responsible for making payments to their panel members when they attend regional panel meetings.

Alternate members

The Minister may at any time appoint a person to be the alternate of another member appointed by the Minister, and may revoke any such appointment.

A council may also at any time appoint a person to be the alternate of a member nominated by the council, and may revoke any such appointment. Any changes are to be notified in writing to the secretariat as soon as possible and at least 14 days before any regional panel meeting at which they will act as a panel member.

A person may be appointed as the alternate of more than one panel member and to more than one regional panel.

The alternate will act in the place of the member with all the powers of the member.

2.3 Defining the regions

Regional panels are constituted by the Minister by order published in the Government Gazette. The local government areas (LGA) covered by each 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 operates.

Regional panels operate in the following six regions: Sydney East, Sydney West, Hunter and Central Coast, Southern, Northern, and Western.

2.4 Classes of regional development and regional panel functions

Schedule 4A of the EP&A Act identifies the types of development for which regional panels exercise consent authority functions of councils.

The capital investment value (CIV) is relevant for some development which is determined by a regional panel. CIV is defined in clause 3 of the EP&A Regulation. The Department of Planning and Infrastructure (the department) has issued Planning Circular 10-008 to assist applicants and councils in the calculation of CIV. If there is doubt about the CIV of an application, councils should consider requesting the applicant to provide a quantity surveyor's certificate or similar expert assessment that addresses the definition of CIV.

The State Environmental Planning Policy (State and Regional Development) 2011 (SRD 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 where the regional panel granted consent to the original development, except where the development is no longer a class of regional development.

Section 96(1) and section 96(1A) modification applications to development consents granted by the regional panel are to be determined by the relevant council.

2.5 Administration

Administration and support for the regional panels is provided by the secretariat. Such support is in relation to:

- scheduling of meetings,
- preparing and issuing meeting agendas and business papers,
- notification of meetings,
- arranging for travel and accommodation for panel members,
- arranging accommodation for panel members;
- taking of meeting minutes (with assistance from council); and
- record keeping for the regional panels.

Councils are responsible for the notification of applications, preparing the assessment reports (including the consideration of submissions) and the post-determination functions including notification of determinations to the applicant and any person who made a submission

Councils may be requested to assist regional panels with the provision of meeting venues, arrangements for site visits and briefings, and the provision of a minute taker for meetings.

The secretariat is the first point of contact for all regional panel matters and publishes a wide range of information on its website: www.jrpp.nsw.gov.au. The contact details for the secretariat are:

phone: (02) 9228 2060

email: jrppenquiry@jrpp.nsw.gov.au

The secretariat deals with applications for information under the *Government Information (Public Access) Act 2009 (NSW)*, however councils may also be required to respond to an application in relation to information it may have, in accordance with the legislation.

2.6 Monitoring of applications

The secretariat will monitor the progress of DAs referred to the regional panels to ensure panel meetings are scheduled as soon as practicable following the submission of the assessment report by the relevant council.

Councils should actively monitor regional applications they have received to ensure they meet expected timeframes for processing and determination. It is expected that council will complete their assessment report within 60 days after the close of the public exhibition period. The secretariat will also monitor the progress and reporting of applications to ensure timeframes are met.

The performance of the regional panels will be monitored and reported in the department's annual monitoring report of local councils which will include a section about the regional panels.

Performance statistics for the regional panels will be published annually in the department's Local Development Performance Monitoring Report.

2.7 Regional panel users group

A regional panel users group has been established to act as a reference group to advise on regional panel operations. The user group meets twice a year and consists of all six regional panel chairs, plus representatives from industry and stakeholder groups.

2.8 Availability of information

The secretariat will make a range of information publicly available on its website, including:

- regional panel meeting agendas with dates, locations and times (at least 7 days before the panel meeting),
- the relevant council's assessment report and recommendation (at least 7 days before the panel meeting),
- any amended or supplementary information submitted by council,
- records of public briefing meetings, minutes of regional panel determination meetings, and meetings where business is transacted by electronic means, and
- a schedule of meeting dates reserved for panel business, including briefing meetings, site visits or panel meetings.

Councils remain responsible for receiving, notifying and exhibiting DAs and supporting documents in accordance with statutory provisions and council's own notification and exhibition policy.

2.9 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 regional panels' Code of Conduct in the performance of their responsibilities.

3. Roles of councils and other panels

3.1 Role of councillors and council staff

The elected council and council staff have distinctly different roles in the handling of DAs. Section 352 of the *Local Government Act 1993* (LG Act) 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 functions such as accepting the DA, 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 section 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.

Determination role

The role of the elected council is to determine, or make decisions on, DAs in their capacity as a consent authority. There are occasions, however, where the determination role is performed by other people 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 DAs and certain other types of DAs.

The elected council is able to make a submission to the regional panel on a DA within their LGA that is to be determined by that regional panel (refer to 4.11).

Post-determination role

Council staff are responsible for post-determination functions including issuing the notice of determination, advising any person who made a submission on the DA of the determination, and the monitoring and enforcement of compliance with conditions of the development consent.

3.2 Support provided to regional panels by councils

The EP&A Act provides that regional panels are entitled to use the staff and facilities of the relevant council for the purpose of carrying out their 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 use of council facilities such as meeting rooms would be arranged prior to meetings of regional panels.

Support such as the taking of minutes for panel meetings, copying of documents and the provision of professional advice may also be required.

Generally, the relevant council bears the administrative and council staff costs associated with the regional panel meetings. Administrative costs may include those associated with the meeting venue and set up, the attendance of council staff, as well as the minute taker.

The chair 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 chair 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, 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 which helps to improve the quality of design. The quality of design has a bearing on many, but 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 panel. However, it is generally more effective in terms of design quality outcomes and timeliness, if the design review panel is convened at the pre-DA 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). The purpose of IHAP's is to provide an independent review of 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.

Applications determined by a regional panel are not referred to IHAPs or any other similar type of public review of the DA or assessment report. The only exception to this is IHAPs which are established under section 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.

4. Assessment

4.1 Pre-development application meetings

Pre-DA meetings between applicants and assessment officers are commonly used to agree on assessment requirements before applications are submitted to the consent authority.

The regional panel encourages applicants to meet with council before lodging a DA, and to respond to the advice of council when preparing the DA.

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.

4.2 Representations to regional panel members

If a panel member is approached by any person about a DA that is to be determined by the regional panel, the panel member must not discuss the development.

Any person that approaches a panel member should be encouraged to make a written submission about the DA to the council planning staff during the notification period. Issues raised in submissions will be addressed in the assessment report to be provided to the regional panel and there will be an opportunity for the applicant and any person who made 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 relevant local council. In addition to council's requirements for lodging a DA, applicants are requested to submit a CD copy of the application and supporting material for referral to the secretariat. The secretariat may request a hard copy of the application from council.

Note: This requirement does not apply to DAs between \$10 million and \$20 million unless a referral is accepted by the chair (see 4.8).

The SRD SEPP provides that a regional panel is to determine the separate DAs that form part of a staged DA if the whole of the development meets the specified regional development thresholds. This information on staged development must be included with the Stage 1 DA. In the case of development located in two or more LGAs, a separate DA must be lodged with the councils of each LGA.

Additionally:

- each DA should only address that part of the development located on land in the relevant 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

- councils are able to make a submission and register to address the regional panel at its meeting.

4.4 Notification to the secretariat

Council is to notify the secretariat within 7 days of receiving a DA for regional development for which the regional panel is the determining body.

The notification is to be made via the regional panels' website (www.jrpp.nsw.gov.au). The notification is to include all the information required on the website notification page.

The secretariat will advise regional panel members of the DA once the referral is accepted. The DA documents will generally be sent to panel members in CD form or panel members will be advised of how these documents can be viewed through the regional panel 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 decision about the proposed development is made until the regional panel meeting is held to consider the application.

4.5 Public notification of development applications by council

Public notification of the application, and re-notification if required, is undertaken by council staff in accordance with the requirements of the EP&A Act and EP&A Regulation, including the provisions of any development control plan or policy 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} Joint Regional 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 regional 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 EP&A 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.

Holding a pre-DA meeting with council staff will often clarify 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.

The regional panel may identify issues at a briefing meeting that must be addressed or clarified in council's assessment report, and for which council may request further information.

Amended plans or additional information on a DA must be lodged with council.

Where council requests additional information, such requests should:

- be in writing to the applicant, with a copy to the 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,
- identify all matters in 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 date for the submission of the information or amendments to council, and
- indicate that if the applicant is unable to meet the deadline, the council will proceed to assess the application in its current form and/or without the requested information.

Status reports

Councils must advise the secretariat as soon as it is evident that there are difficulties in assessing the application or if the assessment report will not be completed within the timeframe indicated in the referral notification.

Councils will be required to provide the secretariat with an application status report for all applications that have been lodged for 70 days or more. A template is available on the regional panels' website.

The status report must detail the processing of the application to date and provide a commitment to a final reporting timeframe. The council may be requested to provide further formal or informal updates as necessary, on the progress of the application and its recommendation.

Where a response or concurrence from public agencies is delaying the assessment of the application, the secretariat will seek assistance from the Project Delivery Unit of the department to ensure the agency responds to council in a timely manner.

Where there is an ongoing and unreasonable delay in the processing of an application, council may be requested by the regional panel to complete its assessment without further delay.

4.7 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 council's responsibility to prepare an 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 of, 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 council.

The assessment report must clearly identify how the proposal meets the relevant requirements for regional development under the EP&A Act, and that the regional panel is 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.
- If the recommendation is for refusal, the report must include reasons for refusal based on the assessment in the report.

The chair, following consultation with the regional panel, may also request without prejudice draft conditions of consent, where council's report recommends refusal. The panel may do this before or at the regional panel meeting where the DA is being considered.

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.

Varying development standards

Where a DA includes a variation to a development standard as defined in the EP&A Act, an objection under *State Environmental Planning Policy No 1—Development Standards* (SEPP 1), or application under clause 4.6 of the Standard Instrument, is required. Council's assessment report is to include an assessment of the objection or application against the relevant statutory provisions.

The function of obtaining concurrence from the Director-General is a matter for the council. However where concurrence is assumed, the council does not need to obtain concurrence. The function of determining that a SEPP 1 objection or clause 4.6 application is well founded is a matter for the regional panel.

Local Infrastructure contributions

The assessment report should address contributions required under section 94 and section 94A of the EP&A Act in accordance with the council's adopted contributions plan applicable to the DA. The regional panel cannot impose any additional contributions that are inconsistent with council's contributions plan. For Crown developments, councils should address contributions in accordance with the relevant planning circular (Circular No. D6, issued September 1995 or as amended).

4.8 Development subject to delays in determination

Schedule 4A, Clause 10 of the EP&A Act provides that an applicant can refer the DA to the relevant regional panel for determination if it remains undetermined for 120 days after being lodged with council. The referral process is outlined below:

- when making a referral, applicants must use the referral form available on the regional panels' website,
- the applicant is required to complete the relevant part of the form and submit it **to both** the relevant council and the secretariat,
- once the council receives the referral form it cannot determine the DA until a decision has been made regarding whether the regional panel will have the function of determining the DA, however council can continue to assess the DA,
- once a referral is made the council must provide the completed referral form and copies of all DA documents such as the Statement of Environmental Effects, to the secretariat within 7 days. Council should also provide their explanation for delay in completing their assessment,
- the chair will consider the information in the referral form and advise the secretariat if the referral is accepted (i.e. the applicant is not responsible for a delay in the application) generally within 14 days of the applicant making the referral. In making this decision, the chair will consider a number of matters, including:
 - permissibility and zoning, including whether the determination is dependent on a rezoning,
 - whether the determination is dependent on a voluntary planning agreement or the approval of a masterplan,
 - whether the landowner's consent has been provided,
 - whether the required referrals and concurrences have been obtained,
 - whether there have been requests for further information, and what the responses were to those requests, and
 - if council has considered the DA and the outcome of that consideration,
- once the chair makes a decision, the secretariat will notify the council and the applicant,

- if the referral is not accepted the chair must advise the reason(s) for not accepting the referral,
- if the referral is accepted, council completes the assessment of the application and prepares an assessment report for submission to the secretariat, and
- a briefing meeting with council may be held prior to determination.

4.9 Panel briefings and site visits

Prior to an assessment report for a DA being submitted to a regional panel, the chair may agree to a site visit or a briefing meeting on the matter by council staff, by other persons undertaking the assessment, or by other persons providing advice to the regional panel .

At site visits or briefing meetings, the regional panel is not able to offer an opinion on the overall merits of the proposal or to direct the person 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.

Briefings with council staff

The purpose of a briefing with council staff is to inform the regional panel about the DA and its key issues. Briefings may include a presentation by council staff on the DA, its key elements and the planning controls that affect it (such as zoning), and 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 regional panel meeting to consider the application may also be discussed. Council's assessment officer should have available a set of large scale DA plans (including amended plans) at the briefing meeting.

Only panel members who will sit on the regional panel to determine the DA are required to attend the briefing meeting.

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 after the close of the public notification period and before council makes any major request for further information from the applicant. Although council can request further information before the exhibition. The assessment of the application should not be delayed in order to conduct a briefing.

Panel members may identify further issues for which they require clarification or further information. A regional panel may request a further briefing with council staff to clarify any element of the DA and assessment report prior to the public regional panel meeting.

Briefings are not determination meetings and panel members should not make any comment that would indicate pre-determination of the application. To avoid any apprehension of bias, no other parties can be involved in the briefing. Formal minutes are not taken for briefings and presentations between council officers and the regional panel, however a record of the

briefing meeting will be made including time, date, attendees and key issues discussed. The secretariat will maintain a record of the briefing meeting.

Public briefing meetings

If the DA attracts significant community interest, the regional panel may consider holding a public briefing meeting prior to the finalisation of council's assessment report. The public briefing meeting is held to hear submitters in a public forum and to meet with key stakeholders to discuss unresolved issues. These public meetings are held at the discretion of the panel chair.

The applicant and all persons who have made a submission are invited to attend the public briefing meeting. The council assessment officer is expected to attend, and record any issues raised which need to be addressed in the council assessment report.

Representatives of community groups interested in the proposal can register to speak to the regional panel at the public briefing meeting.

For those people who are of the view that they would not be appropriately or adequately represented by any groups, they may register to speak to the regional panel as individuals.

A record of each public briefing meeting held will be published on the regional panels' website. Panel members should not make any comment that would indicate pre-determination of the application at a public meeting.

Site visits

A regional panel may visit the site of a DA prior to a briefing or regional panel meeting (see 5.1 below), at the discretion of the chair. The chair 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.

In some circumstances, other parties including the applicant and people who made submissions on the DA, 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 chair.

In deciding to conduct a site visit, the chair 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 to any private land may only take place with the express permission of the owner of the land, and it is the responsibility of council staff to seek owner's consent when required.

Briefings with the applicant

The regional panel will not normally engage the applicant outside of a public meeting.

However, there may be some circumstances where it would be appropriate for the applicant to meet with the regional panel, including where:

- the regional panel could benefit from additional technical explanation on a complex DA
- development options are still being considered (e.g. if a major re-design has been requested by the council)
- material to be presented may be commercially sensitive or confidential.

Any meetings between the applicant and the regional panel should be held after the exhibition period closes but before the assessment report is provided to the regional panel. These meetings should only be conducted where the chair considers it is necessary and appropriate, and following consultation with council's planning director.

A record of the meeting, including attendees and matters discussed, should be made and be publicly available.

It is generally not appropriate for the panel to meet with the applicant at the pre-DA stage, except where the application relates to a subsequent stage of a staged DA which the panel has previously determined.

4.10 Other public meetings about the proposed development

To avoid any perception of bias, panel members should avoid attending public meetings about a proposed development organised by members of the community or council, unless the meeting has been organised at the request of the regional panel.

In order for all panel members to hear the concerns of the public as part of the consideration of the application, panel members should decline the invitation and advise the meeting organisers to make a submission to council and register to address the regional panel at its meeting.

All members of the regional panel are required to observe the regional panels Code of Conduct which requires determinations to be made impartially and based on merit.

4.11 Council representation to the regional panel

An elected council may make a submission on a DA within their LGA that is to be determined by a regional panel up to seven days before the regional 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 has been forwarded to the secretariat, it may be provided to the elected council to assist in its decision as to whether it will be making a submission to the regional panel. The elected council's submission should not be prepared by persons involved in the assessment of the application, and should be prepared by another council officer, or a consultant.

A council submission should not be specifically addressed in the assessment report or recommendations prepared by the council staff. If council makes a submission, a staff representative or individual Councillors may register to address the regional panel at the meeting to express the views of council.

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. They should declare any interest in a 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.

4.12 Submission of assessment report to the secretariat

The completed assessment report and recommendation is to be immediately forwarded, via electronic means and in Microsoft Word format, to the secretariat.

The assessment report is not to be endorsed or presented to the elected council before being forwarded to the secretariat.

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

- assessment report and any attachments and recommendations (including conditions),
- any plans, drawings or other material submitted with the application if they have not previously been submitted to the secretariat,
- copies of each submission received in respect of the DA along with a table containing the names, postal addresses and email addresses (if provided) of every person or body who made a submission, and
- in the case of petitions, only the name and address of the head petitioner should be provided, if that person can be identified.

Note: Council's assessment report must include a summary and assessment of all submissions to enable the regional panel to consider the submissions for the purposes of section 79C of the EP&A Act. Based on the details provided by council, the secretariat will notify persons who made submissions of the time, date and venue of the regional panel meeting at which the relevant application will be considered. Councils should also provide the secretariat with copies of any late submissions and, where necessary, provide further assessment if the issues are not already covered in council's assessment report..

4.13 Written submissions to the regional panel

All written submissions must be sent directly to council.

Any material submitted to the secretariat for the regional panel to consider in making a determination will be made publicly available and provided to council for assessment. Regional panels will not normally accept information provided in confidence that is not also provided to council. However, if confidentiality is requested, the reason must be clearly stated.

At the regional panel meeting, it is acceptable to provide the panel with written material which summarises the matters to be presented to the panel by the speaker. However, this written material must be kept to a minimum.

4.14 Rezoning, master plans and voluntary planning agreements

If a proposed development requires approval to a rezoning application, it is the responsibility of the council to consider and process any such rezoning proposal. Where a DA has been lodged concurrently with a rezoning proposal, the regional panel requires council's assessment report to address the DA against the proposed zoning, and cannot make a determination to approve any DA until the rezoning process has been completed (gazetted).

Where the provisions of an environmental planning instrument require a master plan to be adopted by the council before granting development consent, it is the responsibility of council to adopt the 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. 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 DA.

4.15 Referral of Crown development applications with a CIV less than \$5 million

Crown DAs with a CIV greater than \$5 million are regional development. Crown DAs with a CIV under \$5 million can be referred to the regional panel under section 89(2) of the EP&A Act by either:

- the applicant where council has not determined in the prescribed period, or
- the council at any time including before the end of the prescribed period.

Before the end of the prescribed period, only a council (not the applicant) can refer an application to the regional panel.

For Crown DAs with a CIV less than \$5 million 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 by council to the regional panel under section 89(2) of the EP&A Act. Planning Circular PS 09-017 outlines the Crown DA provisions.

The referral to the 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 section 89(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 receipt of the letter, the secretariat will review the documentation. If accepted, the applicant or council will be requested to lodge the referral on the notification page of the regional panels' website.

Where a report or other documentation has been prepared by council, this is to be provided to the regional panel for consideration. The secretariat will review that report or otherwise prepare an assessment report for the regional panel. Section 5.8 below discusses the determination of Crown DAs.

5. Determination

5.1 Regional panel meeting

Regional panels exercise the consent authority functions of elected councils to determine regionally significant development in accordance with section 23G of the EP&A Act.

A regional panel meeting is where the regional panel meets in public to consider DAs. Refer to **Schedule 1** for more information on the detailed procedures for panel determination meetings.

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 public submissions being heard and after considering the recommendation in council's assessment report and hearing the views of the public, the panel may determine the application or defer its decision for reasons that will be stated in the minutes of the meeting.

5.2 Meeting dates and agendas

A regular schedule of proposed meeting dates is determined at the beginning of each year by the secretariat in consultation with the chair. The meeting dates are listed on the regional panels' website and are reserved for public briefing meetings, briefings with council staff, site visits, or regional panel meetings. A regional panel meeting will generally be arranged within 14 days of receiving council's assessment report.

Additional meetings of a regional panel may be organised at the discretion of the chair. These additional dates will be posted on the website as soon as they become available.

The agenda for each meeting is approved by the chair who may consult with the general managers (or their nominee) of the relevant councils as necessary.

The council is to notify the secretariat of any revised date for completion of the assessment report as soon as it is aware of any delay and advise reasons for the delay.

5.3 The meeting venue

The meeting venue is determined by the chair in consultation with relevant councils, and taking into account:

- 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.

The meeting venue should:

- maximise accessibility to people who have expressed an interest in the matters to be considered at the meeting, and
- facilitate the open exchange of information between the panel members and other parties.

Items from a number of different LGAs might be considered at one meeting provided the venue is reasonably accessible to most interested parties.

In regional areas, the chair 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 secretariat at least 7 days before the meeting. Notice is provided to the 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. A notice is placed on the regional panel website and may be placed in the local newspaper.

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 and uploaded on the regional panels' website by the secretariat no less than 7 days prior to the meeting.

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

5.6 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.

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, which shall be forwarded to the secretariat.

5.7 Determining Crown development applications

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

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 Schedule 4A of the EP&A Act, 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. Refer to section 4.15 for more information.

Where the regional panel wishes to either refuse an application or 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.

The PAC may function as a regional panel to determine Crown DAs within the City of Sydney (where the regional panels do not operate) which are not determined by council within the time prescribed in the EP&A Regulation.

5.8 Delegation to council to determine applications

If the Minister agrees, regional panels may 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 a case-by-case basis.

The *Local Government Act 1993* provides that the regional panels can only delegate to the elected council, and it is then at the discretion of the council to delegate to the general manager, and in turn to senior staff.

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

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

A council may be requested by the chair of the relevant regional panel not to exercise delegation in certain circumstances.

Any determination made by council under delegation remains a decision of the regional panel.

6. Post determination

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 EP&A Regulation, and the council's normal procedures.

The notice should not be issued until a copy of the endorsed and final minutes have been received by council. The notice of determination must include all conditions imposed by the regional panel, including any additional or amended conditions.

Enquiries about the determination should be directed to the council planning officer responsible for the assessment report. Council is also responsible for advising any person who made a submission on the DA of the determination.

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. Under clause 123E(2) of the EP&A Regulation, council is required to advise the chair of the regional panel in writing when the matter specified in the condition has been satisfied.

6.3 Appeals against a regional panel determination

Merit appeals

An applicant who is dissatisfied with an actual or deemed determination of an application may lodge a merit appeal to the Land and Environment Court within six months against the decision as provided for in the EP&A Act.

If the development is designated development, then an objector to the development who is dissatisfied with a determination may also lodge a merit appeal in the Land and Environment Court within 28 days as provided for in the EP&A Act.

A merit appeal against a panel determination is brought against the relevant council. This is because council legally remains the consent authority for the development in the EP&A Act. Merit appeals against the determination of a regional panel are generally defended and managed by the council that received the DA.

Council must notify the secretariat of any merit appeals lodged in the Land and Environment Court against a determination made by a regional panel, as soon as possible. Details about the council's proposed defence of such an appeal, including how it proposes to deal with a deemed refusal appeal, should also be provided to the secretariat.

The panel will determine its level of involvement in an appeal on a case-by-case basis.

A regional panel can still determine a DA even though it is subject to a deemed refusal appeal. In these cases, council's assessment officer is encouraged to complete their assessment report so that the regional panel can determine the DA.

Judicial review and civil enforcement proceedings

Any person may commence judicial review or civil enforcement proceedings in the Land and Environment Court against a panel determination.

A submitting appearance may be filed by the regional panel if the grounds of challenge are not related to the powers or procedures of the panel in determining the application.

6.4 Appeals against determination where council is applicant

The EP&A Regulation provides 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.

Schedule 1: Regional panel meetings

1. General

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

At the meeting, the chair will introduce the members, and make any relevant announcements such as changes to the agenda or apologies. The chair will also ask for any declarations of interest on the DA.

The chair may also briefly summarise the key issues that have arisen in council's assessment report.

2. Quorum for a regional panel meeting

A quorum for a determination meeting of a regional panel is a majority of its members, including the chair, i.e. a total of three members. The determination meeting is to be deferred if a quorum is not present.

Where conflicts of interest are known before the meeting, alternate members will be used to ensure there is a quorum.

3. Presentations at a regional panel meeting

The chair will determine the order of presentations to the panel. Panel members may ask questions of those making presentations. The amount of time given to each speaker will be at the discretion of the chair.

At the regional panel meeting, it is acceptable to provide the panel with written material which summarises the matters to be presented to the panel by the speaker. However, this written material must be kept to a minimum.

(a) Presentation by council assessment officer

The chair may request that the council assessment officer responsible for preparing the assessment report (or a representative) presents a summary of the DA and outlines any relevant assessment issues at the start of the presentations. Council's assessment officer should have available at the panel meeting a set of large scale DA plans (including any amended plans).

The council assessment officer (or representative) should inform the chair of any late submissions received, and of any issues raised which may not have been addressed in the assessment report.

The council assessment officer (or representative) should be present throughout the panel meeting, so that the panel chair can seek clarification where necessary of assessment issues that may arise during the course of the meeting. Other technical experts from the council may also be present (such as traffic engineers) and the panel chair may ask for clarification of specific issues. Any questions to council staff can only be made by panel members and are to be directed through the panel chair.

(b) Presentation by the applicant

The applicant will be given the opportunity to outline the proposal and respond to council's assessment report. The applicant may also be required to respond to submissions made at the meeting. The time allocated to the applicant, including their consultant(s), will be at the discretion of the chair, but will generally be 15 minutes. Additional time may be allocated where professional consultants have been engaged by the applicant to present at the meeting.

(c) Presentation by people or groups who made submissions

Regional panel meetings enable people or groups to make a presentation to the panel meeting. People who wish to address the regional panel must register with the secretariat prior to the meeting by contacting the secretariat by telephone or email within the timeframe specified in the notification letter (generally two days before the panel meeting).

The chair will advise on the time allocated for verbal submissions which will vary from meeting to meeting depending on a number of considerations such as the number of registered speakers.

As a guide:

- individual submitters will have 3 minutes to speak,
- a speaker for a community organisation/group will have 10 minutes to present. Additional time may be allocated where professional consultants have been engaged by community groups to present at the meeting.

In addition, where a large group of people have common issues to raise at the meeting, the chair may ask that a spokesperson be appointed to speak on behalf of the group. In such cases, the spokesperson will generally be allocated more time than individual speakers.

The chair will seek to ensure that all groups or individuals who request to address the panel will be heard. Any requests for extending time limits should be made to the panel at the meeting and may be granted at the discretion of the panel chair.

Speakers should focus their oral presentations on the assessment report and its recommendation rather than re-stating information outlined in their earlier written submissions. The regional panel will have read all submissions and associated documents before the regional panel meeting.

(d) Presentation by people or groups that have not made a submission

The chair has the discretion to allow any member of the public to address the Regional Panel, even if they have not made a submission or registered to speak by the relevant deadline. Considerations may include the number of persons that made submissions and have requested to address the meeting and the available time.

(e) Presentation by a panel appointed expert

For the purpose of determining an application, a regional panel may obtain independent assessment reports, advice and assistance that the panel may require, 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.

Selection of such experts is to be determined by the chair in consultation with the other panel members.

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 regional panel meeting.

The independent assessment report should be made available on the regional panels' website prior to the meeting, except where this information includes legal advice provided to the regional panel and is subject to legal professional privilege.

4. Closed sessions

A regional panel may decide to conduct any part of the meeting in closed session if it considers that the matter to be discussed includes:

- commercial information of a confidential nature that would, if disclosed:
 - prejudice the commercial position of the person who supplied it, or
 - reveal a trade secret,
- 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,
- information concerning the nature and location of a place or item of Aboriginal significance on community land,
- a potential conflict of interest of a member, or
- any other reason deemed appropriate by the regional panel.

Only the regional panel members should be present during the closed session. However, the chair may request council assessment staff to attend if they require any issues to be clarified. The chair may also request that the minute taker is present during the closed session.

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

Where a chair 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.

5. Adjourning during a regional panel meeting

After hearing from registered speakers, the regional panel may adjourn the meeting to confer amongst themselves, before reconvening the public meeting to make their decision. Before the adjournment, the panel chair must publicly state the reasons for adjournment which should be recorded in the meeting minutes.

Only the regional panel members should be present during the adjournment. However, the chair may request council assessment staff to attend the adjournment if they require any issues to be clarified.

During the adjournment, the panel members may deliberate on their decision and formulate a resolution.

The chair may request that the minute taker is present during the adjournment to assist in recording a resolution, where necessary. However, minutes of the adjournment will not be recorded because this is not part of the meeting.

After reconvening, the panel chair should briefly summarise the matters discussed in the adjournment, including any questions asked of council's assessment officer (and any responses given). The regional panel may then discuss the matter in the public meeting and/or make their determination in the public meeting.

6. Deferring a decision at a regional panel meeting

A panel may decide to defer its determination of the matter for a subsequent meeting. A decision may be deferred for any reason including to obtain additional information or advice.

The chair will inform the meeting of the reasons for the deferral of a decision and will advise of the procedures to be followed for the determination of the DA. This may include the decision to conduct any further meetings via electronic means following the conclusion of business transacted substantially in a public meeting. Refer to section 9.

If there are matters raised in the regional 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 subsequent determination.

Council must address all issues raised by the regional panel in their supplementary report. The regional panel may also request a supplementary assessment report to be provided within a specified timeframe.

The minutes of the panel meeting, including the reasons for deferral, will be placed on the regional panel website, and a copy will be provided to the council.

It is the council's responsibility to follow up on any requests for additional information or amendments from the applicant, and to report these to the regional panel in a supplementary report.

7. Making the determination

Where possible the regional panel will make its decision in an open forum and by consensus. Where a decision cannot be made by consensus, the decision will be made by majority vote. The chair will have a second or casting vote if required because of an equality of votes.

The regional panel is required to provide reasons for its decision, which are to be recorded in the minutes of the meeting. The reasons for decision may rely on the conclusions and recommendation(s) within council's assessment report.

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. As outlined in section 4.7, the regional panel may also request without prejudice conditions of consent before a regional panel meeting if council's report recommends refusal.

The decision of the regional panel is not subject to a 'Rescission Motion' as in local government. Reviews under section 82A of the EP&A Act are not available in respect of determinations by regional panels.

8. Recording of meeting minutes

The chair is responsible for ensuring that full and accurate minutes are kept of the proceedings of public briefing meetings and regional panel meetings.

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 secretariat for confirmation by the chair.

Alternatively, a regional panel may choose to complete and endorse the final minutes immediately after completing the meeting. In this case, draft minutes will not be circulated.

When the minutes have been confirmed and endorsed by the chair of that meeting, the minutes will be placed on the regional panels' website and provided to council to issue the notice of determination.

The confirmed minutes must be available within 7 days of the regional panel meeting which determined the application.

The minutes must record:

- the opening and closing times of the meeting,
- the names of members appointed by the Minister (or their alternates) present at the meeting, including the chair,
- the names of the council members (or their alternates) in respect of each item,

- any disclosure of interest made by a member, the reason for that disclosure of interest and whether the member making the disclosure participated in the discussion or determination of the matter,
- the names of each person heard by the regional panel in respect of an item,
- the decision of the regional panel for each item - where the determination is not consistent with the recommendation in council's assessment report, the following must be provided:
 - reasons for the decision, and
 - any new conditions of consent or changes to the recommended conditions of consent, and
- the names of each member who voted for or against the DA, and reasons for dissent, where the decision is not unanimous.

The secretariat, with assistance from the relevant council, is responsible for taking meeting minutes for the regional panel meetings.

9. Transaction of business outside regional panel meetings

Clause 268I of the EP& A Regulations provides that a regional panel can transact its business at a meeting at which members participate by electronic means including telephone, email, and videoconference.

Following consultation with council's General Manager and the applicant, the chair may determine that is unnecessary to hold a meeting in public to consider a DA.

Circumstances where a public determination meeting may not be required includes:

- where the assessment report recommends approval and there are no submissions by way of objection, or
- where the regional panel has held a public meeting and deferred its decision to request specific additional information from an applicant or council (such as amended drawings). In this case, an electronic meeting should only occur if council, after having accepted the amended drawings, has decided that re-exhibition of the amended drawings is not required.

When an electronic meeting is proposed, the council report and recommendation must be made available on the regional panels' website seven days prior to the DA being determined.

The secretariat will distribute business papers (including the assessment report and attachments) to regional panel members for consideration and advise that the determination will be made via electronic means.

Following consideration of the business papers, regional panel members will advise the secretariat of their decision on the DA and a record of decision will be completed and endorsed by the chair.

The chair and each panel member will have the same voting rights as they have at public determination meeting.

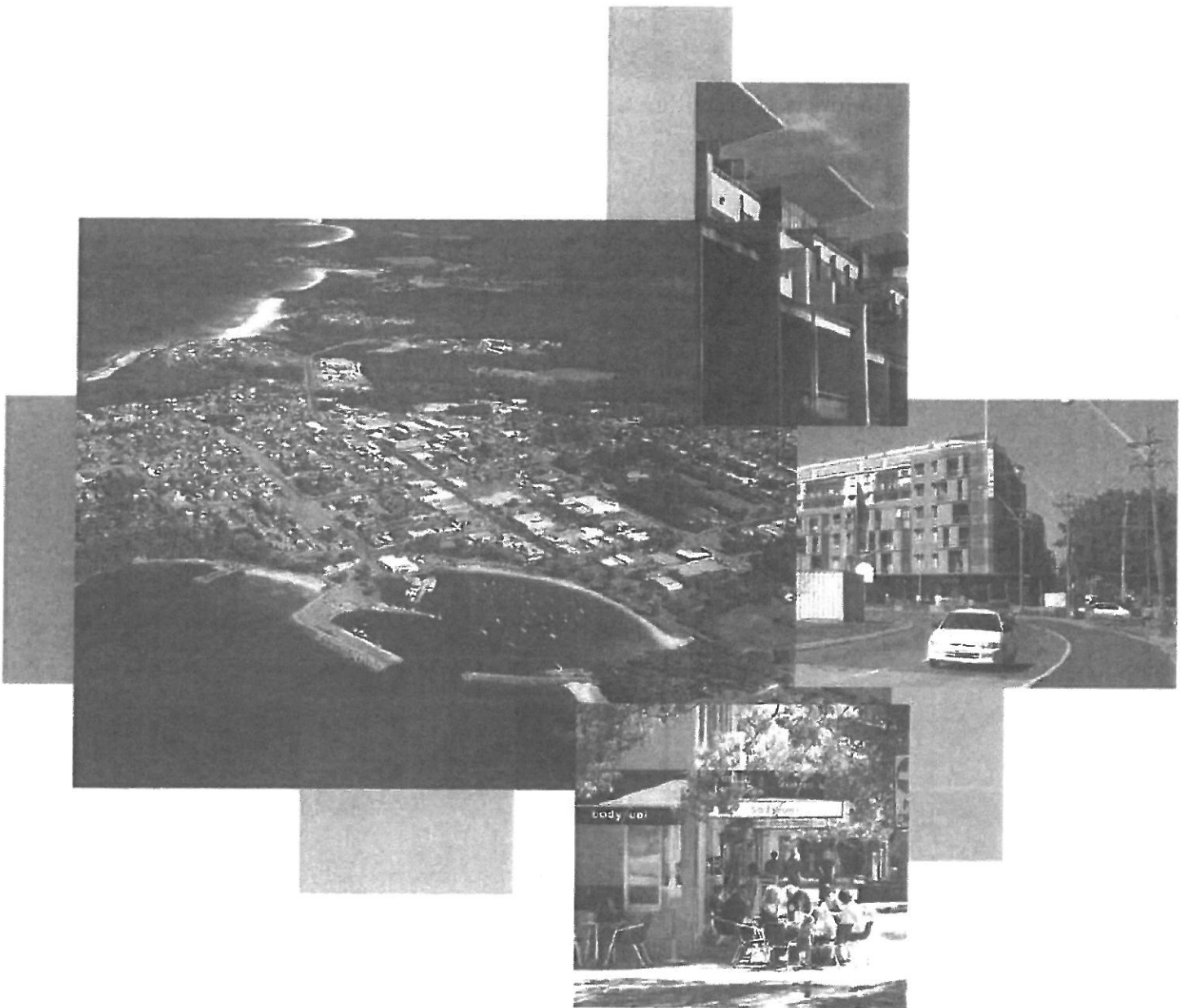
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Joint Regional Planning Panels

Code of Conduct

September 2012



Joint regional planning panels code of conduct
© State of New South Wales through the NSW Department of Planning and Infrastructure
September 2012
NSW Department of Planning and Infrastructure
23-33 Bridge Street Sydney NSW Australia
www.planning.nsw.gov.au

ISBN 978-1-74263-032-8

JOINT REGIONAL PLANNING PANELS

Code of Conduct

Introduction

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

- state appointed members,
- council nominees, and
- alternates acting for regional panel members.

The Code outlines the standards of conduct expected of regional panel members. It is the personal responsibility of each regional panel member to comply with this Code. The Code will be kept under review and will be subject to changes that may be required to reflect the experience of the implementation and operation of the regional panels.

Purpose of the Code

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

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

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

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

Council's adopted code applies to, amongst others, councillors, the general manager and council staff. The Model Code does not apply to regional panel members. However parts of the Model Code have been used to assist in the development of this Code, along with other relevant codes of conduct applying to members of state boards and other statutory bodies.

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

Council staff responsible for dealing with development matters under the *Environmental Planning and Assessment Act 1979* (EP&A Act), preparing assessment reports and/or otherwise assisting a regional panel in the exercise of its functions are not subject to this Code. 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. People must not use their position to influence other council officials in the performance of their duties or to obtain a private benefit for themselves or for somebody else.

Other obligations

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

Code of Conduct

1. Key principles

Integrity

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

Leadership

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

Selflessness

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

Impartiality

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

Accountability

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

Openness

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

Honesty

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

Respect

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

2. General conduct obligations

General conduct

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

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

Fairness and equity

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

Making decisions and taking actions

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

3. Conflicts of interests

General

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

Disclosure of pecuniary interests

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

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

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

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

- 3.8 The obligation on regional panel members with respect to pecuniary interests are set out in clause 12 of Schedule 4 of the EP&A Act (attached at **Appendix A**). All regional panel members must comply with the requirements set out in this provision. In particular:
- (a) If a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of a regional panel and the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, the member must, as soon as possible after the relevant facts have come to the member's attention, disclose the nature of the interest at or before a meeting of the regional panel.
 - (b) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the regional panel otherwise determines:
 - be present during any deliberation of the panel with respect to the matter, or
 - take part in any decision of the panel with respect to the matter.
- 3.9 As a member of a government board or committee, all regional panel members are also required to adhere to the Department of Premier and Cabinet's Guidelines 'Conduct Guidelines for Members of NSW Government Boards and Committees' ("the DPC Guidelines").

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

These declarations will be required to be made by panel members on an annual basis. Taken together, schedule 4 of the EP&A Act and the requirements of the DPC Guidelines ensure that the pecuniary interest disclosure requirements for regional panel members are the same as those for local government councillors.

Disclosure of non-pecuniary interests

- 3.10 A non-pecuniary interest is a private or personal interest that a person has that may, for example, be based on a family or personal relationship, membership of an association, society or trade union or involvement or interest in an activity which may include an interest of a financial nature⁵.
- 3.11 You should consider possible non-pecuniary interests that may arise while carrying out your duties as a regional panel member. Where possible, the source of potential conflict should be removed.
- 3.12 However, where this is not possible, if a member has a non-pecuniary interest in a matter and the interest appears to raise a conflict with the proper performance of

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

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

the member's duties, the member must follow the procedures set out in clause 12 of schedule 4 of the EP&A Act in the same manner as if the interest was a pecuniary interest.

Register of declarations of interest

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

The minutes of all panel meetings will be made available on the regional panel website.

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

Upon request, the register of declarations, including all other declarations made by panel members will be available for inspection at the secretariat during normal office hours.

Political Donations

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

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

Other business or employment

- 3.17 You must ensure that any outside employment or business you engage in will not:

- a) conflict with your functions as a regional panel member,
- b) involve using confidential information or resources obtained through your role as a regional panel member, or
- c) discredit or disadvantage the regional panel.

- 3.18 Members of a particular regional panel will have a close working relationship with each other. Therefore, to avoid a perception of bias, a regional panel member must not represent an applicant or submitter at a regional panel meeting for a regional panel of which you are a permanent member or have been used regularly as an alternate member.

Personal dealings with council

- 3.19 You may have reason to have private dealings with a council that is within the regional panel region where you are a regional panel member (for example as a

ratepayer). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your role as a regional panel member. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

4. Personal benefit

Gifts and benefits

4.1 You must not:

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

4.2 Generally speaking token gifts and benefits include:

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

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

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

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

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

You should also advise the regional panel chair of any such notification to the panel secretariat.

5. Relationship between regional panel members, council and council staff

Obligations of regional panel members

5.1 Section 23N of the EP&A Act provides that a regional panel is entitled:

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

All such requests for assistance will be made by the regional panel chair to the general manager (or such other staff member nominated by the general manager).

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

Inappropriate interactions

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

5.4 In relation to council staff⁶ you must not:

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

5.5 If a panel member is approached by any person about a development application that is to be determined by the regional panel, the panel member must not discuss the development.

5.6 Section 4.2 and 4.9 of the regional panels' Operational Procedures recognises that there may be some circumstances where it is appropriate for the regional panel to meet with applicants in private. Where this occurs, a record of the meeting, including attendees and matters discussed, will be made and be publicly available.

However, individual members of the regional panel must not hold private meetings, briefings, site visits or discussions in respect of the matter.

Where meetings, briefings or site visits occur you should not express any views that would indicate pre-judgement of the matter.

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

Council staff - avoiding the potential for a conflict of duties

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

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

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

6. Relationship between regional panel members and others

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

7. Protecting and using information

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

⁷ In particular Part 5 of the Code.

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

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

8. Use of public resources

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

9. Public Comment/Media

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

10. Reporting breaches

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

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

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

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

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

11. Reporting possible corrupt conduct

11.1 The *Protected Disclosures Act 1994* provides protection to public officials who voluntarily report suspected corrupt conduct. Regional panel members can make

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

reports concerning suspected corrupt conduct⁹ to the regional panel chair.¹⁰ The regional panel chair is under a duty to report to the Independent Commission Against Corruption any matter that they suspect on reasonable grounds concerns or may concern corrupt conduct¹¹.

11.2 Regional panel members can also report directly to the following investigative bodies:

- Corrupt conduct should be made to the Independent Commission Against Corruption¹²,
- Maladministration¹³ should be made to the NSW Ombudsman, and
- Serious and substantial waste of public money should be made to the NSW Auditor General.

12. Removal from office

12.1 The Minister may remove state members from office at any time and without notice.

12.2 The relevant council may remove its nominee/s from office at any time and without notice. If so, the council must notify the panel secretariat.

12.3 The Minister may remove any member if the Independent Commission Against Corruption recommends that consideration be given to the removal of the member because of corrupt conduct by the Member.

13. Complaint handling

13.1 Complaints against regional panel members are handled in accordance with the regional panels' Complaints Handling Policy.

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

¹⁰ or nominated PAC member if the suspected conduct is by the regional panel chair or the chair is reporting suspected corrupt conduct.

¹¹ Section 11, ICAC Act.

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

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

Appendix A

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

12 Disclosure of pecuniary interests

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

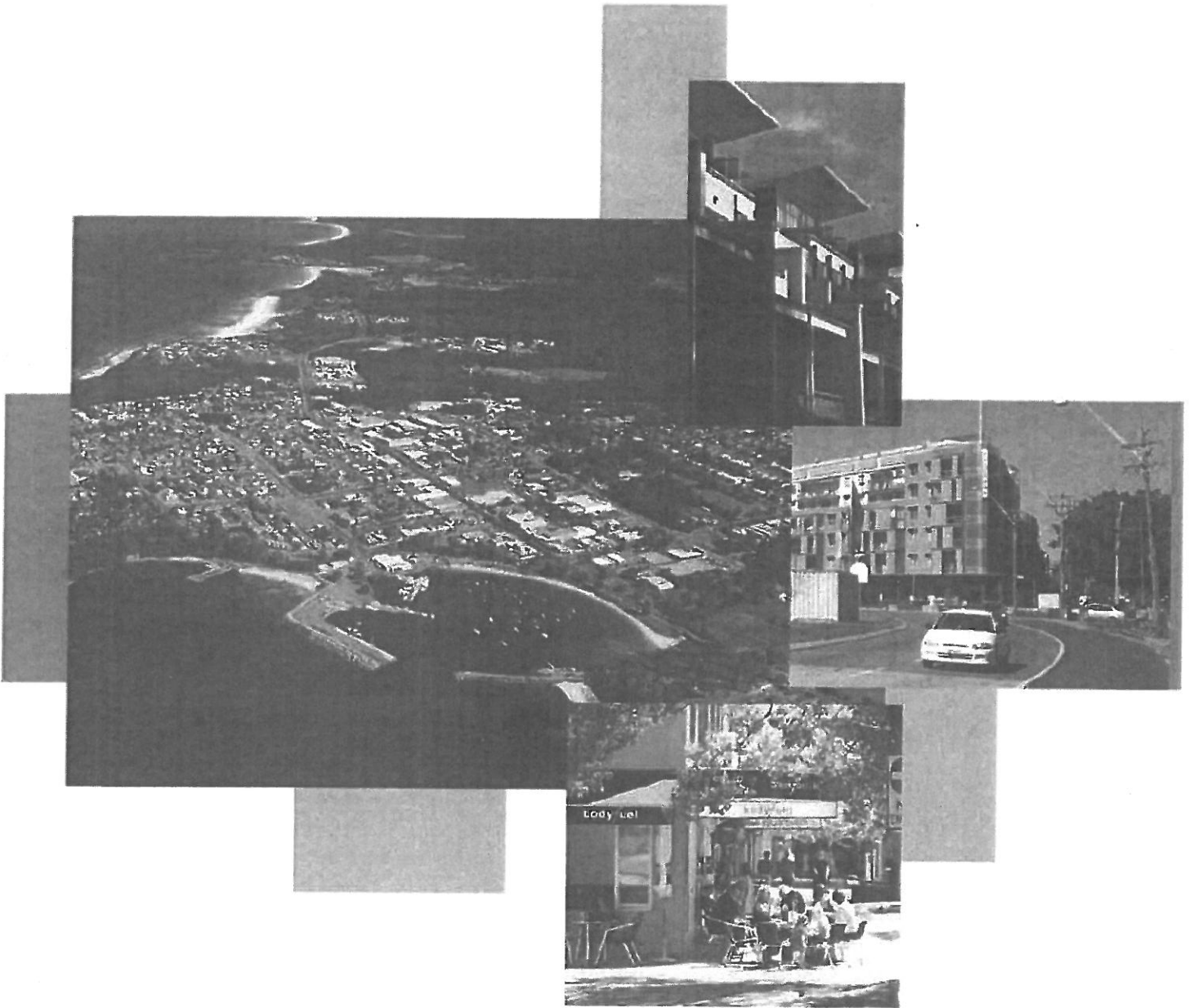
- (7) For the purposes of the making of a determination by the regional panel under subclause (6), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the panel for the purpose of making the determination,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



Joint Regional
Planning Panels

Complaints Handling Policy

September 2012



Joint Regional Planning Panels Complaints Handling Policy
© State of New South Wales through the NSW Department of Planning and Infrastructure
September 2012
NSW Department of Planning and Infrastructure
23-33 Bridge Street Sydney NSW Australia
www.planning.nsw.gov.au
ISBN 978-1-74263-033-5

JOINT REGIONAL PLANNING PANELS

Complaints handling policy

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

- help resolve any public dissatisfaction,
- reduce dissatisfaction and complaints about procedural aspects of the regional panels in the future, and
- identify procedural aspects of the regional panel operations that may need improvement.

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

The role of the regional panels

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

The regional panels:

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

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

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

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

What is a complaint?

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

This policy applies to:

- a) the actions of (or a failure to act by) the regional panel chair, regional panel members and secretariat staff at regional panel meetings, in written communications from regional panel members or secretariat staff or in telephone calls. Examples of complaints may include rudeness or a lack of responsiveness.
- b) the policies and procedures applying to regional panel members.
- c) circumstances where a member of the public suspects that a regional panel member has breached the regional panels' Code of Conduct and/or Operational Procedures.

What will not be regarded as a complaint?

This policy does not extend to complaints about:

- dissatisfaction with determinations of the regional panels,
- government policy and legislative powers, or
- decisions of government.

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

General enquiries and suggestions

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

If you:

- would like to make a general suggestion about the regional panels,
- have a request for information, or
- would like an explanation of regional panel policies or procedures.

The secretariat is the first point of contact for all regional panel matters. Its contact phone number is 02 9228 2060 or email jrppenquiry@jrpp.nsw.gov.au.

The mutual obligations of the secretariat, regional panel chairs and complainants in respect of this policy are outlined below.

Obligations of secretariat and regional panel chairs

The secretariat and regional panel chairs should:

1. respond to the complaint promptly and, where appropriate, promptly refer the matter in accordance with this policy,
2. keep the complainant informed of what happening with their enquiry or complaint,
3. record in detail all actions and outcomes relating to the complaint,

4. treat all complainants with respect, courtesy and sensitivity.

Obligations of complainants

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

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

How to make a complaint?

Step 1

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

Step 2

If you are not satisfied, or if Step 1 is not applicable, write to the secretariat and clearly identify the nature of the complaint (for example an alleged breach of the Code of Conduct or Operational Procedures). The secretariat may be contacted by email at jrppenquiry@jrpp.nsw.gov.au; by mail, addressed to the Regional Panels Secretariat, GPO Box 39, Sydney NSW 2001; or by fax on 02 9228 2066.

- The relevant contact person or secretariat staff will:
 - acknowledge receipt of your complaint promptly,
 - ensure that they understand the complaint - if there is any doubt at all, they will contact you and seek clarification, and
 - inform you what will happen next and who will be dealing with the matter and how they may be contacted.
- Where the complaint relates to the services of the secretariat itself, the secretariat will refer the complaint to the relevant person in accordance with Step 3 below.
- If the complaint is in relation to a matter that falls outside of this policy, the secretariat will try and address the issue where it can be satisfied by providing information. The secretariat will advise you of this in writing, including advice on the other options that may be available to you.

Step 3

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

- a) the relevant regional panel chair - if the complaint is about a regional panel member (other than the chair) or the secretariat, or
- b) another relevant body for action (such as the Ombudsman and/or Independent Commission Against Corruption).

If the complaint is referred to the relevant regional panel chair, the secretariat may conciliate the matter by arranging a meeting between you and the person against whom the complaint has been made, and will confirm the outcome of any meeting or discussion with you in writing.

Step 4

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

General principles

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

The outcomes of the complaint handling process may include:

- an apology,
- review of the matter generally or of a particular decision,
- provision of further information,
- a suggested change to policy or procedure to improve services,
- referral to either an appropriate agency or integrity body for appropriate action, or
- dismissal of the complaint if it is considered to be without reasonable basis.

Complaints alleging corrupt conduct

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

The regional panel chairs are under a duty to report any matter that they suspect on reasonable grounds concerns or may concern corrupt conduct to the Independent Commission Against Corruption.¹

Affording procedural fairness

When considering complaints, the relevant regional panel member and secretariat will adhere to the principles of procedural fairness. The person considering the complaint will:

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

¹ Section 11, Independent Commission Against Corruption Act

Confidentiality

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

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

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

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

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

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

There may be specific circumstances where protected disclosure applies. For example, a regional panel chair is the head of a statutory body, therefore a complaint against a chair made by council staff or councillors will have protected disclosure and the confidentiality guidelines in section 22 of the *Protected Disclosure Act 1994* will apply.

Acknowledgement and resolution of complaints

Each complaint will be acknowledged in writing within 7 days of receipt of the complaint. Where possible all complaints will be resolved within 4 weeks of this acknowledgement. If this is not possible, the complainant will be informed of an estimated resolution date.

Register of complaints

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

- date the complaint was made,

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

Requests to access the register of complaints should be directed to the secretariat.

Report on complaints

The secretariat will prepare a six-monthly report (published in January and July) on the complaints received, detailing the number and scope of the complaints, key issues and any policy or operational response that has been taken to address the concerns raised.

The report on complaints will be made publicly available on the regional panels website.