

**REPORT OF GENERAL MANAGER****ORDINARY MEETING****TUESDAY, 9 JUNE 2009****DEVELOPMENT AND ENVIRONMENTAL SERVICES****1. Department of Planning's call for Nominations to Joint Regional Planning Panels**  
**File 38674**

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**Purpose of the Report:**

The purpose of the report is to inform Council of the establishment of Joint Regional Planning Panels (JRPPs) that will commence from 1 July 2009, provide details about the composition, functions and responsibilities of the JRPP and members of the Panel.

The Minister for Planning has invited Council to nominate two representatives to participate on the JRPP that will determine developments and other planning matters referred to the Panel for the Shoalhaven. There is also provision for Council to nominate an "alternate member" to the Panel. The report provided options and recommendations for consideration.

The Local Government and Shires Association (LGSA) has recommended to Councils that representations be made to defer the introduction of the Panels due to a number of unresolved issues; the report outlines these issues.

**RECOMMENDED that:**

- a) **That Council not nominate representatives to the Joint Regional Planning Panels until such times as guidelines and codes are made available to Councils and issues relating to conflicts of interest have been resolved.**
- b) **That Council seek an extension of time for Council nominations and the commencement of the Joint Regional Planning Panels, to ensure all issues such as guidelines and codes; conflicts of interest and cost sharing arrangements are resolved.**

**Options:**

- i) That Council not nominate representatives to the Joint Regional Planning Panels until such times as guidelines and codes are made available to Councils and issues relating to conflicts of interest have been resolved. Further, that representations be made to defer the introduction of the JRPPs to unable unresolved issues to be resolved.
- ii) That Council nominate two (2) Council nominated members to represent the proposed JRPP for this region to sit on the five (5)-member Joint Regional Planning Panel, when the panel deals with matters within the Shoalhaven City Council area; at least one of the member must have expertise in planning,

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architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism. The nominees being (two names), and an alternate member, being (one name);

- iii) That Council nominate the two representatives from amongst councillors and appropriate staff for up to three years, with an optional shorter term following a selection process as outlined in 3, below;
- iv) That Council call for expressions of interest from amongst community members and the two nominations be made from candidates who demonstrate they meet the selection criteria, including from the community EOI, councillors and staff;
- v) That representations be made to the Minister to defer the commencement of the JRPPs, due to there being unresolved matters concerning dealing with real and potential conflicts for members who are councillors or staff and the unresolved cost implications for this Council.
- vi) That Council do nothing and deal with the implications of the introduction of the proposed JRPP as and when it affects Council.

### **Details/Issue:**

#### **Introduction**

The Minister for Planning by letter dated 5 May 2009 invites nominations from Council of two members to the JRPP for the Shoalhaven. The nominations are to be submitted by 5 June 2009. The Director-General of the Department of Planning (DoP) has released an Information package for Council nominees. The LGSA has also issued to all Councils an Issues Paper about its concerns and advises that objections have been made to the Minister with a request to reconsider a number of matters concerning the establishment and operations of the JRPPs.

The JRPP is to commence operation on 1 July 2009. It is proposed that there be six (6) JRPPs in the state of NSW, coinciding with the regions of the state. The Shoalhaven Local Government Area (LGA) is proposed to fall under the Southern Region, consisting of 27 LGAs among the Illawarra, South Coast, Southern Tablelands and South-West slopes.

It is proposed that the introduction of the JRPP be accompanied by amendments to the State Environmental Planning Policy (SEPP) Major Projects, the *Environmental Planning and Assessment (EP&A) Act 1979* and the *EP&A Regulation 2000*. This will result in the transfer of certain classes of DAs currently under Part 3A (now lodged with and assessed by the DoP, and determined by the Minister) and a number of DA types under Part 4 (lodged with and assessed by Council but to be determined by the JRPP) of the Act. These DA's will be called Regional Development. The remaining categories of local development under Part 4 will be determined by the Council.

A number of specific details about the mechanics and processes as well as the cost structures of the panel operations are still to be advised. There has been a discussion paper as well as the information papers mentioned above.

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The LGSA current Circular also advises matters in respect of proposed amendments to the Heritage Act and the EP&A Act as follows:

*“The Heritage Amendment Bill 2009 is currently before the NSW Parliament and is expected to be debated next week.*

*In the Bill, the Minister for Planning proposes amendments to the Environmental Planning and Assessment Act that will extend plan making functions of a council in relation to development control plans and contributions plans to JRPPs.*

*Separate amendments that extend JRPP power to include making Local Environmental Plans are also proposed. These powers also will be extended to the Planning Assessment Commission (when acting as a JRPP) and to planning panels and planning administrators appointed under s118 of the Act.*

*Minister Keneally indicated in her speech to Parliament that the proposed amendments are in response to issues that have arisen in relation to planning panels (under s118) currently operating in the Burwood, Ku-ring-gai and Wagga Wagga Local Government areas. The original terms of appointment of these panels did not provide them with the power to prepare, make and approve development control plans, and prepare and approve contributions plans. The Minister notes that ‘the requirement for this separate appointment is difficult to justify’ (under the existing provisions of s118 of the Act) and therefore the Act is being amended to facilitate the operations of the panels in these three areas.*

*While perhaps not the primary intent of the amendments, these amendments will establish a legal framework within which the Minister for Planning can, at any time and with no reference to Parliament, remove all the planning functions of a council and transfer them to a JRPP (or in the western region of NSW, the PAC operating as a JRPP).”*

The LGSA has issued a recent letter, dated 1 June 2009, that advises a decision of their recent Executive meeting, and urges Councils:

- a) not to nominate representatives to the Joint Regional Planning Panels until such times as guidelines and codes are made available to Councils and issues relating to conflicts of interest have been resolved; and
- b) to seek an extension of time for council nominations and the commencement date of JRPPs.

A briefing of councillors was held on 27 May 2009. A copy of the Ministers letter, Information package, the LGSA Issues Paper and the LGSA letter of 1 June 2009 is included in the Councillors Information Folder.

### **Functions of the JRPP**

The principle functions of the JRPP are twofold, they are:

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- ii) to exercise certain consent authority functions in regard to regional development; and
  - iii) where requested, advise the NSW Minister for Planning on planning or development matters or environmental planning instruments in respect of the JRPPs region.

As a consequence, the functions will require the Panel:-

- i) To exercise any functions that are conferred to it under the *EP&A Act 1979* (eg, the powers of a Planning Administrator or Planning Assessment Panel).
- ii) To advise the Minister of Planning on planning or development matters in respect of the Panel's region or any related matters as requested by the Minister.
- iii) To review a planning proposal at the request of the Minister or be appointed as the relevant planning authority to make an instrument.
- iv) To act as a statutory body representing the Crown.
- v) To act as the review body for a limited class of third party objector reviews from persons within 1 km of a certain proposal where State Environmental Planning Policy (SEPP) 1 has been used to vary height and floor space ratio controls by more than 25%.

### **Regional Development**

The classes of such "Regional Development" that will be matters for determinations by the Panels include:

- a) Commercial, residential, mixed use, retail and tourism development with capital investment value (CIV) between \$10 million and less than \$100 million.
- b) Public and community infrastructure and ecotourism developments valued at more than \$5 million, both public and private – eg, schools, community halls, child care facilities, places of worship, etc (eg, the Shoalhaven Entertainment Centre);
- c) Certain coastal developments within sensitive coastal locations of regional significance currently in Schedule 2 of the Major Projects SEPP (eg, recreational or tourist facilities, buildings or structures greater than 13m in height, subdivision of land into two (2) or more lots that will lead to development that is not connected to an approved sewage system and others);
- d) Designated development [development needing an Environmental Impact Statement (EIS)]; and
- e) Development with a CIV of more than \$5 million and where the Council is the proponent or has a conflict of interest.

The reference to a CIV value includes additional costs associated with a development that have not previously been included by applicants in the costing of DAs for the purpose of lodging the applications, (eg land and consultancy costs)

### **Membership of the Proposed JRPP**

It is proposed that the JRPP comprises five (5) members as follows:

- Three (3) persons appointed by the Minister, each having expertise in at least one (1) of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration; and
- Two (2) Council nominees of an applicable Council area, at least one of whom has expertise in planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism.

In appointing the State members, it is proposed that the Minister for Planning would appoint the Chairperson of each Regional Panel. State members would hold office for a period [not exceeding three (3) years], as specified in the members instrument of appointment, but may be eligible for re-appointment. The Minister may, from time to time, appoint a person to be an alternate of a State member.

It is proposed that each Council will determine how it selects its nominees on the JRPP. The DoP, in conjunction with the Department of Local Government (DLG), have proposed to provide guidance to Councils on how this is to be done. This guidance would also canvass the suitability of elected Councillors and senior Council staff being Council's representatives.

The selection criterion includes;

- senior high level experience in dealing with multiple stakeholders
- high level communication skills
- capability to drive high profile outcomes in a credible and authoritative manner
- high level analytical skills, and
- knowledge of the assessment of complex developments and planning matters

It is envisaged that there will be a sound mix of these skills amongst the five panel members.

In this regard, this report recommends that Council nominates two (2) Council representatives to sit on the proposed JRPP when the panel deals with matters within the Shoalhaven City Council area; at least one of the members must have expertise in planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism.

In the discussion papers, it is not essential that the two Council nominees be either councillors or staff. Council could proceed to call expression of interests for the community and make a selection from a wider field of candidates. There may be issues

associated with the short timeframe for making nominations, however there could be interim nominations and a review be made at a later time.

The DoP will provide training which is mandatory. There will also be forums and information provided to stakeholders and the broader community.

### **Administration of Regional Panels**

The Planning Assessment Commission (PAC) Secretariat as well as the relevant DoP Regional Office will provide administrative and technical support to the JRPP. Council's obligations in responding to the introduction of the proposed JRPP are proposed to be outlined in the amendments to the *EP&A Act 1979*, enabling the operation of the JRPP. The current discussion paper indicates that only certain costs incurred by Council in meeting its obligations on the introduction of the JRPP can be recovered.

Whilst the draft Discussion Paper has considered the administrative and technical support to service the JRPP, it has not adequately identified the likely resourcing implications to Council in order for Council to meet its obligations with the introduction of the JRPP.

### **Fees and Costs to Operate JRPP**

The Discussion Paper mentions that the *EP&A Act 1979* will provide that Council is to pay the Director-General of the DoP, the costs of the JRPP for this region. Such costs include the member's fees, panel expenses and administration costs of the Department. The draft Paper notes that the Department is currently examining options to gain an initial understanding of the cost of operating Regional Panels and have not yet determined the remuneration rates for JRPP members.

Nevertheless, the Paper anticipates that taking into consideration the time to undertake site inspections, pre-determination briefings, reading of material, attendance at meetings and determination of applications, the cost of operating the panels within NSW, including administration and travel is likely to be in the order of \$2 million to \$3.5 million each year depending on the number of regional matters. The draft Paper also mentions that it proposes to examine other funding options to pay for the costs of establishing the JRPP, such as using planning reform funds, increasing development application fees for regional development or sharing of costs between local government and the State government or a combination of these options.

Whilst the Discussion Paper has considered payment options to pay for the costs of establishing the JRPP, it has not adequately identified the likely costs implications to Council in order for Council to meet its obligations with the introduction of the JRPP.

### **Council's Obligations Associated with the Introduction of the JRPP**

The full implications of Councils involvement has not yet been clearly articulated in draft discussion papers. Where an application is lodged with Council the registration and assessment processes will still apply. For regional development and where the determination is by the JRPP, there will not be a process for reporting to Council that now applies for local development where Council is the consent authority. The

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timeframes for assessing and the templates used for assessing and reporting will be set by the JRPP.

It is envisaged that Council could experience resourcing impact with the introduction of the proposed JRPP, due to both the increased reporting and support to the Panels.

A Diagram representing the process for Regional Development applications is shown in Appendix 1 to this report.

### **Responsibilities of JRPP members and Potential Conflicts**

The members of the JRPP, including Council nominated members will be “officers of the Crown”. There will be a Code of Conduct and members must act for the Panel and be objective and impartial. A Council nominee will not be representing the “Council position”, and will not be an advocate for Council, the applicant or any objector.

There are responsibilities in respect of declaring real and potential conflicts of interest. Where a nominee is a councillor or staff member, there may be perceived conflicts where that person has been involved in the assessment of the DA including pre-lodgement discussions and decision making before the application is reported to the Panel.

### **Implications to Shoalhaven City Council**

- Given the low thresholds (values) for developments to be classed as “Regional Development”, the commencement of the operation of the JRPP may mean that where Council is the proponent for such developments, Council will be required to pay DA fees (presently such fees are waived for Council projects), and will have to factor such fees into the estimated project costs. For example, the Shoalhaven Entertainment Centre may have attracted significant DA fees had it been determined by the JRPP.
  - Although not yet finalised by the DoP, Council will have to prepare itself financially, by making adjustments in the 2009-10 budget quarterly reviews and including projections into the 2010-11 year’s budget expenditure, the anticipated costs and revenues associated with the running of the JRPP after it commences operation on 1 July 2009. The costs may possibly include, but are not limited to, member’s fees, panel expenses and administration costs of the Panels; the impact of such costs will largely depend of the level of fees prescribed by the DoP.
  - The discussion paper mentions that only certain costs incurred by Council in meeting its obligations on the introduction of the JRPP can be recovered. Council will need to consider measures in recovering costs that cannot be reimbursed through the introduction of the JRPP.
  - Where the nominated members are either councillors or staff there are implications to ensure real or potential conflicts are managed, including reviewing workloads of a member of the panel and delegations for determinations.
  - Whilst the administration of the JRPP is proposed to be serviced by the PAC Secretariat and the Regional DoP Office, it is proposed that the JRPP meetings are serviced by Council staff who would be required to provide information and
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material at the request of the JRPP, so that the Panel can perform their functions in determining those DAs. Often, the value of such workload does not get accounted for but undoubtedly will add to the strain on current resources.

- The elected Council will be restricted to making a submission on most large Regional DAs and possibly rezoning, DCP or contribution plan issues.
- Whilst the JRPP is proposed to comprise two (2) nominated Council representatives, the other three (3) members on the Panel appointed by the Minister may not necessarily be a local resident of the Shoalhaven who may or may not be aware of local conditions and needs.

**Economic, Social & Environmental (ESD) Consideration:**

This report is for Council's information in preparation for legislative changes to enable the establishment of the JRPP. In this regard Council needs to consider costs implications associated with those legislative changes in order to maintain economic viability of the organisation.

This report does not identify any social and environmental (ESD) consideration.

**Financial Considerations:**

- # It is prudent that Council considers the costs implications associated with its obligations with the introduction of the proposed JRPP, prior to Council staff forwarding the Regional DA assessment reports to the Panel (as illustrated in the flowchart in this report). **(See Attachment No 1)** In this regard Council should recognise the costs implications in its next financial year's budget and expenditure to cover costs associated with resourcing the JRPP, as outlined in this report.

Tim Fletcher

**DIRECTOR - DEVELOPMENT & ENVIRONMENTAL SERVICES GROUP**

R.D Pigg

**GENERAL MANAGER**



**NSW****The Hon Kristina Keneally MP**

Minister for Planning | Minister for Redfern Waterloo

**Shoalhaven City Council**

5 May 2009

Received

SR

Mr Russell Pigg  
 General Manager  
 Shoalhaven City Council  
 PO Box 42  
 NOWRA NSW 2541

13 MAY 2009

File No. 38674Referred to: RP**Request for Nominations for the Joint Regional Planning Panels (JRPPs)**

Dear Mr Pigg

The NSW Government's planning reforms include the establishment of Joint Regional Planning Panels (JRPPs) to determine development proposals of regional significance. The core objective of JRPPs is to provide stronger decision making through greater independence, to supplement Councils' expertise and draw on local and regional knowledge.

Details of the JRPPs, the regions, and their functions are provided in the attached background document. Six regions are proposed to cover metropolitan and regional areas of NSW. It is intended currently to only appoint JRPPs in five of the regions, with the functions of the JRPP in the Western Region being undertaken by the Planning Assessment Commission.

The JRPPs will commence operation on 1 July 2009.

The core functions of JRPPs will be to:

1. Exercise certain consent authority functions in regard to regional development applications; and
2. Where requested, advise the NSW Minister for Planning on planning or development matters or environmental planning instruments in respect to the JRPPs' region.

Development Applications for projects classed as regional development will be assessed by Council officers. The Council officer's assessment and recommendations will then be referred to a JRPP for determination. Last year I announced that regional development will include:

- Commercial, residential, retail and tourism with capital investment value (CIV) between \$10M and \$100M
- Public and private community infrastructure and ecotourism with a CIV of more than \$5M e.g. schools, community halls, libraries etc
- Designated development (Environmental Impact Statement (EIS) required)
- Certain major coastal developments; and
- If council is the proponent or is conflicted in relation to a development with a CIV of more than \$5M.

JRPPs will be comprised of three members appointed by me to participate in JRPP matters across that region, and two members appointed by the relevant councils, to participate in JRPP development and planning matters in their particular Local Government Area.

The NSW Government is now requesting councils to nominate two persons to become members of the relevant JRPP. Each council should also nominate an alternate member, who could replace a council nominee if unavailable.



New South Wales Government

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It is important for the JRPP to consist of members with a broad range of skills and experience in development and planning matters. The selection criteria include:

- Senior level experience in dealing with multiple stakeholders
- High level communication skills
- Capability to drive high profile outcomes in a credible and authoritative manner
- High level analytical skills; and
- Knowledge of the assessment of complex developments and planning matters.

In addition, *at least one* of the Council panellists must have a high level of expertise in *one or more* of the following fields: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering and tourism.

The Department of Planning has prepared the enclosed information package to assist councils to nominate appropriate candidates for this role.

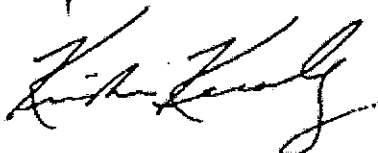
Please consult the information package and return submissions in writing **by Friday 5 June 2009** to:

Director General  
NSW Department of Planning  
GPO Box 39  
Sydney NSW 2001

For further information please contact Sarah McGirr on (02) 9228 6347.

Additional copies of the enclosed information package are available at [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au) or by emailing [innovation@planning.nsw.gov.au](mailto:innovation@planning.nsw.gov.au).

Yours sincerely



The Hon Kristina Keneally MP

Enc: Information Package for Council Nominees



NSW GOVERNMENT  
**Department of Planning**

# **EXPRESSIONS OF INTEREST AND NOMINATIONS FOR THE JOINT REGIONAL PLANNING PANELS**

## **Information Package for Council Nominees**

**May 2009**

## 1. Joint Regional Planning Panels

### 1.1. About Joint Regional Planning Panels

The NSW Government's planning reforms, aimed at delivering a more efficient and transparent planning system, include the establishment of Joint Regional Planning Panels (JRPPs).

The NSW Government is now requesting councils to nominate two persons to become members of the relevant JRPP. Each council should also nominate an alternate member, who could replace a council nominee if unavailable.

The NSW Government is also currently seeking Expressions of Interest (EOIs) for candidates interested in being appointed as State members of the JRPPs. This is being done through an advertised EOI processes.

The objective of JRPPs is to create a panel of people with appropriate expertise to determine development proposals of regional significance providing stronger decision making through greater expertise, independence and regional knowledge.

Six regions are proposed to be established covering metropolitan and regional areas of NSW (see figure one). The JRPPs are planned to commence operation on 1 July 2009.

### 1.2. Functions of JRPPs

The functions of JRPPs are to:

1. Exercise certain consent authority functions for 'regional development'; and
2. Where requested, advise the NSW Minister for Planning on planning or development matters or environmental planning instruments in respect to the JRPPs' region.

JRPPs will also have such other functions as are conferred on them by the *Environmental Planning and Assessment Act 1979* (EP&A Act). For example, JRPPs may have a role in relation to Local Environmental Plans (LEPs). This may include being appointed as the Relevant Planning Authority (RPA) for a LEP or, where requested by the Minister, reviewing or providing advice in respect of a proposed LEP. Where a JRPP is appointed as an RPA for a LEP, the Minister may also delegate plan making powers to the JRPP. JRPPs may also, in limited circumstances, be appointed by the Minister to exercise the functions of planning assessment panels under s.118 of the EP&A Act.

A regional panel is not subject to the direction or control of the Minister, except in relation to the procedures of a regional panel and to the extent provided for in the EP&A Act.

### 1.3. Commencement of JRPPs

Under the current Planning Reform Implementation Program, JRPPs are targeted to commence operation on 1 July 2009.

### 1.4. Support and Training

The Department of Planning will provide to Councils a detailed guideline to assist them prepare for the commencement of JRPPs. These guidelines will provide information on how JRPP matters are dealt with.

Prior to the commencement of the JRPPs, the DoP will conduct information sessions throughout the State for council staff, stakeholders and the community.

A Code of Conduct, based on the local government Model Code of Conduct, will be provided to all JRPP members.

Persons appointed as Panel members will be required to attend a training program that will be developed and provided by the DoP.

### **1.5. Council's role in relation to matters under consideration by the JRPP**

The assessment of applications to be determined by the JRPPs is to be undertaken by the relevant council officers in which the proposed development is located. The council officers are to submit their assessment report and recommendations to the JRPP for determination.

Whilst the council will not be the determining body for JRPP matters, the council will have the opportunity to provide its views about any matters that are to be considered by a JRPP. The council's view may be provided to a JRPP by way of a submission in the same way that any other submissions about the matter are provided to a JRPP for its consideration in determining a matter.

The JRPP must consult the council prior to determining a matter which is likely to have significant financial implications for the council.

### **1.6. Consultation with stakeholders**

The DoP is currently engaged in a consultation process regarding aspects of JRPPs. Elements of the policy may be varied as a result of the consultations or further reviews that may be undertaken.

The performance of JRPP will be monitored regarding the number and type of DAs determined by JRPP and timeframes. This information will provide the basis for any reviews or regional boundary adjustments.

## **2. Membership of JRPPs**

The JRPPs are to consist of five members as follows:

**State Members:** Three State members appointed by the Minister, each having expertise in *one or more* of the following: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration.

In appointing the State members, the Minister is required to have regard to the need to have a range of expertise represented among the panel's members. One of the State members will be appointed as the Chairperson of the JRPP. Each panel may elect a State member to be a Vice-Chairperson.

**Council Members:** Two council members appointed by each council that is situated in a part of the state for which a JRPP is appointed. At least one council nominee is required to have expertise in *one or more* of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism. Important additional selection criteria are listed in Section 2. It will be a matter for each council to identify how the nominees are to be selected. Guidance for councils in selecting their nominees is available in Section 3.

The council nominees will automatically become members of the JRPP for matters in that council's local government area.

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

**Alternates:** A council may, from time to time, appoint a person to be the alternate of a member nominated by the council, and may revoke any such appointment.

### 3. Administrative and other matters

Administrative and technical support for the operations of the JRPPs will be provided by the PAC Panel Secretariat and through the Regional Branches of the Department of Planning.

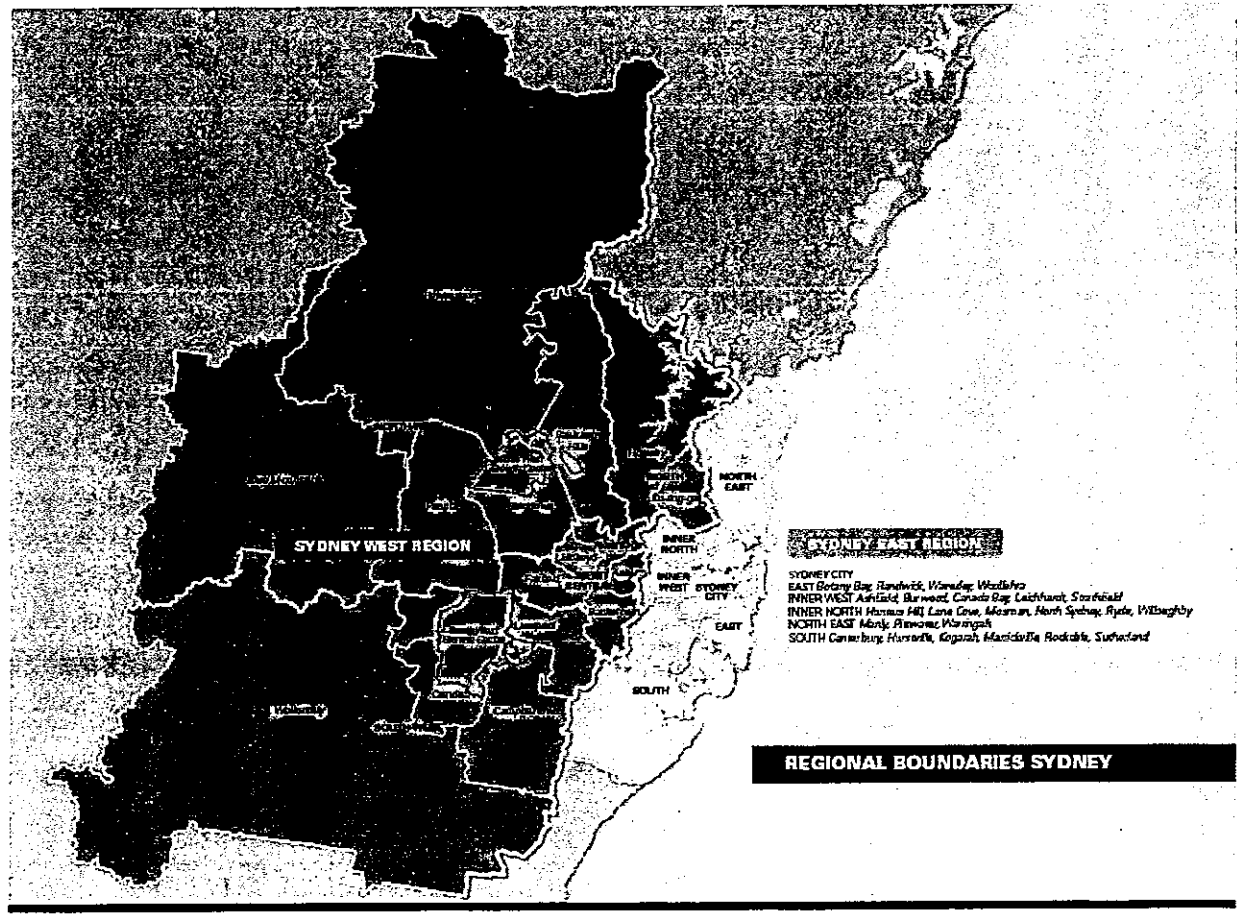
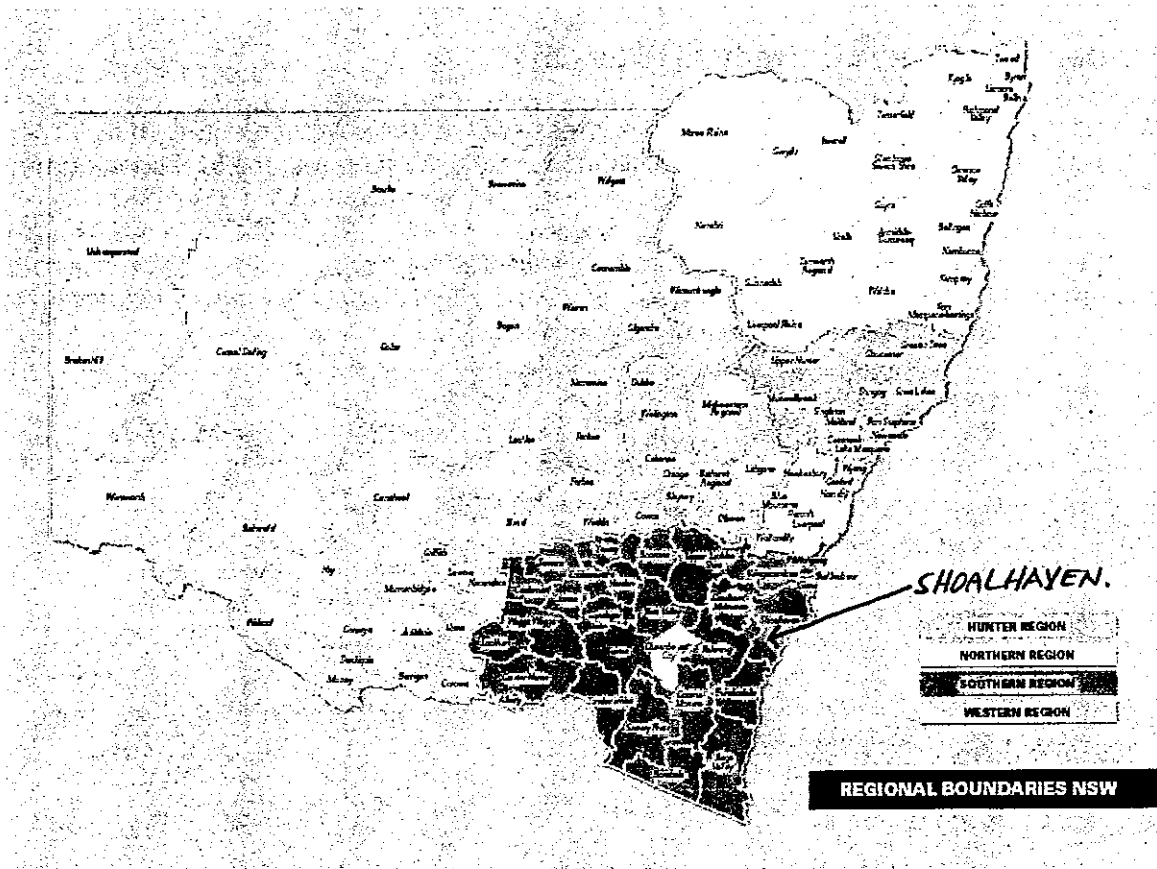
JRPPs are independent bodies, accountable to the Minister, but otherwise not subject to the direction and control of the Minister. JRPP members will be required to act at all times in accordance with best practice probity and accountability requirements and to demonstrate impartiality in the exercise of their functions.

### 4. Coverage of JRPPs

Six regions are proposed, corresponding with the existing DoP regions. These are:

- Northern Region
- Hunter Region
- Southern Region
- Sydney Metro East Region; and
- Sydney Metro West Region.

Currently, it is proposed that matters in the Western Region will be covered by the existing Planning Assessment Commission (PAC). The JRPP provisions do not apply in the City of Sydney, where the Central Sydney Planning Committee (CSPC) will continue to function.



## 5. Nominations of Council Members to the JRPP

In preparing nominations, councils should address each of the selection criteria below including an outline of the nominee's qualifications, skills, attributes and experience under each criterion, along with examples of their achievements relevant to the criterion.

The NSW Government is requesting councils to nominate two persons to become members of the relevant JRPP for the council's area. Each council should also nominate an alternate member, who could replace a council nominee if unavailable.

### Selection criteria

It is important for the JRPP to consist of members from a diverse background with a broad range of skills and experience. The selection criteria include:

- Senior level experience in dealing with multiple stakeholders
- High level communication skills
- Capability to drive high profile outcomes in a credible and authoritative manner
- High level analytical skills; and
- Knowledge of the assessment of complex developments and planning matters; and

In addition; *at least one* of the two Council nominees must have a high level of expertise in *one or more* of the following fields:

- Planning
- Architecture
- Heritage
- The environment
- Urban design
- Land economics
- Traffic and transport
- Law
- Engineering
- Tourism.

## 6. Guidance for Councils in Selecting Nominees

All members of JRPPs will be expected to act independently in reaching their decisions. Therefore, in determining nominees, councils should consider the potential for conflicts of interest, either real or perceived.

Councils may choose to undertake a local Expression of Interest (EOI) process to identify members of the community who would make suitable members of the JRPP. This could be undertaken through existing channels such as Council's Mayoral Column in the local media, Council's website or newsletter (where applicable).

Should a council decide to nominate a member of its staff or an elected member of the council, it should do so in full recognition that such persons will be independent members of JRPPs. As such they should not be subject to influence by other council officers or Councillors on matters that are to be determined by a JRPP.



## 7. Responsibilities of Members

The responsibilities of JRPP members are to:

- Exercise their functions in accordance with statutory requirements as set out in the EP&A Act and associated regulations
- Comply with the approved JRPP Code of Conduct
- Promote a sense of confidence in the JRPPs as independent decision making bodies
- Establish and maintain effective working relationships with the councils in the relevant JRPP region
- Foster a positive working relationship with other JRPP members, the Panel Secretariat and the Department of Planning
- Follow approved JRPP procedures and participate in regular reviews of procedures, to ensure efficient and effective practices are adopted
- Perform their functions with integrity, impartiality, honesty, conscientiousness, care, skill, diligence; and
- Participate in/chair panel meetings or hold public hearings or panel meetings in a timely, efficient and cost-effective manner while having proper regard to the issues.

## 8. Appointment Terms and Conditions

### 8.1. Statutory Position

JRPPs are statutory bodies representing the Crown. Each council within a JRPP region is to nominate two members (and an alternate member) to sit on the JRPP with respect to matters that are within that council's area.

### 8.2. Term of Appointment

The term of appointment for council panellists is up to three years. Councils may nominate a shorter time period if they desire.

### 8.3. Remuneration

A JRPP member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

### 8.4. Private Interests

As part of the consideration of nomination of members to a JRPP, it is suggested that councils require nominees to declare any private interests that may conflict with the public duties they would be required to perform if nominated to a JRPP.

### 8.5. Pecuniary Interests

If a member of a JRPP has a pecuniary interest in a matter being considered or about to be considered at a meeting of a JRPP, and the interest appears to raise a conflict with the proper performance of the member's duties in relation to 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 JRPP. Unless otherwise determined, the member must not be present during any deliberations by the panel with respect to the matter or take part in any decision of the panel with respect to the matter.

### 8.6. Other Matters

- Dealing with the Media:* A protocol will be prepared whereby the Chairperson can comment on decisions and respond to questions.

- ii. **Disclosure or misuse of information:** Members are required under the Act not to unlawfully disclose or use any information received in connection with carrying out their duties under the Act.
- iii. **Appropriate use of Secretariat Resources:** The JRPP must use resources provided by the Panel Secretariat and the DoP in an effective and efficient manner; and not use such resources for private purposes.
- iv. **Removal from office:** A council may remove any of its nominees from office at any time. The Minister may remove a State or council member from office if the Independent Commission Against Corruption (ICAC) recommends that consideration be given to the removal of the member because of corrupt conduct by that member.
- v. **Vacancies:** A vacancy in the office of a member occurs if the member:
- Dies, or
  - Completes a term of office and is not reappointed, or
  - Resigns the office by instrument in writing addressed to the Minister or applicable council, as the case requires, or
  - In the case of a council nominee, is removed from office by an applicable council or by the Minister where ICAC recommends removal, or
  - In the case of a State member is removed from office by the Minister or by the Governor under Chapter 5 of the *Sector Employment and Management Act 2002*, or
  - Is absent from three consecutive meetings of the regional panel of which reasonable notice has been given to the member personally or by post, except on leave granted by the panel or unless the member is excused from the panel for having been absent from those meetings, or
  - Becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - Becomes a mentally incapacitated person, or
  - Is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more and is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- vi. **Regulations:** Regulations may be made in relation to the procedures of regional panels in exercising their functions, the provision of information and reports by regional panels and other matters.

## 9. Notification of council members

Each council should provide advice of the two persons it has nominated to become members of the relevant JRPP for its area.

Such advice should be provided by **Friday 5 June, 2009** in writing to:

Director-General  
NSW Department of Planning  
GPO Box 39  
Sydney NSW 2001

84456

**Ball, Ros**

**From:** Trish Mayer [Trish.Mayer@lgsa.org.au]  
**Sent:** Tuesday, 26 May 2009 1:49 PM  
**To:** Council's Generic Mailbox  
**Attachments:** image003.png; image004.png; image005.png

Shoalhaven City Council

Received

26 MAY 2009

File No. 38674

Referred to: RP

council@shoalhaven.nsw.gov.au

25 May 2009

*Copies to Councillors*

**To Mayors and General Managers in councils covered by JRPPs**

**Joint Regional Planning Panels – Issues Paper**

As you would be aware, the State Government is proposing to commence the operation of new Joint Regional Planning Panels (JRPPs) from 1 July 2009.

The Associations strongly oppose these planning panels and believe that the establishment of JRPPs needs to be reconsidered. Our submission on the proposed model of JRPPs has been sent to the Minister and the Associations are running a media campaign to ensure that our concerns about the panels are made known to the State Government, community and other key stakeholders.

At a practical level, the Associations are aware that councils have been requested by the Minister for Planning to nominate two representatives to serve as JRPP members, except in the western areas of NSW where the Planning Assessment Commission will undertake the functions of a JRPP.

We have received a number of requests from councils for advice and direction on this issue. To assist councils, the Associations have prepared a paper on issues associated with JRPPs and the nomination of council representatives. The paper, based on a report prepared by a senior Local Government planner, highlights some of the key issues that need to be considered by councils.

The issues paper has been prepared for your information only and councils must still comply with their obligations under the Act.

In particular, councils need to give careful consideration to their selection of nominees to JRPPs bearing in mind the very different circumstances that now apply to the decision making process for developments determined by these planning panels. Councils should be mindful of the Local Government Code of Conduct provisions and the potential for conflicts of interest (in the case of councillor and staff appointments) as well as the changed role of councillors in the development control process.

Yours sincerely

Cr Genia McCaffery  
President  
Local Government Association of NSW

Cr Bruce Miller  
President  
Shires Association of NSW

Local Government  
Association of NSW



Shires Association of NSW

## JOINT REGIONAL PLANNING PANELS ISSUES TO CONSIDER

### Function of JRPP

The functions of a JRPP as stated in s23G(2) of the Act are to undertake those "functions as a consent authority that are conferred on it under an environmental planning instrument".

At this time, the primary function of the JRPP is to assess and determine development applications. In undertaking this role the JRPP stands in the place of the council. The decision of the JRPP is not subject to any endorsement or review by council.

On 6 November 2008 the Minister for Planning announced details of the range of development applications that will be determined by a JRPP and not by council. The classes include:

- environmentally significant projects that are designated development
- all residential, commercial, retail, tourism and mixed use developments with an estimated value greater than \$10 million
- council projects valued at more than \$5 million
- development where council has a financial interest or a conflict of interest
- public and private community infrastructure projects worth more than \$5 million (e.g. private hospital, waste facilities, schools/colleges)
- major coastal developments
- subdivision for more than 100 lots
- applications to modify proposals previously determined by the Panel.

From this list it can be identified that some projects that would normally attract community interest or which previously may have come before the council for determination will now be submitted to the JRPP for determination.

There are several consequences of these changes, including:

- There will be an increased need for council to ensure that its statutory plans (i.e. LEP & DCP) precisely state its policies because council will not be able to make policy decisions through the development application process for these larger projects.
- Projects that are to be undertaken by council on behalf of the community will not be solely under council's control because an external body (i.e. JRPP) could refuse the project or impose conditions that do not suit the council.
- If a council project is refused development consent, the council would be required to lodge an appeal with the Land & Environment Court. As a council is required to defend a decision of the JRPP the council would have a difficult conflict of interest.
- Residents or applicants will no longer seek the support of councillors in the same way as previously because the councillors will not be determining the application. However, there is the potential that the role of a councillor will be transformed from being a decision-maker to that of an advocate.
- Regional Panels are required to consult with council where a decision will have, or might reasonably be expected to have a significantly adverse financial impact on council. This is only consultation and does not prevent a Panel decision that requires council to provide infrastructure at the council's expense. Another possibility is that a s94 contribution could be waived.

- There will be applications which in future will go to a regional panel that previously would have been determined under delegation. This will necessitate the production by council staff of an increased number of detailed reports with consequent implications for time and cost.
- While the administrative support for each JRPP will be provided by the Department of Planning, the Department has not yet determined who will bear the other costs associated with the operation of the Panels. JRPPs are likely to meet more frequently than councils and it is likely that the fees to be paid to panel members will be higher. At this time it is difficult to quantify the amount but it is expected that costs will be higher.
- Applications that are to go before a JRPP are expected to be determined within 90 days. When an application is submitted the Department will specify a date by which an assessment report must be completed and forwarded for the Panel's consideration. As there will be no "stop the clock" there will be no opportunity for an applicant to submit additional information or amend the proposal. The Department envisages that these applications will receive priority and be afforded any resources that are required. There will be implications for other applications being processed by council staff.

### Membership of JRPPs

Within the Act there are specific criteria for establishing the membership of a joint regional planning panel. These can be summarised as:

- a JRPP consists of 5 members
- 3 members are appointed by the Minister (including the chair)
- 2 members are nominated by the appropriate council
- members are appointed for a period of three years but council can replace its nominee at any time
- four of the five appointees must have expertise in planning, architecture, the environment, urban design, land economics, traffic and transport, law, engineering or tourism
- the council can nominate one person who does not have this professional expertise if it wishes

Some restrictions apply to the Minister when making appointments. The Minister is to have regard to the need to have a range of expertise within the panel members and the panel is not subject to the direction or control of the Minister.


While the relevant sections of the Act do not specify how a panel should conduct its business or how decisions should be made, the normal restrictions that apply to any decision making body will be relevant. Guidelines are being issued on meeting procedure, conflict of interest and other matters of administrative practice, although these are not yet finalised.

The legislation does not preclude a councillor being a member of a JRPP because a council can nominate one member who does not have the specified professional expertise. A councillor who is a member of a JRPP would be:

- nominated by the council but not represent the council. It would not be the role of the nominated councillor to present the opinion of the council during the debate within the JRPP.
- constrained in dealing with applicants and objectors prior to a DA coming before the Panel. The councillor would not be able to express an opinion or establish a position on the DA until the time that the DA was being evaluated by the JRPP.

### Evaluating and Reporting

It will be the responsibility of the council to engage professional staff to compile an assessment report that can be considered by a JRPP. The model described by the Department of Planning is that development applications will be processed as at present but rather than the staff report being submitted to council, the report would be submitted to the JRPP. According to the Regulations, the staff are employed to work on behalf of the JRPP for such applications but the council carries all costs for the work done by the staff.

Should a council officer be involved in the preparation of a report to the JRPP, that officer would be excluded from being considered for nomination to the JRPP. The person preparing the professional recommendation should not also be part of the decision making process. 

### **Nominee Options for Council**


When nominating two people as JRPP members council has greater flexibility than the Minister because only one council nominee must have the specified expertise. However, there are some constraints that need to be considered.

#### **Options for Professional Nominee**

The following options are not exhaustive but represent the range of nominees that council would be most likely to consider when seeking to select the nominee who has the specified professional expertise -

- an existing member of a council panel i.e. design panel or IHAP
- council's Director of Planning (or similar)
- the Director of Planning from another council
- a professionally qualified person selected in response to a call for expressions of interest
- a councillor who has the specified professional expertise

In choosing a person with professional expertise council should be seeking a person who is familiar with their local area and the council's adopted strategy and direction. Additionally, the person should be held in high regard as a professional so that the person's opinions and arguments will be persuasive at meetings of the JRPP. The person would need to be available to attend at least one meeting each month, possibly more.

 Due to the role of the Director of Planning in the assessment of development applications and the management of the application assessment system it is not considered appropriate for the council's Director to be a nominee.

Councils may select a member of an existing IHAP, Design Panel or other relevant panel members. Such members would be appropriately qualified and have knowledge and experience of council planning policies, the Land and Environment Court and the local area. For those councils that do not have an established IHAP or other appropriate panel, an option may be to call for expressions of interest from suitably qualified persons.

#### **Options for Second Nominee**

One of the people appointed to the JRPP does not need to have the specified professional expertise and could therefore come from any background. Some of the options would include:

- a councillor
- a resident appointed to represent the community
- one of the community representatives currently on IHAP
- another person with the required professional expertise.

There are many options available but the critical consideration is whether a councillor should be appointed. Some practical issues will need to be considered because work commitments will eliminate some potential candidates as the JRPP is likely to meet during the day and not within the local area.

One option could be to call for expressions of interest and consider submissions from a wide variety of persons including independent experts, councillors, residents and persons with a vested interest. However, this option may not be feasible given the requirement to provide nominations to the Department by 5 June.

## Changed Role of Councillors

With the creation of JRPP there will be fundamental changes to the role of a councillor. In circumstances where one councillor has been nominated by the council to be a member of a JRPP, different councillors could perform one of three very different roles -

- a councillor may be supportive of the development application and appear at the JRPP as an advocate in favour of the project
- a councillor may be opposed to the development application and appear at the JRPP as an advocate objecting to the project
- the nominated councillor would be a member of the JRPP and would hear submissions from supporters and opponents of the development application.

There is the potential that somewhere in NSW a situation may arise where councillors perform all three roles in relation to the one application.

While the nominated councillor would have to refrain from participating in any public discussion about the development application, other councillors would not be so constrained.

Only the nominated councillor would be participating in the determination of the application and so the other councillors would be able to participate in the public debate. This will produce a fundamental change in the role of all councillors. In the past some councillors have wanted to pursue a more active role in the public debate about a particular proposal but have had to curtail their involvement. It is possible that this restriction may now be removed.

The South Australian experience with similar panels provides a useful insight. Legislation in South Australia required each council to establish a panel. Initially, councillors were keen to be appointed as members by the council and so most panels included councillors. Over time many councillors found that the constraints of being a panel member hindered them in their role as an elected member of council. Quickly the position has changed to where most councillors do not wish to be members of a panel.

## Who Else Could Council Nominate?

One of the key issues for council to consider when deciding who to nominate is the definition of the role that the council wishes the person to play. From the NSW Government perspective panels are considered to be technical committees that make judgements after considering only technical issues. Certainly, panels are not seen to be part of a political process or capable of being influenced by any matters other than the technical issues relevant to the application.

When any development application is considered, s79C of the EP&A Act requires the determining authority to consider public submissions and the public interest. It is often argued that councillors are best placed to adjudicate the public interest and represent the public in the evaluation process. Under council's existing process the community perspective is provided by all councillors at the council level. At council the collective opinions of all councillors reflect the public interest rather than the opinion of an individual councillor.

Joint Regional Planning Panels will consist of five persons with the majority being appointed by the Minister. In purely numeric terms the potential for council or councillors to influence the determination of a development application is limited. Within local government there are different opinions about the approach that a council should take towards the panels and the nomination of members. Some argue that the action by the NSW Government to remove the participation of councillors from determining regionally significant applications should be resisted. Under this scenario a council may strive to justify the appointment of two councillors. To achieve this, the council would need to argue that one of the councillors has the professional expertise to satisfy the

criteria established by the Act. Nevertheless, two councillors cannot always reflect the opinions of all councillors or even a majority of councillors.

At the other extreme is the argument that if the NSW Government is seeking to portray the JRPP as a joint State/Local Government body, this move should be resisted. Central to this argument is the opinion that a council has nothing to gain by having council represented on the JRPP. By not appointing a councillor to the JRPP it can be argued that any decision of the JRPP has been made independent of the council. Consequently, if the community does not accept the JRPP decision, the council should not be held to account but rather the NSW Government.

Another option is for councils to seek to appoint persons who will influence the decisions of the JRPP through their knowledge and experience and who can argue from a local perspective just as a councillor would. However, the nomination of independent persons rather than a councillor highlights that council has not appointed persons who some may be perceived as voting in accordance with a political position. Council could seek expressions of interest from suitable experts or seek nominations from persons currently working on existing planning panels, including professional experts and/or community representatives.

### **Conclusion**

Councils need to give careful consideration to their selection of nominees to JRPPs bearing in mind the very different circumstances that now apply to the decision making process for developments determined by these planning panels. Councils should be mindful of the Local Government Code of Conduct provisions and the potential for conflicts of interest (in the case of councillor and staff appointments) as well as the changed role of councillors in the development control process.

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Local Government  
Association of NSW



Shires Association of NSW

1 June 2009

To all Mayors/General Managers

### **Council nominations to Joint Regional Planning Panels**

The Minister for Planning has requested councils to nominate two members to become members of the new Joint Regional Planning Panels (JRPPs) that are to commence operation on 1 July 2009. Council nominations are currently due by Friday 5 June.

At the recent Local Government Association Executive meeting and the recent Shires Association Executive meeting, the Executives resolved to urge member councils:

- not to nominate representatives to the Joint Regional Planning Panels until such time as guidelines and codes of conduct are made available to councils and issues relating to conflicts of interest have been resolved; and
- to seek an extension of time for council nominations and the commencement date of JRPPs.

The Executives also resolved to make representations to the Minister requesting that the NSW Government commit to further consultation with the Association to resolve these issues and to not implement the regional panels until consultations have occurred.

The Associations have previously written to councils about the problems associated with the regional panels, particularly in relation to the potential for conflicts of interest, in the case of councillor and staff appointments, as well as the changed role of councillors in the development control process. The Associations have also made representations to the Minister and the Department of Planning. The Associations have been advised that there are moves to address some of these problems but it is clear that the issues will not be resolved by Friday 5 June.

The Associations request that your council give urgent consideration to the Executives' resolutions in relation to regional panels.

Yours sincerely

Handwritten signature of Genia McCaffery in black ink.

Cr Genia McCaffery  
**President**  
*Local Government Association of NSW*

Handwritten signature of Bruce Miller in black ink.

Cr Bruce Miller  
**President**  
*Shires Association of NSW*



# Joint Regional Planning Panels Code of Conduct



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## JOINT REGIONAL PLANNING PANELS

### Code of Conduct

#### Introduction

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

- State appointed members
- Council nominees
- alternates acting for JRPP members

The Code outlines the standards of conduct expected of JRPP members. It is the personal responsibility of each JRPP 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 JRPPs.

#### Purpose of the Code

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

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

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

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

The Council's adopted Code applies to, amongst others, councillors, the General Manager and Council staff. The Model Code does not apply to JRPP 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 JRPP separate to their ordinary functions as a councillor or member of council staff. When exercising functions as a JRPP 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 JRPP in the exercise of its functions are not subject to this Code.

#### Other obligations

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

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**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 JRPP 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 JRPPs and their role in the planning system.

*Selflessness*

- 1.3 You must not act in order to gain financial 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 JRPP 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.

*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 JRPP member in a manner that is likely to bring the JRPP into disrepute. Specifically, you must not act in a way that:

- a) contravenes the EP&A Act<sup>1</sup>
- b) is improper or unethical
- c) is an abuse of power
- d) causes, comprises or involves intimidation, harassment or verbal abuse
- e) causes, comprises or involves discrimination, disadvantage or adverse treatment.

- 2.2 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions as a JRPP member, having regard to the statutory obligations under the EP&A Act.

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

**Draft for Consultation***Fairness and equity*

- 2.3 You must consider issues consistently, promptly 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 are properly made 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.

**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 JRPP 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 up-hold the probity of JRPP decision making. When considering whether or not you have a conflict of interests you should consider how others would view your situation.
- 3.5 Private interests can be of two types: pecuniary or non-pecuniary.

*Disclosure of pecuniary interests*

- 3.6 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 person<sup>2</sup>.
- 3.7 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 of that person might make<sup>3</sup>.
- 3.8 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 relative of 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.

<sup>2</sup> 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*.

<sup>3</sup> 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*.

**Draft for Consultation**

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- 3.9 The obligation on JRPP 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 JRPP 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 JRPP and the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter the member must, as soon as possible after the relevant facts have come to the member's attention disclose the nature of the interest at a meeting of the regional panel.
  - (b) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the regional panel otherwise determines:
    - be present during any deliberation of the panel with respect to the matter, or
    - take part in any decision of the panel with respect to the matter.

*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 nature<sup>4</sup>.
- 3.11 You should consider possible non pecuniary interests that may arise while carrying out your duties as a JRPP member. Where possible, the source of potential conflict should be removed.
- 3.12 However, where this is not possible, if a member has a non pecuniary interest in a matter and the interest appears to raise a conflict with the proper performance of the member's duties, the member must follow the procedures set out in clause 12 of Schedule 4 of the EP&A Act in the same manner as if the interest was a pecuniary interest.

*Political Donations*

- 3.13 JRPP members should be aware that political contributions or donations may give rise to a pecuniary or non-pecuniary interest. It is the responsibility of JRPP 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.

*Other business or employment*

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

*Personal dealings with council*

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<sup>4</sup> 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.

**Draft for Consultation**

3.13 You may have reason to have private dealings with a council that is within the JRPP region where you are a JRPP 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 JRPP member. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

**4. Personal benefit***Gifts and benefits*

4.1 You must not:

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

4.2 Generally speaking token gifts and benefits include:

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

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

**5. Relationship between JRPP members, council and council staff***Obligations of JRPP members*

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

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

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

5.2 Notwithstanding the operation of s 23N, JRPP members must not:

- a) direct council staff (unless authorised by the JRPP Chair)
- b) direct or influence or attempt to direct or influence, any other member of the staff of the council or a delegate of the council

**Draft for Consultation**

- c) contact a member of the staff of the council on JRPP related business (unless authorised by the JRPP Chair)
  - d) contact or issue instructions to any of the council's contractors.
- 5.3 Your actions must not compromise the ability of the council staff to prepare their assessment reports independently of the JRPPs.
- 5.4 You have a responsibility to promote and support an effective and co-operative working relationship with the council, general manager and council staff.

*Inappropriate interactions*

- 5.5 You must not engage in inappropriate interactions when exercising your functions as a JRPP member.
- 5.6 In relation to council staff you must not:
- a) approach individual council staff or seek to make enquiries of staff other than through the official channels and in accordance with this Code.
  - b) be overbearing or threatening to council staff.
  - c) make personal attacks on council staff in a public forum.
  - d) direct or pressure council staff in the performance of their work or recommendations they make.
  - e) seek to influence staff in the preparation of assessment reports or other information to be submitted to the JRPP.
- 5.7 In relation to applicants/proponents and/or or persons with an interest in proposed development:
- a) hold private meetings or discussions in respect of the matter in the absence of other JRPP members or without council staff being in attendance;
  - b) you must not attend site visits unless they have been formally arranged by council staff and you are accompanied by other JRPP members and/or council staff;
  - c) you must not attend private briefings with interested parties in respect of the matter.

*Council staff - avoiding the potential for a conflict of duties*

- 5.8 As a general rule it is not appropriate for council staff to be members of a JRPP, as it would be difficult for them to appropriately manage the conflicts of interest between being a council staff member and fulfilling the obligations of a JRPP member.
- 5.9 Council employees (including general managers and other senior staff) who are nominated to sit as a member of the JRPP should carefully consider what measures must be put in place to ensure they will be able to comply with the requirements of this Code.<sup>5</sup>
- 5.10 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 JRPP. 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

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<sup>5</sup> In particular Part 5 of the Code.



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employees who are nominated to sit on a JRPP must ensure that appropriate measures are in place to ensure potential conflicts are managed.

5.11 Council employees who are nominated to sit as JRPP 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 JRPP member either because:

- a) they have been directly or indirectly involved in the preparation of the assessment report for the JRPP, 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 JRPP.

## **6. Relationship between JRPP 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 Department of Planning staff and the Panel Secretariat.

## **7. Protecting and using information**

7.1 Information must be handled in accordance with section 148 of the EP&A Act.

7.2 In addition to the obligations under section 148 of the EP&A Act you must:

- a) protect confidential information
- b) only release confidential information if you have authority to do so
- c) only use confidential information for the purpose it is intended to be used
- d) not use confidential information gained through your position as a JRPP 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 JRPP or any other person or body
- f) not disclose any information discussed during a confidential session of a JRPP.

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

## **8. Public Comment/Media**

8.1 Only the JRPP Chair, or another person determined by the JRPP is permitted to speak publicly to the media and/or address the public on behalf of the JRPP. No other JRPP members may make a comment to the media or the public in relation to any matter before the JRPP or any decision of the JRPP.

## **9. Reporting breaches**

9.1 You are required to report suspected breaches of the Code to the JRPP Chair. If the suspected breach is by the Chair, you should report the suspected breach to the Chair of the Planning Assessment Commission.

9.2 The JRPP Chair or PAC Chair, as the case may be, may take such action as s/he thinks appropriate to investigate the alleged breach.

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- 9.3 A person who is alleged to have breached the Code must be given:
- a) the full particulars of the alleged breach;
  - 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.
- 9.4 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 10 below)

**10. Removal from office**

- 10.1 The Minister may remove State members from office at any time and without notice.
- 10.2 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.
- 10.3 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.

**11. Complaint handling**

- 11.1 Complaints against JRPP members are to be handled in accordance with the JRPP Complaints Handling Policy.

**Appendix A****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:

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- (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.



# Procedures for the Operation of Joint Regional Planning Panels



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# Procedures for the Operation of Joint Regional Planning Panels

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## 1. Introduction

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

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

The procedures should be read in conjunction with the Code of Conduct for Joint Regional Planning Panels which explains the standard of conduct expected of Regional Panel members.

These procedures are in relation to the operation of Regional Panels under the *Environmental Planning and Assessment Act 1979* (EP&A Act), and extend to Regional Panels if they are undertaking any functions that may be conferred by the Minister for Planning in accordance with the EP&A Act.

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

## 2. Functions of Regional Panels

### 2.1 Functions

The principal function of Regional Panels is to determine regionally significant development applications. Additional functions of regional panels include:

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

### 2.2 Membership of Regional Panels

Regional Panels consist of 5 members as follows:

- **State Members:** Three State members appointed by the Minister, each having expertise in one or more of the following: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration.

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In appointing the State members, the Minister is required to have regard to the need to have a range of expertise represented among the panel's members. State members of Regional Panels may also be members of the Planning Assessment Commission (PAC) or appointed as casual members of the PAC.

- **Council Members:** Two council members appointed by each council that is situated in a part of the state for which a Regional Panel is established. At least one council member is required to have expertise in one or more of the following: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism.

It is a matter for each council to identify how the members are selected. In selecting members, however, Councils should have regard to the conflict of interest that would be created for a person nominated to the Regional Panel if they were in any way responsible for or involved in the assessment and recommendation of a matter to be determined by the Regional Panel.

As a general rule it is not appropriate for council staff to be members of a JRPP, as it would be difficult for them to appropriately manage the conflicts of interest between being a council staff member and fulfilling the obligations of a JRPP member.

At a meeting of a Regional Panel, matters in a number of different council areas may be considered. The two (2) members of individual councils will join the three (3) State members to comprise the Regional Panel whenever the Regional Panel is considering a matter that is located in that council's area.

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

Councils can appoint, terminate, and reappoint, members at anytime. Councils should, however, reappoint council members within 12 months following a council election.

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

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

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

The Chairperson presides at meetings of Regional Panels. The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

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

A council may also, from time to time, appoint a person to be the alternate of a member nominated by the council, and may revoke any such appointment.

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

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

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

### **2.3 Defining the Regions**

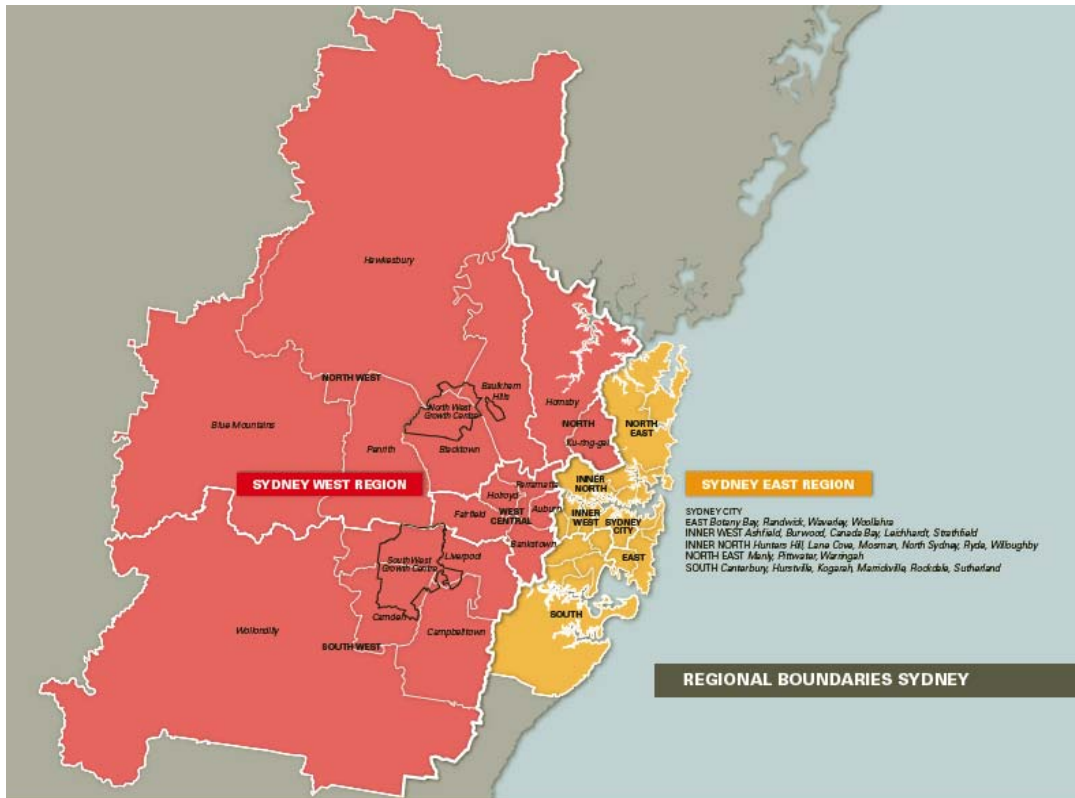
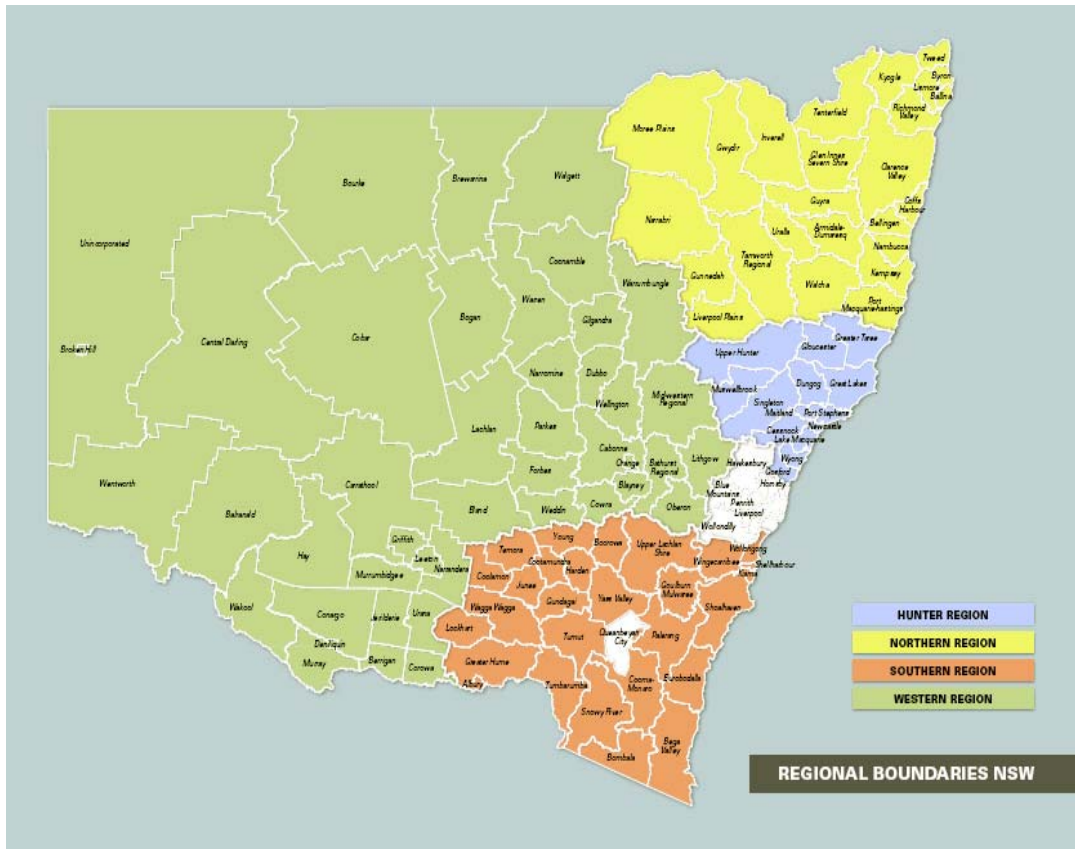
Joint Regional Planning Panels are constituted by the Minister for Planning by order published in the Gazette. The Minister may revoke an order and make new orders at any time.

There are 6 Regional Panels, corresponding with the Department of Planning Regional Boundaries as shown in the following maps. The 6 regions are:

- Northern Region;
- Hunter and Central Coast Region;
- Southern Region;
- Western Region;
- Sydney Metro East Region; and
- Sydney Metro West Region.

The Regional Panel provisions do not apply in the City of Sydney, where the Central Sydney Planning Committee will continue to function.

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## 2.4 Classes of Regional Development

The Major Projects State Environmental Planning Policy identifies classes of 'regional development' to which the JRPPs will be made the consent authority. The regional development classes include:

- a) designated development
- b) development that has a capital investment value of more than \$10 million
- c) subdivisions over 250 lots
- d) certain coastal development and coastal subdivisions that were previously Part 3A projects
- e) the following development if it has a capital investment value of more than \$5 million:
  - (i) public and private infrastructure
  - (ii) Crown development
  - (iii) eco-tourism development
  - (iv) where Council is the proponent or has a conflict of interest.

The above classes of development are not regional development if the development proposal is:

- a) a project to which Part 3A applies
- b) complying development
- c) development which does not require consent (vis. exempt development or Part 5 activities)
- d) development within the area of the City of Sydney.
- e) development where the Minister is the consent authority under Part 4

**Note:** Full details of the classes of "regional development" will be provided within the amendment of the Major Projects SEPP.

## 2.5 Administration

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

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

Councils may be requested to assist JRPPs with the provision of meeting venues, arrangements for site visits and briefings (where appropriate).

## 2.6 Monitoring and Review

The performance of Regional Panels in relation to their handling of development applications and other matters will be monitored and reported on in a Regional Development Monitor to be published annually.

### **3. Roles of councils and other panels in relation to the JRPP**

#### **3.1 Role of Councillors and Council Staff**

Councillors (as the elected Council) and council staff have distinctly different roles in the handling of development applications. The separation of these roles is reinforced in s.352 of the *Local Government Act 1993* (LG Act) which 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 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 development application. The assessment of a development application requires undertaking various statutory requirements such as public notification, advertising, consultation, concurrence and obtaining general terms of approval from an agency if required, and consideration of the matters set out in the EP&A Act including s.79C. The assessment is documented in an assessment report with recommendations. The report is subsequently considered by the person or body whose role it is to determine the application.

##### ***Determination Role***

The role of the elected Council is to determine, or make decisions on, development applications in their capacity as consent authority - provided the determination role has not been delegated to, or conferred upon, another person or body.

The elected Council can delegate its function of determining development applications to other bodies or the General Manager. The vast majority of development applications are determined by Council staff under delegation.

In a similar way, s.23G of the EP&A Act has conferred upon Regional Panels the function of elected councils to determine regionally significant, and certain other types of development applications. As such, regionally significant development applications are not determined by councils.

#### **3.2 Support provided to Regional Panels by councils**

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

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

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

Requests by members of Regional Panels for support from councils should be made through the Chairperson to the General Manager (or their delegate) 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), or informally, in order to bring special design expertise to the assessment of certain types of development applications. Design Review Panels that are properly integrated in the assessment process are an effective tool helping to improve the quality of design. The quality of design has a bearing on many, but obviously not all, of the matters considered in the assessment of a development application.

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

### **3.4 Role of Independent Hearing and Assessment Panels**

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

If the IHAP is advisory, it will review the application taking into consideration issues raised and provide independent expert advice to the council. In a limited number of councils, the panels may also be delegated the decision making functions of the council.

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 development application to be properly heard (free of the strictures of parliamentary style rules and procedures); and Regional Panels bring independent expertise.

As such, applications to be determined by a Regional Panel are not to be referred to Independent Hearing and Assessment Panels where they exist.

Note: Section 23I of the EP&A Act makes explicit provisions for the establishment of Independent Hearing and Assessment Panels and councils are required to constitute such panels if an assessment by a panel is required by an environmental planning instrument. Section 23I, however,

does not apply in the case of matters subject to determination or review by a Regional Panel.

### **3.5 Role of Planning Assessment Panels (s.118 panels)**

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

Where a Planning Assessment Panel has been established and its role includes determining applications for regionally significant development, this role may instead be determined by the Minister to be undertaken by the Regional Panel (where one exists).

Other classes of development applications will continue to be determined by the Planning Assessment Panel.



## **4. The Assessment Process**

### **4.1 Pre-DA Meetings**

Pre-DA meetings are commonly used to resolve the assessment requirements for applications before they are submitted to the consent authority.

It is not appropriate for determining bodies, such as Regional Panels or their members, to participate in such meetings in so far as a determining body, or individual members of a determining body, cannot express an opinion regarding the merits or otherwise of a development application prior to the proper assessment of the development application at a formal meeting of the Regional Panel.

### **4.2 Making of Development Applications**

Development applications, including staged development applications, are made in the ordinary manner to the council that would otherwise have had the function of determining the application. Proponents should be requested to submit the application and supporting material in electronic form for notification on the council's website as well as for ease of notification of the panel secretariat.

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

### **4.3 Notification to Panel Secretariat**

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

The notification is to include:

- A copy of the development application and Statement of environmental Effects or Environmental Impact Statement to be used for the purpose of public notification;
- The dates during which it is proposed to conduct public notification of the application; and
- The estimated date by which the assessment report will be completed.

### **4.4 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 as they would in accordance with the provisions of the EP&A Act. Usually councils would rely on their own professional staff. However, where they do not have the technical expertise required in-house, they may involve external expertise in the assessment of aspects or the whole development application.

Public notification of the application, and re-notification if required, is undertaken by the council staff in accordance with the requirements of the EP&A Act,

including the provisions of any development control plan the council has for the notification or advertising of development applications.

Council staff will negotiate Voluntary Planning Agreements (VPAs) with applicants in the normal way.

#### **4.5 Panel briefings or site visits during the assessment phase**

Prior to an assessment report for a development application being submitted to a Regional Panel to be determined, the Chairperson may agree to a site visit or a briefing as part of a formal meeting of the Regional Panel. The site visit or briefing may be as a result of a request from the proponent, community representative or the council.

The purpose of the briefing would be for the information of the Regional Panel. The Regional Panel should not be able to offer an opinion on the merits of the proposal at this stage prior to receiving the assessment report and recommendations. A senior planner from the relevant council should be present at the site visit or briefing. An appropriate record of the matters discussed at any briefing or site visit should be kept by the Regional Panel.

#### **4.6 Council representation to the Regional Panel**

A council may make a representation on a development application that is to be determined by a Regional Panel during and up to two (2) weeks after the close of the notification period. The applicant may consider it appropriate to provide a briefing to council prior to the council framing its submission to the Panel.

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

There is nothing to prevent a Regional Panel considering a council representation made after the period described above but before the application is determined.

#### **4.7 Submission of Assessment Report to Panel Secretariat**

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

The following items are to be forwarded electronically to the Secretariat:

- Assessment Report, any attachments and the Recommendations;
- Development Application and Statement of Environmental Effects or Environmental Impact Statement along with any plans, drawings or other material submitted with the application;
- Copies of each submission received in respect of the application along with a table containing the names and addresses (preferably email addresses) of every person or body who made a submission. In the case of petitions, only the name and address of the head petitioner, if that person can be identified.

## 5. The Determination Process

### 5.1 Setting of meeting date and agenda

A regular schedule of proposed meeting dates will be determined in advance by the Panel Secretariat in consultation with the Chairperson. The schedule is likely to be on a 2 or 3 week cycle depending on the particular region and the likely volume of applications. If there are no items for a scheduled meeting date, the meeting will not take place.

Special meetings of a Regional Panel may be organised at the discretion of the Chairperson subject to the notice requirements discussed later.

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

Preliminary agendas should be forecast as far ahead as possible, being mindful that issues may emerge during public notification that will alter the originally estimated date for completion of the assessment report. In these circumstances, the council is to notify the Panel Secretariat of the revised date for completion of the assessment report and the brief reasons for the delay.

Councils will need to be mindful that regional development applications are to be determined within a period of 90 days.

### 5.2 Meeting venue

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

- The location of the matters 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 accessibility of the proposed venue for those persons.

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

- maximise accessibility to people who have expressed an interest in the matters to be considered at the meeting;
- to rotate meetings between different local government areas;
- to facilitate the open exchange of information between the Panel members and other parties.

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

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

### **5.3 Notice of meeting**

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

- The time and date of the meeting;
- The venue for the meeting; and
- The development applications; and
- The Assessment Report and recommendations; and
- Other matters to be considered at the meeting

### **5.4 Distribution of meeting agenda**

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

### **5.5 Site visits**

Formal visits by the Regional Panel to the site of a development application being considered may be arranged prior to the meeting at the discretion of the Chairperson. The Chairperson may also invite the responsible council assessment officer and the proponent as well as any relevant community member or representative who has requested to make a presentation. Entry on to any private land in these circumstances may only take place with the express permission of the owner of the land.

Informal visits to the locality of a matter before a Regional Panel may also be undertaken by Regional Panel members at their own discretion and in order to assist their understanding of the matter before the Panel. In such circumstances, however:

- Panel members should not enter onto any land, even if invited by the landowner or a neighbouring property owner or any other person;
- Panel members should not discuss the merits or otherwise of an application with any person, including the applicant, any person representing the applicant, or any person who made a submission in respect of the application; and
- Panel members should advise the Chairperson of such visits.

### **5.6 Quorum for a Regional Panel Meeting**

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

### **5.7 The Regional Panel Meeting**

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

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

1. Commercial information of a confidential nature that would, if disclosed:
  - a) prejudice the commercial position of the person who supplied it; or
  - b) reveal a trade secret; or
2. Advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege;
3. Information concerning the nature and location of a place or an item of Aboriginal significance on community land.

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

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

### **5.8 Presentations at Regional Panel Meeting**

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

#### **(a) Presentation by the applicant**

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

#### **(b) Presentation by persons or bodies who made submissions**

Persons (or persons on behalf of bodies) who made a submission on a matter before the Regional Panel may request to address the Panel. The Chairperson will invite such requests prior to considering a development application.

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

**(c) Presentation by person responsible for assessment**

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

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

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

**(d) Presentation by a panel appointed expert**

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

**5.9 Transaction of business outside formal meetings**

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

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

1. A planning body (which includes a Regional Panel) may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the planning body for the matter for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the planning body.
2. The planning body may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

3. For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),
4. The chairperson and each member of the planning body have the same voting rights as they have at an ordinary meeting of the planning body.
5. A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the planning body.
6. Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

#### **5.10 Obligation to consult council – if adverse financial impacts**

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

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

#### **5.11 Making the determination**

Decisions on individual matters are to be made by consensus and in public whenever possible. On occasions when it is not possible to reach consensus, a decision is to be made by majority vote. The presiding member will have a second or casting vote if required because of an equality of votes.

A decision may be deferred for any reason including the obtaining of additional information or advice. In these circumstances, the decision may be made at a subsequent meeting; including a meeting conducted by the circulation of papers or by electronic means in accordance with clause 268I of the *Environmental Planning and Assessment Regulation 2000*.

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

Where the determination is not consistent with the recommendations by the relevant council officers, the Regional Panel will be required to prepare a report justifying the variation from the recommendations or the alternative approach. Depending on the circumstances, the inconsistencies may be relatively minor or may represent a total change in approach and may include:

- determination to approve an application with modifications to certain conditions; or
- determination to refuse an application when council officers recommended approval; or

- determination to approve an application when council officers recommended refusal.

In the latter case, an assessment report (which included justification to the change in approach) will need to be developed along with conditions of approval. Depending on the particular Regional Panel, the panel may prepare the report and conditions of approval, or seek assistance through the JRPP secretariat or engage an independent expert to assist it.

### **5.12 Recording of minutes**

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

The unconfirmed minutes must be endorsed by the Chairperson and made publicly available within five (5) days of the Regional Panel meeting. A copy of the unconfirmed minutes must also be provided to the relevant councils which participated in the Regional Panel Meeting, once they have been endorsed by the Chairperson. Panel members may submit any proposed corrections of the unconfirmed minutes to the Panel Secretariat for distribution to the Panel members prior to the meeting at which the minutes are to be confirmed.

The minutes of a meeting must be submitted for confirmation at the next ordinary meeting of the Regional Panel. When the minutes have been confirmed at a subsequent meeting of the Regional Panel, the Chairperson of that meeting must sign them.

The minutes must record:

- (a) The opening and closing times of the meeting;
- (b) The names of state members (or their alternates) present at the meeting,
- (c) The names of the council members (or their alternates) in respect of each item,
- (d) Any disclosure of interest made by a member and the reason for that disclosure of interest;
- (e) The names of each person heard by the Regional Panel in respect of an item and a summary of key issues raised;
- (f) The decision of the Regional Panel for each item, Where the determination is not consistent with the recommendations by the relevant council officers, the following must be provided:
  - (i) any conditions of approval or changes to the recommended conditions of approval,
  - (ii) a report justifying and providing the reasons for the variance from the recommendation; In the case where the panel is determining to approve a project which the relevant council recommend refusal, an assessment report (which included justification to the change in approach) will need to be developed.
- (g) Where a decision is made by a majority vote, the names of: each member who voted for; and of each member who voted against.



Minutes are recorded by an officer of the Panel Secretariat. The Panel Secretariat is responsible for keeping records of the Regional Panels.

## **6. Post Meeting Procedures**

### **6.1 Issuing the notice of determination**

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

### **6.2 Monitoring of and compliance with conditions of approval**

The proponent will be expected to implement the approval consistent with the approval conditions. The proponent will need to appoint a certifier and obtain a construction certificate and other approvals as appropriate to commence the implementation of the consent. 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.

### **6.3 Appeals against determination**

Appeals against the determination of a Regional Panel are to be defended by the council that received the development application as though the determination were made by the council. Notwithstanding that the determination was made by a Regional Panel, council retains its responsibilities as the consent authority. In exceptional cases the JRPP may also become a party to any appeal.

### Council's Obligations Prior to Referring Regional DAs to the JRPP for Determination

