

PLANNING SYSTEM

Local planning

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Joint Regional Planning Panels - Review and Changes

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

Introduction

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

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

The Review

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

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

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

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

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

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

Changes to Operational Procedures

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

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

DA monitoring and follow up

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

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

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

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

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

Best practice assessment

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

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

Requests for information

Requests should:

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

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

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

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

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

Draft conditions of consent

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

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

Councils should endeavour to ensure that conditions are:

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

SEPP No.1 objections

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

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

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

Crown Development

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

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

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

Changes to the Code of Conduct

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

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

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

Amendments to the MD SEPP

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

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

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

Updated frequently asked questions

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

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

Further information

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

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

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

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