

## PLANNING SYSTEM

State environmental planning policies

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| <b>Circular</b> | PS 11-020                       |
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| <b>Related</b>  | PS 09-016; PS 09-017; PS 10-009 |

# Return of certain regional development to councils for determination

This circular is to advise councils, applicants and the community about the reduction in the classes of regional development, changes to joint regional planning panels (regional panels) and procedures relating to them. Regional redevelopment is development that is assessed by councils but determined by regional panels. Development no longer included in the classes of regional development will now be determined by councils.

## Introduction

As part of the government's commitment to reform of the NSW planning system, from 1 October 2011 regional panels will no longer determine:

- development applications for some designated development
- development applications for smaller coastal subdivisions and other coastal development
- development applications lodged from 1 October 2011 for residential subdivisions of more than 250 lots
- development applications lodged from 1 October 2011 for 'general development' with a capital investment value (CIV) of between \$10 million and \$20 million.

Development applications for these development types will now be returned for determination by the council of the area concerned. This will see about 55 per cent of the development applications determined by regional panels returned to councils.

## Changes to regional development and regional panels

The *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011* (the Repeal Act) commences on 1 October 2011. New classes of regional development are now set out in Schedule 4A, of the *Environmental Planning and Assessment Act 1979* (the Act). This schedule replaces the former classes of regional development set out in Part 3 of State Environmental Planning Policy (Major Development) 2005 (MD SEPP).

Savings and transitional provisions are set out in Schedule 6A clause 15 of the Repeal Act.

The new State Environmental Planning Policy (State and Regional Development) 2011 sets out the functions of regional panels in determining applications for regional development. These functions have been transferred from Part 3 of the MD SEPP, which has been repealed.

The Repeal Act also makes changes to the way the chairpersons of regional panels are appointed.

As a result of these changes the operational procedures and code of conduct for regional panels will be reviewed in the coming months. This circular includes some interim changes to the operating procedures pending the updating.

## Revised classes of regional development

### Designated development – reduced

The types of designated development that are regional development have been reduced. Only the following types of designated development are now regional development:

- extractive industries
- marinas
- waste management facilities.

Marinas are no longer a type of development considered as state significant development, and the thresholds for extractive industries and waste management facilities as state significant development have been raised. This will result in more applications in these classes being assessed by councils and determined by regional panels.

An undetermined development application (DA) lodged before 1 October 2011 for designated development types not continuing as regional development will now be determined by councils, not regional panels.

Accordingly, from 1 October 2011 regional panels will only determine a DA for designated development lodged before 1 October 2011 that is for:

- an extractive industry
- a marina
- a waste management facility.

#### **Coastal development – reduced**

Several types of coastal development that were formerly regional development have been returned to councils for determination, including:

- caravan parks, tourist and visitor accommodation
- buildings and structures over 13 metres
- small subdivisions.

An undetermined DA lodged before 1 October 2011 for these development types will now be determined by councils, not regional panels.

The coastal development class for regional development now only includes the former Part 3A large coastal subdivision class transferred to regional panels on 13 May 2011. This class comprises the following development within the coastal zone:

- subdivision into more than 100 lots, if more than 100 of the lots will not be connected to an approved sewage treatment work or system
- subdivision of land for residential purposes into more than 100 lots, if the land:
  - is not in the metropolitan coastal zone, or
  - is wholly or partly in a sensitive coastal location
- subdivision of land for rural-residential purposes into more than 25 lots, if the land:
  - is not in the metropolitan coastal zone, or
  - is wholly or partly in a sensitive coastal location.

From 1 October 2011 regional panels will only continue to determine existing undetermined DAs in this class that are for large coastal subdivisions and were lodged from 13 May 2011 onwards.

#### **Private infrastructure and community facilities over \$5 million – changed**

The description of this class has been changed to simplify the ordering of the types of development and to avoid overlap with development already included in the Crown development class. Notwithstanding these changes the class captures the same development types as it did before 1 October 2011.

As such the relevant regional panel will continue to determine DAs lodged either before or after 1 October 2011.

#### **Residential subdivisions over 250 lots – abolished**

This class is no longer regional development. Any DAs lodged for these subdivisions from 1 October 2011 will be determined by the relevant council.

An undetermined DA for these subdivisions lodged before 1 October 2011 will continue to be determined by the relevant regional panel.

#### **General development over \$10 million – threshold raised to \$20 million**

The most significant change to the regional development classes is the CIV threshold for general development has been raised from \$10 million to \$20 million. This means that from 1 October new DAs lodged for development with a CIV under \$20 million will generally be determined by the relevant local council.

DAs for development with a CIV between \$10 million to \$20 million lodged with council before 1 October 2011 will continue to be determined by the relevant regional panel.

#### **Development subject to delays in determination – new class and new procedures**

This new class provides that general development with a CIV of more than \$10 million but less than \$20 million which remains undetermined 120 days after lodgement with council may be referred by the applicant to the regional panel for determination. The referral will not be accepted if the delay in determining the DA was caused by the applicant.

Councils are still asked to register DAs in this class with the panel secretariat as if they were DAs to be determined by the regional panel and update the regional panel development register at the secretariat when the DA is determined by council. This will enable the secretariat to continue to monitor DA determination times in this class and to act promptly should the DA be referred to the regional panel after 120 days.

The department is developing a template referral form for applicants and councils to keep the referral process simple and consistent. The template and referral procedures will be published shortly.

#### **Modification of development consents**

Councils will also be the consent authority for modification applications where the development was approved by the regional panel but where the development is no longer a class of regional development. Councils will now determine those modification applications whether lodged before or after 1 October 2011.

#### **Appointment of regional panel chairpersons**

A regional panel comprises three members appointed by the Minister for Planning and Infrastructure, and two members nominated by the relevant local council. The appointment of an independent chairperson from one of the members appointed by the government now requires the concurrence of the Local Government and Shires Associations.

These new arrangements are intended to provide more equitable representation on the panels for local councils.

The new provisions will only apply on future appointments of chairpersons. The current appointments of regional panel chairpersons expire on 30 June 2012.

## **Changes to the operational procedures, code of conduct and delegations**

The operational procedures and code of conduct will be updated to reflect the changes outlined above. It is proposed that public comment will be sought on the revised procedures before they are adopted by the Minister for Planning and Infrastructure.

The existing delegations of regional panel decision making functions to councils approved by the former Minister for Planning expire on 30 September 2011. No development applications should be determined under those delegations after 30 September 2011.

Given the return to councils of the decision making role for more than half the applications formerly determined by regional panels, the issue of future delegations from the regional panels will be considered as part of the upcoming review of the operational procedures.

## **Further information**

The delegation can be found on the department's website at [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au).

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## **Authorised by:**

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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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