



How does the Regional Panel determine an application? What is the procedure after the regional panel meeting?

How are regional development applications determined?

Regionally significant development applications are determined by the Regional Panel, as the consent authority. Regional Panels operate under the *Environmental Planning and Assessment Act, 1979* (EP&A Act) and must determine an application in accordance with that Act. Prior to determination, the relevant local council planning staff assesses the development application and submits its assessment report to the regional panel.

The purpose of the determination meeting is for the Regional Panel to hear from people that wish to express their view on the development application prior to determination. After hearing public submissions, the Regional Panel may decide to determine the development application or it may defer the determination and/ or request further information.

The Joint Regional Panels Operational Procedures and Code of Conduct are important documents that guide Regional Panels and should be consulted if further information is required.

How will we know when a Regional Panel Meeting is to be held?

Notice of the meeting is provided to the Regional Panel members, the relevant councils in that region, the applicant and every person who made a submission to the council about an item to be considered at the Regional Panel meeting.

The meeting notice is also included on the Regional Panel website and on the web-site of the councils that has matters to be considered at the meeting. The notice will advise of the venue, time and date of the meeting, details of the development application, the availability of the agenda and business papers and will list the matters to be considered at the meeting.

Where possible, in determining a suitable meeting venue the objective is to allow persons that made a submission on the development an opportunity to voice their concerns. At times, items from a number of council areas may be considered at the one meeting provided the venue is reasonably accessible to most interested parties.

How are Regional Panel meetings conducted?

Regional Panel meetings are to be held in public, unless otherwise directed by the Minister, or unless the Chairperson believes there are justifiable reasons (such as litigation, commercial considerations etc) to hold a meeting or any part of a meeting in closed session.

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. If the chairperson decides to close any part of a Regional Panel meeting, the reasons for closing that part of the meeting will be recorded in the minutes of the meeting.

Who is able to provide a submission or presentation to the Regional Panel?

The Chairperson is responsible for deciding the order of presentations at a Regional Panel meeting and the amount of time for persons to be heard. The following presentations may be made:

- The Applicant to outline the proposal and respond to any issues raised.
- Persons (or persons on behalf of bodies) who made a submission.
- The elected council of the area where the development is proposed to outline its submission.
- At the Chairperson's discretion, any member of the public.
- The person responsible for preparing the council's assessment report is to be present at the Regional Panel. Other technical experts from the council as appropriate may also be present. Assistance may be sought from such persons to clarify issues regarding the assessment report or matters raised.
- Independent assessment reports, advice or assistance may be sought so the Panel can determine a development application. Persons that prepared the report or advice may be invited to present to the Regional Panel meeting.
- Regional Panel members may ask questions of those making a presentation to the meeting.

What if a councillor wishes to make a submission representing the community and is also a Regional Panel Member?

If a councillor is a member of the Regional Panel, he or she would be bound by the Joint Regional Panel's Code of Conduct. In such cases, the councillor could not make a submission on behalf of the community member or other person(s) to the Regional Panel that is responsible for determining the development application.

The councillor should advise the community members or other person that as a member of the Regional Panel, he/ she is not able to make a submission on behalf of the community or any individual. The community member should make a written submission to the council during the exhibition period, which will then be considered in the assessment report and provided to the Regional Panel. Also the community member/s may request to address the Regional Panel meeting directly on the proposed development.

Alternatively, if the councillor would still like to make a submission on behalf of the community group the councillor would need to stand down from the Regional Panel in relation to the proposed development and have an alternate Regional Panel member appointed by the council. In this way, the councillor would not be in a conflict of interest position and could make a submission to the Regional Panel meeting on behalf of the relevant party.

Consultation with council.

A Regional Panel is required to consult with the council if it might reasonably be expected that the proposed development may have a significantly adverse financial impact on a council. These costs may be associated with the need for additional infrastructure or services.

Does the Political Donations Legislation apply?

Yes. The requirements of the EP&A Act for the disclosure of political donations apply to Regional Panel application. An applicant, a person making a submission and a member of a Regional Panel must declare a reportable political donation or gift.

The Code of Conduct for Regional Panels provides guidance to members of Regional Panels if a political donation creates a conflict of interest.

Can a Regional panel decide to adjourn or defer a meeting?

After hearing from parties, a Regional Panel may adjourn a meeting for the members to confer before reconvening the meeting to make its decision. A Regional Panel may also decide

to defer its determination of the matter to a subsequent meeting.

If there are matters raised in the Regional Panel meeting by submitters that were not addressed in the assessment report, these will be recorded in the minutes of the meeting, and the Regional Panel may refer these matters to the Council's officer for a supplementary report.

A decision may be deferred for any reason including the Regional Panel obtaining additional information or advice to assist in its determination. In these circumstances, the decision may be made at a subsequent meeting.

The Chairperson should inform the meeting of the reason(s) for the deferral of a decision and provide advice of the proposed further meeting(s) of the Regional Panel to determine the application.

If a Regional Panel's request is for an additional report, the question of cost to prepare the required report will be determined by the Panel Secretariat after consultation with the Chairperson and the council's general manager.

When does the Regional Panel actually make the determination?

After hearing from parties who addressed the meeting, the Regional Panel is to make its decision on the development in an open forum and by consensus where possible. If a consensus decision is not possible, the decision of the Regional Panel is to be made by majority vote. If voting of the Regional Panel members is equal, the chair person will have a second or casting vote.

A quorum for a Regional Panel meeting is 3 members.

A Regional Panel may hold a meeting by electronic means such as a telephone or video meeting. Such meetings will be few, and are likely to be in order to conclude unfinished business from a previous public meeting. At these meetings, the Chairperson and other Regional Panel members have the same voting rights as for any other Regional Panel meeting

Where the determination of an application by a Regional Panel varies from the recommendation by the relevant council officer in the assessment

report, the Regional Panel is required to provide reasons for its decision, which are recorded in the minutes of the meeting together with any changes to the recommended conditions of consent. The meeting minutes will record how each panel member voted on the development application, any declarations of interest made at the meeting and the names of persons that made a presentation.

How do councillors that are Regional Panel members deal with the situation where their council opposes the proposed development – is there a conflict of interest?

Any councillors that are members of the Regional Panel should refer to the Joint Regional Planning Panels Code of Conduct to address this situation. Generally, they should declare an interest in the matter at the council meeting and step aside from the council's decision making process so that they are independent when considering the development application at the Regional Panel meeting.

An alternative option is for the councillor to stand down from the Regional Panel in relation to the proposed development and have an alternate Regional Panel member appointed by the council. If the alternate member is a councillor, that person would also be required to similarly address the above situation by declaring an interest and stepping aside from any council decision about the development.

What happens after the Regional Panel meeting?

The minutes of the Regional Panel meeting are required to be finalised within five (5) working days. Minutes, which include details of any determination and other relevant information, when confirmed and endorsed, will be available on the Regional Panel website. The details of any determination will be provided to the council to issue the Notice of Determination.

The Notice of Determination is issued by the council that received the development application in accordance with the EP&A Act and Regulation and the council's normal procedures.

Enquiries about the determination should be dealt with by the council planner that prepared the assessment report.

The council is responsible for the monitoring and enforcement of the conditions of development consent.

Can the decision of a Regional Panel be appealed?

Appeal rights are unchanged by the introduction of the Regional Panel process.

Dissatisfied applicants may appeal to the Land and Environment Court within 12 months as provided in the EP&A Act.

Where a development application is for designated development an objector who is dissatisfied with the determination of the Regional Panel to grant consent may appeal to the Court within 28 days after the date on which notice of the determination is given.

Appeals against Regional Panel determinations are to be defended and managed by the council that received the development application. Early advice of any appeals should be provided to the Panel Secretariat together with details about the council's proposed defence.

Can a council appeal a decision of a Regional Panel if the council is against the decision?

A council is not able to appeal a determination of a Regional Panel, unless the application is for designated development to which third party appeal provisions apply under the provisions of the EP&A Act and Council objected to the proposed development.

The EP&A Regulation provides the Regional Panel will be the respondent where a council is the applicant for the development and appeals against a determination of the Regional Panel, or otherwise commences Land and Environment Court proceedings concerning a Regional Panel determination in respect of the Council's application.

Crown Development Applications

The EP&A Act provides that, in certain circumstances, a Crown development application may be referred to a Regional Panel for determination.

A council or a Crown applicant may refer a development application to the Regional Panel if the council fails to determine a development within the prescribed period in the EP&A Regulation. If the DA is referred to the Regional Panel and the Regional Panel fails to determine the development application within the prescribed period, the development application may then be referred to the Minister.

Further Information

- Regional Panel website – <http://jrpp.nsw.gov.au>
- Joint Regional Planning Panels – Operational Procedures (available on the Regional Panel website – these provide the principles to direct every aspect of Regional Panel activities)
- Joint Regional Planning Panels Code of Conduct (available on the Regional Panel website – the Code outlines the standards of behaviour which all members of a Regional Panel must comply with)
- Complaint Handling Policy (available on the Regional Panel website)