



# **AGENDA**

## **EXTRAORDINARY PLANNING COMMITTEE MEETING**

**Tuesday 30 June 2009**

**Mayor: Cr J van Lieshout**

**Councillors: Cr B Longland, Deputy Mayor  
Cr D Holdom  
Cr K Milne  
Cr W Polglase  
Cr K Skinner  
Cr P Youngblutt**

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## ITEMS FOR CONSIDERATION OF THE COMMITTEE:

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## **PLANNING COMMITTEE**

### **REPORTS THROUGH GENERAL MANAGER**

### **REPORTS FROM DIRECTOR PLANNING & REGULATION**

### **MATTERS FOR CONSIDERATION UNDER SECTION 79(C)(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

The following are the matters Council is required to take into consideration under Section 79(C)(1) of the Environmental Planning and Assessment Act 1979 in assessing a development application.

### **MATTERS FOR CONSIDERATION**

1. In determining a development application, a consent authority shall take into consideration such of the following matters as are of relevance to the development the subject of that development application:
  - (a) the provisions of
    - (i) any environmental planning instrument; and
    - (ii) any draft environmental planning instrument that is or has been placed on exhibition and details of which have been notified to the consent authority, and
    - (iii) any development control plan, and
    - (iv) any matters prescribed by the regulations,that apply to the land to which the development application relates,
  - (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts of the locality,
  - (c) the suitability of the site for the development,
  - (d) any submissions made in accordance with this Act or the regulations,
  - (e) the public interest.

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**P1 [PR-PC] Joint Regional Planning Panels - Nomination of Tweed Council Representatives for the Northern Region Panel**

**ORIGIN:**

**Director Planning & Regulation**

**SUMMARY OF REPORT:**

As part of its broader planning reforms, the NSW Department of Planning (DOP) has recently released details of the introduction of new Joint Regional Planning Panels (JRPP) for the assessment of major development applications, and other advisory functions. JRPPs will act as a development consent authority for designated applications within their particular region. Three (3) State representatives will be appointed for each Region, and will meet with two (2) representatives from the local council area where each relevant development application is located. In a letter dated 5 May 2009 from the Minister for Planning, the Hon Kristina Keneally MP, Tweed Council was requested to advise of their appointment of two (2) representatives (and an alternate) to participate on the Northern Region Panel by 5 June 2009.

Following receipt of the Minister's advice, and consultation with Tweed Councillors, an Expressions of Interest (EOI) process was conducted to obtain nominations to represent Tweed Council on the Northern Regional Panel. The Department of Planning provided certain selection criteria for the assessment of Council nominations. The EOI process involved a Media Release, and advertisements in the Tweed Link and Tweed Daily News, and set a deadline of Tuesday, 2 June 2009 for the submission of nominations.

Initially, an Extraordinary Council Meeting had been organised for 4 June 2009 for Council to determine its JRPP members. However, a further letter dated 29 May 2009 from the Director General of the Department of Planning, advised Councils that they would be granted additional time to determine their Panel nominees through their Ordinary Meeting cycle.

A total of eleven (11) submissions were received in response to Council's EOI process. A summary of the response from each of these submissions to the selection criteria as well as full copies of each of the submissions have also been included in a Confidential Attachment to this report. It is recommended that Council determines two (2) representatives and one (1) alternate to participate in the Northern Region Joint Regional Planning Panel, effective from 1 July 2009.

Given the current lack of detail on the future operations of the proposed JRPPs, it is also recommended that Council write to the Minister for Planning, seeking urgent clarification of the full operational aspects of the Panels, particularly the likely costs to be incurred by participating Councils.

**RECOMMENDATION:**

That: -

1. Council determines two (2) representatives and one (1) alternative member to participate in the Northern Region Joint Planning Panel, effective from 1 July, 2009; and
2. Writes to the Minister for Planning seeking clarification of the full operational details of the proposed Joint Regional Planning Panels, particularly the costs that are likely to be incurred by participating Councils.
3. The ATTACHMENT be treated as CONFIDENTIAL in accordance with Section 10A(2)(c) of the Local Government Act, 1993, because it contains information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.

## REPORT:

### Recent Notification from the State Government

Arising from the State Government's Planning Reforms Package of new legislation, NSW Councils have recently received the following correspondence and information regarding the proposed introduction of Joint Regional Planning Panels, effective from 1 July, 2009:

- 23 April 2009: Release of Department of Planning "Discussion Paper: Commencement of Joint Regional Planning Panels."
- 5 May 2009 (received by Council 11 May 2009): A letter from the Minister for Planning, the Hon Kristina Keneally MP, requesting that Council nominate two (2) representatives (and an alternate) for the Northern Region Panel by 5 June 2009, and an accompanying document, "Expressions of Interest and Nominations for the Joint Regional Planning Panels – Information Package for Council Nominees".
- 29 May 2009: The Director General of the Department of Planning advised all councils that an additional period for making JRPP nominations would be allowed through their Ordinary Meeting cycles.

Copies of the above documents have been distributed prior to all Councillors.

### Overview of New Joint Regional Planning Policies

The following is an extract from the recent DOP correspondence:

#### ***"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 seeking Expressions of Interest (EOIs) for candidates interested in being appointed as State members of the JRPPs. The objective of JRPPs is to create a panel of people with appropriate expertise to determine development proposals of regional significance as well as providing planning advice resulting in stronger-decision making through greater expertise and independence taking into consideration local and regional knowledge.*

*Six regions are proposed to be established covering metropolitan and regional areas of NSW. The JRPPs are targeted to commence operation on 1 July 2009.*

## **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 JRPP's 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.*

*In future, JRPPs will also have a role in respect of the new, yet to be commenced, third party reviews. This new type of review will allow third parties to, in certain circumstances, seek a review of a council decision to grant consent which would, if the development proceeded, result in development standards (e.g. height and floor space ratio [FSR]), being exceeded. The JRPP will be the body to whom an application for review is made where the council determined the original development application.*

*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.*

## **Assessment functions**

*Councils will assess development proposals that are regionally significant. The council officer's assessment and recommendations will then be referred to the JRPP to make its determination. Regionally significant development is proposed to include:*

- *Commercial, residential, mixed use, retail and tourism development with a capital investment value more than \$10 million and less than \$100 million*
- *Community infrastructure and ecotourism developments more than \$5 million both public and private, such as schools, community halls and child care facilities*

- Certain coastal developments currently in Schedule 2 of the [State Environmental Planning \(Major Projects\) 2005](#) (known as the Major Projects SEPP)
- Designated development (development needing an environmental impact statement)
- Development where the council is the proponent or has a potential conflict of interest.

The new system will return the assessment of many developments to local councils from the Department of Planning. These include:

- Commercial, residential, and retail development with a capital investment value between \$50 million and \$100 million
- Certain coastal developments currently in Schedule 2 of the Major Projects SEPP.

### **Commencement of JRPPs**

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

The role of JRPPs in relation to the new third party reviews will not commence until the relevant provisions of the Environmental Planning and Assessment Amendment Act 2008 have commenced. These provisions are not planned to commence until later in 2009.

### **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 JRPPs will be monitored regarding the number and type of Development Applications (DAs) determined by JRPPs and timeframes. This information will provide the basis for any reviews or regional boundary adjustments.

### **Membership of JRPPs**

The JRPPs are to consist of five members as follows:

1. **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.*

*JRPPs State members may also be members of the Planning Assessment Commission (PAC) and appointed as casual members of the PAC.*

- 2. 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 the following: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism.*

*The council members will participate in JRPP matters when they are located in their local government area. It will be a matter for each council to identify how the nominees are to be selected. Council members will automatically become members of the JRPP for matters in the council area.*

*The assessment of applications to be determined by the JRPPs is to be undertaken by the relevant council in which the proposed development is located.*

*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.*

- 3. 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.*
- 4. 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.*

## **Coverage of JRPPs**

*Six JRPP 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.*

## **Responsibilities of Members**

### *Responsibilities of JRPP 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 an 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.*

### Additional Responsibilities of the Chairperson

The Chairperson of each JRPP has the following additional responsibilities:

- Ensure that the JRPP carries out its roles with integrity and in a timely fashion;
- Establish and maintain effective working relationships with the councils in the relevant JRPP region;
- Chair JRPP meetings and/or public hearings with impartiality and balance, and facilitate the flow of information and discussion;
- Ensure the JRPP delivers on its annual reporting requirements; and
- Ensure JRPP meetings and any related meetings or hearings are conducted in a timely and cost-effective manner while having proper regard to the issues.

### Travel

Persons considering making an application for appointment as a State member of a JRPP should be aware that travel throughout their region will be required. This may consist of meetings or site inspections across a range of locations in their region.

### **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 councils 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.

### **Appointment Terms and Conditions**

#### Statutory Position

JRPPs are statutory bodies representing the Crown. The Chairperson and State members are appointed by the Minister.

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

### Term of Appointment

*Each member is appointed on a part time basis for a fixed term (not exceeding three years) as set out on the member's instrument of appointment. Members will be eligible for reappointment at the end of the fixed term.*

*Appointments as a State member of the JRPP and the filling of vacancies will take into account the current and future needs of the JRPP and the mix of skills, background and experience of the JRPP.*

### 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.*

### Private Interests

*As part of the application for membership on the JRPP, applicants are requested to declare any private interests that may conflict with the public duties they would be required to perform as a member of the JRPP.*

*Candidates must declare any significant political activity they have undertaken in the previous ten years.*

### 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.*

### Training

*Persons appointed as Panel members will be required to attend a training program that will be provided by the Department of Planning.*

### **Other Matters**

- (a) Dealing with the Media:** *A protocol will be prepared whereby the Chairperson can comment on decisions and respond to questions.*
- (b) Disclose or misuse 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.*

(c) **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.*

(d) **Removal from office:** *The Minister may remove a State member from office at any time. 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.*

(e) **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.*

(f) **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.”*

## **Factors to Consider for the Selection of Council Representatives**

The key criteria for Council representatives on the JRPP for the Northern Region:

“2. **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 the following: planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism.*

*The council members will participate in JRPP matters when they are located in their local government area. It will be a matter for each council to identify how the nominees are to be selected. Council members will automatically become members of the JRPP for matters in the council area.*

*The assessment of applications to be determined by the JRPPs is to be undertaken by the relevant council in which the proposed development is located.*

*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.”*

### **Summary of Submissions for Tweed Nominees on the Northern Region JRPP**

Following an Expressions of Interest process, advertised through the Tweed Link and Tweed Daily News, a total of eleven (11) submissions were received from the following people :

Bennett,	Peter P
Griffin,	Dr John
Grimes,	Steven
James,	Henry
Jardine,	Douglas
McAllister,	Don
Murdock	Tania
Quirk,	Robert
Townsend,	Lisa
Wales,	Dr Ned
Wolff,	Ronald H

A summary of the response to the selection criteria provided by the Department of Planning, as well as copies of each of the submissions is provided in a Confidential Attachment to this report.

### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

It appears from the information recently provided by the DoP that Council staff and funding will be required in part to service the operation of the Panels. The full details of these requirements are still to be provided. It is recommended that Council writes to the Minister for Planning seeking further information on the operation of the Panels.

### **POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

To view any "**non confidential**" attachments listed below, access the meetings link on Council's website [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).

1. CONFIDENTIAL - Full copies of all submissions received in respect of the Expressions of Interest process conducted for Tweed Council's participation in the Northern NSW Region Joint Regional Planning Panels (ECM 2067101)
  2. CONFIDENTIAL - Table Summary of the response to the selection criteria provided by the Department of Planning (ECM 2067130)
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**EXTRAORDINARY PLANNING COMMITTEE MEETING DATE: TUESDAY 30 JUNE 2009**

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