



MINUTES

SPECIAL COUNCIL MEETING

10 NOVEMBER 2009

I certify that the minutes of the Special Council Meeting held 10 November 2009 Folios SC1 to SC17 were confirmed on 24 November 2009.

Presiding Person



MINUTES

SPECIAL COUNCIL MEETING

10 NOVEMBER 2009

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SPECIAL COUNCIL MEETING COUNCIL CHAMBER

1.0 OPENING PROCEDURES

To be read out aloud by the Presiding Person

Members of Council and members of the gallery are advised that this meeting will be audio-recorded.

The Presiding Person declared the meeting open at 6.02pm.

1.1 Announcement of Visitors

Nil

1.2 Record of Attendance/Apologies/Approved Leave of Absence

Councillors	<i>Cr J Johnson</i>	<i>Central Ward</i>
	<i>Cr E Wysocki</i>	<i>Central Ward</i>
	<i>Cr A Pilgrim (Deputy Shire President)</i>	<i>Central Ward</i>
	<i>Cr P Bertola</i>	<i>East Ward</i>
	<i>Cr S Fox</i>	<i>East Ward</i>
	<i>Cr C James</i>	<i>South Ward</i>
	<i>Cr D Jones</i>	<i>South Ward</i>
	<i>Cr T Cuccaro</i>	<i>West Ward</i>
	<i>Cr H Dullard (Shire President)</i>	<i>West Ward</i>
Staff	<i>Mr M Luzi</i>	<i>Director Statutory Services</i>
	<i>Mr A Dyson</i>	<i>Manager Health & Community Services</i>
	<i>Mr J Devereux</i>	<i>Manager Planning Services</i>
	<i>Mr C Cockerton</i>	<i>Manager Building Services</i>
	<i>Mr D Chidlow</i>	<i>Senior Planning Officer (Statutory)</i>
	<i>Mrs R Broz</i>	<i>Minute Secretary</i>
Apologies	<i>Cr E Marjanovic</i>	<i>South Ward</i>
	<i>Cr J Daw</i>	<i>East Ward</i>
	<i>Cr P Clark</i>	<i>West Ward</i>
	<i>Mr S Purdy</i>	<i>Director Infrastructure Services</i>
	<i>Mr P O'Connor</i>	<i>Director Corporate Services</i>
	<i>Mr K Kitchin</i>	<i>Acting Director Community Services</i>
Absent	<i>Nil</i>	
Leave of Absence	<i>Nil</i>	
Guests	<i>Nil</i>	
Members of the Public	<i>2</i>	
Members of the Press	<i>Nil</i>	

2.0 ANNOUNCEMENTS BY PRESIDING PERSON WITHOUT DISCUSSION

Nil

3.0 PUBLIC QUESTION TIME

Procedures for asking and responding to questions are determined by the Shire President. Questions must relate to a matter affecting the local government.

Note: This is not a verbatim record of questions asked and answers given. It is a summary only.

Nil

4.0 DISCLOSURES OF INTERESTS

4.1 Disclosure of Financial Interest and Proximity Interests

Members must disclose the nature of their interest in matters to be discussed at the meeting. (Sections 5.60B and 5.65 of the Local Government Act 1995).

Employees must disclose the nature of their interest in reports or advice when giving the report or advice to the meeting. (Sections 5.70 and 5.71 of the Local Government Act 1995).

Nil

4.2 Disclosure of Interest Affecting Impartiality

Members and staff must disclose their interest in matters to be discussed at the meeting in respect of which the member or employee has given or will give advice. (Shire of Mundaring Code of Conduct, Local Government (Admin) Reg. 34C).

Nil

5.0 REPORTS OF OFFICERS

5.1 Response to Discussion Paper – Implementing Development Assessment Panels in Western Australia

Date of Report	23 September 2009
Author	David Chidlow Acting Manager Planning Services Stuart Thiele Senior Planning Officer (Strategic)
Senior Officer	Mark Luzi Director Statutory Services
Disclosure of Any Interest	Nil
Attachments	1. Discussion paper public submission form 2. Paper – Denis McLeod

SUMMARY:

The Department for Planning is seeking submissions on the discussion paper "Implementing Development Assessment Panels in Western Australia". Submissions close on the 16 November 2009.

These panels will remove the planning powers of Council to approve a range of development types where the value is estimated to equal or exceed two million dollars (\$2M).

This initiative stems from the "Planning Makes it Happen" blueprint for planning reform in WA. The creation of Development Assessment Panels will be by way of Regulations. The anticipated timeframe is to have Panels in place by 30 June 2010, although this will depend on the timeliness of the introduction of Regulations.

The intent of the regulations are to:

- Address an apparent lack of efficiency in local government development assessment processes.
- Reduce/avoid politically influenced and populist decisions on complex and potentially contentious applications.
- Address an apparent lack of accountability and transparency in local government decision-making processes (particularly delegated decisions).
- Eliminate the need for dual approvals.

It is noted that:

- Panels will not abolish dual approvals (Action 1.17, *Building a Better Planning System*). The statutory requirement for dual approvals will still exist and could be overcome without introducing DAPs.
- The specified type and value of applications that need to be referred to DAPs is arbitrary and not representative of truly "major projects".

Item 5.1 cont'd 2

A 'performance test' should determine the applications referred to a DAP – E.g. where integrated planning and environmental approvals are required (Action 2.5, *Building a Better Planning System*).

- Panel membership should comprise an equal number of specialist and elected representatives.
- Decision-making powers should be returned to local government where annual reporting reveals that Panels are not making decisions any differently or more efficiently than the local government.
- The power for Panels to incur expenditure on behalf of local government is not supported. Panels should be properly resourced by the State Govt.
- If Panels are to be bound by the existing planning framework, how will their decisions be any different to those of local government?

This report recommends that Council objects to the introduction of Development Assessment Panels and provides a submission in response to their proposed introduction.

BACKGROUND:

On 11 September 2009 the Minister for Planning the Hon John Day announced the release of the discussion paper "Implementing Development Assessment Panels in Western Australia".

The written and oral advice of the Director General of the Department for Planning (Mr Eric Lumsden) is that the State Government is committed to implementing Development Assessment Panels (DAPs) in Western Australia. The purpose of the discussion paper is to seek comments and feedback to inform the drafting of the new Planning and Development (Development Assessment Panels) Regulations only. The comment period that was to close on the 2 November 2009 has been extended by two weeks to the 16 November.

The Council of Australian Governments (COAG) is progressing a national planning reform agenda, headed by the Local Government and Planning Ministers' Council (LGPMC). The message from the State is that DAPs are part of the Blueprint for Planning Reform in WA and will be implemented irrespective of the wishes of local government. There are DAPs that have been introduced in New South Wales and South Australia. It has been advised by the Department for Planning that other states are following the introduction of these panels, albeit in differing forms and structure.

The model proposed for Western Australia comprises;

1. Local development assessment panels (for metropolitan areas) to be established to determine applications made to a single local government, where that local government is deemed to be a high-growth local government with enough development to support its own local development assessment panel (at this stage only the City of Perth will have a local DAP).

Item 5.1 cont'd 3

2. Joint development assessment panels (for metropolitan and non-metropolitan areas) will be established to determine applications made to two or more small local governments that are not high-growth local governments.

The Shire of Mundaring is classified as fitting into a Joint Development Assessment Panel comprising the Cities of Swan, Bayswater, Belmont, the Town of Bassendean and the Shire of Kalamunda - the same membership as the Eastern Metropolitan Regional Council (EMRC).

The DAPs will remove the authority for Council to approve planning applications over a certain monetary value and class as detailed below;

- Applications for development approval valued at equal to or greater than \$2M, where they represent:
 - All commercial, retail and office applications;
 - All mixed use/centre applications (such as commercial, retail and residential);
 - All industrial (including, but not limited to, light, service, extractive, general, noxious and rural industry) applications;
 - All grouped dwelling or multiple dwelling applications of over 10 dwellings;
 - Non-complying grouped dwelling or multiple dwelling applications of 10 or less dwellings;
 - All aged and dependent persons dwelling applications;
 - All infrastructure proposals;
 - Applications requiring dual approval of the local government and the WAPC, under the Metropolitan Region Scheme;
 - Strategic land use, transport and infrastructure projects;
 - Public works of State/regional significance where not exempt from local planning approval requirements;
 - All applications for hospitals, TAFEs, universities and non-government schools.

- Exempt development will include:
 - The determination of an application of approval for the purpose of one or more single houses, complying and non-complying;
 - The determination of an application for approval of development for the purpose of not more than 10 complying grouped dwellings or multiple dwellings;
 - Minor applications, such as carports, shade sails, outbuildings and sheds.

Item 5.1 cont'd 4

The Joint Development Assessment Panels will consist of five members:

- the Chairperson (a specialist member);
- two specialist members; and
- two local government representatives.

The local government membership of the panel will depend on the location of the development applications being determined at the time. It is intended that the local government members will rotate on and off the panel accordingly.

During a meeting of the Joint Development Assessment Panel, matters in all local government areas may be considered. As such, the two members from each individual local government will join the three specialist members to comprise the Joint Development Assessment Panel when an application within that particular local government area is being considered. The two members from each local government will only sit on the panel when the applications being determined by the panel have been made under their local planning scheme.

Each member will be appointed by the Minister for a term of two years, with an option to extend their appointment for an additional year (exercised by the Minister). Member appointment to the panel will not exceed three years. The Chairperson will always be an independent member with 'considerable knowledge of the Western Australian planning and development assessment framework'. The Minister will appoint a deputy chair from the remaining two specialist members to undertake the role of the presiding member when the chair is unavailable.

The range of expertise required of the specialist members appointed to the panel may include (but not be limited to) planning, architecture, urban design, engineering, landscape design, environment, law, property development or management. Specialist members will be appointed from a register of appropriately qualified and experienced individuals.

Nomination of the two local government representative members to a development assessment panel will be the responsibility of the relevant local government.

All panel members (including elected council representatives) will be required to attend a mandatory training workshop on planning law and Codes of Conduct. All panel members (including the Chairperson) will be voting members. (It is noted that Council representatives will form the minority on the panel and that decisions may be made by the three technical experts.)

Meetings of development assessment panels will be conducted in a place open to the public such as a local government meeting room. Those persons who made submissions during the advertising period for a particular application will be permitted to make a presentation to the panel.

Item 5.1 cont'd 5

However, in certain circumstances, the public may be excluded from the meeting while a particular development application is being discussed – for example, where the application contains commercial information of a confidential nature, or information about the personal affairs of a person.

A record of meetings and voting outcomes by individual panel members will be kept and be made available to the public via the relevant local government and WAPC websites. Lobbying of panel members will not be permitted, outside of the usual consultation and submission process for development applications. Development Assessment Panels will be required to produce an annual report to the Department of Planning which will then produce a state wide annual report on development assessment panels.

Professional staff from the relevant local government (and the WAPC if an application was made under the region planning scheme) will prepare a report and recommendation on the development application for the panel's consideration in making its determination. The planning officer will be required to attend the development assessment panel to present the application and provide clarity on the assessment report if required. Given that the statutory timeframe for determination is 60 days, it is recommended that the relevant local government and the WAPC submits their application assessment report no later than 55 days from lodgement to allow for the panel to give the report due consideration when making its assessment.

Secretariat support for a Joint Development Assessment Panel will be provided by the relevant local governments on a six monthly rotational basis. Secretariat duties will include, but may not be limited to, preparing agendas, advertising meetings, organising meetings, taking minutes and publicising meeting outcomes. The secretariat support will also coordinate the preparation of the relevant local or joint development assessment panel annual report in consultation with panel members and technical planning staff (when required). This will impose an additional financial burden on local government that is not proposed to be compensated by any increase in planning application fees. Logically, the EMRC is the ideal body to provide secretarial support and coordination for this region.

Applications will be lodged directly with the relevant local government as required under the scheme. The secretariat support for the development assessment panel will then be responsible for coordinating applications onto the relevant development assessment panel agenda and forwarding all relevant technical papers for determination.

The local government for which decision making powers are being exercised by the development assessment panel will be required to contribute to the payment of costs and expenses incurred by the panel in the course of its activities (e.g. provision of venue, secretariat support). Fees that would ordinarily be paid to the local government under the *Planning and Development Regulations 2009* will be used to cover the costs of the panels.

Item 5.1 cont'd 6

It is proposed that panel members in Western Australia (other than elected members) will also be paid sitting fees on a sessional basis. It is expected that the sessional fee paid in Western Australia will be \$400 for specialist members and \$500 for the chairperson. The chairperson's sessional sitting fee will be higher than the other two specialist members to reflect the added responsibilities of this role.

Elected council members would not attract a sitting fee, as their role on the panel is considered in keeping with their position.

As development assessment panels will be determining applications in place of the current decision-makers (as identified in the *Planning and Development Act 2005* and the relevant scheme), they will be required to make decisions in accordance with the existing planning framework. Therefore, the development assessment panel will determine the application in accordance with the requirements in the relevant region or local planning scheme, as the responsible authority.

As development assessment panels will determine an application as the relevant decision-maker, then the same right to make an application for review will apply to decisions made by those panels. The local government will be the respondent for any application of review lodged for the decision made under the local planning scheme. Similarly, the WAPC will be the respondent for any application for review lodged for the decision made under a region planning scheme.

The local government or the WAPC will be responsible for administering any conditions imposed on an approval given by a development assessment panel. The local government or the WAPC will also be responsible for resolving any disagreement in relation to these conditions.

STATUTORY / LEGAL IMPLICATIONS:

Planning and Development Act 2005

Proposed Planning and Development (Development Assessment Panels) Regulations.

POLICY IMPLICATIONS:

Nil

FINANCIAL IMPLICATIONS:

There are implications to the Shire from the need to fund the secretarial, administration and sitting fees of the proposed DAPs. The requirement for additional reports to a separate panel above what is now dealt with under delegation or in addition to Council reports will impact on staff resources.

Item 5.1 cont'd 7

There will also be potentially significant costs to Council in defending any decisions of the DAP at SAT.

STRATEGIC IMPLICATIONS:

Major developments previously dealt with by Council will now be determined by a separate State Government panel with minority local government input.

SUSTAINABILITY IMPLICATIONS:

There is an existing process in place for planning decisions at the Council level. The creation of another body to decide on specific applications in addition to the existing system creates another bureaucracy and is not a sustainable choice.

CONSULTATION:

The Minister for Planning released a discussion paper on 11 September 2009 for comment until 2 November 2009 (now extended by 2 weeks until 16 November).

COMMENT:

The document presents the introduction of Development Assessment Panels as a *fait accompli*. The Discussion Paper is the first time that local governments have had the opportunity to consider and comment on any details regarding Development Assessment Panels. The short time period for comment gives Council limited time to consider the proposal.

The rationale for introducing Development Assessment Panels

The need for and benefits of Development Assessment Panels are doubtful, for the reasons set out in the following. Page 23 of the Discussion Paper sets out the perceived benefits of Development Assessment Panels, yet all of the same benefits either already apply to the current system (in some cases to a greater extent) or can be achieved by simpler methods. Comments further below demonstrate disadvantages of the proposal for Development Assessment Panels. In order to achieve the benefits without generating disadvantages, it is recommended that Development Assessment Panels, if they are to be introduced at all, should be limited to identified matters of state significance, development in local governments that have been clearly identified (against publicly available, measurable criteria) as non-performing, or cases where local governments voluntarily request Development Assessment Panels (perhaps for small rural local governments without planning expertise on staff).

Item 5.1 cont'd 8

Arguments for Development Assessment Panels in the Discussion Paper.

A main argument being used in favour of Development Assessment Panels is overcoming issues of timeliness, efficiency and simplicity relating to dual approvals under a local scheme and a region scheme (this is mentioned under four separate dot points on page 23 of the Discussion Paper). Firstly, such applications constitute a small proportion of the number of development applications overall. Secondly, legislative change could remove the requirement for dual approvals without recourse to Development Assessment Panels.

Transparency is given as a benefit of Development Assessment Panels. However, it is unreasonable to suggest that local government decision making is not transparent at the Shire of Mundaring. Items that go to Council are on public agendas and usually determined in public Council meetings. Where items are approved under delegated authority, this is in accordance with a notice of delegation that is publicly available. Development Assessment Panels offer no apparent additional benefit with regards to transparency compared to the current system at the Shire. It is recognised that there may be Local Governments that are not as transparent in their decision making. The application of a blanket solution has been applied in this proposed introduction of DAPs.

It is claimed that making sustainable decisions is a benefit of Development Assessment Panels, but most larger local governments have adequate expertise on staff for sustainability to be an integral part of reporting and decision making. It is unclear how the sustainability of decisions would improve under Development Assessment Panels, particularly when the ethos behind such panels seems to be a response to development industry complaints.

Accountability is given as a benefit of Development Assessment Panels on the basis that they will regularly report to the Minister for Planning. Local governments are arguably subject to far greater accountability in that Councillors are answerable to their local communities who are impacted by planning decisions.

Fairness is given as a benefit of Development Assessment Panels on the basis that discretionary decisions can be appealed (ie. be subject of an application for review to the State Administrative Appeal). Obviously this appeal right also exists under the current system, therefore Development Assessment Panels offer no advantage in this respect.

With respect to issues of consistency and reference to non-performing local governments, there might be justification to claims that local governments are under-performing if their decisions were frequently being overturned at the State Administrative Tribunal (SAT), but it is unclear that the number and type of SAT decisions overturning local government decisions (or making decisions in the case of deemed refusals) demonstrates a significant problem or warrants this level of significant change.

Item 5.1 cont'd 9

Given that local government staff will still be required to report on development applications, the only difference being that the report will be to a Development Assessment Panel rather than Council, there will be no reduction in workload. Applications that are currently approved under delegated authority by local government staff would need to be reported to a Development Assessment Panel; this will lead to an increased workloads and a slower time frame for decisions, and does not represent a "streamlining" of the planning process. There should be provision to retain existing delegations that do not currently go to a Council meeting, such that they are determined by staff and not a DAP. Throughout the Discussion Paper it is claimed that Development Assessment Panels will free up local governments to address strategic planning matters. As there will be no reduction in the statutory workload for local government staff (rather, there is likely to be an increase), these claims are disputed. Fortunately, the current cut off level of 2 million dollars will mean that there will not be many applications received by the Shire of Mundaring that will need referral to the DAP. The concern will be if this currently proposed monetary figure of 2 million dollars is reduced to something like the \$500,000 as proposed by the development industry.

Page 11 of the Discussion Paper, in a section setting out arguments for the benefits of introducing Development Assessment Panels, notes that development industry bodies have been vocal in their criticism of development assessment processes for reasons including "the complex nature of ... planning requirements applicable to them". Given that Development Assessment Panels will be making decisions using the same state and local planning frameworks (Schemes, strategies, policies etc...) as local governments currently use, there will be no change in the planning requirements applicable to them and therefore it is incorrect and misleading to indicate that this is a reason for introducing Development Assessment Panels.

Joint Development Assessment Panels will be required to be conversant with several Local Schemes, Local Planning Strategies and sets of Local Planning Policies, each of which may differ significantly from others in its local content and approach. This is a massive amount of information for the panel's specialist members to absorb and implement. It is hard to imagine the panels being able to absorb and accurately implement all of this information without spending such time doing so as to render the process inefficient.

Arguments for Development Assessment Panels in the Questions and Answers document:

The document Development assessment panels: Questions and Answers provides a clearer argument of the rationale for the proposal ("What is wrong with the existing development assessment system that warrants establishing development assessment panels?") It provides four arguments:

Transparency: Local government delegation arrangements are readily available and to indicate they are not is incorrect.

Item 5.1 cont'd 10

Reports to Councils are all publicly available and the use of Development Assessment Panels will not add any further transparency. It is worth contrasting the excellent transparency of local government Council meetings and development application processes in general with the confidential Western Australian Planning Commission process of determining subdivision applications.

Local Government resources and technical issues raised by applications: Again, as referred to above, reference is made to the "complexity of the ... planning requirements applicable to" large-scale development. As this will not change under the Development Assessment Panels, it should not be a justification for such panels. Moreover, most local governments do in fact have adequate resources to determine the proposals put to them for determination without recourse to expensive technical expertise. On the few occasions where outside technical expertise is required, there is no guarantee that equivalent technical expertise will be available among the three specialist members of the Development Assessment Panel. For those local governments that do not have the resources commensurate with the requirements their development applications impose on them (mostly smaller rural Councils), Joint Development Assessment Panels may be warranted, but they should not be imposed on those local governments which have adequate resources to deal with applications.

Appropriate balance between local representation and professional advice in decision-making: The argument put here is noted, however it is argued that if local government is being overly swayed by local opinion and refusing applications without adequate planning justification, this would be expected to be reflected by a large number of State Administrative Tribunal decisions overturning such decisions. It is not clear that there is a level of such decisions that warrants the additional costs and workload that the proposed changes will cause.

Dual approvals: As indicated above, this situation could be addressed by other legislation so as to ensure that only a single approval is required. It is not necessary to address Development Assessment Panels to address this issue. It is also noted that the number of dual applications dealt with at Mundaring are in the extreme minority (estimated to be less than 0.5%).

The CEO recently had a meeting with the Director-General of the Department of Planning, Mr Eric Lumsden, in which Mr Lumsden emphasised one of the key reasons for introducing the DAPs was to improve the governance of the planning process. He acknowledged that this reason was under emphasised in the discussion paper. In particular Mr Lumsden stated that the introduction of DAPs were designed to address concerns over inappropriate influence being exerted onto planning staff by elected members in a number of local governments. The problem with the planned response to this issue is that it assumes all local governments suffer the same problem of undue influence.

Denis McLeod, Managing Partner of McLeods Solicitors, has recently presented a discussion paper on this issue, which is attached as [ATTACHMENT 2](#).

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Mr McLeod states that the introduction of development assessment panels is a "radical philosophical change in the assessment of development applications in WA." He states that the change is a move away "from a system emphasising decisions by elected councillors responsible to the local community...to a system emphasising decision by technical specialists...who are appointed by the State Government and are not responsible to the local community".

In the absence of third party appeals mechanisms (which are in place in other jurisdictions with similar development assessment panels), this change in effect sidelines the community from having effective input into the consideration of a development application.

Summary

The proposal to introduce Development Assessment Panels has not been shown to be necessary. Rather than "streamlining" the planning process, it will more than likely add expense and workload to it. Fortunately, the impact on the Shire of Mundaring will be limited as there are not significant numbers of applications that will exceed the 2 Million dollars benchmark. The major concern will be if this draft figure is reduced and further planning decision making is removed from Council.

The development industry may find that the establishment of another level of approvals process may result in a slowing of the timeliness of approvals rather than a speeding up of the system. Ideally, existing delegations should remain with staff rather than now be required to be presented to a separate panel when they would not have been presented to Council. This report recommends that Council respond to the discussion paper and note it's opposition to the proposed introduction of Development Assessment Panels.

VOTING REQUIREMENT:

Simple Majority

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COUNCIL DECISION

That Council:

1. objects to the creation of Development Assessment Panels as proposed;
2. submits the attached public submission form (**ATTACHMENT 1**) to the Department for Planning; and,
3. forwards a copy of the Shire's submission to:
 - The Minister for Planning
 - WALGA
 - Local Members of Parliament

Preamble to Modified Resolution

Due to discussions at a recent presentation given by Council's solicitors, Attachment 1 was modified to reflect the issues discussed at that Presentation. Council also were of the opinion that the submission should be strengthened in relation to Council and community involvement in the planning process.

COUNCIL DECISION

SC1.11.09

Moved by: Cr Pilgrim Seconded by: Cr Johnson

That Council:

1. *objects to the creation of Development Assessment Panels as proposed;*
2. *submits the attached amended public submission form ([ATTACHMENT 1](#)) to the Department for Planning incorporating the views of this meeting with regard to strengthening the comments about councillor representation on the DAP; and*
3. *forwards a copy of the Shire's submission to:*
 - *The Minister for Planning*
 - *WALGA*
 - *Local Members of Parliament*

CARRIED 9/0

6.0 MATTERS BEHIND CLOSED DOORS

Nil

7.0 CLOSING PROCEDURES

7.1 Date, Time and Place of the Next Meeting

The next Ordinary Council meeting will be held on Tuesday, 24 November 2009 at 7.00pm in the Council Chamber.

7.2 Closure of the Meeting

The Presiding Person declared the meeting closed at 6.22pm.

8.0 ATTACHMENTS

Attachment No.	Item No.	Subject
<u>1</u>	5.1	<i>Amended Public submission form - Development assessment panels discussion paper</i>
<u>2</u>	5.1	Discussion Paper – Denis McLeod