

Amended Attachment No. 1

Pages 1 of 12

Refer to Item 5.1

Public submission form

– Development assessment panels discussion paper

Shire of Mundaring

Address:

7000 Great Eastern Highway, Mundaring WA 6073

Interest: (e.g. government, industry body)

Local Government Authority

Development applications criteria

1. Do you consider that additional criteria of development type (value \$AUD and class) are required for the metropolitan local/joint development assessment panels? If yes, what additions would you propose and why?

Rather than a blanket criteria based on monetary value or development type, the criteria 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).

Should the currently proposed criteria be adopted, it is recommended that the minimum monetary value be increased to \$10 million to capture those projects of significance.

2. Do you consider that additional criteria of development type (value \$AUD and class) are required for the nonmetropolitan joint development assessment panels? If yes, what additions would you propose and why?

Same response as in question 1 above.

Panel Membership

Local government members

3. How should local governments nominate and choose council members to represent the council on its Local or Joint development assessment panel? Should this be set out in the regulations, or left to local governments to determine?

This process should be left to local governments to determine.

4. Do you consider it an appropriate requirement for local government representatives appointed to a development assessment panel in Western Australia (WA) to have a certain qualification or type of experience, in addition to being an elected member of council?

Councillors are elected by the community to represent the community, they are not elected based on specific qualifications or experience. As such, there should not be a requirement for qualifications or experience as a prerequisite to DAP membership. However, once appointed, training should be provided.

Specialist members

5. Should development assessment panels in Western Australia be required to have a "reasonable balance" of experience represented on the panel? Or should every panel be required to have an expert from a particular set of fields? (For example, one expert with substantial planning experience, one expert with substantial environmental experience and one expert with substantial urban design experience or three experts with reasonable experience across a number of the fields indicated in section 4.3.1).

Ideally the panel should consist of one member with substantial Town Planning experience (preferably the chairperson) and the other two members may comprise experts with substantial related fields of experience as indicated in section 4.3.1

6. Is it suitable for specialist members to be able to rotate within the panel according to the expertise required for that particular development assessment or should the panel be a constant set of specialists regardless of the development being assessed?

Ideally the panel should consist of rotating members with expertise required for a particular development. However this presents several logistical problems, such as panels considering multiple applications at the one hearing, loss of built up knowledge of regional planning issues and specific needs, coordinating the rotation and choosing panel members (who would choose, and would they lead themselves open to criticism of bias by choosing members based on applications).

7. Independent specialist members of development assessment panels in Western Australia will be required to have a certain level of experience in their chosen field. How many years of experience (in a relevant field) and or what level of qualification would be appropriate for the appointment of independent specialist members to a development assessment panel in Western Australia?

Ideally, specialist members should have at least 10 years of experience in their field as well as relevant post graduate qualifications.

8. Is it appropriate for specialist members to be permitted to sit on several development assessment panels during the same time period? Or should each specialist member only be permitted to sit on a single panel?

There is no objection to a specialist member sitting on several panels.

9. Should specialist members be required to go through a formal interview process with the State Government to be eligible for the panel?

Yes

Operation of panels

10. The Minister will nominate a specialist member proxy from the Register of Panel Members to attend meetings of the development assessment panel on behalf of a specialist member when they are unable to attend. Should the proxy's be assigned to a particular panel or is it more appropriate to have a pool of proxy members that any panel can call upon as needed? Is it appropriate for the relevant local government (secretariat) to be responsible for coordinating the replacement of core panel members with the nominated proxy (from the register). Are there any other process issues relating to the use of specialist proxy panel members that needs further consideration?

A pool of proxy specialist members is supported.

The appointment of the proxy and replacement of core proxies to each panel should be managed by the Department of Planning, otherwise it may lead to accusations of bias against local governments that are submitting applications as well as nominating experts.

11. Each local government will be required to nominate a permanent local government representative proxy to replace the core local government panel members when they are unable to attend panel meetings. The nominated proxy along with the core local government members will need to be on the Register of Panel Members managed by the Department of Planning. Are there any other process issues relating to the use of local government proxy panel members that needs further consideration?

Terms of appointment for local government representatives should be limited to the time that they are Council members for their respective local government and should cease when they are no longer elected members.

12. If a panel member declares that they have a conflict of interest in relation to a particular development application, should that member be replaced for the duration of the discussion on that item or the duration of the entire meeting?
Should the Minister appoint 'alternate' members to each panel, whose role is to replace permanent members where a conflict of interest arises?

In the event that a member has declared a conflict of interest, which should be determined prior to a meeting, the member should be replaced for the entirety of the meeting. This will reduce unnecessary cost of having additional members present to replace members declaring an interest just for one item.

13. What specific issues need to be covered by the Department of Planning when producing a guidance document for development assessment panels?

Rules of conduct and meeting procedures, similar to SAT rules or Council standing orders.

14. Minutes of the development assessment panels are intended to be posted on both the WAPC and relevant local government website? Is this the most appropriate method of providing transparency on decision making or are their other processes also required? Is there a need for a dedicated WA development assessment panels webpage?

Ideally it would be better to have one web site; after all, the purported purpose of panels is to reduce bureaucracy, not increase it, by having two separate websites with the same information. However, the maintaining and updating of one website presents problems.

Given that most interest for development applications will be generated by local residents, the local government website is the most appropriate publishing authority.

Code of Conduct

15. What should the WA Code of Conduct cover? Does the list provided in section 4.3.7 exclude any items that should be covered? If yes what additional information needs to be addressed in the *Planning and Development (Development Assessment Panel) Regulations 2010* code of conduct?

The code of conduct should match any public sector code.

16. Is it appropriate to incorporate the Code of Conduct into the Development Assessment Panels Guidance Manual (discussed in section 4.3.5) so that there is one holistic “manual” for running DAPs within the state or be one in a series of documents on operating a DAP?

It makes no difference whether there is one guidance manual or a series of documents.

Administrative issues

17. How should secretariat support for a joint development assessment panel be shared by the participating councils? The current proposal is for each local government to appoint an officer to undertake the secretariat role (e.g. take minutes, organise the Agenda and provide other general administrative support) to the development assessment panel on a six monthly rotation.

The Shire of Mundaring will be recommending that a centralised body such as the Eastern Metropolitan Regional Council coordinate and provide secretarial support for the Joint Panel proposed for this region.

Logistically and equitably it cannot be run in any other manner. To expect smaller local governments to administer the panel on behalf of larger local Authorities places an unfair financial and administrative burden on ratepayers.

18. What would be an appropriate process for development assessment panels to report on their performance? Should they provide data to the Department of Planning and the relevant local government on a monthly basis?

Data should be provided to both the Department of Planning as well as relevant local governments on a monthly basis.

19. The Department of Planning will be required to produce an annual report on the performance of all development assessment panels across the State? What input should be provided by each development assessment panel on its operations?

This will depend on what data the Department of Planning seeks for inclusion in the annual report.

Financial arrangements

20. Given that the proposed sitting fees need to be set low enough to be reasonably paid from established application fees (as set out in the *Planning and Development Regulations 2009*) and high enough to attract appropriately experienced candidates, is there a need to increase the proposed sitting fees?

Sitting fees should be incorporated into planning application fees above the current fees charged. There will be additional reports to be produced to the panel for applications that were previously dealt with under delegation, there will be increased secretarial support provided by the local government, as well as additional planning officer time to attend to panel meetings. These costs are currently not factored into the current fees. Therefore the sitting fees should reflect the amount that the government is prepared to increase planning application fees to cover costs.

It is noted that local government members will not be paid sitting fees. This is not equitable given that members will be giving up time beyond normal Council meeting duties (both for attendance at meetings and training). Councillors are currently reimbursed for attending Council and committee meetings. It is inequitable to expect them to provide their time free of charge.

21. The current model proposes that the chair will attract a higher sitting fee rate than other specialist members given the additional responsibilities the role demands and elected members will not attract a sitting fee as their role is considered to within their elected duties. Is this the most appropriate sitting fees arrangement?

Yes for Chair person – see above comments at question 20 regarding elected members.

Training of panel members

22. What does the WA training course need to cover? Is the proposed content outlined in section 4.3.9 detailed enough or do we need to cover other issues?

An emphasis on training in planning law and administration is strongly recommended. It is also recommended that panel members be conversant with Local Planning Schemes, Strategies and Policies.

23. Is it appropriate for all members, regardless of their experience and background, to be required to attend the same panel training session outlining planning law and procedures for DAPs in WA?

Yes, this will assist in consistency of decision making. It is also recommended that regular updated training be provided to enable all members to be conversant with current planning law and practices.

General comments

To assist in the collation of comments please reference the section, page number and paragraph number (where appropriate) that corresponds to your comments (e.g. *Section 4.5, page 22, paragraph 2:-*). If your comment is of a more general nature please place in a "general comments" section in your response.

Please provide any additional comments you may have on the discussion paper.

[4.1.2] If Development Assessment Panels are to be introduced with a cut-off value determining whether developments go to panels, a higher cut-off value than \$2 million should apply, so as to capture fewer but more significant developments (ie. \$10 million). The comment (2nd last paragraph on page 13) regarding obtaining ABS data *for* development approvals to determine the cut-off point is noted, but local government does not compile data on the value of planning applications and hence it is not available from the ABS. The ABS data referred to relates to building licences. It is common for building licences to be issued for several components of a development which receive a single planning approval, further distorting the statistics.

[4.1.2] Whatever cut-off point in value of planning applications is used to require referral to Development Assessment Panels, it will be necessary for this to be reviewed and increased annually to reflect both inflation and changes in land prices, so as to not progressively increase the workload of DAPs by requiring less substantial and less complex applications to go to Panels. Any increase in applications to DAPs will increase the workload for panels and reduce the number of applications normally approved under delegation by staff or presented to Council. The additional costs associated with funding DAPs to consider further applications without cost recovery will add to the cost burden of the local government.

[4.2.3] The proposed composition of the joint Development Assessment Panels, whereby two local government representatives (ie. Councillors) must deal with those applications relating to their local government, will require most councillors to sit idle during most of the Development Assessment Panel meetings. These meetings could involve 5 to 10 (or even more) local governments in some regions, hence 10 to 20 (or more) councillors would be present, although there may be only a single item relating to their local government. This is not particularly efficient. Such a process does not afford respect to councillors, most of whom are working full time.

[4.3.3] Requiring the planner who prepared each report to attend the Development Assessment Panels will be a costly and time-consuming requirement. In many cases these will be applications which would have been approved under delegated authority under the current system. In other cases, a manager or senior officer would represent the staff at Council currently rather

than each individual planning officer presenting their applications and reports. This requirement will increase workloads and costs for local governments and hence will act to slow down the planning system rather than “streamline” it.

[4.3.4] The requirement for local government to provide secretariat support to Development Assessment Panels would impose an additional cost burden compared to the current situation, given the administration required for panel meetings and the additional proportion of applications going to panel meetings compared to Council under the current system.

[4.3.4] The requirement for local governments to provide secretariat support on a six-month rotating basis would be grossly inequitable. In any given joint Development Assessment Panel, it is likely that some local governments will generate a significantly higher workload and have a substantially greater population than other local governments (for example, in the proposed Eastern JDAP, the Town of Bassendean versus the City of Swan), yet it is proposed that each local government must, for a six month period, provide secretariat support for a panel dealing with applications from all local governments (which, for some panel meetings, may not deal with any applications at all from that particular local government). This is particularly unfair on smaller local governments within each grouping – they and their ratepayers would effectively be subsidising the largest local governments by contributing proportionally greater to the secretariat task. For this reason, a regional body such as the EMRC should provide the secretarial support (see answer to question 17).

[4.3.6] Panel sitting fees represent an additional cost being introduced into the planning system and being imposed onto local governments. Unless planning application fees are increased to cover this cost (which would be difficult to achieve equitably), this will mean the additional costs have to come out of Council revenues. This will be an additional cost burden on ratepayers and is considered unacceptable. The majority of Councillors work full time and it will be difficult to take further time away from work day duties. If meetings are held in the evening, then this also creates an additional cost of overtime for staff. It is suggested that the State Government should meet such costs.

[4.4.1] It is considered unfair to require the local government to be a respondent to appeals against decisions made by a separate body. For example, when a Council makes a decision contrary to a staff recommendation, staff do not represent Council because they would constitute an adverse witness, but instead a third party is engaged. However, ongoing negotiations and decisions on whether or not to contest Appeals are reported to Council and Council makes those decisions – which often have significant financial ramifications for the local government. Will these decisions be taken by the Development Assessment Panel? (And could the two local government representatives, whose positions

may or may not be representative of the Council as a whole, be outvoted by the specialist members on these matters?)

Council members on DAPs are not able to represent or seek a Council view prior to DAP consideration. This raises questions over the legal position of Council members on a DAP in making decisions without being part of an elected member body (i.e. Council).

General Comments

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. Items that go to Council are on public agendas and usually determined in Council meetings where the public are present. 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 additional benefit with regards to transparency compared to the current system.

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. The proposed process does not allow Council to form a view, yet Council will be held accountable for the decisions of a

DAP.

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). As this appeal right also exists under the current system, the 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). However no evidence has been presented to demonstrate 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.

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. Many applications that are currently approved under delegated authority by local government staff would need to be reported to a Development Assessment Panel. This may lead to increased workloads and a slower time frame for decisions, and does not represent a "streamlining" of the planning process. 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.

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.

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 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:

- (a) Transparency: Local government delegation arrangements are readily available and to indicate they are not is incorrect. Reports to Councils are all publicly available and the use of Development Assessment Panels will not improve transparency. It is worth contrasting the excellent transparency of local government Council meetings and development application processes in general with the Western Australian Planning Commission confidential process of determining subdivision applications.
- (b) 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 any further 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.

(c) Appropriate balance between local representation and professional advice in decision-making: The argument put here is noted, but if local government is being overly swayed by local opinion and refusing applications without inadequate planning justification, this would be expected to be reflected by a large number of State Administrative Tribunal decisions overturning such decisions. No evidence has been presented to demonstrate that this is the case and therefore it is unclear that there is a level of such decisions that warrants the additional costs and workload associated with the proposed changes.

(d) 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.

Other questions that arise from the document including the question as to whether the objectives to a DA retain the right to front the panel if they have not lodged a submission, as is the current case with Council meetings, and what happens to minor variations to approvals once a panel has approved a DA (i.e. do these have to go back to a panel) have not been answered. There needs to be a greater consultation process with such an important issue.

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 for local government.

The specified type and value (\$2 million) of metropolitan applications that need to be referred to DAPs is arbitrary and not representative of truly “major projects”. 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) or development is of a State or regional significance.

The development industry may find that the establishment of another level of approvals process results 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.

The Shire of Mundaring objects to the creation of Development Assessment Panels. This submission is offered in anticipation that should DAPs be implemented, the shortcomings identified in this submission will be addressed so that the process proposed can be substantially improved.