



**WALGA**

**North Metropolitan Zone  
Minutes**

**1 October 2009**

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**MEETING OF THE NORTH METROPOLITAN ZONE  
OF THE WA LOCAL GOVERNMENT ASSOCIATION**  
Held at the City of Joondalup, Conference Room 1, Joondalup Civic Centre,  
Boas Avenue, Joondalup  
Thursday 1 October 2009 at 6:00 pm

**MINUTES**

**1. ATTENDANCE AND APOLOGIES**

**ATTENDANCE:**

**City of Joondalup**

Members: Mayor Troy Pickard (Chairperson)  
Cr Trona Young  
Cr Tom McLean  
Officers: Mr Garry Hunt, Chief Executive Officer  
Mr Jamie Parry, Director Governance and Strategy

**City of Wanneroo**

Members: Cr Frank Cvitan (Deputy Chairperson)  
Cr Tracey Roberts  
Cr Rudi Steffens  
Cr Alan Blencowe – *Deputising for Cr Maureen Grierson*  
Officer: Mr Daniel Simms, Chief Executive Officer

**City of Stirling**

Members: Cr David Boothman  
Cr Elizabeth Re  
Officers: Mr Ross Povey, Director Planning and Development (6:05pm)  
Mr Aaron Bowman, Manager of Governance and Council Support

**WALGA**

Ms Jo Burges, Regional Cooperation Manager  
Ms Meredith Neilsen, Governance & Strategy Policy Officer.

**GUESTS:**

Physical Activity Taskforce: Ms Michelle Hogan, Manager  
Communications and Advocacy.  
Australian Bureau of Statistics: Mr Colin Clarke, Census and  
Indigenous Statistics and Mr Steve Austin, Graduate Indigenous  
Statistics

**APOLOGIES:**

**City of Wanneroo** Cr Maureen Grierson  
Mr John Paton, Director Corporate Strategy and Performance

**City of Stirling** Cr Bill Stewart  
Cr Terry Tyzack  
Mr Stuart Jardine, Chief Executive Officer

**City of Joondalup** Cr Russ Fishwick

**WALGA** Ms Allison Hailes, Executive Manager Planning and Community  
Development

## 2. ANNOUNCEMENTS

An email was despatched prior to the meeting from Jamie Parry, Director of Governance and Strategy advising of an update to item 6.2 *Release of Discussion Paper on Development Assessment Panels* and in particular to figures contained within the City of Joondalup's report relating to the planning applications.

A late report submitted by the City of Wanneroo on Implementing Development Assessment Panels in WA was circulated prior to the meeting and was tabled as a late item and included in deliberations on this matter, now labelled at item 6.3.

**(Moved Cr Tracey Roberts / Seconded Cr Elizabeth Re)**

That the late item from the City of Wanneroo be considered by the North Metropolitan Zone.

**The motion was put and CARRIED**

## 3. DECLARATIONS OF INTEREST

Pursuant to Local Governments Code of Conduct, Councillors must declare to the Chairperson any potential conflict of interest they have in a matter before the North Metropolitan Zone as soon as they become aware of it.

No declarations of interest were declared.

## 4. CONFIRMATION OF MINUTES

**(Moved Cr Tracey Roberts / Seconded Cr Elizabeth Re)**

That the Minutes of the meeting of the North Metropolitan Zone held on Thursday 30 July 2009 be confirmed as a true and accurate record of the proceedings.

**The motion was put and CARRIED**

## 5. DEPUTATIONS/PRESENTATIONS

**Presentation: Premier's Physical Activity Taskforce**

Ms Michelle Hogan, Manager Communications and Advocacy, briefed the meeting on the "**be active wa**" Physical Activity Taskforce.

The briefing aimed to highlight the opportunities, resources and support available to local governments to assist with the development and planning of initiatives to continue improving the physical activity levels of Western Australians.

For queries or further information, Michelle can be contact on 94929635 or email [michelle.hogan@dsr.wa.gov.au](mailto:michelle.hogan@dsr.wa.gov.au). Additional information can also be downloaded from the "**be active wa**" web site: [www.beactive.wa.gov.au](http://www.beactive.wa.gov.au).

The Chair, Mayor Troy Pickard thanked Michelle Hogan for her presentation.

## **Presentation: Preparing for the 2011 Census of Population and Housing**

Colin Clarke, Census and Indigenous Statistics and Mr Steve Austin, Graduate Indigenous Statistics briefing the meeting with respect to the Australian Bureau of Statistics (ABS).

The ABS is gathering local intelligence and raising Census awareness from local governments and other stakeholders to seek advice and support in planning for the 2011 Census of Population and Housing.

For queries or further information, Colin Clarke can be contact on 9360 5181 or email [colin.clarke@abs.gov.au](mailto:colin.clarke@abs.gov.au).

The Chair, Mayor Troy Pickard thanked Mr Colin Clarke and Mr Steve Austin for their presentation.

## **5. MATTERS REFERRED TO WALGA**

### **5.1 Status Report on Matters referred to WALGA State Council for Action.**

As a means of increasing communication and providing feedback to the North Metropolitan Zone, a schedule (appended to the agenda) has been prepared on matters referred to WALGA State Council for action.

#### **(Moved Cr Frank Cvitan / Seconded Cr Tom McLean)**

That the Status Report on matters referred to WALGA State Council for action, dated September 2009, be received.

**The motion was put and CARRIED**

*Cr Elizabeth Re queried as to what was happening with the leave entitlements issue and requested an update on this matter.*

## **6 REPORTS FROM MEMBER COUNCILS**

The Chair, Mayor Troy Pickard advised that as each member Council had submitted a report and recommendation on the Development Assessment Panels, and that the recommendations were not dissimilar, that these items (6.1, 6.2 and the late item now labelled 6.3) would be dealt with together with one consolidated recommendation submitted to WALGA.

The consolidated recommendation of items 6.1, 6.2 and 6.3 is as follows:

### **DEVELOPMENT ASSESSMENT PANELS**

#### **(Moved Mayor David Boothman / Seconded Cr Tracey Roberts)**

- 1. That the Minister for planning and director general of the department of planning be advised that the North Metro Zone does not support the introduction of development assessment panels in the form proposed, as it is considered that the panels will provide little or no benefit to local government, the community or the development industry as it is considered that they will not increase transparency of decision making beyond what is already provided by local government and will not**

**necessarily improve the timeliness or quality of decisions; and would incur additional cost and resources to local government and remove local determination;**

- 2. That the Zone may consider a model similar to that of New South Wales including variations, but not limited to the following:**
  - a. As a precursor to the implementation of Development Assessment Panels, the Zone recommends that the State Government legislate for the mandatory reporting and publishing of development application data by local governments, in a consistent format that would enable comparison and benchmarking of performance between local governments; and**
  - b. Following a review of local government development application data, the Zone would support the implantation of Development Assessment Panels in areas where the development assessment process or the local government is underperforming, or where the local government agrees and/or has insufficient resources or technical expertise to assess large-scale complex development applications.**
- 3. Further consultation with local governments take place to assist in developing a practical and efficient model; and**
- 4. that the comments in the attachments from the Cities of Joondalup, Stirling and Wanneroo be included in WALGA's submission to the Department of Planning on the Development Assessment Panels discussion paper.**

**The motion was put and CARRIED**

## **6.1 DEVELOPMENT ASSESSMENT PANELS**

*Report submitted by City of Stirling*

### **BACKGROUND**

On Friday 11 September 2009 the Minister for Planning, the Hon John Day, announced the State Government's intention to implement Development Assessment Panels (DAPs) in WA. The Minister released a Department of Planning discussion paper titled *'Implementing Development Assessment Panels in Western Australia'* (refer attachment) and is seeking comment until 2 November 2009.

The discussion paper proposes a significant change to the statutory planning system in Western Australia through the establishment of DAPs. These Panels would take the place of local government and the Western Australian Planning Commission in determining the following specified types of development applications with a threshold value of \$2 million applicable in the metropolitan area (\$1 million in country areas):

- 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.

The discussion paper outlines 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.

For the City of Stirling, the discussion paper proposes the Minister will establish a Joint DAP to cover the Cities of Stirling, Joondalup and Wanneroo and the Town of Vincent. Local governments are required to provide all administrative support for the DAP on a six monthly rotational basis.

The Development Assessment Panel would comprise 5 members:

- A Chairperson (specialist member – appointed by the Minister)
- Two other specialist members – appointed by the Minister)
- Two local government representatives (Councillors)
- (Note: The two local government representatives would sit on the panel when applications from their local government are being considered)

It is proposed the Chair would be paid a sitting fee of \$500 and the Specialist Members a \$400 sitting fee. It is proposed that the local government representatives would not be paid a sitting fee as this is viewed in the discussion paper as part of their elected role. The cost of operating the DAP would be met by local government from existing revenues generated from Development Application fees.

## **COMMENT**

The establishment of DAPs was first identified in the 'Building a Better Planning System' document released by the State Government in March 2009 as follows:

*"In cases of major projects that are likely to face significant approval delays and may be highly contentious, and in cases where major projects are proposed but there is limited local government technical capacity to undertake an appropriate level of assessment, Development Assessment Panels are being considered, as have been established in other States. Development Assessment Panels would include elected representatives as well as independent experts."*

Council considered the Building a Better Planning System document at its meeting of 21 April 2009 and in respect to DAPs the City of Stirling made the following comment:

*"The City requires further information and would need to further consider the implications of the Development Assessment Panels approach, as this would represent a significant change from current local government and Council consideration of development."*

The scope of the proposed DAPs goes further than outlined in 'Building a Better Planning System' and will have significant impact on the operation of the Council's decision making in respect to major development applications. This proposed DAP system outlined in the discussion paper has been developed without reference to local government and essentially

introduces a duplicate administrative system to deal with developments of a specified type and application value.

The approach taken by the State Government in the discussion paper is akin to the appointment of Commissioners to take over some of the most important functions of a local government, decision-making on larger scale development.

The DAP system as proposed will require additional local government resource and be unlikely to significantly improve decision making timeframes or decision quality. The City of Stirling has undertaken an analysis of development applications over the past 3 financial years to determine the number of applications of specified type and over \$2 million value which would be referred to the proposed Joint DAP. The results are as follows:

**Table 1: Possible Number and Value of DAP Applications**

Year	Total Development Applications (DAs) determined	No. of DAs \$2 million & over and specified type (DAP applications)	Average No. of DAs per month to Joint DAP	Total Value of proposed DAP applications	Total Value of remaining applications
2006-07	2,878	24	2	\$213,094,782	\$552,833,788
2007-08	3,800	27	2.25	\$474,719,000	\$760,264,920
2008-09	3,380	25	2.1	\$582,824,000	\$617,939,888

The City has also analysed number of DAP applications determined by Council and those determined under delegated authority. The City has also analysed the average processing time in days for DAP applications. These are detailed as follows:

**Table 2: Applications determined by Council and Delegated Authority and Average Timeframe**

Year	No. of DAP applications determined by Council	No. of DAP applications determined by Delegated Authority	Average assessment and decision time of DAP applications (days) (Note: Statutory time 60 days)
2006-07	3	21	40.5
2007-08	7	20	53.4
2008-09	5	20	50.2

The above analysis indicates the current proposal to introduce DAPs would have no benefit to applicants who deal with the City of Stirling.

The Director General of the Department of Planning has indicated the objectives of the proposed model are to:

1. Streamline the determination process for particular types of development applications, by eliminating the requirement for two-decision makers to make a decision on the same development application where the provisions of both local and regional planning scheme apply;
2. Involve independent technical experts in the determination process, in accordance with the DAF (Development Assessment Forum) Leading Practice Model;



3. Encourage an appropriate balance between independent professional advice and local representation in decision-making for significant projects; and
4. Reduce the number of complex development applications being determined by local governments, to allow local governments to focus their resources on strategic planning.

While the objectives appear to have merit on the surface, a closer examination reveals they will not be delivered by the proposal for DAPs as outlined in the discussion paper. Officer comment on each of the above objectives is as follows:

1. Only few development applications require decisions to be made by both the City and the WAPC. Many of these determinations are currently made by City officers under delegated authority. The introduction of DAPs would transfer the administrative workload of these applications to local government who would be required to formulate agendas, host and attend DAP meetings and compile minutes, consuming additional resources.
2. Only a very small proportion of the City of Stirling's development applications of the specified type are currently determined by Council. In 2008/09 the City processed a total of 3380 development applications with a total value of \$1.2 billion. Only 5 of these applications were determined by Council. City officers already seek independent advice from time to time where necessary to provide expert input on the assessment of major development applications, including architectural and urban design advice. The use of expert panels, given the very small numbers involved, is unlikely to have any significant overall benefit to the planning approval process.
3. Comments generally as per 2 above. It should be noted that the introduction of DAPs will reduce local representation and that specialist panel members will be appointed by the Minister for Planning and not the local government.
4. The majority of development applications of the specified type and value are currently determined under delegated authority. The City of Stirling has a strong focus on strategic planning as evidenced by its commitment to major strategic regeneration projects at Scarborough, Mirrabooka and Stirling City Centre. Additionally, the City has a strong focus on community planning through its award winning Local Area Planning project and on policy review and development. The introduction of DAPs will not provide any additional resources to local government (indeed they will consume further resources) and will not provide any significant additional time to Council to focus on strategic matters.

Development Assessment Panels are currently legislated in South Australia and New South Wales. In Victoria legislation has also been introduced to establish DAPs. The NSW model could be supported by the City as it gives the Minister the power to appoint a DAP or Planning Administrator in four circumstances:

- a. where, in the opinion of the Minister, the Council has failed to comply with its obligations under the planning legislation;
- b. where, in the opinion of the Minister, the Council has unsatisfactorily performed its development assessment or planning role;
- c. where the Independent Commission Against Corruption has written a report recommending the appointment of a panel due to serious corrupt conduct by a councillor in connection with the exercise of functions by the Council; or
- d. the Council agrees to the appointment.

These panels can be appointed to perform all the planning functions of a Council, including determining development applications. This approach would reflect a similar approach provided in the Local Government Act 1995, which enables the Minister for Local Government to suspend a Council in certain circumstances where they are not, in the Minister's opinion, meeting the requirements of the Act.

If the NSW approach was applied in Western Australia, with clear performance thresholds established, it would be expected that local government would see a significant performance

improvement across the board, not just in relation to decision making on a small proportion of applications (less than 1% in the case of the City of Stirling).

There has been no substantive reason provided in the discussion paper to remove or reduce the planning powers of local government. A common reason cited by the development industry relates to delay experienced when applications are considered by Council, however no supporting data or evidence is provided in the discussion paper.

Section 4 of the Discussion Paper details how Development Assessment Panels are proposed to operate in Western Australia. A summary of each section is provided, together with officer comment.

No	Section Heading	Summary	Officer Comment
4.1	Local Development Assessment Panels	<p>A Local DAP is only proposed at this stage to operate in the City of Perth.</p> <p>The decision to establish a Local DAP would rest with the Minister and be determined based on development application data.</p>	<p>The current categories and \$2 million value of development applications does not represent 'major projects' as outlined in the Building a Better Planning System discussion paper.</p> <p>These applications are currently capably addressed by the City of Stirling and the introduction of DAPs will add administrative complexity and remove the current officer delegation that exists to approve many of these developments (80% in 2008/09) where they comply with Scheme requirements. This will introduce further delay into the system.</p> <p>The NSW system of Planning Assessment Panels is preferred by the City in that it would only be introduced where:</p> <ol style="list-style-type: none"> <li>1. the Minister deems the Council has failed to comply with its obligations under the planning legislation</li> <li>2. the Minister deems the Council's performance in dealing with Planning and Development to be unsatisfactory</li> <li>3. the Council agrees to appointment, or</li> <li>4. a report from the NSW Independent Commission Against Corruption recommends appointment.</li> </ol> <p>This would enable the State Government to improve performance by addressing specific local governments, rather than Council's who consistently perform their functions with diligence and professionalism.</p> <p>The South Australian DAP model allows Councils to determine through delegation which types of applications will be determined by officers and which are to be determined by the DAP.</p>
4.2	Joint Development Assessment Panels	<p>The discussion paper proposes that the City of Stirling would be part of a Joint DAP with the Cities of Joondalup and Wanneroo and the Town of Vincent.</p>	<p>It is worth noting this DAP covers a large portion of the metropolitan area and a population of just over 500,000 people (30% of the Perth's population).</p> <p>The City anticipates a Joint DAP could be workable based on an analysis of the volume of development applications determined over the past 3 years that are of the prescribed type and value. It must be noted that the DAP would consider less than 1% of the development applications determined by the City during 2008/09. As such the introduction of DAPs is unlikely to provide any substantive benefit in terms of approvals times or decision making.</p>

4.2.1	How will joint development assessment panels be established?	<p>The Minister for Planning will establish permanent joint development assessment panels.</p> <p>The rates of growth and number of development applications will be used to determine the final arrangements.</p> <p>The joint panels are designed to assist local governments focus their resources on strategic and policy issues.</p>	<p>The establishment of DAPs based on development application data is supported, however it would appear that this assessment has not yet been undertaken and the suggested Joint DAP arrangements may need to be modified.</p> <p>The establishment of Joint DAPs will not provide any assistance to the City of Stirling in respect to a greater focus on strategic and policy issues. The City has a dedicated team of strategic and policy planners who make up the City Planning Business Unit. Development Approvals are assessed by a separate Approvals Business Unit. 99% of development applications will continue to be determined by the Council or by the officers under delegated authority.</p> <p>Officers will still need to undertake detailed assessments and prepare reports in respect to applications determined by the DAP. Local government will be required to provide administration and technical support to the DAPs from existing resources.</p>
4.2.2	What applications will joint DAPs determine?	<p>The specified types and value of applications are outlined in the Background section of the report.</p>	<p>The value and types of applications do not relate to matters of regional significance, but a range of routine application types. The \$2 million threshold is an arbitrary figure and does not relate to any relevant planning consideration.</p> <p>The City believes that if DAPs are introduced, local government's need to be provided power to determine the appropriate delegations to either an officer or the DAP as in South Australia.</p>
4.2.3	How many members will sit on the joint DAP?	<p>The proposal is as follows:</p> <p>Chairperson (Specialist Member)</p> <p>Two Specialist Members</p> <p>Two local government Representatives</p> <p>The local government membership of the panel will depend on the location of DA being determined at the time.</p>	<p>Membership of the DAP does not sufficiently recognize the importance of local input into decision making. The City contends that if DAPs are to be introduced equal membership should be provided (specialist and local government), with any deadlock in voting resting on a casting vote of the Chairperson.</p> <p>The operation of a Joint DAPs has the potential to become inefficient, due to having a multiplicity of local government Representatives, officers, presenters and members of the public in attendance.</p>
4.2.3	How long will joint DAPs operate?	<p>A joint DAP will operate for as long as the Minister determines it appropriate.</p>	<p>If DAPs are implemented the membership of the panel should be reviewed every two years to coincide with the local government election cycle. This would allow for specialist members to serve a specified period and for local government to appoint new representatives following each local government election.</p>
4.3	How will local and joint DAPs operate?		<p>City of Stirling's comments for this section are detailed below.</p>
4.3.1	Panel Membership	<p>It is proposed that each panel member would be appointed for a term of up to two years, with an option for an additional year at the discretion of the Minister. Member appointment would not exceed three years.</p> <p>Local government</p>	<p>If DAPs are implemented the membership of the panel should be reviewed every two years to coincide with the local government election cycle. This would allow for specialist members to serve a specified period and for local government to appoint new representatives following each local government election.</p> <p>The maximum term of appointment of specialist members should be two terms (4 years).</p>

		<p>representatives would be nominated from the Councillors by the Council. If a local government failed to nominate the Minister will have power to appoint two members to represent the interests of the local community.</p> <p>All panel members will be required to attend mandatory training.</p>	
4.3.2	Panel Accountability	<p>Meetings are to be open to the public and people who made submissions will be permitted to make a presentation to the panel.</p> <p>A Code of Conduct will be developed to govern procedures of the DAP and deal with matters including conflicts of interest and lobbying. A record of meetings and voting by panel members will be required to be kept.</p> <p>DAPs will be required to produce an annual report</p>	<p>Meetings of Joint DAPs are likely to be held at one of the member local governments. This will make attendance by local community members less accessible. Currently the City of Stirling operates with open committee and Council meetings in the evenings. The timing of DAP meetings has not been addressed in the discussion paper, however if DAPs are to be established the City believes meetings should be held after working hours to allow members of the public and Councillors (who commonly work full-time) the ability to attend.</p> <p>The City of Stirling provides the opportunities for applicants and members of the public to provide deputations (whether or not they have made a submission) to Committee. The DAP does not provide any additional benefit in respect to public involvement.</p> <p>The Code of Conduct is similar to what already exists in local government. The City of Stirling keeps minutes and records voting of members currently. The DAP proposal does not provide any additional benefits in respect to decision making accountability regard to these matters.</p> <p>Additional resources will be required to prepare an Annual Report for the DAP. It would appear this function would fall to the local government or group of local governments. The State Government is not proposing to provide additional resources to undertake this function.</p>
4.3.3	Panel Technical Support	<p>This will be provided by local government officers and officers of the WAPC where required.</p> <p>Similar to the current procedure an officers report would be prepared and provided to the DAP within the statutory timeframe.</p> <p>The DAP will be able to engage experts to prepare reports on particular technical issues, with these reports to be paid by the relevant local government.</p>	<p>This reflects the current technical support and reporting arrangements provided to Committee and Council. The DAP proposals will require that officers service both the DAP and the remaining applications being presented to Committee and Council. This will place an additional burden on Technical and Administration Officers who will need to attend the separate DAP and Committee/Council meetings.</p> <p>It is unclear what authority the DAP would have to expend local government funds. This presents particular governance difficulties as technical reports can cost significant amounts and it would be unlikely the City of Stirling would have made specific budget provision for such reports. Approval to expend unbudgeted funds normally can only be made by Council.</p>
4.3.4	Panel Secretariat Support	<p>Secretariat support for the Joint DAP will be shared among the members and would</p>	<p>The Secretariat support required would provide additional resource demand on the City in terms of meeting attendance, preparation of agendas and minutes and advertising of meetings. This</p>

		include coordinating agendas, advertising meetings, taking minutes etc.	will not streamline any current processes and the State Government is not proposing to provide any additional resource
4.3.5	Panel Administration Costs	<p>Local government will be required to contribute to the cost of operation of the DAP. It is proposed that this would be paid from fees currently derived from development applications.</p> <p>The Department of Planning will provide training to panel members and development the Code of Conduct and provide operational guidance. The State will establish a small secretariat in the Department of Planning to undertake a monitoring role and coordinate the annual reporting process.</p>	<p>The administration costs of the DAPs will draw on local government resources. No additional resources will be provided to local government to meet the additional costs of administering the DAPs.</p> <p>It is noted that the State Government will provide training to panel members, however this is likely to be generic and will not cover specific local scheme or policy issues. Additional training would need to be provided by local government technical officers.</p> <p>The State should establish a small team within the Department of Planning to monitor and report on development approval performance by local government and that of the WAPC. It should be noted the City of Stirling reports on approvals performance in the City's Sustainability Annual Report.</p> <p>The City recommends a team be established in the Department of Planning to monitor local government performance, WAPC performance and subdivision approval times. Further the City recommends that DAPs only be introduced into local governments who are unable to meet established performance requirements (as per the NSW model).</p>
4.3.6	Panel Sitting Fees	<p>It is proposed specialist members would receive a sessional sitting fee:</p> <p>\$500 for the chairperson \$400 for specialist members</p> <p>Elected Council members would not be paid a sitting fee as their role on the panel is considered to be in keeping with their position.</p>	<p>local government would be required to meet the cost of the sitting fees for specialist members. If meetings occurred monthly these fees would be \$15,600 divided by the joint members (\$3,900 if divided equally between 4 members). If the panel met fortnightly fees would increase to \$31,200 (or \$7,800).</p> <p>It could be argued that the two local government representatives are being asked to take on additional work that is not required of other Councillors. Councillor members will be required to undertake all work associated with the complex planning and development issues including undertaking mandatory training, reading all agendas, undertaking site visits and participating in meetings. It is the City's view that is unreasonable for Council DAP members not receive a sitting fee should development assessment panels be established.</p>
4.3.7	Panel Code of Conduct	<p>A Code of Conduct will be drafted to assist members:</p> <ul style="list-style-type: none"> <li>• understand the standards of conduct expected</li> <li>• act honestly, ethically and responsibly</li> <li>• exercise reasonable degree of care and diligence</li> <li>• act in a way that enhances public confidence</li> </ul>	<p>The City of Stirling already has a Code of Conduct which, together with the Rules of Conduct and the Local Government Act which, establishes standards for Councillors. This proposal will duplicate current Code requirements and will add little if anything to improve the standards of conduct.</p>

4.3.8	Panel quorum and meeting frequency	<p>A quorum will be three members, comprising at least the chair (or deputy chair) one specialist member and one local government member.</p> <p>Meeting frequency will be determined by the individual assessment panel based on the number of applications submitted and the timelines required to have them assessed within the statutory timelines. Panels will meet at least monthly and possibly fortnightly in high growth areas.</p>	<p>The City of Stirling Planning &amp; Development Committee and Council operate on a monthly basis. Should the proposed Joint DAP operate on a monthly basis this would provide no additional benefit to applicants.</p> <p>If the Joint DAP operated on a fortnightly basis this may provide a quicker approval timeframe for applicants. It would however be significantly more resource intensive from an administrative, technical officer and panel member perspective.</p> <p>The City of Stirling would support a NSW model in which DAPs would only be introduced into Council's which for one reason or another are unable to perform at the required standards.</p>
4.3.9	Panel Members Training	<p>Panel members will be required to attend mandatory training before being appointed to a DAP. This will apply to local government and Specialist members.</p>	<p>The City supports the training of decision makers and regularly provides induction training to newly elected members and information sessions when legislative or policy changes occur. Additionally the City encourages elected members to undertake ongoing professional development through WALGA.</p> <p>The Department of Planning could equally provide this training and training resources to elected members within local government regardless of the DAP proposal.</p>
4.3.10	Panel Reporting and Performance	<p>Each panel would be required to report on its decisions to the relevant local government, the WAPC and the Minister for Planning.</p> <p>The Department of Planning will prepare an annual report summarizing approvals trends and review the performance of each panel.</p>	<p>The City of Stirling currently publishes all decisions made by Council on the City's website via the meeting minutes. Additionally a listing of all development approvals granted under delegated authority is also posted on the City's website.</p> <p>This proposal would add nothing to the current reporting already provided by the City.</p> <p>The Department of Planning could allocate resources to provide benchmarking of local government approvals and report on performance of each local government. The City of Stirling would support that where a local government fails to meet the performance requirements a DAP could be installed as per the NSW model.</p>
4.4	Will these panels be bound by the existing planning framework?	<p>The DAPs will be determining applications based on the relevant Planning Scheme and relevant planning policies.</p> <p>If a DAP believes a Local Planning Scheme should be amended the panel is able to advise the Minister and the relevant local government.</p>	<p>The City is supportive of the NSW model of DAPs which would only be introduced where there are identified problems with local government performance or with the agreement of the local government.</p> <p>Where a DAP is implemented the DAP should be able to provide advice to the local government and the Minister in respect to possible Scheme amendments. This advice should be in written form and should be formally endorsed by the DAP. This would require the DAP to access further local government resources to prepare formal reports regarding possible Scheme amendments. The ability of the DAP to request the preparation of officer reports relating to these matters has not been addressed in the Discussion Paper.</p>
4.4.1	Appeals	<p>The current appeals process will continue to operate. The local</p>	<p>While this appears to reflect the current system, the question arises as to what role the DAP members would have in the conduct of any</p>

		<p>government will be respondent for appeals against decisions made in respect to the Local Planning Scheme and the WAPC respondent for decisions made under a region planning scheme.</p>	<p>appeal. Clearly an issue arises where the DAP makes a decision which is different from an officers recommendation. The City officers would be in an invidious position and as per the City's current procedure would require an independent planning consultant and/or lawyer represent the City on these matters. This may require the chairperson of the DAP instructing the consultant engaged by the City and authorizing expenditures in respect to expert witnesses. This matter is not addressed in the discussion paper and would present some difficulties as the DAP (as currently proposed) would not have any authority to expend Council funds.</p>
4.5	Applications of State or Regional significance	<p>It is proposed the Minister for Planning will be given the power to call in any application of a class prescribed in the regulations as being a project of State or regional significance. The minister would determine the application after receiving advice from the DAP.</p> <p>There will be no right of appeal provided in respect of these decisions.</p>	<p>The discussion paper does not describe the exact type of applications that are proposed to be included in the regulations. It notes that the applications would have an impact beyond a local government boundary.</p> <p>This proposal reduces the transparency of decision making goes against the general principle of introducing independent expert panels. On one hand the discussion paper proposes a major change to remove decision making powers from elected local governments for various categories of development and on the other hand it proposes to give power to an elected State Minister (who is not an expert) to determine applications and further provide no appeal right to applicants in respect to these matters. This is not supported by the City. The City would however supports the establishment of a specific high-level expert DAP to deal with all applications of State or Regional significance. This DAP should receive reports from local government and the WAPC as well as experts where required prior to making their determination. These bodies would operate in a public arena which will provide openness and transparency to decision making.</p> <p>As mentioned, this proposal eliminates the opportunity for an applicant to have the decision reviewed by an independent body, such as the State Administrative Tribunal. This is a reduction in the rights of the applicant provided by the current system and is not supported by the City.</p>

The discussion paper identifies the benefits of DAPs as follows and Officer comment is provided in respect to each item:

Suggested Benefit	Officer Comment
Timeliness	Some benefits may arise from the DAP being the sole decision making body (taking the place of the local government and the WAPC) where joint approvals are required. However this is a small number of development applications per year and could be streamlined by a reduction in the types of applications which require WAPC approval in addition to local government approval.
Efficiency	The discussion paper suggests that fewer government resources will be required with the introduction of DAPs. This will not be the case. Local governments will perform the same assessment functions as they do currently. In addition local government will be required to provide administrative and technical support to these panels, consuming additional resources and reducing the efficiency of the current system.
Simplicity	The discussion paper suggests that eliminating the need for dual approvals (WAPC and local government) will simplify the application process. While this may be correct, it should be noted that for the City of Stirling this will only apply to less than 1% of the development

	<p>approvals issued by the City.</p> <p>The introduction of a dual system with some applications being referred to a DAP and others being determined by local government is likely to cause confusion for applicants and introduce a complexity into the planning system that does not currently exist.</p>
Transparency	<p>The introduction of a DAP will not provide any additional transparency over that already provided by local government. City of Stirling Committee and Council meetings are open to the public and voting by individuals Councillors is recorded.</p> <p>The introduction of DAPs may provide additional transparency in respect to decisions currently made by the WAPC who currently meet behind closed doors and whose voting patterns are not published.</p>
Sustainability	<p>The discussion paper indicates that by involving independent experts and elected members this should ensure the most sustainable decision. These factors have little (if anything) to do with sustainable decision making. The main element of sustainable decision making is an appropriate Scheme and Policy framework which focuses on sustainable outcomes. The City of Stirling has introduced development policies that promote and support more sustainable forms of development. The City also provides a sustainability assessment within its standard report template. The introduction of DAPs is unlikely to have any benefit to sustainability over the current system.</p>
Accountability	<p>DAPs will be required to report regularly to the Minister on their decisions and members will be subject to a strict Code of Conduct. Councillors are already subject to strict Conduct requirements and the City of Stirling reports on its development approval performance each year within its Sustainability Annual Report.</p>
Fairness	<p>DAPs will not introduce any new aspects that improve the current system. Decisions made by a DAP where discretion has been exercised will be able to be reviewed by SAT. The DAP proposal significantly reduces fairness to applicants as those applications 'called-in' and determined by the Minister will have no right of appeal.</p>
Consistency	<p>The confusion caused by the current dual approval (local government &amp; WAPC) process only applies to a minority of development applications. It is suggested a better approach would be for the WAPC to review their requirements to streamline the types of applications requiring dual approvals.</p>
Suitability	<p>The paper states that DAPs will determine applications of State or regional significance. However the specified types of application and low threshold value (\$2 million for metropolitan local governments) bears no relationship to development of State or regional significance.</p> <p>The analysis of applications determined by the City of Stirling indicates that in 2008/09 - 80% of the applications that would have required to be referred to a DAP were determined under delegated authority as they met the City's District Planning Scheme requirements.</p>

## FINANCIAL IMPLICATIONS

The operation of DAPs will increase the cost of development assessment as the City of Stirling would meet its share of the cost of the operation of the DAP (estimated at between \$15,600 and \$31,200 (total for all Councils for sitting fees), plus administrative costs of advertising and secretariat support. There will be also be some additional staff costs associated with attendance at the DAP meetings if these meetings occur after hours. Local governments would also be required to formulate an annual report regarding the operation of the DAP. The cost of these items is difficult to quantify.

The DAP proposal would require local government to perform some functions currently performed by the WAPC in relation to items which currently require dual approval, as local government would be required to collate agendas and minutes in respect to these items.

No funding is proposed from State Government to support the introduction of DAPs.

## CONCLUSION

It is recommended North Zone not support the introduction of DAPs in the form proposed in the discussion paper. The proposal will have little or no benefit to the Zone members, the community or to applicants seeking development approval.



In the case of the City of Stirling Less than 1% of development applications would be referred to a DAP (approximately 2 to 3 per month). These applications are currently being processed effectively by the City, the majority under delegated authority. Where applications are referred to Council, the Council has demonstrated it has the capacity to determine major development applications mindful of its quasi-judicial role.

On average these development applications are approved within the statutory timeframe (50.2 days in 2008/09). The City of Stirling has a strong track record of managing the development approvals process with a \$1.2billion worth of development being approved last financial year.

The introduction of DAPs will place a further burden on Councillors appointed to the DAP and on administrative and technical staff and does not provide any additional resources for the planning system.

The North Zone should consider providing support for a model for DAPs similar to NSW. This would enable the Minister for Planning to intervene where there is poor performance, poor decision making or evidence of corruption or where a local government makes a request for a panel to be established.

The North Zone should support the establishment of a high-level expert DAP for applications of real State or regional significance which would need to be clearly prescribed by regulation. However the right of appeal for applicants in these matters should remain unchanged.

## **RECOMMENDATION**

### **That:**

- 1. in respect to the proposal to introduce Development Assessment Panels in Western Australia, the Minister for Planning and Director General of the Department of Planning BE ADVISED that WALGA:**
  - (a) does not support the introduction of Development Assessment Panels in the form proposed in the discussion paper 'Implementing Development Assessment Panels in Western Australia' as the proposal will have little or no benefit for the local government, our residents or for applicants seeking development approval. Further the proposal would incur additional cost and resources to local government and remove local determination;**
  - (b) would support a system of Development Assessment Panels similar to that introduced in New South Wales as this is more likely to lead to improved development approval processes across local government;**
- 2. the comments in the report submitted by the City of Stirling be incorporated into WALGA's submission to the Department of Planning on the Development Assessment Panels discussion paper.**

## **6.2 RELEASE OF DISCUSSION PAPER ON DEVELOPMENT ASSESSMENT PANELS**

*Report submitted by City of Joondalup*

### **BACKGROUND**

In March 2009, the Department of Planning released the *Building a Better Planning System* paper, which sets out the broader planning agenda for improvement and reform of the planning system.

One of the suggested reform initiatives was the introduction of development assessment panels to determine significant development proposals, as a means to simplify planning approvals. The City of Joondalup provided the following comment in regard to that suggested reform:

*Clear guidelines would need to be in place as to when DAPs would be used, and should also be used sparingly. Also, there may be a perception that DAPs are taking away the Council's right to determine applications.*

The State Government, through the Department of Planning, released on Friday 11 September 2009 a discussion paper for public comment, titled *Implementing Development Assessment Panels in Western Australia*.

Development Assessment Panels are stated as being part of the State Government's commitment to reform of the planning system. The Panels would replace the local government or the Western Australian Planning Commission, as appropriate, in determining development applications that meet a certain value and class of development. The Panel would consist of 3 specialist members, appointed by the State Government, and 2 elected members from the relevant Council.

It is noted that the form of the proposed development assessment panels appears to have changed since the suggestions contained within the *Building a Better Planning System* paper.

Development Assessment Panels will have the power to determine development applications on behalf of the relevant current decision making authority. In Western Australia, the panels will make decisions on specified applications on behalf of local government, and the Western Australian Planning Commission.

The Minister for Planning will create the panels through publication of an Order in the Government Gazette. New *Planning and Development (Development Assessment Panels) Regulations 2010* will also be prepared.

#### Type of development to be determined by Development Assessment Panels

Applications for development approval valued at \$2 million or more (\$1 million or more in country areas), and that fall into one of the following categories, will be required to be determined by the Development Assessment Panel:

- 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.

Developments that will not be required to be determined by the panel include:

- applications for approval of one or more single houses, complying and non-complying;
- applications for approval of not more than 10 complying grouped dwellings or multiple dwellings;
- Minor applications, such as carports, shade sails, outbuildings and sheds.

Where the approval of both the local government and the WAPC is usually required, the panel will be the only approval authority.

### Panel Membership

The discussion paper states that it is anticipated that there will be a minimum of 15 development assessment panels in Western Australia. With the exception of the City of Perth which will have its own panel, all other local authorities will be grouped together into 14 joint development assessment panels (5 metro and 9 non-metro). The City of Joondalup would be included in the North West panel along with the Cities of Stirling and Wanneroo and the Town of Vincent.

It is proposed that the panel will consist of 5 members being 3 specialist members (including the chair and deputy chair), and 2 elected members from the relevant local government.

The specialist members for the North West panel will remain constant; however the relevant 2 elected members will sit on the panel when considering applications from their local government.

The range of expertise required of the specialist members appointed to the panel may include (but not limited to) planning, architecture, urban design, engineering, landscape design, environment, law property development or management.

Training will be mandatory for panel members, and will cover aspects such as the planning framework, development assessment, roles and responsibilities and code of conduct issues. The Department of Planning will be responsible for developing the training course.

### Panel Costs

Development application fees will continue to be levied in accordance with current the fee regulations. The local government will continue to received the fee, however, the local government will be required to pay the sitting fees of the specialist panel members (\$500 for chairman and \$400 for specialist members) as well as secretariat and technical support.

Secretariat support for the panel will be provided by staff from the local government on a six monthly rotational basis. These duties will include preparing agendas, advertising meetings, organising meetings, taking minutes and publicising outcomes.

### Operation of the Panel

Meetings of the panel will conducted in a place open to the public such as a local government meeting room. People who made submissions during public comment periods will be permitted to make a presentation on that particular application.

Meetings will operate according to a set of Standing Orders to be developed by the Department of Planning. A quorum for the panel will be three members which comprise of a least the chair (or deputy chair), one local government member and one specialist member. Meeting frequency will be determined by the individual panel, however is likely to be monthly as a minimum.

The panel will be required to assess applications in accordance with the existing planning framework, that is, in accordance will all local government town planning schemes and policies, and WAPC region schemes and policies.

Applicants will have the right request panel decisions be reviewed by the SAT. The local government will be respondent for applications determined under the local planning scheme, while the WAPC will be the respondent for applications determined under the region scheme.

#### Minister's Call in Power

The Minister for Planning will have the power to 'call in' any application that is prescribed in the Regulations (yet to be drafted) as a project of State or regional significance. The Minister will be the determining person in the event that an application is called in, and there will be no right of review on those decisions (i.e. no appeal rights).

#### **COMMENT**

A draft submission on the discussion paper has been prepared and is included as Attachment one.

The main points of contention addressed in the submission are:

- The panels will not address matters that are stated as being addressed, such as timeliness of approvals and the lack of technical skills of some local governments. The proposed panels are a 'one size fits all' approach whereby large metropolitan councils, which have specialist planning, urban design and engineering skills, are treated the same as small council's that may need assistance.
- The panel will remove local government decision making roles for larger applications, and is unlikely to improve the quality of decisions made, or their timeliness.
- The proposed Development Assessment Panel model is markedly different from that suggested in the *Building a Better Planning System* paper, whereby panels were suggested for major applications, and where local technical capacity was lacking. The discussion paper does not outline any reason for the change in intent of the panels, and importantly does not present any evidence to support the need for development assessment panels.
  - The class and value of development proposed to be determined by assessment panels is considered excessively low.
  - The discussion paper states that the assessment panels will improve transparency in decision making. It is considered that this view demonstrates a lack of understanding of the workings of local government.
  - The description of how the Minister's call-in and determination powers will be used lacks substance, and it is a concern that there is no right of independent review by an applicant against a refusal by the Minister.
  - There is a concern regarding the working relationship between the assessment panel and officers representing the local government.

#### Impact on Local Government decision making ability

The panel will be an additional administrative system, and will remove local government's decision making role for development applications \$2m and over where they fall into the categories described in the Background section above.

An analysis of development applications determined by the City of Joondalup over the last three years is shown in the table below. It illustrates that over this 3 year period that 58 applications were received that were valued at \$2m or more. It is noted that five single dwellings were approved that had a value over \$2m. Given these are exempt from referral to the assessment panel, these have been excluded from the below statistics.

Of the 58 applications:

- 34 were determined by Council;
- 24 were determined under delegated authority;

<b>Year</b>	<b>Total DA's determined</b>	<b>No of DA's \$2m and over</b>	<b>Assumed average no of DA'S per month to joint DAP</b>	<b>Total Value of proposed DAP \$</b>	<b>Total Value remaining \$</b>
2006/07	1,403	18	1.5	74,438,071	340,466,546
2007/08	1169	18	1.5	530,360,826	669,534,576
2008/09	1162	22	2	232,821,546	443,703,900

The type of applications received varied and included additions to private schools, car parks, grouped and multiple dwelling developments, and mixed use developments. Under the panel system, the 58 applications would be required to be referred to the panel for determination including the 24 applications determined under delegated authority.

It is noted that development assessment panels will determine development that require planning approval. Therefore, the panel would not determine local government works and buildings that would be considered as public work on public land.

### Financial Implications

For development applications which are to be determined by the panel, the prescribed application fee will still be applicable. However, the implementation of the panel system will increase the cost of development assessment as local government will be required to meet its share of the cost of the operation of the panels.

Costs will include the panel members sitting fees, which are proposed to be \$400 for the specialist members and \$500 for the chairman. Elected members on the panel will not be entitled to a sitting fee.

A development application of \$2 million attracts a fee of \$6,050. \$1,300 of this fee would be absorbed by sitting fees. Costs will also be incurred by local government in attending meetings and providing secretariat support, although these costs are difficult to quantify.

There is no proposed funding from the State Government to support the proposed panels.

### Conclusion

The implementation of a panel system will be a fundamental shift in the way larger development applications are determined, with that determination being removed from local government and Councils. The evidence that this will improve the planning system, the quality of decisions, or their timeliness, is severely lacking.

It may be possible to demonstrate that panels would be of benefit in certain circumstances, for example, to determine developments of genuine state or regional significance, or where a local government is not meeting appropriate benchmarks. However, as proposed, the panel system cannot be supported.

It is recommended that North Zone not support the implementation of development assessment panels in the form currently proposed, and endorse the submission presented in Attachment 1.

## RECOMMENDATION

- 1 **That the Minister for Planning and Director General of the Department of Planning be ADVISED that WALGA:**
  - (a) **does not support the introduction of Development Assessment Panels in the form proposed, as it is considered that the panels will provide little or no benefit to local government, the community or the development industry as it is considered that they will not increase transparency of decision making beyond what is already provided by local government, and on the whole will not improve the timeliness or quality of decisions;**
  - (b) **REQUESTS that further consideration on the funding of Development Assessment Panels be undertaken, as their implementation as proposed will unfairly place additional funding and resourcing pressure on to local government;**
- 2 **That the comments included in Attachment 1 submitted by the City of Joondalup be incorporated into WALGA's submission to the Department of Planning on the Development Assessment Panels discussion paper.**

### Attachment 1 to item 6.2

#### Submission on Development Assessment Panels

#### GENERAL COMMENTS

##### Format of discussion paper

It is disappointing that the discussion paper has been constructed in a way that does not present or encourage any discussion or feedback on the merits, or issues, with the introduction of development assessment panels. The introduction of the panels is treated as a fait accompli, with the only feedback on the operation and form of the panels being sought.

Local government has not been consulted on the current proposal. Given the significance of the proposal, it is to be expected that consultation allow and encourage feedback, both positive and negative, on the proposal.

##### Intent of Development Assessment Panels

The *Building a Better Planning System* discussion document (2009) introduced the notion of development assessment panels for WA, and stated:

*"In cases of major projects that are likely to face significant approval delays and may be highly contentious, and in cases where major projects are proposed but there is limited local government technical capacity to undertake an appropriate level of assessment,*

*Development Assessment Panels are being considered, as have been established in other States. Development Assessment Panels would include elected representatives as well as independent experts.”*

The intent, as expressed above, has some degree of merit. However, the intent expressed in the above document is markedly different from the format now proposed in two fundamental ways:

- The use of panels is not limited to local governments where there is limited technical capacity to undertake assessment.
- The use of panels is not limited to major projects.

In the first instance above, the lack of technical expertise within a particular local government is cited as a reason to implement panels. However, the Development Assessment Panel format does not distinguish between those local governments that have the technical capacity and those that do not.

The panel system in itself does not assist to address any lack of technical resources of a particular local government, as the local government is still responsible for the assessment of the project. It would appear that the name Development Assessment is a misnomer, as the panels are responsible for determination of an application, not its assessment.

In the second instance, the ‘bar’ has been set low in terms of the applications that will be required to be determined by the panel, and cannot be considered to be confined to ‘major’ projects. For example, it is difficult to justify that 11 grouped dwellings is a major development that warrants consideration by a development assessment panel.

#### Rationale

The following comments are made on the rationale for the development assessment panels as stated in the discussion documents:

Department of Planning Comment	Submission Comment
<p><i>Transparency of decision making: Current local government delegation arrangements are not readily available and so there is no clarity as to whether a development application will be referred to Council or determined by local government staff. Further transparency to the decision making process will be provided by the use of independent experts and the publication of panel decisions and panel member voting trends.</i></p>	<p>This comment shows a lack of understanding of local government processes. In regard to delegation arrangements, the City of Joondalup’s delegation register is available on the City’s website. The Town Planning Delegations are outlined in the delegation register. It would be a relatively simple matter to require local governments to publish delegation arrangements, and is not a compelling reason to implement development assessment panels.</p> <p>All decisions of Councils, as well as voting trends, are contained in the Council meeting minutes which are publically available. In the case of the City of Joondalup, decisions made under delegated authority are reported in Council agendas and minutes, and all persons who make submissions are notified of the outcome.</p> <p>In addition, the proposal for the Minister for Planning to be able to call in applications, determine those applications independently, with no appeal rights, goes against the stated objective of transparent decision making. This proposal is not supported.</p>

Department of Planning Comment	Submission Comment
<p><u>Local government resources and technical issues raised by applications:</u> Applications for large-scale development can take extensive periods of time to progress through the development assessment process, due to the complexity of the development applied for and the planning requirements applicable to them. The resources and expertise available to the relevant local government are also a factor affecting the timeliness of decision-making. The use of independent experts on a development assessment panel will assist with this by involving experts with relevant technical knowledge in the determination of applications, thus reducing some of the need for briefings to be provided by technical experts.</p>	<p>In practice, City staff will spend the same amount of time assessing applications and preparing reports if panels exist. Local Governments with limited technical expertise will not be assisted in the assessment of development applications by the introduction of panels, and will still need to source external assistance.</p> <p>As the independent experts will be from a range of disciplines, it is highly likely that briefings for panel members will still be required by technical experts and local government staff.</p> <p>It is also of great concern that the panel will be able to request external advice, at the expense of the local government. It is usual and appropriate that the applicant bear this cost, and this proposal is not supported.</p> <p>The discussion paper has not provided any justification as to how panels will address the issue of local government resources, or show how panels will improve the timeliness of decision making.</p> <p>It is also noted that applications currently determined under delegated authority will now be subject to the panel determination process, and is likely to increase the time taken to determine those applications.</p>
<p><u>Appropriate balance between local representation and professional advice in decision-making:</u> Large-scale developments may be controversial, and so the local opposition to such change may become a factor for local government staff and councils. There is a real opportunity for development assessment panels to improve this process due to the fundamental role that independent technical experts play on such panels.</p>	<p>This statement appears to indicate that technical matters should take precedence over local issues, and this seems to be borne out by the proposal that elected members be the minority of the panel. This approach is not supported.</p> <p>It is also argued that elected members bring a broader range of experience and importantly, local knowledge, to the table when determining development applications, backed up by professional advice.</p>
<p><u>Dual approvals:</u> Where an application is made regarding development on land that is subject to the requirements of both a local planning scheme and a region planning scheme, approval of that application may be required under both schemes. As such, approval may need to be obtained from two decision-making authorities: the relevant local government and the Western Australian Planning Commission (WAPC). This requirement for dual approval is time consuming and uses many Government resources, as well as potentially creating a situation where the two decisions conflict with one another. Development assessment panels will address these issues by creating a single point of assessment under both</p>	<p>The duplication of the assessment of these types of applications will continue, as both the local authority and the Department of Planning staff will continue to assess the application and submit separate reports to the panel. In this respect, there is no benefit in the panel system as proposed.</p> <p>The implementation of the panel system would, however, mean that only one decision would be made on an application, with one set of conditions rather than two. This is considered to be a benefit in the panel system, however, only represents a very small number of applications, and will not improve the system overall.</p>



Department of Planning Comment	Submission Comment
schemes.	

## ISSUES

Comments on specific clauses of the discussion paper are made below

### 4.2.2 Type of development to be determined by Development Assessment Panels

It is not considered that applications with a value of \$2 million represent major development in the context of the benefits that the panels are meant to deliver. The type of development to be determined by panels is not sufficiently targeted, and removing these applications from determination by Council will not in itself improve timeliness or the quality of the decision.

If the panel system is to be implemented, it considered more appropriate to target areas where there are substantiated issues. For example, it may be appropriate that local government approval processes be the subject of benchmarking. Where a local government is having difficulty meeting benchmarks, a development assessment panel may be needed.

### 4.3.1 Panel Membership

The implementation of the panel system will effectively mean that Council will not have the ability to review development applications that fall within the specified categories within the City. While Council will be represented on the development assessment panel by 2 elected members, there will be a perception that Council will not be able to effectively represent the community in regard to some of the more significant development in the locality.

### 4.3.2 Panel accountability

The discussion paper does not outline any processes or procedures that are above and beyond the accountability already required and expected of local government. Codes of conduct, records of Council meetings and voting outcomes and the provision of applicant deputations are all currently implemented by the City of Joondalup.

### 4.3.3 Panel Technical Support

The discussion paper indicates that the panel system should assist local governments and the WAPC by allowing them to focus on the development of strategic planning instruments, rather than administering them. However, this is will simply not be the case.

It is unclear whether procedurally, Council and WAPC officers will still be required to assess applications and write reports for consideration by the panel, as well as for the Council meetings. In fact, the burden on staff will increase due to duplication of the systems, requiring staff attendance at both panel and Council meetings.

The discussion paper also indicates that if local expertise is not available, the panel will be able to engage experts to prepare reports on particular technical issues to be paid by the relevant local government. It would appear, for example, that if the panel decides that a traffic report is required, the local government, rather than the applicant, will be responsible for the cost of that report.

Currently, if additional or specialist information is required, this is provided by the applicant, at their expense. It is not considered appropriate that the local government be responsible for the justifying or supporting a particular application.

It is also unclear under what head of power would allow the panel to, in the first instance direct local government staff to undertake certain actions and secondly, expend local government funds, particularly when it is unlikely that such funds would have been appropriately budgeted.

#### 4.3.4 Panel Secretariat Support

Additional demands will be placed on local government to administer the panel system by way of attendance at meetings, preparation of agendas and minutes, and liaison with other local governments. It is noted that there is no proposal to assist local government with additional resources or funding.

#### 4.3.5 Panel Administration Cost

The local government will be required to pay the expert panel members sitting fees. However, it is not indicated how this cost will be shared among the member local governments in an equitable way. It is suggested that the cost be based on the proportion of applications considered by the panel at a particular sitting.

#### 4.3.8 Panel quorum and meeting frequency

It is indicated that panels will meet on at least a monthly basis. City of Joondalup Council meetings are held monthly, and therefore there would be no time benefit to applicants if panel meetings are held monthly.

Alternatively, fortnightly meetings would be administratively difficult and resource intensive for both local government and panel members.

#### 4.3.9 Panel Member Training

It is stated that the Department of Planning will provide training to panel members. However, it is likely that this training will be generic. While the specialist panel members may be experts in a particular field, it is not conceivable that adequate training could be provided to panel members on the local scheme, structure plan and policy issues in each local government from which they will be considering applications from. It is likely that the local government will be requested to provide specific training on local issues for panel members.

#### 4.3.10 Panel Reporting Performance

The City of Joondalup publishes all Council meeting minutes on its website. A monthly report is also provided to Council on the approvals issued under delegated authority. The proposed panel system would not improve the current reporting processes.

#### 4.5 Applications of State or regional significance (Minister's call-in power)

The proposal for the Minister for Planning to have call-in powers, be able to determine an application, and there be no right of review, is not supported. The discussion paper is not clear on the types of applications that would be subject to the call-in powers, albeit that they would be applications that the Minister believes would have an impact beyond a local government boundary.

It is considered more appropriate that an expert panel determine those significant applications which have impacts beyond a single local government area. Advice could be provided by the local governments affected and the WAPC, and the right of review could be retained. This is considered a more open and transparent process for dealing with these applications.

#### Conclusion

There is a lack of evidence to demonstrate that development assessment panels are needed in WA in the form proposed. Further, the rationale for the implementation the panels is flawed.

It is suggested that the panels should along the lines of that suggested in the *Building a Better Planning System* paper, and be used to determine applications that are legitimately of state or

regional significant, or where local governments are clearly not meeting appropriate performance benchmarks.

## 6.3 DEVELOPMENT ASSESSMENT PANELS

*Report submitted by City of Wanneroo*

### BACKGROUND

#### Implementing Development Assessment Panels in Western Australia

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File Ref:	S27/0062V01
Responsible Officer:	Director, Planning and Sustainability
Disclosure of Interest:	Nil
Author:	Len Kosova
Meeting Date:	13 October 2009
Attachments:	1

#### Issue

To consider and respond to the Department of Planning's recently released discussion paper "Implementing Development Assessment Panels in Western Australia".

#### Background

In March 2009, the Department of Planning (DP) released the "Building a Better Planning System" consultation paper, which set out a range of proposed planning reform initiatives. One of the initiatives identified was the introduction of independent development assessment panels (DAPs) to deal with significant development applications. According to the Department, fifty submissions were received on this proposal, the majority of which requested more detail on the operation of the panels and the types of applications that would be referred to panels for determination.

On Friday 11 September 2009, the Minister for Planning announced the release of the discussion paper "Implementing Development Assessment Panels in Western Australia". The discussion paper sets out the DAP model that the State Government is committed to implementing in Western Australia. Public comment is being sought on the discussion paper until 2 November 2009.

A copy of the discussion paper was previously circulated to all Elected Members under separate cover. A copy of the "Questions and Answers" leaflet that accompanies the discussion paper is included as **Attachment 1**.

The discussion paper makes it clear that DAPs will be mandatory in Western Australia and that comments are not being invited on whether DAPs should be introduced, but rather on the manner in which DAPs are proposed to operate. It is stated in the discussion paper that feedback received will be used to inform the drafting of enacting regulations to support the introduction of DAPs.

#### Detail

The key elements of the proposed DAP model are outlined below:

1. Two different types of panels will be established – Local Development Assessment Panels (LDAPs) and Joint Development Assessment Panels (JDAPs). LDAPs will 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 panel. A LDAP is currently only proposed for the City of Perth.

JDAPs will be established to determine applications made to two or more local governments that are not considered by the Minister to be high-growth local governments and do not have enough development to support their own LDAP. The discussion paper proposes that a JDAP would be established to cover the City of Wanneroo, City of Joondalup, City of Stirling and Town of Vincent.

2. Development assessment panels will deal with “*complex applications that will require specialist determination and will have significant impacts on the local or regional area*”. DAPs will determine all development applications valued at \$2 million or more, where approval is required under a local planning scheme or a region planning scheme. Hence, the panel will be the decision-making body in place of the local government (in the case of an application under a local planning scheme), or the Western Australian Planning Commission (WAPC) (in the case of applications under a region planning scheme). The only development that will be exempt from the need to be determined by a DAP will be single houses, development of up to 10 ‘complying’ (i.e. with the Residential Design Codes) grouped or multiple dwellings, and minor applications, such as carports, shade sails, outbuildings and sheds.
3. Panels will consist of five members, comprising a chairperson (who must be a specialist member), two additional specialist members and two local government representatives, nominated by the respective local governments. The Minister will appoint all panel members and will appoint the chairperson and deputy chairperson. Specialist members will be appointed from a register maintained by the Minister, following a call for expressions of interest. All members will be appointed for a two-year term with an option to extend by an additional year (at the Minister’s discretion).
4. In the case of joint development assessment panels, two local government representatives will be appointed from each member local government. Local government members will only sit on the panel when the application being determined by the panel has been made under their local planning scheme.
5. Sitting fees of \$400 will be paid to specialist members and \$500 to the chairperson. No sitting fee will be paid to local government representatives.
6. The costs of operating DAPs will be borne by local government. The discussion paper suggests that these costs can be funded from the development application fees already collected by local government. Local government is also expected to provide the secretariat support for DAPs and the venues for panel meetings. In the case of joint DAPs, the secretariat will be rotated between member local governments on a six-monthly basis. Further, technical staff from each local government will need to attend panel meetings to present their reports and provide any clarification that may be required. Panel meetings will be open to the public, unless a confidential item is being discussed. It is expected that panels will meet either monthly or fortnightly, depending on the number of applications to be determined and the statutory timeframes for determining them. Panels will operate for as long as the Minister determines is appropriate.
7. The Department of Planning will prepare a Code of Conduct to govern the standards that panel members must abide by. The Department will also prepare an annual report summarising approval trends and the performance of each panel.
8. DAPs will make decisions in accordance with the existing planning framework, including local and region planning schemes and having regard to relevant local and State planning policies.
9. The local government or the WAPC will be responsible for assessing each application, preparing a report for the DAP’s consideration, administering any conditions of approval

imposed by the DAP and for responding to any applications for review (appeals) arising from panel decisions.

10. DAPs will have the right to engage specialist experts to prepare reports to assist in the decision-making process, at the expense of the relevant local government to which the application relates.
11. The Minister will have the right to 'call in' any development application that would ordinarily be determined by a DAP, where the Minister believes the project will have impacts beyond a single local government area. Under this arrangement, applications will be assessed by the local government and referred to the DAP for consideration. The panel will then submit a report containing its advice and recommendation to the Minister. There will be no right of review to the State Administrative Tribunal (SAT) available against the Minister's decision.

The stated objectives of the proposed DAP model are to:

- (i) Streamline the determination process for particular types of development applications, by eliminating the requirement for two decision-makers to make a decision on the same development application where the provisions of both local and region planning schemes apply;
- (ii) Involve independent technical experts in the determination process, in accordance with the Development Assessment Forum (DAF) leading practice model;
- (iii) Encourage an appropriate balance between independent professional advice and local representation in decision-making for significant projects; and
- (iv) Reduce the number of complex development applications being determined by local governments, to allow local governments to focus their resources on strategic planning.

Additionally, the "Questions and Answers" leaflet accompanying the discussion paper suggests that the DAP model will address the following alleged faults with the existing development assessment system:

- (a) Lack of transparency in local government delegated decision-making arrangements;
- (b) Lack of resources and technical expertise available to local government to assess large-scale complex development applications in a timely manner;
- (c) Local representation or opposition influencing outcomes for large-scale, potential controversial developments; and
- (d) Dual approvals that are currently required for a range of developments from both the local government and the WAPC.

### **Comment**

The City, in its response to the "Building a Better Planning System" consultation paper, expressed its strong opposition to the blanket introduction of development assessment panels. Administration still maintains this same position and is of the view that development assessment panels should only be introduced in circumstances where the development assessment process or decision-making body is failing to meet established performance requirements.

To properly measure the performance of each local government, the State should (in the first instance) mandate the reporting of development assessment data and decisions by local government, in a consistent form, to establish performance benchmarks. Panels could then be introduced in those areas where performance benchmarks are not being met. This approach would be similar to the New South Wales model for planning assessment panels, where the Minister has the power to appoint a panel or planning administrator in the following instances:

- (a) where, in the opinion of the Minister, the Council has failed to comply with its obligations under the planning legislation;

- (b) where, in the opinion of the Minister, the Council has unsatisfactorily performed its development assessment or planning role;
- (c) where the Independent Commission Against Corruption has written a report recommending the appointment of a panel due to serious corrupt conduct by a councillor in connection with the exercise of functions by the Council; or
- (d) where the Council agrees to the appointment.

The table below provides a summary of the total number and value of development applications determined by the City of Wanneroo in the past three financial years and identifies those applications that would now need to be referred to a DAP for determination.

Year	Total no. of applications determined	No. of DAP applications	Total value of all applications	Total value of DAP applications	No. of DAP applications determined under delegated authority	Average assessment time for DAP applications
2006/07	991	30	\$309M	\$153M	30	15 days
2007/08	1144	29	\$679M	\$527M	29	73 days
2008/09	883	19	\$443M	\$285M	19	49 days
<b>Total Ave:</b>						<b>45.7 days</b>

The above table illustrates that, in the past three financial years, 2.58% of all development applications determined, were of a type that would now need to be referred to a DAP for determination. All such applications were determined by City staff, under delegated authority from Council and in accordance with District Planning Scheme No. 2 requirements and adopted Council policies. The average timeframe over the past three years for determining those applications was 45.7 days. This is well within the 60 day statutory timeframe afforded by the Scheme. Referral of such applications to a DAP would, in all likelihood, have increased the timeframe for determination due to the need for staff to prepare and submit formal reports to the panel for a decision and to attend panel meetings to present the reports.

Administration provides the following comments in response to the stated objectives of the proposed DAP model (as outlined in the Detail section of this report):

- (i) Although DAPs will act as the single decision-maker in place of both the local government and the WAPC for certain types of applications, they will not (in themselves) eliminate the need for two separate approvals, under local and regional planning schemes. This is a severe shortcoming of the current planning system to which the State Government's planning reform efforts should be directed to addressing.
- (ii) The City employs a broad range of technical experts to assess and determine development applications. It is, however, accepted that not all local governments will possess the same resources and expertise as the City of Wanneroo and, as such, may benefit from access to the technical experts (specialist members) of DAPs.
- (iii) Administration is of the view that an appropriate balance already exists in the City of Wanneroo between independent professional advice (provided by staff) and local representation (through elected members) in decision-making for significant projects. Both Administration and Council give careful and balanced consideration to all development applications and make determinations on the basis of the facts at hand and the individual merits of each proposal, not by adopting a populist approach to decision-making.
- (iv) The introduction of DAPs will reduce the number of 'complex' development applications being determined by local governments, simply because the power to make those decisions will be transferred to panels. However, the workload involved in determining these applications will actually increase, as technical staff will still need to undertake a detailed assessment of each application (as they currently do), but will then also need to prepare a report to the panel and attend a panel meeting to present the report. This

represents an increase in the actions and time taken to make a determination under delegated authority.

Administration provides the following comments on the alleged faults with the existing development assessment system, which are outlined in the “Questions and Answers” leaflet accompanying the discussion paper (as summarised in the Detail section of this report):

- (a) Any lack of transparency in local government delegated decision-making arrangements can be addressed by legislating for the mandatory reporting of all development application data by local government, in a consistent format that would enable comparison and benchmarking of performance between local governments. Introducing DAPs will only provide transparency for a miniscule proportion of development applications.
- (b) The City of Wanneroo employs a large multi-disciplinary team of technical experts capable of efficiently and effectively assessing large-scale complex development applications.
- (c) It is reasonable and appropriate in a democratic system of governance for decision-makers to have due regard to public sentiment on development applications. In fact, local planning schemes typically list this as one of the many matters to be taken into account when the local government makes a determination on a development application.
- (d) As mentioned earlier, the introduction of DAPs will do nothing to extinguish the current need for dual approvals under both local and regional planning schemes; that can only be achieved by legislative change and/or amending the relevant region scheme.

A summary of the various sections of the discussion paper and Administration’s comments thereon is included as **Attachment 2**. Although Attachment 2 includes numerous comments on individual elements of the State Government’s proposed DAP model, Administration’s position on the model can best be summarised as follows:

1. As a precursor to the blanket implementation of DAPs, the State Government should legislate for the mandatory reporting of all development application data by local government, in a consistent format that would enable comparison and benchmarking of performance between local governments.
2. Following a review and publishing of local government development application data, DAPs should be implemented in areas where the development assessment process or the local government is underperforming, or where the local government agrees and/or has insufficient resources or technical expertise to assess large-scale complex development applications. In this regard, the New South Wales model for planning assessment panels is supported.
3. In those instances where DAPs are introduced, consideration should be given to expanding the range of applications determined by the panel, to ensure maximum benefit in terms of streamlining the development assessment process.
4. The proposed Ministerial ‘call-in’ power for applications of State or regional significance is not supported, nor is the absence of any right of appeal against the Minister’s decision in respect of such applications. Instead, it is recommended that a high-level expert panel be established to determine applications that are truly of State or regional significance, with a right of appeal available to the applicant against the panel’s decision.
5. Consideration should also be given to:
  - (a) Making changes to and providing clarification on certain aspects of the proposed DAP model, including – increasing the monetary cut-off from \$2 million to \$4 million; ensuring local government representatives are paid sitting fees equivalent to specialist members; ensuring panel membership comprises equal specialist and local government representation; the State Government contributing to the funding and resourcing of DAPs; the State Government providing clarification as to the

- assessment and reporting responsibilities for applications referred to a DAP for determination that would have otherwise been determined by the WAPC;
- (b) Making legislative changes to eliminate the need for dual approvals under local and regional planning schemes;
  - (c) Ensuring that the WAPC's delegation of authority to local governments is reviewed and expanded to include DAPs;

### **Statutory Compliance**

A range of legislative changes will be required and new regulations enacted to implement the State Government's proposed model for Development Assessment Panels.

### **Strategic Implications**

### **Policy Implications**

Nil

### **Financial Implications**

The State Government's model for the implementation of Development Assessment Panels will increase the City of Wanneroo's cost of development assessment. These costs are unbudgeted and would be both direct and indirect. Direct costs will be incurred from member sitting fees (which could range from \$3,900 to \$7,800+ depending on the frequency of panel meetings and the number of paid members); copying and postage charges; advertising charges and the cost of any technical reports commissioned by the panel. Indirect costs include secretariat support, technical support and staff time to prepare reports and attend panel meetings.

### **Voting Requirements**

Simple Majority.

### **Recommendation**

**That COUNCIL, ENDORSES the comments provided in Attachment 2 as the basis for the City's response to the Department of Planning's discussion paper "Implementing Development Assessment Panels in Western Australia" and ADVISES the Department and the Minister for Planning that, in respect of the proposed model for Development Assessment Panels:**

- 1. Council does not support the introduction of Development Assessment Panels in the form proposed in the discussion paper, but would support a system of Development Assessment Panels similar to that introduced in New South Wales;**
- 2. As a precursor to the implementation of Development Assessment Panels, Council recommends that the State Government legislate for the mandatory reporting and publishing of development application data by local governments, in a consistent format that would enable comparison and benchmarking of performance between local governments;**
- 3. Following a review of local government development application data, Council would support the implementation of Development Assessment Panels in areas where the development assessment process or the local government is underperforming, or where the local government agrees and/or has insufficient**



resources or technical expertise to assess large-scale complex development applications;

4. In those instances where Development Assessment Panels are introduced, Council recommends that consideration being given to expanding the range of applications determined by the panel, to ensure maximum benefit in terms of streamlining the development assessment process.

**Attachment 2 to item 6.3  
Implementing Development Assessment Panels – Discussion Paper Comment**

Section	Summary	Administration Comment
<p><b>1. – Introduction</b></p>	<p>Submissions received on the <i>Building a Better Planning System</i> consultation paper supported the proposal to implement development assessment panels in Western Australia. Most submitters were eager to see more detail on the proposed model, in order to further understand the impact that the introduction of these panels would have on the current planning system.</p>	<p>This first sentence is misleading and inaccurate. Advice received from the Department of Planning indicates that, of the 50 submissions received on this matter in response to the earlier consultation paper, 13 submissions were either opposed to or raised significant concerns on the introduction of development assessment panels. A further 7 submissions expressed only qualified support and requested further details regarding the role, membership and operation of the panels.</p> <p>With regard to the second sentence, if most of the submissions on this matter in the previous consultation paper requested more detail in order to better understand the proposal, it would seem like a logical step for the State Government to first invite meaningful comment on the purpose, function and value of development assessment panels, before declaring that such panels <u>will</u> be mandated across the State.</p>
<p><b>3. – Current development approval process</b></p> <p>3.1 – Requirement for dual approval</p>	<p>Local governments are responsible for the determination of development applications made under local planning schemes. Local governments also have some responsibility for determining development applications under region planning schemes where that power has been delegated by the WAPC. Some applications, however, require the dual determination of both the local government under its local planning scheme and the WAPC under the regional planning scheme (for example, proposals subject to “<i>Clause 32</i>” resolutions under the Metropolitan Region Scheme).</p>	<p>The abolition of dual approvals for development applications was identified as Action 1.17 in the “<i>Building a Better Planning System</i>” consultation paper. The City, in its response to that consultation paper, strongly supported this action, on the basis that generally only local government approval should be required.</p> <p>In the vast majority of instances, the determination by a local government of a development application under a local planning scheme will already serve as an automatic and equivalent determination under the relevant region planning scheme, such as the Metropolitan Region Scheme (MRS).</p> <p>It would be possible to remove dual approvals by any one of the following actions, without introducing DAPs:</p> <ul style="list-style-type: none"> <li>• Expanding the range of authority that the WAPC has delegated to local governments to make decisions under region schemes;</li> <li>• Eliminating or reducing the number and extent of “<i>Clause 32</i>” resolutions;</li> <li>• Increasing the range and type of development that is exempt from the need to obtain approval under the MRS.</li> </ul> <p>It is acknowledged that the introduction of DAPs will indeed create a single decision-making body for applications that currently require determination by both local government and the WAPC. However, it is</p>

		<p>questionable whether any time will actually be saved in the assessment process, because technical staff from both the local government and the WAPC/DP will still need to assess and report on the application to the DAP.</p> <p>If the statutory need for dual approvals is not eliminated, then DAPs will provide virtually no benefit in terms of streamlining the processing of development applications that require approval under both local and region planning schemes. It is strongly recommended that steps are taken to reverse the duplicity that exists in the need for development approvals between local and region planning schemes. In the meantime, the enacting legislation for DAPs should clearly stipulate that any determination of the DAP under a local planning scheme is also an automatic and equivalent determination under the region planning scheme. Further, the WAPC's existing delegated authority to local government should be expanded to include DAPs, where applicable.</p> <p>The discussion paper states that DAPs will take the place of the WAPC as the decision-maker in respect of development applications made under the relevant region planning scheme. However, the discussion paper is silent on who would perform the assessment of those applications, which is currently performed by staff of the DP.</p> <p>It is entirely unreasonable for the State Government to expect local governments to undertake the assessment that is currently performed by staff of the DP in respect of applications that require WAPC determination; particularly given that the discussion paper claims the introduction of DAPs will reduce local government assessment workload and provide time for local governments to focus on strategic planning and policy development.</p>
<p>3.2 – Local Government resources</p>	<p>In many instances, local governments may have insufficient resources and expertise to assess highly complex development applications. In addition, overly administrative internal decision-making processes can delay applications in small local governments.</p>	<p>The City of Wanneroo does not fall within either of these categories. The City employs a large multi-disciplinary team of experienced, qualified professionals that are capable of efficiently and effectively assessing large and complex development applications. The introduction of a DAP will not improve the City's existing development application process.</p> <p>If DAPs are to be of any value in improving local government development application processes, then they should be focused on those decision-making bodies that are unable to meet agreed performance standards. DAPs in those instances should also be responsible for determining a broader range of development applications than the type and value specified in the discussion paper.</p>
<p><b>4.1 – Local Development Assessment Panels (LDAPs)</b></p>	<p>The Minister for Planning will establish LDAPs for high-growth local governments, based on population and development application data.</p> <p>On the basis of data collected to date, a LDAP is only proposed for the City of Perth.</p>	<p>Administration questions how and when the population and development application data was collected by the Department of Planning and whether that information was collected for all local governments?</p> <p>The collection and reporting of uniform data from all local governments is essential for determining the performance of existing development assessment and decision-making processes, and therefore the need (or not) on a performance basis, for the</p>

		<p>introduction of DAPs in certain local governments. This is supported by Action 1.19 of the <i>Building a Better Planning System</i> consultation paper (“Development decisions tracked and reported”).</p> <p>The Discussion Paper proposes that a Joint DAP would be established for the Cities of Wanneroo, Joondalup and Stirling and the Town of Vincent (see comment in response to Section 4.2).</p>
<b>4.2 – Joint Development Assessment Panels (JDAPs)</b>	The Discussion Paper proposes that the City of Wanneroo would be part of JDAP with the Cities of Joondalup and Stirling and the Town of Vincent.	<p>The proposed JDAP would cover some 900 square kilometres and more than 500,000 residents (30% of Perth’s population).</p> <p>Based on application data for the past 3 financial years, the JDAP would deal with only 2.5% of development applications assessed by the City, all of which were determined under delegated authority in an average of 45 days. Referring these applications to a JDAP would not likely result in any reduction in assessment timeframes or difference in decisions, than would otherwise have occurred.</p>
4.2.1 – How will JDAPs be established?	<p>The Minister for Planning will establish JDAPs for two or more local governments, where the Minister believes that neither local government has the development assessment workload to support an individual LDAP. The Minister’s decision will be based on an assessment of available population and development application data.</p> <p>The JDAPs are designed to assist local governments to focus their resources on strategic planning and policy issues by providing an alternate decision maker for complex development applications.</p>	<p>Administration supports the establishment of DAPs based on development application data and the performance of each local government’s assessment and decision-making processes. However, it appears this assessment has not occurred.</p> <p>DAPs should be introduced where the type of development is of such significance as to truly warrant this approach, or where the existing approvals process or decision-making body is underperforming.</p> <p>The establishment of a JDAP will not assist the City in focussing more on strategic planning and policy development, as the City Growth service unit already undertakes that work, altogether separately from the assessment of development applications by the Planning Implementation service unit.</p> <p>Officers will still need to assess applications and prepare reports to the JDAP for consideration, in addition to attending JDAP meetings and providing administrative and technical support. This will impact on City resources and will not generate more efficiencies or different decisions.</p>
4.2.2 – What applications will JDAPs determine?	The types and value of applications are outlined in the Detail section of this report.	<p>The specified type and value of applications is arbitrary and not supported, as the significance and complexity of a development cannot readily be determined by its value. Development can, by its nature, be significant or potentially have a major impact on a community regardless of its value.</p> <p>The <i>Building a Better Planning System</i> document, released for comment by the State Government in March 2009, indicated that DAPs were being considered for introduction where “major projects”:</p> <ul style="list-style-type: none"> <li>• Are likely to face significant approval delays and may be highly contentious; or</li> <li>• Where the local government lacks the technical capacity to undertake an appropriate level of assessment.</li> </ul> <p>It is recommended that a qualitative ‘performance test’ be developed (either instead of or in addition to the \$2 million threshold) to determine the types of applications that should be referred to a DAP for determination. Possible criteria for such test could</p>

		<p>include:</p> <ul style="list-style-type: none"> <li>• Where the application is contrary to or represents a material departure from an endorsed regional-level planning position, strategy or policy;</li> <li>• Where significant delays in the assessment process would be likely under a local government assessment and would unacceptably compromise the project's security and viability, due to matters such as reliance on and acquittal of grant funding;</li> <li>• Where the proposal is, in the opinion of the Minister for Planning, a project of State or regional significance;</li> <li>• Where the application requires separate determination from both the WAPC and the local government;</li> <li>• Where the application requires local government and multiple State Government agency approvals, such as WAPC and DEC approvals. This is supported by Action 2.5 of the <i>Building a Better Planning System</i> consultation paper ("Integrate state planning and environmental approvals and appeals processes").</li> </ul> <p>If the State Government insists on maintaining a monetary threshold for development applications that are referred to DAPs, then it is recommended the value of applications be increased from \$2 million to \$4 million, as this is considered more representative of a 'significant' application.</p>
4.2.3 – How many members will sit on the JDAP?	<p>Five in total (unless varied by the Minister), comprising a Chairperson (specialist member), Two additional specialist members and Two local government members.</p> <p>Two local government members would be appointed from each of the local governments covered by the JDAP. The local government representatives from each Council would only sit on the panel when the applications being determined relate to their local government area.</p>	<p>Membership should comprise an equal number of specialist members and local government representatives, with the Chairperson able to make a casting vote in the event of a deadlock.</p> <p>It will be difficult for just two or three local government members to represent the position of each local government in the same way as the Council provides relativity in Elected Member representation for its community.</p>
4.2.4 – How long will JDAPs operate?	<p>For as long as the Minister determines is appropriate. The Minister will also have the power to expand the membership to include additional local governments or to exclude an existing local government in place of its own LDAP.</p>	<p>The annual reporting of each panel should be used as the basis for an annual review of the value and effectiveness of each panel. If it is identified that panel decisions are being made less efficiently than the local government has previously made them and if the decisions of the panel are no different than would otherwise have been made (or recommended) by the local government, then the decision-making function should be returned to the relevant local government. Nevertheless, the City's fundamental position on DAPs remains the same – that DAPs should only be introduced in areas where the existing development application process or decision-making body is not meeting agreed performance standards.</p>
<b>4.3 – How will local and joint DAPs operate?</b>		
4.3.1 – Panel Membership	<p>Each member would be appointed by the Minister for a two-year term, with an option to extend his or her appointment by an additional year (exercised by</p>	<p>The two-year panel membership term could be staged to coincide with the local government election cycle. However, there may also be merit in extending the membership term beyond two years for specialist members, to ensure greater member familiarity and</p>

	<p>the Minister).</p> <p>The Chairperson will always be an independent member, and the Minister will appoint a deputy chair from the two remaining specialist members.</p> <p>Specialist members will be appointed by the Minister from a register created and maintained by the Minister, following a call for expressions of interest.</p> <p>Each individual local government will need to nominate two Elected Members as its two representatives.</p> <p>All panel members will be voting members and will be required to attend mandatory training.</p>	<p>understanding of local planning schemes, policies and issues.</p>
<p>4.3.2 – Panel accountability</p>	<p>Panel meetings will be open to the public and held in a public place (such as a local government meeting room).</p> <p>A Code of Conduct will be developed to govern the procedures of the panels, which will address (among other things) disclosures of interest and lobbying of panel members.</p> <p>Panels will be required to produce annual reports.</p>	<p>As the location of panel meetings will rotate between each member local government, the meetings (when not held in the City of Wanneroo) will be less accessible to the City's residents. The discussion paper states that meetings will be held at least monthly, but is silent on meeting times. It is expected that each panel will determine their own meeting times. Meetings will most likely need to be held out of office hours to provide the optimum opportunity for public attendance. This will unnecessarily increase the number of after-hours meetings that local government elected members and officers need to attend.</p> <p>The Discussion Paper states that a record of meetings and voting outcomes (i.e. Minutes) will be kept and made publicly available, but is silent on whether the agenda papers will be publicly available.</p> <p>If one of the State Government's drivers for introducing DAPs is to ensure more accountability and transparency in local government decision-making processes (particularly for decisions made under delegated authority), then mandatory reporting of development assessment processes and performance should be introduced as a first step. The establishment of mandatory DAPs will not provide any additional benefit in terms of performance and benchmarking of decision-making bodies.</p>
<p>4.3.3 – Panel Technical Support</p>	<p>Technical staff from the local government and the WAPC (where applicable) will prepare a report and recommendation on applications for the panel's consideration and determination. The technical officers will be required to attend the panel to present the application and provide any clarification that may be required.</p> <p>Given the 60 day statutory timeframe for determination, reports will need to be submitted no later than 55 days after lodgement of the application.</p>	<p>This process will unnecessarily complicate and delay the City's existing development assessment and determination process.</p> <p>The City employs a large multi-disciplinary team of competent, qualified and experienced technical staff to efficiently and effectively assess and determine development applications. The DAP will need to rely on the specialist advice of these technical officers and will therefore not likely provide any added benefit to the assessment and determination of applications, than what already exists. However, the City accepts this may not be the case for all local governments. The City questions the authority and ability for DAPs to incur expenditure on behalf of local governments, to commission external technical reports. The legal and financial management implications of this</p>

	<p>If local expertise is not available to assess the application, the panel may engage a suitable expert(s) to prepare reports on particular technical issues, at the expense of the relevant local government.</p>	<p>proposal need to be examined more closely.</p>
<p>4.3.4 – Panel Secretariat Support</p>	<p>Secretariat support will be provided by the relevant local governments on a six-monthly rotational basis.</p> <p>Applications will be lodged with the relevant local government. The secretariat support for the DAP will then be responsible for coordinating applications onto the relevant DAP agenda and forwarding relevant technical papers for determination.</p>	<p>This process will unnecessarily complicate and burden the administrative staff of the relevant local governments involved in the Joint DAP.</p> <p>If the State Government intends to introduce mandatory DAPs then those panels should be properly resourced by the State, rather than the cost of operating those panels being borne by local government.</p>
<p>4.3.5 – Panel Administration Costs</p>	<p>The relevant local governments will be required to contribute to the payment of costs and expenses incurred by the panel. Development application fees normally paid to the local government will be used to cover the costs of the panels.</p> <p>The Department for Planning will be responsible for preparing guidance documents and processes relating to the operation of DAPs, and to undertake a monitoring role and coordinate the annual reporting process.</p>	<p>The Discussion Paper is silent on the basis on which each local government would need to contribute to panel expenses. Further clarification is required in this regard.</p>
<p>4.3.6 – Panel sitting fees</p>	<p>It is proposed that sessional fees (per panel meeting) of \$400 will be paid for specialist members and \$500 for the chairperson. No sitting fee is proposed to be paid to Elected Members as their role on the panel is considered to be in keeping with their position.</p>	<p>If the Joint DAP meets on a monthly basis, the sitting fees would amount to \$15,600 per annum, or \$31,200 if the panel meets twice per month. If divided equally between the four member local governments, this would equate to \$3,900 and \$7,800 per annum per local government, respectively. These costs are currently un-budgeted and would need to be taken into account in future financial years.</p> <p>It is unreasonable to suggest that the local government representatives should not be paid, as the DAP would not constitute a local government committee and would impose an additional workload on the appointed elected members, over and above that of other elected members not appointed to the DAP.</p> <p>If DAPs are to be introduced, the elected members appointed to them should receive a sitting fee equivalent to that paid to the specialist members, in recognition of the workload involved with their participation on the panel.</p>
<p>4.3.7 – Panel Code of Conduct</p>	<p>A code of conduct will be drafted to govern the acceptable standards of conduct, behaviour and integrity of panel members.</p>	<p>It will be essential for panel members to be bound by a code of conduct; just as local government elected members and officers are bound by codes of conduct.</p>
<p>4.3.8 – Panel quorum and meeting frequency</p>	<p>The quorum for meetings will be three members, comprising the chairperson (or deputy chairperson), one specialist</p>	<p>Panels will need to operate in accordance with clear meeting processes and protocols, addressing a range of matters, including quorum, meeting frequency and rules of debate. Local government Standing Orders</p>

	<p>member and one local government member.</p> <p>Meeting frequency will be determined by the individual DAP, having regard to the number of applications referred to it and the statutory timeframes within which applications need to be determined. It is envisaged that panels will meet at least monthly.</p>	<p>Local Laws provide a sound basis for the drafting of such guidelines.</p>
4.3.9 – Panel Members Training	<p>Panel members will be required to attend mandatory training before being appointed to a DAP.</p>	<p>The City supports this initiative and recommends that the training include familiarisation of panel members with each local government area, schemes and policies to which their decisions will relate.</p>
4.3.10 – Panel reporting on performance	<p>Each panel will need to report on its decisions to the relevant local government, the WAPC and the Minister for Planning.</p> <p>The Department for Planning will prepare an annual report to be tabled in Parliament, which will summarise trends and review the performance of each panel.</p>	<p>The City supports this initiative and recommends that local governments first be required to report on their own performance in respect of development applications, so that DAPs are only introduced for those local governments that are unable to meet prescribed performance requirements. This is consistent with the New South Wales model for planning assessment panels.</p>
<b>4.4 – Will panels be bound by the existing planning framework?</b>	<p>Yes, DAPs will be required to make decisions in accordance with the relevant regional or local planning scheme and will be required to take into account any local or State planning policy.</p>	<p>This being the case, the City considers there is no merit in introducing mandatory DAPs where the existing planning and decision-making process is operating efficiently and effectively. The City does, however, consider there to be a strong case for introducing DAPs in circumstances where existing processes or decision-making bodies are not meeting desired performance benchmarks.</p>
4.4.1 – Appeals	<p>Decisions of a DAP will be subject to a right of appeal, in the same way that local government decisions are. In the case of an appeal against a DAP decision, the local government (or the WAPC where applicable) will be responsible for defending the DAPs decision through the State Administrative Tribunal.</p>	<p>This is a reasonable proposition and consistent with existing practice regarding decisions made by Council. However, clarification should be provided in respect of the potential for the local government to call DAP members as witnesses when responding to appeals.</p>
<b>4.5 – Applications of State or regional significance</b>	<p>The Minister will have the power to ‘call in’ any application of a class prescribed in the regulations as being a project of State or regional significance (having impact beyond a single local government area). Applications made in respect of such proposals will be assessed by the relevant DAP and determined by the Minister.</p> <p>There will be no right of appeal against the Minister’s decision.</p>	<p>If a Ministerial ‘call in’ power is to be introduced for projects of State or regional significance, stakeholder comment should first be invited on the prescribed classes of application that would be captured by this power.</p> <p>The City is strongly opposed to the proposition that the Minister’s decision would not be subject to a right of review. It is recommended that a high-level expert panel be established to deal with development applications that are truly of State or regional significance (rather than by the Minister alone), with a right of review available against the panel’s decision.</p>

## **7. WALGA STATE COUNCIL AGENDA – MATTERS FOR DISCUSSION**

*(Zone delegates to consider the Matters for Decision contained in the WALGA State Council Agenda and put forward resolutions to Zone Representatives on State Council)*

### **Matters of Particular Interest on State Council Agenda**

#### **4.1 State Government Proposal - Implementing Development Assessment Panels in Western Australia (05-036-03-0020 AH)**

**(Moved Mayor David Boothman / Seconded Cr Tracey Roberts)**

- 1. That the Minister for planning and director general of the department of planning be advised that the North Metro Zone does not support the introduction of development assessment panels in the form proposed, as it is considered that the panels will provide little or no benefit to local government, the community or the development industry as it is considered that they will not increase transparency of decision making beyond what is already provided by local government and will not necessarily improve the timeliness or quality of decisions; and would incur additional cost and resources to local government and remove local determination;**
- 2. That the Zone may consider a model similar to that of New South Wales including variations, but not limited to the following:**
  - a. As a precursor to the implementation of Development Assessment Panels, the Zone recommends that the State Government legislate for the mandatory reporting and publishing of development application data by local governments, in a consistent format that would enable comparison and benchmarking of performance between local governments; and**
  - b. Following a review of local government development application data, the Zone would support the implantation of Development Assessment Panels in areas where the development assessment process or the local government is underperforming, or where the local government agrees and/or has insufficient resources or technical expertise to assess large-scale complex development applications.**
- 3. Further consultation with local governments take place to assist in developing a practical and efficient model; and**
- 4. that the comments in the attachments from the Cities of Joondalup, Stirling and Wanneroo be included in WALGA's submission to the Department of Planning on the Development Assessment Panels discussion paper.**

**The motion was put and CARRIED**

#### **5.1 Directions 2031: Draft Spatial Framework for Perth and Peel (05-036-03-0020 BF)**

**(Moved Cr Elizabeth Re / Seconded Cr Frank Cvitan)**

- 1. The North Metropolitan Zone suggest that WALGA's submission on the Directions 2031: draft spatial framework for Perth and Peel focus on the**



- strategic nature of the framework and not specifically Local Government authorities; and**
- 2. That WALGA request the Minister for Planning to re-establish a State/Local Government consultative committee to assist with the implementation of the Directions 2031: draft spatial framework for Perth and Peel.**

The motion was put and CARRIED

## **5.2 Draft State Planning Policy: Activity Centres for Perth and Peel (05-036-03-0020 BF)**

**(Moved Cr Elizabeth Re / Seconded Cr Alan Blencowe)**

- 1. The North Metropolitan Zone suggest that WALGA's submission on the Draft State Planning Policy: Activity Centres for Perth and Peel focus on the strategic nature of the framework and not specifically Local Government authorities; and**
- 2. That WALGA request the Minister for Planning to re-establish a State/Local Government consultative committee to assist with the implementation of the Draft State Planning Policy: Activity Centres for Perth and Peel.**

The motion was put and CARRIED

**(Moved Cr Elizabeth Re / Seconded Cr Alan Blencowe)**

State Council items 5.3, 5.4 and 5.5 are endorsed en bloc and State Council Items for noting were noted en bloc.

The motion was put and CARRIED

## **8. WALGA STATE COUNCIL MEMBERS' REPORTS**

The Chair, Mayor Troy Pickard briefed the meeting on the WALGA President's Report for September/October 2009. The WALGA President's report was appended to the agenda.

## **9. GENERAL BUSINESS**

The Chair, Mayor Troy Pickard briefed the meeting on the Local Government election process due on 17 October, and in particular explained the terms of office for State Councillors.

## **10. DATE, TIME & PLACE OF NEXT MEETING**

The next meeting of the North Metropolitan Zone will be held at the City of Wanneroo at 6.00 pm on Thursday 26 November 2009.

## **11. CLOSURE**

There being no further business, the Chair declared the meeting closed at 7:50pm.