

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><u>Transparency of decision making:</u> 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>
<p><i><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.</i></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</p>

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	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><u><i>Appropriate balance between local representation and professional advice in decision-making:</i></u> <i>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.</i></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><i>Dual approvals:</i></u> <i>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 schemes.</i></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>

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.

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.