

Preferred Model

Third Party Appeal Rights for decisions made by Development Assessment Panels

Benefits of Third Party Appeal Right for decisions made by Development Assessment Panels

- The model provides a good test for the introduction of Third Party Appeal Rights, which could possibly be expanded later if it proves to be beneficial.
- Local Government would be able to appeal a DAP decision and defend the merits of their policies and defend the enforceability of their conditions.
- Other interested parties and community members would be able to appeal a DAP decision.
- Addresses community concerns that decisions are being made by those 'removed' from the local community, leading to improved community confidence in the system.
- More transparent process in both decision making and condition setting, resulting in more accountable DAP members.
- Would allow for an appeal to be made on the conditions of approval or refusal
 - i) that may have been removed from a RAR; or
 - ii) added to the decision, particularly where no liaison has occurred with the authority responsible for clearing or enforcing the condition; or
 - iii) applied inappropriately i.e. the condition would change the intent or design of the development and therefore a new application should have been lodged.
- Limits appeal rights to larger, more complex applications and would filter out 'smaller' impact applications which could potentially overburden the system.
- Provides the opportunity for additional information to be included in the appeal process, particularly if information was not received before the DAP meeting.
- Provides the ability to challenge any new information being presented at the DAP meeting without the responsible authority being able to undertake any assessment of the new information (unassessed revised plans are currently being lodged and approved at meetings).
- Able to appeal the 'Deferral' process being over utilised, i.e. DAPs are tending to defer applications multiple times rather than making a decision to approve or refuse the proposal.
- Can give the Local Government more confidence that the developer will provide a fully complete application and discuss the application with the Local Government first, rather than relying on the DAP to condition the proposal requiring additional critical information.

Appellants in a Third Party Appeal

Should not be open to any interested party but be limited to those parties which previously made a submission.

- Should be available for a Responsible Authority where DAP has gone against the RAR; or
- Should be available for a Local Government where DAP has gone against the position of Council itself; or
- Should be available to a public authority (e.g. Main Roads WA, Department of Transport) where DAP has made a decision contrary to their advice.

If any appellant makes a submission

- SAT would need to ensure that appeals are made on valid planning grounds and are not made for commercial or vexatious reasons.
- A Preliminary Hearing could be used to see if the appeal has reasonable planning merit, which would assist in providing clarity for an appellant on what constitutes a valid planning consideration and what would be an invalid planning consideration. The Preliminary Hearing could consider the appellant's justification for submitting the appeal, in particular, whether the grounds of appeal are supported by documentary evidence or other material (a similar process for justifying the lodgement of an appeal already exists through Section 76 of the *Planning and Development Act 2005*).

What can be appealed?

- DAP applications that are compulsory over \$10 million for JDAPs and \$20 million for City of Perth DAP; or
- DAP applications in the optional threshold \$2m – 10m for JDAPs and in the City of Perth \$2 million - \$20 million; or
- DAP applications seeking amendments to approvals (Form 2 applications proposing a change to the development application, but should not include applications for an extension of time).

Timeframe to lodge an appeal

- As per the existing timeframe, an appeal on a decision made by a Development Assessment Panel should be lodged within 28 days of the decision being made public, ie publishing of the DAP minutes.
- Local Governments would need to determine within their own organisation what process to follow in order to decide whether or not to lodge an appeal against a DAP decision. In many cases this may require a Special Council meeting to determine this.

For procedural fairness reasons all parties should be involved.

- The third party - Local Government or
- The third party - another interested party
- The respondent (DAP)
- The applicant

If the appellant is another interested party, then the Local Government should be invited as an observer.

Costs

- Any appellant would need to cover their costs of initiating the appeal, attending SAT directions, mediation and hearings, and costs could also include obtaining expert advice.
- A third party appellant should be counselled as part of the Preliminary Hearing in relation to the potential for costs being awarded against them in the case of an unsuccessful appeal.

Appeals Process



Flowchart

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