

2.1: DEVELOPMENT ASSESSMENT PANELS – UPDATE ON IMPLEMENTATION (VERSION 2)

- Land Description** : N/A
Proponent : City of Albany
Attachments :
 - Planning Bulletin 106/2011 – New legislative provisions for development assessment panels.
 - Incoming correspondence from Minister for Planning, Culture and the Arts requesting Local Government Nominations for Development Assessment Panels.**Responsible Officer** : Executive Director Planning & Development Services (G Bride)

IN BRIEF

- The WA Planning Commission has recently released Planning Bulletin 106 which provides an overview of the new provisions relating to the introduction of Development Assessment Panels (DAPs).
- The implementation of Development Assessment Panels requires the City to consider nominating two Councillors and two Alternate members (by 13 June 2011) to be City of Albany representatives on the Development Assessment Panels.
- The recommendation is to note the information contained in the Planning Bulletin and nominate representatives for appointment by the Minister onto the Great Southern Joint DAP.

ITEM 2.1: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council;

1. **Nominates Councillors _____ and _____ as the City of Albany representatives on the Great Southern Joint Development Assessment Panel, and Councillors _____ and _____ as alternate members; and**
2. **Advises the Minister for Planning of such nominations.**

CEO:

RESPONSIBLE OFFICER:

BACKGROUND

1. The State Government has been pursuing amendments to the planning system to improve its efficiency. The proposed amendments have been the subject of previous consideration by the City, in particular the introduction of compulsory Development Assessment Panels (DAP's) to determine development applications within the City. The Council opposed their introduction.

2. Development Assessment Panels (DAPs) are scheduled to become operational on 1 July 2011. The City of Albany is part of the Great Southern Joint Development Assessment Panel which consists of the following local governments:
 - City of Albany
 - Shire of Broomehill-Tambellup
 - Shire of Cranbrook
 - Shire of Denmark
 - Shire of Gnowangerup
 - Shire of Jerramungup
 - Shire of Katanning
 - Shire of Kent
 - Shire of Kojonup
 - Shire of Plantagenet
 - Shire of Woodanilling

DISCUSSION

3. There are essentially three types of applications under *Planning and Development (Development Assessment Panels) Regulations 2011*:

Type	Threshold Value
Mandatory DAP Applications (i.e. not an excluded development application)	\$7 million or more
Optional DAP Applications (i.e. not an excluded development application; or that has not been delegated by a local government to a DAP)	Between \$3 - \$7 million
Election to DAP (an applicant can elect to refer a development application in the Optional type above to a DAP for determination)	Between \$3 - \$7 million

4. The regulations define an excluded development application (i.e. not required to be referred to a DAP for determination) as follows:
Means a development application for approval of:
 - (a) *Construction of:*
 - (i) *A single house and any associated carport, patio, outbuilding and incidental development;*
 - (ii) *Less than 10 grouped dwellings and any associated carport, patio, outbuilding and incidental development;*
 - (iii) *Less than 10 multiple dwellings and any associated carport, patio, outbuilding and incidental development; or*
 - (b) *Development in an improvement scheme area; or*
 - (c) *Development by a local government or the Commission; or*
 - (d) *Development in a district for which:*
 - (i) *A DAP is not established at the time the application is made; or*
 - (ii) *A DAP has been established for less than 60 days at the time the application is made;*
5. Where a DAP is established in a district, any DAP application must be determined by the DAP as if they are the responsible authority; and cannot be determined by the local government or WA Planning Commission. All applications with a value of \$7m or more are subject to mandatory referral to the DAP.
6. All applications are to be lodged with the local government including payment of application fees. The applications will attract an additional fee (contained in the regulations) to the existing local government planning application fee.
7. The local government then advises the DAP secretariat (i.e. WA Planning Commission) and completes any advertising, referral, report writing and recommendation on how the application should be determined (i.e. approve/refuse, conditions etc.)-similar to what the City would do in preparing a Council Report.
8. The DAP then make its determination and advise the local government and applicant accordingly. The owner may apply to the DAP to have the determination amended or cancelled. In addition, the person who made the DAP application may apply to the State Administrative Tribunal for a review of the DAP decision.
9. *Part 3 Delegation to DAPs*
This part enables local government to delegate to a DAP an application(s) for determination as set out in the delegation.
10. *Part 4 Development Assessment Panels*
This part sets out the requirements for DAP membership (both local government and specialist members) and their appointment by the Minister etc. It also contains details on meetings, member's fees/allowances and DAP member conduct/powers etc.

11. The Joint DAP will consist of five members with one presiding member, two specialist members and two local government members. The local government's membership will depend on the location of the development applications being determined at the time.
12. Local government members will be rotated on and off the panel to ensure that local knowledge that is relevant to the application is on each panel. Only two representatives from local government can be on the panel.
13. If the Council fails to nominate two representatives, the Minister has the power to appoint two members to the DAP to represent the interests of the local community. These alternative representatives must be eligible to vote in elections for that local area and have relevant knowledge or experience that, in the opinion of the Minister, will enable them to represent the interests of their local community.
14. The period of appointment for DAP members is two years. At the expiration of two years, the Council will be required to nominate two local government members as well as two alternate members. The same individuals may be renominated for the position.
15. Following appointment, all DAP members will be required to undertake training on the Western Australian DAP legal framework and planning decision-making. DAP members cannot sit on a DAP and determine applications until they have attended training. It is understood that a DAP training manual will be provided, which will include the DAP regulations, the Standing Orders, Code of Conduct and DAP member procedures manual. The timing and location of this training for local government members of the DAP has not yet been established but is expected to commence shortly and will be first made available to those with a high-volume of applications.
16. In regards to annual Council elections, should within the two year term, a local government DAP member is not re-elected, they cannot hold the position of local DAP member. Should this occur, advice from the Department of Planning is that the alternate DAP member will take the place of the former DAP member. If both former and alternate members are not re-elected, the local government will need to renominate other Councillors for the Minister to appoint. The Department advises the Council should consider the above in selecting nominees as local DAP members.
17. The Minister will utilise a working group to assist in selecting the specialist DAP members. Once the specialist members have been appointed by the Minister, each local government will be advised.
18. Only the presiding member can comment on the actions or determination of a DAP.
19. *Part 5 Administration*
This part sets out the administrative process for DAPs including support of DAPs, enforcement provisions, powers of the Minister and reporting requirements for the Department of Planning.

20. *Part 6 Miscellaneous*

This part contains the transitional arrangements and Department for Planning review of fees and regulations (required after two years of operation).

21. The timing of meetings has not yet been established but indications are that frequency would be determined by the number of applications being referred. City of Albany representatives would only need to attend meetings when an application is being considered from the City. In the advertising for specialist members it was identified that they may be required to travel on short notice and it is likely that this would also apply to local government members. At this stage the agenda for a DAP meeting is to be made public at least five days before the meeting.
22. Applications to a DAP will incur an additional fee above the fee currently charged by the City for a development application. This fee will be used to cover the costs of administering the DAP process and will be forwarded to the WA Planning Commission accordingly. If the City elects to refer an application to a DAP, then the City will be responsible to pay that fee.
23. All DAP meetings will be open to the Public.
24. The City would be responsible to “host” the DAP meetings relevant to the City of Albany and provide administrative assistance. The City can invoice the DAP Secretariat for costs incurred in hosting a DAP meeting including for the minute taker, light refreshments and security (where necessary).
25. Members of the DAP will receive sitting and training fees in accordance with the fees prescribed in the Regulations. The current amount prescribed for members (not the Presiding member) is \$400 per meeting. A Fee of \$400 will also be paid for attending and completing training.
26. A member of the DAP is also entitled to be reimbursed for motor vehicle and travel expenses at the rate decided by the Public Sector Commissioner for members of Government boards and committees.
27. A member of DAP cannot be paid (unless the Minister has given written consent to the payment) if that member is also;
- a. an employee as defined in the Public Sector Management Act 1994; or
 - b. an employee of a department or other agency of the Commonwealth; or
 - c. a local government employee; or
 - d. a judicial officer or retired judicial officer; or
 - e. an employee of a public academic institution.

GOVERNMENT CONSULTATION

28. No consultation with government is required to be undertaken in relation to this item.

PUBLIC CONSULTATION / ENGAGEMENT

29. No consultation with the public is required to be undertaken in relation to this item.

STATUTORY IMPLICATIONS

30. The statutory implications associated with this item are:

- *Planning and Development Act 2005 and associated Regulations*
- *Planning and Development (Development Assessment Panels) Regulations 2011*
- *Local Planning Scheme No's 1A,2, 3, 3.2B & 7*
- *Local Government Act 1995 and associated Regulations*

STRATEGIC IMPLICATIONS

31. There are no known strategic implications arising from the recommendations of this report.

POLICY IMPLICATIONS

32. There are no known policy implications arising from the recommendations of this report.

FINANCIAL IMPLICATIONS

33. The DAP application fee is in addition to the fee currently charged by the City for a development application as set out in the annual Budget 'Schedule of Fees and Charges' and will not affect the income for planning applications.

34. Costs incurred in hosting a DAP meeting may be claimed back by invoicing the DAP Secretariat which should minimise the procedural cost.

ALTERNATE OPTIONS & LEGAL IMPLICATIONS

35. Council has the following options in relation to this information:

Option A

To note the information and nominate member and alternates for appointment as City representatives on the Joint Great Southern DAP.

Option B

To note the information and decline to nominate member and alternates for appointment as City representatives on the Joint Great Southern DAP.

36. It is recommended that Option A be pursued to ensure that the City is represented at any DAP meeting. The alternative at Option B, to decline to nominate members, may see the Minister appoint replacements from eligible voters in the City, rather than Councillors which would effectively totally remove the City from the decision-making process.

SUMMARY CONCLUSION

37. The formation of a Great Southern Joint DAP is imminent and the City should proceed to nominate 2 Councillors as members and 2 Councillors as alternate members for appointment onto the Great Southern DAP.

Consulted References	Planning and Development (Development Assessment Panels) Regulations 2011
File Number (Name of Ward)	GOV 093 (All Wards)
Previous Reference	OCM 20/10/2009 – Item 13.1.2