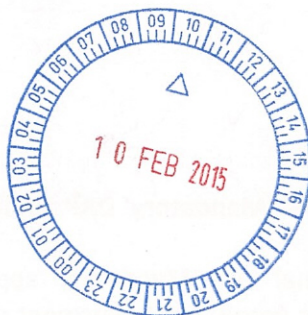


Our Ref: ACT12, PLA 79
Contact: Michelle Teoh



5 February 2015

Shire of Broome
ABN 94 526 654 007

27 Weld Street
PO Box 44
Broome, WA, 6725
Phone: (08) 9191 3456
Fax: (08) 9191 3455
shire@broome.wa.gov.au
www.broome.wa.gov.au

Ms Samantha Parsons
Committee Clerk
Standing Committee on Uniform Legislation and Statutes Review
GPO Box A11
Perth WA 6837

Dear Samantha,

Shire of Broome Submission – Review of Development Assessment Panels (DAPs)

The Standing Committee on Uniform Legislation and Statutes has advised they are seeking written submissions on the operation and effectiveness of Development Assessment Panels.

The *Planning and Development Act 2005* (The Act) part 11 Clause 171A to 171F and *The Planning and Development (Development Assessment Panels) Regulations 2011* (Regulations 2011) apply to the establishment, operation and function of DAPs. *Town Planning Regulations 1967* (Regulations 1967) Appendix B – Model Scheme text Part 10 provide direction on the procedures for dealing with applications.

On 28 September 2011 an application for a Tourist Development, on Lot 2785 Murray Road, Cable Beach, Broome was the first application to be determined by the a DAP in WA. Since then the Kimberley Joint Development Assessment Panel (JDAP) has determined a further three applications for development within the Shire of Broome, these being:

- 17 February 2012 - Various works within the Browse LNG Precinct, Lot 259 Wattle Drive Water bank Shire of Broome
- 4 April 2013 – Proposed 857 person Transient Workforce Accommodation Facility and associated fly camp, Lot 283 Broome Road, Roebuck, Shire of Broome, and
- 23 January 2014 - Drilling Fluids Facility, Portion of Lot 621, Port Drive and Portion go Lot 698 Port Drive, Minyirr, and Shire of Broome.

The issues that are of concern to the Shire relate to Regulation 2011, Regulation 1967 and the DAP standing orders, being:

1. Definition of 'Optional' and 'Mandatory' and DAP applications
2. Further Information Requests
3. Operation of the DAP Pre-meeting Discussions
4. Term of Local Government Members
5. Training of DAP Members
6. Submission of RA Report
7. Further Services from the RA

1. Definition of 'Optional' and 'Mandatory' DAP applications

The determination of 'Optional' and 'Mandatory' applications is based on the estimated construction dollar value. It is noted the Department of Planning (DOP) is foreshadowing in Stage 2 of the Planning review that thresholds would change to 'Optional' \$2 to \$10million and 'Mandatory' \$10million and above.

The Shire considers the thresholds applied do not deliver efficiencies to the development process. Large industrial developments frequently come within the optional thresholds. Such applications while warranting careful technical assessment are not complex.

Recommendation: The thresholds are changed to better capture only development considered to be of 'regional' or 'state' significance.

2. Further Information Requests

Regulation 10 requires that the application made to the Responsible Authority (RA) must be in accordance with Form 1 (Schedule 3).

Regulation 12 (4) allows the Presiding member, with the consent of the Applicant, to extend the period within which the report on a DAP application may be made.

At the time of the formation of the DAPs the Shire sought clarification about how applications with insufficient information can be handled. The DOP advised Applicants are likely in all instances to hold prelodgement meetings with the Shire prior to submitting the application. Therefore at this time DOP contended there would be ample opportunity for the Shire to seek further information and provide direction on what information must be submitted with the application. The Shire has found this assumption of DOP that applicants will, in most instances, have pre-lodgement discussions to be incorrect.

When an Applicant does not agree to an extension of time to obtain the additional information this can result in the DAP deliberating on an application and, contrary to orderly and proper planning, conditioning an approval instead of making a decision in full knowledge of the necessary details.

Regulation 2011 contains no provision to 'stop the clock' on the statutory processing time when a request for further information is issued. The current assumption is that at the time of requesting an extension the RA or the Applicant is able to determine when the information can be provided. In instances when further technical advice is required this up front assumption about delivery time can be incorrect.

Recommendation: Regulations 2011 be amended to include a provision to 'stop the clock' on statutory processing time when a request for further information is issued.

3. Operation of the DAP Pre-meeting Discussions

The JDAP deliberations on applications within the Shire of Broome have always included a site inspection which is also attended by the RA and Applicant. Sometimes local members are present and sometimes not. During the site inspection DAP members ask questions of

both the RA and Applicant about the site and proposed development. These questions and responses are not always inclusive of all DAP members.

A similar situation arises when the DAP members convene to a pre-meeting room to take refreshments etc. A DAP member can seek further clarification from the RA representative but the question(s) and response(s) are not inclusive of all DAP members.

The Shire of Broome (Policy 1.2.13) establishes procedure for such pre meeting sessions (Council agenda forums) as follows

Agenda Forums shall not be open to the public and therefore no debate on the items shall be entered into during the Agenda Forum there shall be no opportunity for a collective Council decision or implied decision that binds the local government. Fundamental to this decision is that any debate shall be held at Council meetings so as to ensure the public in attendance at a Council meeting can see and hear the decisions and debate around Council decisions

The purpose of the Agenda Forum is to allow questions in relation to the item or to request further information from the Chief Executive Officer (employee) in relation to the item in a collective environment.

Recommendation: The DAP Standing Orders be updated to include a process that is inclusive of all present DAP Members whether during site visits or pre DAP meeting discussions.

4. Term of Local Government Members

Regulations 23, 24 and 29 reference the appointment of Local Government members and the term of office.

Nominations are currently being sought by the DOP for the next 2 year cycle that will commence on 28 April 2015. Local Government elections are held in October of every second year. Council then, convene a meeting to nominate representatives to committees in accordance with the Councillor accordance with *Local Government Act 1995*. The nomination of representatives for DAP could occur at the same time. The 'off cycle' nomination requirements of current DAPs nomination process can require Council to convene a Special Council Meeting to ensure nominations are lodged within the requirement timeframes.

Recommendation: The nomination of DAP local members be co-ordinated within the local government election and subsequent meeting cycle.

5. Training of DAP members

When DAPs were first established the DOP held a one day training session for all nominated local members. Recent advice from DOP indicates replacement members are to be trained prior to the convening of any DAP meeting. It is unclear whether standard levels of training continue to be applied.

Recommendation: A procedure be established that sets out the process for delivery of training for new DAP members.

6. Submission of RA Report

Regulation 12 (3) specifies the number of days by which the RA report must be submitted to the DAP – these timeframes and the Regulation 1967 statutory timeframes (Model Scheme text clause 10.9) make no allowance for days when the RA office is closed for public holidays or other circumstances.

DAP applications have been lodged with the Shire just prior to the Christmas/New Year shut down (25 December to 1 January). As a result, it has been difficult to ensure (when relevant) that government agencies review and provide comment in a timely manner. This has a flow on effect to officers seeking to ensure the delivery of a professional RA report.

Recommendation: The Act be amended to exclude public holidays and the period between 25 December to 1 January from the statutory determination days and the associated requirement or the lodging of the RA report.

7. Further Services from the Responsible Authority

Regulation 13 states *Presiding member of a DAP may, at any time after the DAP is notified of a DAP application made to a responsible authority, direct the responsible authority to give to the DAP either or both of the following services in connection with the application.....*

When a DAP application is lodged, as required by Regulation 2011, copies are forwarded to the DAP Secretariat. The Shire assumes the Secretariat then notifies the respective DAP members of the application, which property it relates to and the proposed development.

There should be no requirement of any DAP member to seek technical advice / assistance or information in writing prior to the completion of the RA report. Subsequently further services or technical advice may be warranted if there are gaps in the RA report details or rationale.

The Shire has only had to respond to questions after the lodgment of the RA report, in some instances the questions asked highlight, despite the details being provided in the RA report, DAP members not familiar with the region seem to require additional confirmation about site and local conditions.

Recommendation: Regulation 13 be amended to state as follows *Presiding member of a DAP may, at any time after the RA Report is forwarded direct the responsible authority to give to the DAP either or both of the following services in connection with the application ...*

Should the Committee have any further questions in respect of these matters please contact Manager Planning Services Michelle Teoh (08) 9191 3449.

Regards,



Andre Schonfeldt
Director Development Services