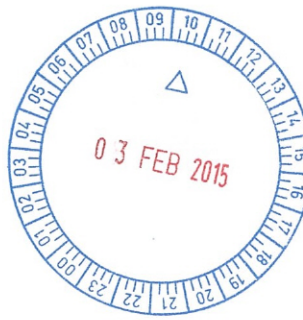


Enquiries: Fiona Mullen  
Our Ref: FM 1644313



30 January 2015

Ms Samantha Parsons  
Committee Clerk  
Standing Committee on Uniform Legislation and Statutes Review  
Legislative Council  
Parliament House, GPO Box A11,  
PERTH WA 6837

Dear Ms Parsons

**Standing Committee on Uniform Legislation and Statutes Review  
Planning and Development (Development Assessment Panels) Regulations  
2011**

At the meeting of the Joint Council meeting held on Tuesday 27 February 2015, Council resolved that the following recommendation and report (copy enclosed), formed the City of Mandurah's submission to the above Standing Committee:

**RECOMMENDATION**

**That:**

1. The Standing Committee on Uniform Legislation and Statutes Review inquiry into the Planning and Development (Development Assessment Panels) Regulations 2011 be advised that the City of Mandurah welcomes the opportunity to provide a submission in relation to the operation of the Regulations.
2. This report forms the submission to the Inquiry, noting that the following forms the basis of Councils' submission:
  - 2.1 An additional regulation be inserted to allow applicants to 'opt-out' of the DAP process, subject to criteria;
  - 2.2 Clarification is required in relation to Regulation 12(2) to confirm that the RAR is the responsibility of the local government administration (officers);
  - 2.3 The ability for local governments to delegate the determination of a development application to a DAP, where the local government is also the land owner, should be simplified by the amendment of DAP Form 1 Part B;
  - 2.4 Clause 5.2.3 of the Development Assessment Panel: Procedures Manual 2013 to be amended to require (as a minimum) site visits be undertaken in instances where submissions have been received;

**2.5 Development Assessment Panel Practice Notes: DAP Standing Orders 2012 be amended to indicate that additional information must be lodged at least 72 hours prior to a DAP meeting; and**

**2.6 In circumstances where deputations are made during a DAP meeting, detailed minutes must be kept.**

Yours sincerely

A handwritten signature in black ink, appearing to be 'Fiona Mullen', written in a cursive style.

Fiona Mullen  
**Manager Planning & Land Services**

Enc. Copy of Report

**10      SUBJECT:**                      Submission to the Standing Committee on Uniform Legislation and Statutes - *Planning and Development (Development Assessment Panels) Regulations 2011*

**CONTACT OFFICER/S:**      Fiona Mullen

**AUTHOR:**                      Fiona Mullen

**FILE NO:**                      1620393

---

### **Summary**

The Standing *Committee* on Uniform Legislation and Statutes Review has commenced an inquiry into the *Planning and Development (Development Assessment Panels) Regulations 2011* (the Regulations) and will report back to the Legislative Council by 14 May 2015.

Submissions may be made in relation to how the Regulations have operated since being introduced and also suggestions for amendments to the Regulations and reasons for suggesting amendments.

Council is requested to endorse this report as the City of Mandurah's submission on the Regulations.

### **Disclosure of Interest**

Nil

### **Previous Relevant Documentation**

- G.28/10/09                      13 October 2009              Council made a submission in response to the Department of Planning's discussion paper entitled 'Implementing Development Assessment panels in Western Australia (dated September 2009).
- G.22/10/14                      28 October 2014              Council delegated to Officers endorsement of Responsible Authority Reports with 'call-in' provision.

### **Background**

As part of the State Governments aim to streamline and improve the planning approvals process, the Approvals and Related Reforms (No 4) (Planning) Act commenced on 22 November 2010. Part 3 of the 2010 Amendment Act contained the heads of powers required to introduce development assessment panels (DAP's) in Western Australia through the making of regulations by the Governor. Subsequently, the Planning and Development (Development Assessment Panels) Amendment Regulations 2013 (the Regulations) were gazetted on 25 January 2013, which followed a review of the new system and aimed to address ambiguities concerning amongst other matters, uncertainty surrounding Responsible Authority Reports.

### **Comment**

The City is supportive of an Inquiry into the operation of the Regulations, given that a number of issues have arisen with the administration of the regulations.

Accordingly the following comments and recommendations outline the key points of submission to the Inquiry and include a number of recommendations:

#### **Mandatory DAP applications (Act s.171A(2)(a))**

The City has considered a number of development applications which fell within Part 2 Regulation 5 (c) which were compliant with the provisions of Town Planning Scheme 3, did not require advertising and would ordinarily have been considered under delegated authority, however, due to the estimated cost of development, required to be considered by the DAP, thereby adding additional timeframe to the assessment.

In such instances, it is therefore recommended that an additional regulation allows applicants to elect to 'opt-out' of the DAP process, akin to Regulation 7 *Election in respect of r.6 application*.

#### Council endorsement of the Responsible Authority Report (Regulation 12)

Regulation 12(2) of the Regulations requires that the local government to which a development application has been made must provide a Responsible Authority Report (RAR) to the presiding member. Practice Note 9 published by the Department of Planning (the Department) advises that it is ultimately a matter for each responsible authority (being the relevant local authority and/or the Western Australian Planning Commission (WAPC)) to decide who is to submit the RAR.

Practice Note 9, *2013 DAP Amendment Regulations* published by the Department of Planning, advises:

*"12. As outlined in Practice Note 5, Regulation 12 Responsible Authority Reports ...there are ambiguities as to who is specifically responsible for submitting a regulation 12 Responsible Authority Report ('RAR') where regulation 12(2) merely states:*

*(2) A responsible authority to which a DAP application is made must give the presiding member of the DAP that will determine the application a report on the application in a form approved by the CEO.*

*13. As noted in Practice Note 5, ultimately it is a matter for each responsible authority, being the relevant local government and/or the WAPC, to decide who is to submit the RAR.*

*14. It was the original intention of the DAP Regulations that the report be provided by a local government planning officer, not necessarily by Council. However, it has been suggested that absent any delegation arrangements [sic], Council may or shall endorse a RAR prepared by the planning officer. Whenever possible, Councils are encouraged to have sufficient delegation arrangements in place to facilitate a timely approvals process".*

The City has determined (following legal advice) that Officers provide Elected Members with the ability to 'call in' an application for consideration by Council, with Council determining whether to endorse or not endorse the RAR. Should Council not endorse a RAR, the reasons are provided to the DAP for consideration. A survey of a number of Councils within Western Australia indicates that the majority of Councils do not consider RAR's, with view being that the preparation of a RAR is the responsibility of the administration.

It is therefore recommended that the Regulations be clarified to confirm that the RAR is the responsibility of the administration (Officers). Should such clarification be forthcoming, the option for Council to 'call-in' the application would still remain and Council would still be able to endorse or not endorse a development application.

#### Delegation to DAPs (Regulation 19)

Part 3 Regulation 19 (2) of the Regulations – Delegation to DAP's, provides for local governments to delegate to a DAP the power to determine a development application that is made to a local government, and Council recently made such a request in relation to a development application lodged over land that is owned by the City and in relation to which Council has recently approved the sale of the land.

The ability to delegate to a DAP requires a decision with an absolute majority (as defined in the *Local Government Act 1995* section 1.4) and subsequent publication of a notice in the Government Gazette. In requesting the application be determined by a DAP, the City is endeavouring to ensure probity in the decision making process, as owner of the land over which the application is being made.

The exercising of the power to delegate to the DAP has resulted in significant delays in the determination of the application, and to date the notice has not been published. As such, in order to ensure that the

process by which a development application may be delegated to a DAP where a local government is the owner of land over which a development application has been lodged is simplified, the DAP Form 1 Part B is amended with the only requirement of the local government being to require a decision by absolute majority, with a requirement to only submit the minutes of the meeting.

#### Site Visits

Clause 5.2.3 of the Development Assessment Panel: Procedures Manual 2013, states that:

##### *"5.23 Site Visits*

*Where a highly complex DAP application is made, or the application is contentious, the Presiding Member may consider that a site visit to the development will better enable the DAP members to fully understand and determine the application"*

However, the Regulations are silent in respect of the requirement to undertake a site visit prior to a meeting and whilst this is an operational element, it is considered appropriate, particularly where the submissions have been received that a site visit is required to be undertaken.

#### Acceptance of late items

In the operation of DAP meetings within the Peel JDAP, the City has experienced a number of occasions where late information has been submitted to the Panel to address either conditions, or specific concerns raised within RAR's. As such, Members and Officers have been required to consider additional information within a very short timeframe and/or draft conditions during the meeting which is not considered to be appropriate for considered decision making.

The Development Assessment Panel Practice Notes: DAP Standing Orders 2012, does not specifically reference the acceptance or otherwise of late information, or indeed submissions by applicants other than Clause 3.5 (reference r.40 (3)) which relates to Submissions or presentations at meeting, which states that a presentation request must be made at least 72 hours before the commencement of a meeting. It is considered appropriate that this period be extended to the submission of additional information.

#### General comment

Regulation 44(1) of the Regulations states that *Accurate Minutes of a meeting of a DAP must be kept*, however the City's experience is that the minutes associated with DAP's are minimal and do not accurately reflect the proceedings, to the extent that the content of deputations were not fully minuted, notwithstanding that the minute officer provided detailed minutes.

Whilst it is acknowledged that a standardised approach is required, it is recommended that particularly where deputations are made, more detailed minutes should be kept.

#### **Statutory Environment**

Planning and Development (Development Assessment panels) Regulations 2011 (as amended)

#### **Policy Implications**

Nil

#### **Economic Implications**

Nil

## **Strategic Implications**

The following strategies from the *City of Mandurah Strategic Community Plan 2013 – 2033* are relevant to this report:

### Leadership:

- Demonstrate leadership on major regional, state and national issues.

### Organisational Excellence:

- Deliver excellent governance and financial management.

## **Conclusion**

The City is supportive of an Inquiry into the operation of the Regulations, given that a number of issues have arisen with the administration of the regulations and in particular, a recent request to delegate the determination of an application from the City of Mandurah to the Peel Joint Development Assessment Panel (DAP's).

Council is therefore requested to endorse the recommendations of this report as the City's submission to the Standing Committee on Uniform Legislation and Statutes Review inquiry into the *Planning and Development (Development Assessment Panels) Regulations 2011*.

## **RECOMMENDATION**

That:

1. The Standing Committee on Uniform Legislation and Statutes Review inquiry into the Planning and Development (Development Assessment Panels) Regulations 2011 be advised that the City of Mandurah welcomes the opportunity to provide a submission in relation to the operation of the Regulations.
2. This report forms the submission to the Inquiry, noting that the following forms the basis of Councils' submission:
  - 2.1 An additional regulation be inserted to allow applicants to 'opt-out' of the DAP process, subject to criteria;
  - 2.2 Clarification is required in relation to Regulation 12(2) to confirm that the RAR is the responsibility of the local government administration (officers);
  - 2.3 The ability for local governments to delegate the determination of a development application to a DAP, where the local government is also the land owner, should be simplified by the amendment of DAP Form 1 Part B;
  - 2.4 Clause 5.2.3 of the Development Assessment Panel: Procedures Manual 2013 to be amended to require (as a minimum) site visits be undertaken in instances where submissions have been received;
  - 2.5 Development Assessment Panel Practice Notes: DAP Standing Orders 2012 be amended to indicate that additional information must be lodged at least 72 hours prior to a DAP meeting; and
  - 2.6 In circumstances where deputations are made during a DAP meeting, detailed minutes must be kept.