



Development Assessment Panels

July 2011

Introduction

- Development Assessment Panels (**DAPs**) became operative on 1 July 2011.
- DAPs are governed by the Planning and Development Act 2005, and the Planning and Development (Development Assessment Panels) Regulations 2011 (**DAP Regulations**).

Types of DAPs

- A Local Development Assessment Panel (LDAP), which is set up for one local government area.
- A Joint Development Assessment Panel (JDAP), which is set up for more than one local government area.

Types of Applications

There are three types of DAP applications.

Type	Monetary threshold	Excluded application	Commentary
Mandatory	\$7 million or more except City of Perth \$15 million or more in City of Perth	<ul style="list-style-type: none"> • Single house or incidental development • Less than 10 grouped dwellings • Less than 10 multiple dwellings 	The Applicant has no choice – all applications which satisfy the monetary limit and are not excluded applications will be determined by the relevant DAP.
Optional	\$3 million - \$7 million except City of Perth \$10 million - \$15 million in City of Perth	<ul style="list-style-type: none"> • Development by a local government or the WAPC. 	The Applicant has the choice to 'opt-in' to the DAP system.
Delegated	\$3 million - \$7 million except City of Perth \$10 million - \$15 million in City of Perth	<ul style="list-style-type: none"> • Development in an improvement scheme area. • Development in a redevelopment scheme area. 	The original decisionmaker can delegate its decision-making powers to a DAP. At this stage, no delegations have been made.



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Jurisdiction of the DAP

Planning instruments

The DAP has power to make decisions in relation to development applications pursuant to the following planning instruments:

- Local planning schemes;
- Region planning schemes;
- Local interim development orders;
- Regional interim development orders.

A DAP can only make decisions in relation to applications for development approval. It has no power to determine other types of applications made pursuant to local planning schemes, such as approval of structure plans.

Extra powers

While a DAP is generally bound by requirements of the planning instrument pursuant to which it is determining a development application, it does have some extra powers which are useful for developers.

These are in r.17 of the DAP Regulations. Regulation 17 allows an owner of land who has received a development approval from a DAP, to:

- Apply for an extension of time to substantially commence the development, even after the period of substantial commencement has ended;
- Apply to amend or delete a condition of the approval;
- Apply to amend the approval itself, provided the amendment is not substantial.
- Cancel the approval.

An application under section 17 costs \$150 to lodge.

These powers are very useful for developers. Most local planning schemes do not lawfully allow for the extension of time, or amendment of an approval once granted. Often it is the case that a new application must be lodged, with the full fee, for the local government to reconsider the application.

These r.17 powers should not be underestimated as they provide a degree of flexibility to developers.



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Constitution of DAPs

A DAP is made up of 3 specialist members, and 2 members from the local government to which the development application relates.

While a JDAP appears to be a large organisation, in practice, it will only ever sit and determine applications with a maximum of 5 members. At a DAP meeting where there are applications from several local governments, the 3 specialist members remain constant, and the 2 local government members change as the applications from different local governments are considered.

A DAP can sit as a quorum in circumstances where DAP members are unavailable or have a conflict which precludes them from voting. A quorum is 2 specialist members and 1 local government member.

DAP Meetings

Unlike local government council meetings, there is no set timetable of DAP meetings throughout the year. DAP meetings will be called when an application is lodged. The reason for this is that there may be months between DAP applications in some DAP areas.

DAP meetings are held in public. They will be held in the local government council chambers from which the DAP application was lodged. Where there are DAP applications from a number of local governments to be considered at the same meeting, the meeting is likely to be held at the local government of the earliest-lodged DAP application.

In regional and remote areas, it is more likely that DAP applications will be dealt with separately at the local government from which the DAP application was lodged, as it would be too onerous to require local government staff and any people wishing to make a submission on the application to travel long distances.

The agenda for DAP meetings will be posted on the Department of Planning's website at least 5 days before the DAP meeting.

Role of responsible authority

Report to DAP

The authority responsible for the scheme or interim development order in question (that is, a local government or the WAPC) is required to provide the DAP with a planning report, in much the same way as a local government planning officer prepares a report for a local government council meeting.

Regulation 12 requires the responsible authority to provide a report to the DAP. It has been stressed to local government that this should be a technical report by their planner, and not a resolution of the council as to whether they think the application should be approved.

If the council wants to have input, they are welcome to do so by the lodging of a submission on the application to the DAP.

The responsible authority's report must be provided to the DAP at least 10 days prior to the date upon which determination is due under the relevant planning instrument.



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Providing further information

The DAP can request further information from the responsible authority after it receives the responsible authority report, pursuant to r.13 of the DAP Regulations.

The presiding member of the DAP 'directs' the responsible authority to provide further information, and the time within which it must be provided.

Attendance at DAP meetings

The presiding member has the power to invite the CEO of a local government or the WAPC to attend a DAP meeting, and the CEO can either attend in person, or send a representative (usually likely to be the planning officer who prepared the responsible authority's report).

Reviews to the State Administrative Tribunal

A right of review is available to an application where a DAP has refused an application, or approved it subject to conditions which are unacceptable to the applicant.

The respondent in these proceedings will be the DAP, and not the local government or the WAPC. The State Solicitor's Office will be providing advice and representation of the DAP at the Tribunal, but depending on workload, my brief matters to private law firms.



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