2.5 IMPLEMENTING DEVELOPMENT ASSESSMENT PANELS IN WESTERN AUSTRALIA - CITY OF SWAN COMMENT

(All Wards) (Development Services)

KEY ISSUES

- In September 2009 the Minister for Planning announced the release of the discussion paper *Implementing Development Assessment Panels in Western Australia*, which outlines the model of Development Assessment Panels (DAPs) that the Minister has committed to implementing. Public comment is being sought on the discussion paper until 2 November 2009.

- The City of Swan does not consider that the DAP model proposed is a logical response to the identified issues, nor does the City consider that the model will achieve its stated objectives.

- Further, the City considers that the proposal significantly erodes the right of people to be involved in planning decisions which affect their community by putting elected representatives in a minority position in decision-making.

- The City does not consider that the proposed DAP application referral threshold of equal to or greater than $2 million will be effective in identifying projects which are contentious or of regional significance, and consider that this threshold requires reconsideration.

- The City does not support the implementation of the DAP model proposed, as it is significantly more extreme than models proposed in other Australian states, with no information provided to substantiate this radical proposition.

- The City does not consider that the proposed operation of DAPs is adequately flexible in meeting the needs of all WA Councils, and has made a number of recommendations that should be included within the final DAP framework prior to its implementation.

It is recommended that Council resolve to endorse the comments provided in this report as the basis for the City of Swan’s response to the Department of Planning’s discussion paper *Implementing Development Assessment Panels in Western Australia*; and advise the Minister for Planning that Council does not support the introduction of Development Assessment Panels in the form proposed in the discussion paper, but may be willing to support an alternative model more closely aligned with that introduced in New South Wales.

BACKGROUND

In March 2009 the Department of Planning (DoP) released the *Building a Better Planning System* consultation paper which set out a range of proposed planning reform initiatives that are aimed at improving the efficiency of the WA Planning
System. One of the key initiatives identified was the introduction of Development Assessment Panels (DAPs) to deal with:

- Development applications for significant or contentious developments that may face significant approval delays; and
- Cases where major projects are proposed but there is limited local government technical capacity to undertake an appropriate level of assessment.

The City of Swan provided comment on the *Building a Better Planning System* consultation paper in April 2009, recommending that further information be provided about the proposed DAPs through a discussion paper.

In September 2009 the Minister for Planning announced the release of the discussion paper *Implementing Development Assessment Panels in Western Australia*, which outlines the proposed justification for the introduction of DAPs in Western Australia and the proposed model that the Minister has committed to implementing. Public comment is being sought on the discussion paper until 2 November 2009.

The discussion paper, along with advice from the Department of Planning, has made it clear that DAPs will be introduced in Western Australia and that comments are being invited on the operational component only. It is stated in the discussion paper that feedback received will be used to inform the drafting and enacting of regulations to support the introduction of DAPs in Western Australia, which are to be progressed in mid 2010.

**Proposed Rationale for Implementation of DAPs**

The introduction of DAPs in Western Australia is a proposed response to what the DoP regard to be issues with the existing development assessment system. In summary, the proposed issues or faults with the existing system are reported to include:

a) A lack of transparency in local government delegated decision-making arrangements;

b) A lack of resources and technical expertise available to local government to assess large scale complex development applications in a timely manner;

c) The tendency for local representation or opposition to influence outcomes on large scale, potentially controversial development proposals; and

d) The onerous requirement for some development applications to be subject to dual approvals from both the local government and the WAPC.

The DoP proposes that each of the above issues will be addressed through the implementation of the DAP model in Western Australia, by:

a) Streamlining the determination process for particular types of development applications, by eliminating the requirements for two decision-makers to make a decision on the same development application where the provisions of both local and region planning schemes apply;

b) Involving independent technical experts in the determination process, in accordance with the Development Assessment Forum (DAF) leading practice model;
c) Encouraging an appropriate balance between independent professional advice and local representation in decision-making for significant projects; and

d) Reducing the number of complex development applications being determined by local government, thereby allowing local governments to focus their resources on strategic planning.

**Threshold for Development Application Referral:**

It is proposed that DAPs will deal with complex applications that will require specialist determination and will have significant impacts on the local or regional area. In the metropolitan region, all development applications equal to or greater than $2 million in value will be referred to a DAP, where those applications represent:

- All commercial, retail and office applications;
- All mixed use/centre applications (such as commercial, retail and residential);
- All industrial (including, but not limited to, light, service, extractive, general, noxious and rural industry) applications;
- All grouped dwelling or multiple dwelling applications of over 10 dwellings;
- Non-complying grouped dwelling or multiple dwelling applications of 10 or less dwellings;
- All aged and dependent persons dwelling applications;
- All infrastructure proposals;
- Applications requiring dual approval of the local government and the WAPC under the Metropolitan Region Scheme;
- Strategic land use, transport and infrastructure projects;
- Public works of State/regional significance where not exempt from local planning approval requirements; and
- All applications for hospitals, TAFEs, universities and non-government schools.

Those applications of equal to or greater than $2 million that will be exempt from the requirement for DAP approval will include:

- Applications for development approval for the purpose of one or more single houses, complying and non-complying;
- Applications for development approval for the purpose of not more than 10 complying grouped dwellings or multiple dwellings; and
- Minor applications, such as carports, shade sails, outbuildings and sheds.

**Proposed DAP Model:**
The discussion paper outlines that two different types of panels will be implemented in Western Australia, although there are relatively minor differences between the two models:

1. Local Development Assessment Panels (LDAPs) will be established to determine applications made to a single local government, where that local government is deemed by the Minister to be a high-growth Council with sufficient development to support its own Panel. An LDAP is currently proposed for the City of Perth only.

2. Joint Development Assessment Panels (JDAPs) will be established to determine applications made by two or more local governments that are not considered by the Minister to be high-growth local governments and do not have enough development to support their own LDAP. The discussion paper proposes that a JDAP would be established to cover the Eastern Metropolitan Region, which incorporates the City of Swan, Town of Bassendean, City of Bayswater, City of Belmont, Shire of Kalamunda and the Shire of Mundaring.

The panels will consist of five members, comprising of a Chairperson (who must be a specialist member), two additional specialist members and two local government Councillors nominated by the respective local governments. The Minister will appoint all panel members and will appoint the chairperson and deputy chairperson.

Specialist members will be appointed from a register maintained by the Minister, following a call for expressions of interest. All members will be appointed for a two-year term with an option to extend by an additional year (at the Minister’s discretion).

In the case of joint development assessment panels, two local government Councillors will be appointed from each member local government. Local government members will only sit on the panel when the application being determined relates to the local government area of those councillors.

**Operational Component:**

The costs of operating DAPs will be borne by local government. The discussion paper suggests that these costs can be funded from the development application fees already collected by local government.

Local governments are also expected to provide the secretariat support for DAPs and the venues for panel meetings. In the case of joint DAPs, the secretariat will be rotated between member local governments on a six monthly basis.

Technical staff from each local government will be required to attend panel meetings to present their reports and provide any clarification that may be required.

Panel meetings will be open to the public, unless a confidential item is being discussed. It is expected that panels will meet either monthly or fortnightly, depending on the number of applications to be determined and the statutory timeframes for determining them.

The specialist members will each be paid a sitting fee $400, with the chairperson paid a sitting fee of $500. Councillors will not be paid a sitting fee as it is considered to be a necessary part of their role as an elected representative.
The DoP will prepare a Code of Conduct to govern the standards that panel members must abide by. The Department will also prepare an annual report summarising approval trends and the performance of each panel.

The DAP will make decisions in accordance with the existing planning framework, including local and regional planning schemes, with due regard to relevant local and State planning policies. The local government or the WAPC will be responsible for assessing each application, preparing a report for the DAPs consideration, administering any conditions of approval imposed by the DAP and for responding to any applications for review (appeals) arising from panel decisions.

The Minister will have the right to ‘call in’ any development application that would ordinarily be determined by a DAP, where the Minister believes the project will have impacts beyond a single local government area. Under this arrangement, applications will be assessed by the local government and referred to the DAP for consideration. The panel will then submit a report containing its advice and recommendation to the Minister. There will be no right of review to the State Administrative Tribunal (SAT) available against the Minister’s decision.

REPORT

In response to the publication and request for comment on the *Implementing Development Assessment Panels in Western Australia* the City of Swan has drafted a number of comments and recommendations to be conveyed to the Department of Planning. These comments and recommendations are outlined below:

1. **Proposed Rationale for the Implementation of DAPs**

   The City considers that the proposed issues with the existing development approval process are borne from a severe misunderstanding of the development application system. Specific comments with regard to each issue are outlined as follows:

   a) **A lack of transparency in local government decision making arrangements:** The City of Swan has an endorsed delegation policy for statutory planning applications that is publicly available via the City’s website. All Council meetings are open for public attendance, and the minutes of Council meetings are recorded and made publicly available. The City would welcome any recommendations by the State Government on potential methods of making this system more transparent to the public. Decisions of local government can also be challenged in the State Administrative Tribunal.

   b) **A lack of resources and technical expertise available to local government to assess large scale complex development applications in a timely manner:** The City of Swan employs a wide range of highly experienced professionals that assist in the assessment of development applications, including officers dedicated to planning, engineering, natural resource management, environmental health and building. The City has in the past had a relatively minor issue with meeting assessment timeframes for some development applications, but this is being addressed through a review of the assessment framework and the implementation of the ePlanning project.
c) The tendency for local representation or opposition to influence outcomes on large scale, potentially controversial development proposals: The City considers that it is reasonable and appropriate in a democratic system of government for decision makers to have due regard to public sentiment on development applications. In fact, local planning schemes typically list this as one of the many matters to be taken into account when the local government makes a determination on a development application. Significant community involvement is an accepted component of planning decision-making around the world.

d) The onerous requirement for some development applications to be subject to dual approvals from both the local government and the WAPC: Dual assessments (rather than approvals) are required under various pieces of legislation, including the Metropolitan Region Scheme, most local planning schemes and the Swan Valley Planning Act. This situation will not be addressed without significant legislative change, which the City supports as an effective way of streamlining decision-making.

Dual approvals could be effectively eliminated by the WAPC delegating more decision-making to local government, but this has not been canvassed in the discussion paper.

Dual approvals by the Swan Valley Planning Committee will continue unaffected by the introduction of DAPs.

In addition to these points, the City also provides comment on the proposed benefits of the implementation of DAPs in Western Australia:

a) Streamlining the determination process for particular types of development applications, by eliminating the requirements for two decision-makers to make a decision on the same development application where the provisions of both local and regional planning schemes apply: The City of Swan does not support the proposal that the creation of a single decision making authority will alleviate the requirement for dual assessment of applications under local and regional planning schemes. As a result, the City is of the opinion that the DAP process will in no way streamline the determination process, and if anything will exacerbate the time taken for approval to be granted.

b) Involving independent technical experts in the determination process, in accordance with the Development Assessment Forum (DAF) leading practice model: The City employs a broad range of technical experts to assess and determine development applications, although it is recognised that some local governments may not be as well resourced in this regard. The City does not consider that the introduction of DAPs will be of benefit in terms of providing technical assistance in the determination process.

c) Encouraging an appropriate balance between independent professional advice and local representation in decision-making for significant projects: It is considered that an appropriate balance already exists in the City of Swan between independent professional and technical advice (provided by officers) and local representation (through elected members) in decision making for significant projects. Both administration and Council give careful and balanced consideration to all development applications
and make determinations on the basis of the facts at hand and the individual merits of each proposal.

d) Reducing the number of complex development applications being determined by local representation, thereby allowing local governments to focus their resources on strategic planning: The City is of the view that a DAP will only alter the decision making authority, and will not change the assessment process at all. As a result, the workload for ‘complex’ development applications from the City’s perspective will be exactly the same, and no additional resources will become available for strategic planning purposes. In fact, there is significant potential for the workload to increase, as Council may request additional briefings on development applications that are being referred to the DAP which would otherwise not have required a Council briefing.

2. Threshold for Development Application Referrals

The City of Swan does not consider that the outlined threshold for applications equal to or greater than a value of $2 million will have the desired effect of identifying applications that are contentious or of significance to the region or the State.

It is certainly not considered that this threshold will assist in streamlining the development assessment process, as it will only relate to a small proportion of development applications received by the Western Australian local government sector (1.6% in the Perth metropolitan area and 1.4% in regional Western Australia).

The City of Swan estimates that only 26 development applications that have been received in the last financial year were of a value greater than $2 million, and 15 of these were determined by City staff under delegated authority. To refer these 15 applications to a DAP will only slow down the process due to the additional reporting requirements and time delays associated with panel meeting schedules.

It is strongly recommended that the Department for Planning reconsider the proposed threshold to ensure that it meets the objectives of streamlining decision making and identifying developments of significance to the region or State. It is additionally recommended that the threshold be revised to ensure that the terminology is clearly understood by all parties, particularly with respect to references such as “all infrastructure projects” and “strategic land use, transport and infrastructure projects” which are poorly defined.

3. Proposed DAP Model

In the first instance, the City of Swan considers that the proposed DAP model is significantly more extreme than any of the existing DAP models in other Australian states. This model is squarely focused on centralising the decision making authority with the Department for Planning (and the Minister) and ensuring that the local community sentiment to significant or controversial development proposals is marginalised.

This intentional exclusion of the community from the decision making process directly contradicts the core fundamentals of the planning framework in Western Australia, and is strongly opposed by the City of Swan.
If the DAP agenda is to proceed in spite of a significant lack of evidence to justify its implementation, the City of Swan strongly supports the implementation of an alternative model similar to the existing New South Wales system.

This model would allow the Minister to establish DAPs for local governments that are underperforming in their development assessment and determination responsibilities or do not have sufficient resources or technical expertise to assess large scale complex development applications. This would require the establishment of mandatory reporting requirements for development application data by all WA local governments in a consistent format that would enable comparison and benchmarking of performance.

The City of Swan considers that the NSW model for DAPs represents a more appropriate system than that proposed by the DoP as it will at least address most of the “failings” reported by DoP with the WA existing system.

As an alternative, the City of Swan may also be willing to consider supporting a model based on the South Australian system, in which the local government is required to delegate all determination powers to either:

a) A Delegated Officer

b) A Council Development Assessment Panel (CDAP); or

c) A Regional Development Assessment Panel (RDAP).

This would ensure that all development applications were determined by a single decision making authority, with Council given the discretion to determine the most cost effective and resource efficient method of determining applications based on their varying circumstances.

4. Operational Component:

If the State Government is determined to proceed with its flawed DAP model, the City of Swan makes the following recommendations for the operation of DAPs:

a) **Elected Representatives Appointed to the DAP:** The City of Swan is of the opinion that WA local governments should be given the opportunity to nominate one elected representative and one member of staff for the DAP as an alternative to nominating two elected representatives. This would ensure that both the local community and local planning dimensions of decisions are appropriately reflected on the panel decision-making process.

b) **Sitting Fees for Panel Membership:** The City of Swan does not support the proposal that Councillors who are appointed to a DAP should not be paid a sitting fee. The DAP process has the potential to occupy a significant proportion of elected members time, including time taken to review reports, consult with community members and other Councillors and attend panel meetings. It is recommended that Councillors be afforded a sitting fee for their service on a DAP that is of comparison with the sitting fee afforded to specialist panel members.
ATTACHMENTS

Nil

STRATEGIC IMPLICATIONS

Nil

STATUTORY ENVIRONMENT

The implementation of the DAP framework in Western Australia will have a substantial impact on statutory planning within the City of Swan. At a minimum, the changes to the decision making authority for certain development applications will require:

- A revision of existing internal procedures and processes, particularly with respect to drafting reports for the DAP; and
- A revision of the City’s Delegation of Authority – Statutory Planning policy, to ensure that reference to the authority of the DAP is made;

FINANCIAL IMPLICATIONS

The discussion paper indicates that the City of Swan will be responsible for an equitable contribution towards the costs of operating the DAP, including the sitting fees for specialist panel members and the costs of secretariat duties. There may also be additional costs associated with City staff being required to attend DAP meetings to present the referred applications.

These costs are proposed to be covered by the existing development application fees already collected by local governments.

RECOMMENDATION

That the Council resolve to:

1) Endorse the comments provided in this report as the basis for the City of Swan’s response to the Department of Planning’s discussion paper Implementing Development Assessment Panels in Western Australia;

2) Advise the Minister for Planning that Council does not support the introduction of Development Assessment Panels in the form proposed in the discussion paper, but may be willing to support an alternative model more closely aligned with that introduced in New South Wales.
MOTION that the Recommendation be adopted.

(Cr Fardig – Cr Holmes)

RESOLVED UNANIMOUSLY TO:

1) Endorse the comments provided in this report as the basis for the City of Swan’s response to the Department of Planning’s discussion paper Implementing Development Assessment Panels in Western Australia;

2) Advise the Minister for Planning that Council does not support the introduction of Development Assessment Panels in the form proposed in the discussion paper, but may be willing to support an alternative model more closely aligned with that introduced in New South Wales.