

DEVELOPMENT ASSESSMENT PANELS – APPLICATIONS FOR DEVELOPMENT APPROVALS

Introduction

This information sheet provides summary information on the procedures for development applications that are involved in the development assessment panels process. It is not a definitive document but provides general, overview information to assist the public in understanding the processes applicable to development assessment panels application for development approval.

Please be aware that the Department of Planning Lands and Heritage has extensive amount of information available on their website in regards to Development Assessment Panels: <https://www.planning.wa.gov.au/7585.asp>

What is a Development Assessment Panel?

Development Assessment Panels (DAPs) are decision making bodies which comprise a mixture of technical experts and local government representatives with the ability to determine applications for development approval in place of the relevant decision making authority (ie. local government or the Western Australian Planning Commission (WAPC)).

There are nine (9) DAPs established throughout Western Australia with the City of Stirling part of the Metropolitan North-West Joint Development Assessment Panel (JDAP) which also includes the local government areas of Joondalup and Wanneroo. JDAPs are established to service two or more local government areas where it is deemed that there is insufficient growth and/or enough development for a local government area to support its own DAP. Currently, only the City of Perth has its own DAP.

Development Assessment Panel Applications

DAPs determine development applications within certain class and value thresholds in accordance with the DAP regulations. There are three types of DAP applications:

- **Mandatory DAP applications:**
 - Development applications with a cost of development in excess of \$10 million or more must be determined by a DAP and cannot be determined by a local government, except for Warehouse developments.
- **Optional 'Opt-in' DAP applications:**
 - Where the cost of a development application is between \$2 million and \$10 million, or any Warehouse development in excess of \$2 million, an applicant may elect to have the development application determined by a DAP or by the local government.
- **Local government delegated applications:**
 - In certain instances a local government may elect to delegate their decision making authority for development applications which fit the 'Opt-In' criteria for DAP applications. The development application will be determined by a DAP

in these instances.

Additionally, amendments to previous DAP determinations can be lodged and determined with either the DAP or local government at the discretion of the applicant in accordance with Regulation 17(1) of the DAP Regulations.

The following types of applications are excluded from determination by DAPs in accordance with the DAP regulations:

- Construction of Single houses;
- Construction of less than 10 grouped dwellings or multiple dwellings;
- Construction of carports, shade sails, outbuildings or sheds;
- Development in an improvement scheme area; and
- Development by a local government or the Western Australian Planning Commission (WAPC).

The types of development applications outlined above are to be determined by local government or the WAPC.

Role of Local Government in the Development Assessment Panel Process

DAPs are only decision-making bodies and therefore development applications requiring determination by DAPs are to be lodged with the local government. The local government notifies the DAP that a development application has been lodged and undertakes an assessment of the development application in accordance with the relevant planning legislation, which may include the advertisement of development applications for public submissions or referrals to relevant agencies.

Once the local government has finalised its assessment of the development application, the local government prepares a Responsible Authority Report (RAR) and provides a recommendation to the DAP on how the development application should be determined. The DAP reviews the RAR prepared by the local government and conducts a public meeting to determine the development application, which may be consistent or inconsistent with the recommendation prepared by the local government. Any determination made by the DAP will be taken to be a determination made by the local government.

Frequently Asked Questions

How many members will sit on a DAP?

The DAP Regulations set out the membership requirements for DAPs. Each DAP will consist of five panel members:

- the presiding member (a specialist member),
- two specialist members (one of which is the deputy presiding member); and
- two local government members (elected members nominated by the relevant local government).

All DAP members may be appointed for a term of three years.

JDAPs service two or more local government areas, and two local government members

from each relevant local government area will be appointed to the panel. The two members from each local government will only sit on the panel when the applications being determined by the panel have been made within their relevant districts. As such, the local government membership of a JDAP will depend on the location of the development application being determined at the time.

What qualification will specialist members have?

The three specialist members will be appointed from a register of appropriately qualified individuals. The register will be established and maintained by the Minister following a call for expressions of interest from interested and appropriately qualified experts.

Specialist members may have experience in one or more of the following areas of expertise: town planning; architecture; urban design; engineering; landscape design; environment; law; and property development and management.

How will DAP meetings operate?

As DAPs are only decision-making bodies, they will only meet when there is a DAP application to determine. The presiding member will preside at all DAP meetings at which he or she is present. If the presiding member is unable to attend the DAP meeting, the deputy presiding member will preside over the meeting.

All DAP members will have been provided with the RAR from the relevant authority before the meeting. An officer from the local government may be in attendance to answer any questions that the DAP members may have regarding the application.

DAP meetings will be open to the public, and so any interested person can attend. However, only those persons invited to give a presentation to the DAP may address the DAP during the meeting. People who have made a submission on the application during the public advertising process and who are in attendance at the meeting may be asked to make a short presentation to the DAP on their position regarding the application.

Each member of the DAP who is present at a meeting of the panel is entitled to one vote on each matter. In the event of a deadlocked vote (which may occur if one member is absent from a meeting), the person presiding (either the presiding member or the deputy presiding member) will have the power to cast the deciding vote.

Following the meeting, the minutes of the meeting will be finalised and a determination letter on the development application will be sent to the applicant.

The full process for DAP meetings is set out in the DAP Standing Orders.

Can an applicant request a private DAP meeting?

No, Regulation 40 of the DAP Regulations requires DAP meetings be open to the public.

What consideration will the DAP give to local planning scheme requirements, policy and local concerns?

The DAP will determine applications as if it was the responsible authority under the relevant planning scheme. As such, the DAP will consider the same range of matters under the

applicable local planning scheme as the local government, and under the applicable region scheme as the Western Australian Planning Commission where relevant, is currently required to consider.

Will the members of the public who provided a submission be notified the scheduled DAP meeting?

Yes. The DAP Regulations require the relevant local government to give written notice of the scheduled meeting (via email or post) to members of the public who had provided written submissions during any formal advertising period with respect to a DAP application.

Can a presiding member allow verbal submissions even where there has not been a formal presentation request submitted?

Yes, although such a request should only be granted rarely. Standing Order 3.5.2 requires:

“A person who, or group of persons which, wishes to be present at a meeting of a DAP to make a verbal submission to the DAP must provide a request in writing (a presentation request) to the DAP secretariat, at least 72 hours before the commencement of the meeting. The presentation request is to be accompanied by a written document setting out the substance of the submission the person or group proposes to make.”

What is a Responsible Authority Report (RAR)?

The relevant authority is required to provide a report to the DAP detailing the City’s assessment process including outlining the relevant planning framework, referrals and public submissions received and a recommendation for determination. The RAR is the report that is submitted by the local government to the DAP and included in the agenda for the DAP meeting.

The relevant authority has 48 days to provide the RAR to the DAP. However the relevant authority has 78 days to provide the RAR to the DAP should public consultation be required.

Can a local government in Council alter the Responsible Authority Report as prepared by the relevant professional planner?

This is not encouraged, although the views of Council may still be relevant and can be submitted as a separate submission to the DAP. As stated in the publication ‘Making Good Planning Decisions’ at clause 5.3.2:

“It should be noted that a DAP application report is NOT a resolution of the relevant local government’s council – it is the professional opinion of the local government’s planning officer who assessed the application. It is improper for Councillors of a local government to influence the planning officer’s report in any way. If the local government wishes to make a statement regarding an application before a DAP, it should do so by making a submission.”

The RAR is primarily concerned with providing the DAP with technical data. The views of a Council may also be relevant, especially in providing information of a public interest nature and community concern. However, the DAP is best assisted if both sets of information are submitted separately, otherwise there is the real danger of confusing the DAP members.

Can the Planning Minister intervene in DAP proceedings?

No. DAPs are independent decision-making planning bodies and the Minister for Planning does not have any power to intervene in DAP decisions.

With respect to SAT proceedings, the Minister has the power to call in applications of state or regional significance under s.246 of the PD Act. However, such a direction can only be made within 14 days of the application being made to the Tribunal with the direction to be published in the Gazette and laid before each house of Parliament.

Can DAP make a determination contrary to the City's recommendation?

Yes, the City's RAR only provides a recommendation. The DAP can make an alternative determination to the City's recommendation.

Can a local government or the Western Australian Planning Commission contest a decision made by a DAP?

No, a determination made by a DAP will be taken as a determination made by local government or the Western Australian Planning Commission.

Can a third party request a review of a DAP determination through the State Administrative Tribunal?

No, a person who is not an applicant or a respondent is known as a 'third party' and there are generally no third party appeal rights in relation to planning decisions in Western Australia as per section 243 of the *Planning and Development Act 2005*.

Who will be responsible for administering any conditions of approval on an application approved by a DAP?

The local government will be responsible for administering any conditions of approval on a conditional approval given by a DAP, as that decision will be taken by the relevant authority under the local or region planning scheme.

If a DAP application is made, will the local government's development application form still need to be lodged?

Yes, all applications for development approval will continue to be lodged in the usual way. DAP applications will be lodged with the relevant local government, along with the existing local government fee, and a DAP application form and DAP determination fee. In most cases, this will in effect require applicants to submit two sets of forms and two sets of fees.

Does the applicant need to fill out a DAP form if they choose not to opt-in to the DAP process?

No. Regulation 7 only requires an applicant submit a DAP form if they choose to opt-in to the DAP process in accordance with the prescribed requirements under regulation 6, not opt-out. There is arguably no head of power to require someone who chooses to opt-out of the DAP process to submit any form. However, as a practical measure, local governments may wish to implement internal administrative procedures to take note of development applications that fall within the optional threshold but where the applicant chooses to opt-out of the DAP process.

Should an application that is currently with SAT also have an amendment application concurrently?

No. As the original determination is subject to an application before the SAT for review, it is not open to seek to amend that determination under regulation 17 until the SAT process is finalised.

What is a regulation 17 Amendment Application?

Regulation 17(1) states an owner of land in respect of which a development approval has been granted by a DAP may apply to the DAP to do any or all of the following —

- a) to amend the approval so as to extend the period within which any development approved must be substantially commenced;
- b) to amend or delete any condition to which the approval is subject;
- c) to amend an aspect of the development approved which, if amended, would not substantially change the development approved;
- d) to cancel the approval.

Therefore, the applicant (or the owner of the land) could apply any of the above for a determination by a DAP pursuant to regulation 17.

The applicant may apply to the relevant responsible authority (City of Stirling) to determine an Amendment Application pursuant to regulation 17A. However, such application must be made in accordance with clause 77 of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015, rather than the DAP Regulations.

What must I submit with my Development Application?

Please refer to the Development Application Submission Checklist and the Schedule of Fees and Charges available on the City's website.

What information will be made available on the DAP website?

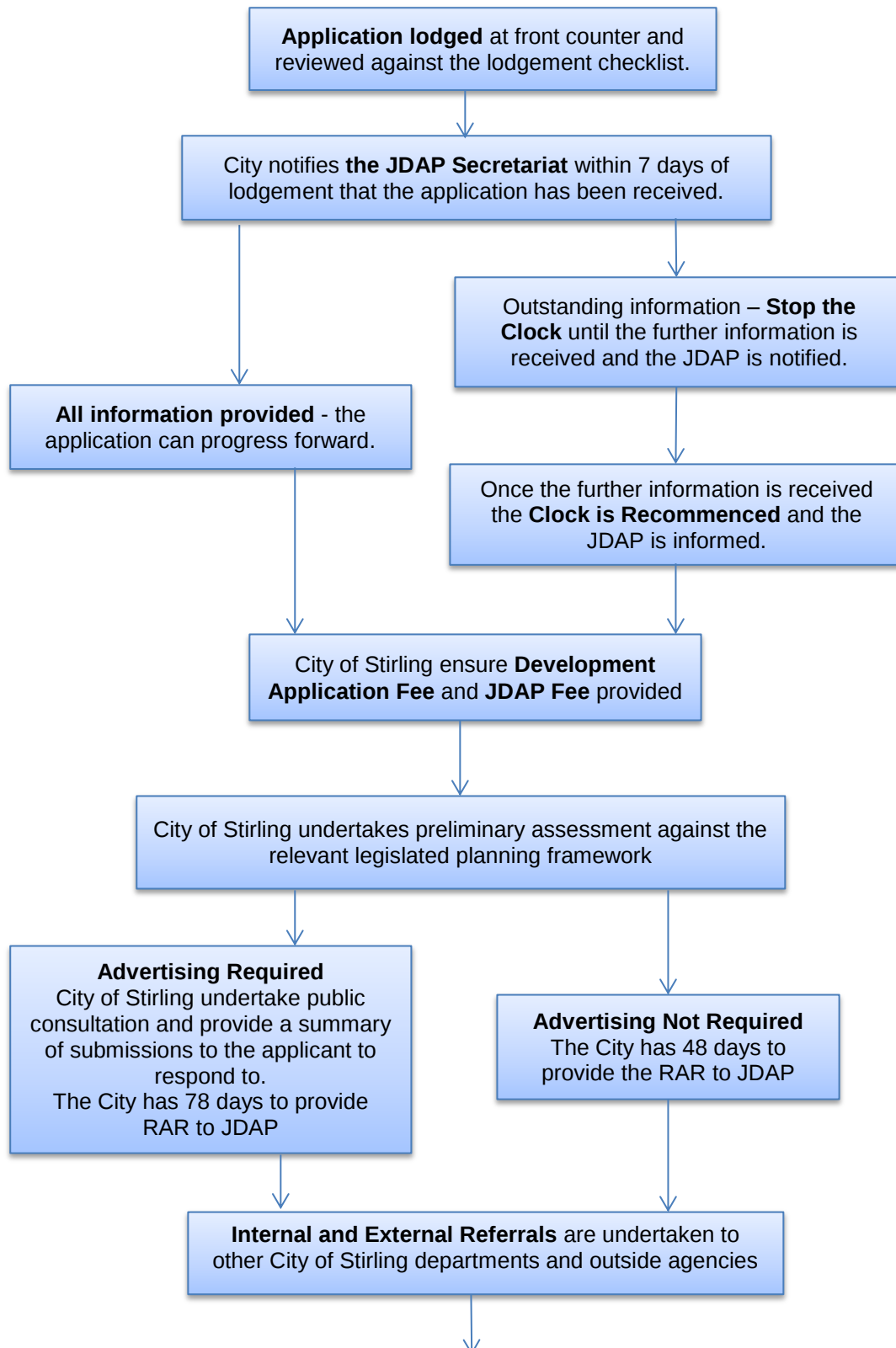
The DAP website contains information on every DAP in the State, including its membership details, meeting dates, locations, and decisions (see: www.planning.wa.gov.au/7578.asp). Agendas and minutes will be put on the website before and after each meeting.

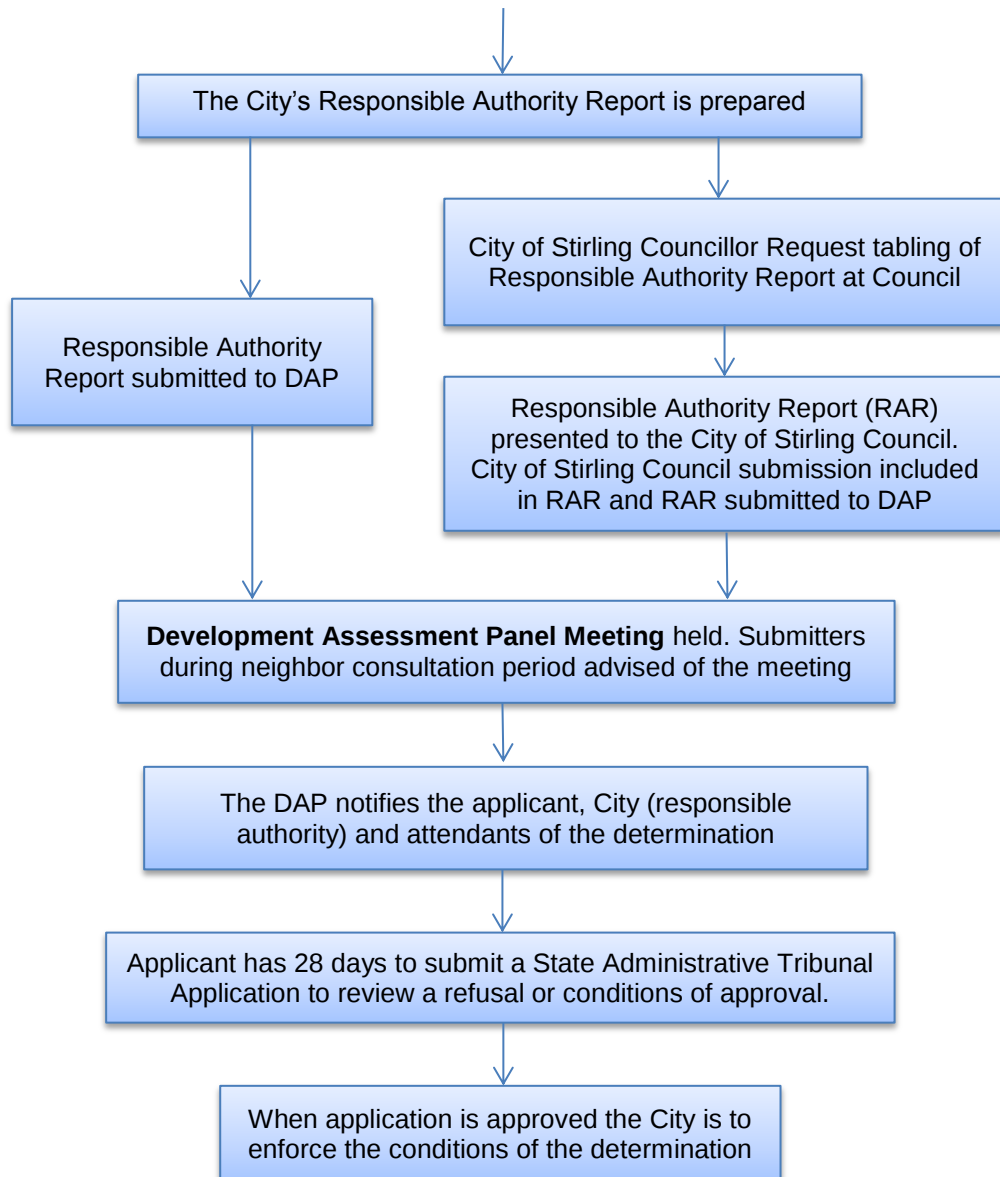
Additional information, such as the DAP standing orders, code of conduct and annual report are also available.

Where can I obtain further information about DAPs?

For further information on Development Assessment Panels, please visit the Department Website at www.planning.wa.gov.au/Development-Assessment-Panels.asp or contact the DAP Secretariat at daps@dplh.wa.gov.au, or phone 6551 9919.

Flow Chart of Development Assessment Panel Applications





Enquiries

General enquiries may be made to the City's staff on 9205 8555, in person at the City's offices between the hours of 8.30am to 4.30pm, Monday - Friday or via the City's email address development@stirling.wa.gov.au

Further information is available on the City's website: www.stirling.wa.gov.au and the Department of Planning Lands and Heritage website: <https://www.planning.wa.gov.au/7585.asp>

Last update: 06.02.18

Disclaimer:

This information is produced by the City of Stirling in good faith and the City accepts no responsibility for any ramifications or repercussions for providing this information. Verification with the original Local Laws, planning schemes and other relevant documents is recommended for detailed references.

© Copyright 2018 City of Stirling