



Government of **Western Australia**
Development Assessment Panels

Development Assessment Panel
Practice notes:

DAP Standing Orders 2020

Under the
*Planning and Development
(Development Assessment Panels)
Regulations 2011*

October 2020





I, Gail McGowan, Director General of the Department of Planning, Lands and Heritage, make this Standing Orders under regulation 40(5) of the *Planning and Development (Development Assessment Panels) Regulations 2011*.

Gail McGowan PSM
October 2020

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Introductory statement

These Practice Notes contain Standing Orders that set out procedures for the efficient administration and operation of meetings of Development Assessment Panels (DAPs) established under Part 11A of the *Planning and Development Act 2005* (the Act).

DAPs are required, under regulation 40(5) of the *Planning and Development (Development Assessment Panels) Regulations 2011* (the DAP Regulations), to operate in compliance with these Practice Notes.

Where requirements of the Act or DAP Regulations are relevant to matters dealt with in these Practice Notes, the relevant provisions are referred to in the text for information purposes. However, the references in these Practice Notes to requirements of the Act or Regulations are not intended to be a comprehensive statement of all legal obligations applying to DAPs or to individual DAP members.

Other legal requirements applying to individual DAP members are contained in the Act and Regulations and in the *Development Assessment Panel Code of Conduct 2017*.

It remains the responsibility of each DAP member to be aware of the legal obligations that apply to them in the performance of their functions under the Act.

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1.1 Citation

These Practice Notes may be cited as the *Development Assessment Panel Standing Orders 2020*.

1.2 Purpose

- 1.2.1 These Practice Notes set out the procedures for the efficient administration and operation of DAP meetings.
- 1.2.2 The aim of these Practice Notes is:
- to standardise certain DAP secretariat procedures; and
 - to increase community and industry understanding of DAP meeting procedures; and
 - to facilitate the orderly and efficient conduct of DAP meetings; and
 - to clarify DAP members' responsibilities in relation to the conduct of DAP meetings.

1.3 Application of Practice Notes

- 1.3.1 These Practice Notes apply to the conduct of meetings of DAPs.
- 1.3.2 DAPs are required to comply with these Practice Notes under regulation 40(5) of the DAP regulations.
- 1.3.3 DAP members are required to comply with the DAP Code of Conduct. The DAP Code of Conduct contains provisions that apply to members' conduct in the course of DAP meetings. DAP members should ensure they are familiar with their obligations under the DAP Code of Conduct.

1.4 Definitions

- 1.4.1 In these Practice Notes, unless otherwise defined, words and phrases have the same meanings as they have in the Act, the DAP Regulations and the DAP Code of Conduct.
- 1.4.2 In particular:
- alternate local government member** means a person appointed to be an alternate member for a local government member under regulation 28(1)(a) or (b) of the DAP regulations.
 - alternate member** includes an alternate local government member and an alternate specialist member.
 - alternate specialist member** means a person appointed to the pool of alternate members for specialist members under regulation 28(1)(c) of the DAP regulations.
 - DAP** means a development assessment panel established under Part 11A of the *Planning and Development Act 2005*.
 - DAP application** means:
 - a development application that is a mandatory DAP application under regulation 5 of the DAP regulations; or
 - a development application that is an optional DAP application under regulation 6 of the DAP regulations and in relation to which the applicant has elected, under regulation 7 of the DAP regulations, to have the application determined by a DAP.

Note 1: A mandatory DAP application is a development application that:

is not an excluded development application: that is, an application for approval of:

- (i) construction of:
 - a single house and any associated carport, patio, outbuilding and incidental development;
 - less than 10 grouped dwellings and any associated carport, patio, outbuilding and incidental development;
 - less than 10 multiple dwellings and any associated carport, patio, outbuilding and incidental development; or
- (ii) development in an improvement scheme area; or
- (iii) development by a local government or the Commission; or
- (iv) development in a district for which -
 - a DAP is not established at the time the application is made; or
 - a DAP has been established for less than 60 days at the time the application is made.

In the case of an application for development in the district of the City of Perth - is for the approval of development that has an estimated cost of \$20 million or more; and

In the case of an application for development outside the district of the City of Perth - is for the approval of development that has an estimated cost of \$10 million or more.

In the case of a significant development application which has an estimated cost of \$20 million or more in the City of Perth or \$10 million or more in areas outside the City of Perth, the application is a mandatory

DAP application UNLESS the applicant has elected to have the application determined by the Commission.

Note 2: An optional DAP application is a development application that:

- (i) is not an excluded development application as defined in Note 1;
- (i) in the case of an application for development in the district of the City of Perth - is for the approval of development that has an estimated cost of \$2 million or more and less than \$20 million; and
- (ii) in the case of an application for development outside the district of the City of Perth - is for the approval of development that has an estimated cost of \$2 million or more and less than \$10 million;
- (iii) development of a warehouse in any district that has an estimated cost of \$2 million or more.

In the case of a significant development application which has an estimated cost between \$5 million to less than \$10 million outside the metropolitan region, the application is an optional DAP application.

Note 3

- (i) A development application for the approval of a warehouse anywhere, which is estimated to cost \$2 million or more, is not to be treated as mandatory DAP application. Rather, the applicant has the option to submit it to a DAP. See regulation 4A of the DAP Regulations.
- (ii) Local government has the ability to delegate its power to determine certain development applications to the DAP under regulation 19. If this has occurred, the DAP must determine the application even if the application would normally

be considered an 'optional DAP application' and has been submitted to the local government. This is the effect of regulation 4A(2) of the DAP Regulations.

- f. **DAP Code of Conduct** means the *Development Assessment Panel Code of Conduct 2017*.
- g. **DAP fee** means the fee payable under regulation 10 of the DAP regulations.
- h. **DAP member** means a specialist member, a local government member, or an alternate member of a DAP.
- i. **DAP regulations** means the *Planning and Development (Development Assessment Panels) Regulations 2011*.
- j. **DAP secretariat** means the departmental officer or officers made available to provide services to a DAP or DAPs under regulation 49 of the DAP regulations.
- k. **DAP website** means the website established under regulation 51 of the DAP regulations.
- l. **Department** means the Department of Planning, Lands and Heritage.
- m. **deputy presiding member** means the DAP member performing the functions of a presiding member under regulation 27 of the DAP regulations.
- n. **JDAP** means a Joint Development Assessment Panel.
- o. **LDAP** means a Local Development Assessment Panel.
- p. **local government member** means:
 - (i) in relation to an LDAP - a person appointed under regulation 23(1)(a) of the DAP regulations; and
 - (ii) in relation to a JDAP - a person whose name is included on the register of local government members established under

regulation 26 of the DAP regulations for that JDAP for the relevant local government.

- q. **presiding member** means the DAP member presiding at a meeting of a DAP under regulation 27(1) of the DAP regulations. A reference to a presiding member includes a reference to a deputy presiding member when the deputy presiding member is performing the functions of the presiding member.
- r. **specialist member** means a person appointed as a specialist member of a DAP under regulation 37 of the DAP regulations.
- s. **the Act** means the *Planning and Development Act 2005*.

1.5 Relationship to DAP regulations

- 1.5.1 If there is any inconsistency between a provision of these Practice Notes and a provision of the DAP regulations, the provision of the DAP regulations prevails to the extent of the inconsistency.
- 1.5.2 Notes in the text of these Practice Notes containing reference to relevant provisions of the DAP regulations are included for reference purposes only. Any relevant provisions of the DAP regulations may contain additional material and should be consulted in addition to the Practice Notes.

Part 2 - Attendance at DAP meetings

2.1 Entitlement to sit as DAP member

A DAP member who has a conflict of interest in relation to a DAP application to be considered at a DAP meeting is not entitled to attend or vote at the meeting. Conflicts of interest are dealt with in more detail in Part 6 of these Practice Notes and in Part 3 of the DAP Code of Conduct.

2.2 Quorum

At a meeting of a DAP, a quorum is constituted by 3 DAP members, one of whom is the presiding member.

Reference: r. 41

2.3 Attendance of members generally

2.3.1 If a member will be unable to attend a DAP meeting in relation to which the member has confirmed his or her availability to attend, the member is to inform the DAP secretariat as soon as practicable after becoming aware of the fact.

2.3.2 If a member will be unable to attend two or more consecutive DAP meetings, the member must seek leave of absence from the Minister under regulation 33 of the DAP regulations, and in accordance with item 2.9 of these Practice Notes.

Reference: r. 33

2.3.3 With the consent of the presiding member, the business of a DAP meeting may be conducted with one or more members attending by way of teleconference.

Reference: r. 43

2.4 Attendance of presiding members and deputy presiding members

2.4.1 The presiding member of a DAP must preside at all meetings of the DAP at which the member is present. If the presiding member is not present at a meeting of the DAP, the deputy presiding member is to act in the presiding member's place.

2.4.2 If neither the presiding nor the deputy presiding member will be present at a proposed DAP meeting, the Director General can appoint the presiding member of another DAP to act as presiding member of the DAP.

Reference: r. 27(2), (3) and (3A)

2.4.3 If neither the presiding member, the deputy presiding member nor a presiding member of another DAP pursuant to r. 27(3A) will be present at a proposed DAP meeting, the meeting cannot be convened as a quorum will not be formed.

Reference: r. 41

2.5 Attendance of specialist members

At a meeting of a DAP, the following specialist members are to attend:

- a. one specialist member who is the presiding member or deputy presiding member; and
- b. two other specialist members.

Reference: r. 23(1)(b); r. 25(1)(b)

2.6 Attendance of alternate specialist members

- 2.6.1 At a meeting of a DAP where a specialist member is unable to attend, an alternate specialist member may attend in the absent member's place, where sufficient notice is provided in accordance with the procedure set out in 2.3.1.
- 2.6.2 The presiding member of a DAP at which an alternate specialist member is to or may attend is to select an appropriate alternate specialist member from the register established under regulation 28(1) (c) of the DAP regulations. When selecting an appropriate alternate specialist member, the presiding member is to have regard to the expertise of the absent member and, so far as is possible, is to select an alternate specialist member with similar expertise.

2.7 Attendance of local government members

- 2.7.1 At a meeting:
- a. of an LDAP - two of the members are to be members of the council of the local government of the district for which the DAP is established; and
 - b. of a JDAP - two of the members are to be members of the council of the local government of the district to which the DAP application to be determined relates.

Reference: r. 23(1)(a); r. 25(1)(a)

- 2.7.2 At a meeting of a JDAP at which more than one application is to be determined, and the applications relate to development in more than one local government district, the presiding member must ensure that the JDAP is, at all times, constituted with two

local government members representing the local government of the district to which the DAP application being determined relates. This is referred to, in these orders, as the **required constitution** of a JDAP.

- 2.7.3 The required constitution of a JDAP is to be achieved by rotating local government members on and off the JDAP as appropriate.
- 2.7.4 A local government member who is attending a DAP meeting in order to enable the required constitution of a JDAP to be achieved:
- a. may attend and observe the business of the meeting while the member is not sitting as a member of the JDAP; and
 - b. is not entitled to vote on any application or to otherwise address or participate in the meeting otherwise than at a time when the member is sitting as a member of the JDAP.

2.8 Attendance of alternate local government members

- 2.8.1 At a meeting of a DAP at which a quorum would otherwise be unable to be formed because of the absence of a local government member, an appropriate alternate local government member is to attend in the absent member's place.
- 2.8.2 At a meeting of a DAP meeting where a local government member is unable to attend, an alternate local government member may attend in the absent member's place, where sufficient notice is provided in accordance with the procedure set out in 2.3.1.

Reference: r. 28

2.9 Leave of absence

- 2.9.1 If a member will be unable to attend two or more consecutive DAP meetings, the member must seek leave of absence from the Minister under regulation 33 of the DAP regulations.
- 2.9.2 A DAP member's leave of absence is to be included as an item on the next meeting agenda of the relevant DAP to ensure that it is noted in the DAP minutes.

2.10 Attendance of responsible authority representative

A DAP is to invite the responsible authority officer preparing a report for a development application to attend, or to send a representative to, a DAP meeting at which the application is to be determined.

2.11 Public attendance

DAP meetings are to be open to the public, unless otherwise directed by the Presiding Member for meetings held by teleconference to determine an application to amend or cancel an existing approval.

Reference: r. 40(2)

Part 3 - Arrangements to be made before DAP meetings

Division 1 Convening a DAP meeting

3.1 DAP meeting agenda

- 3.1.1 The DAP secretariat is to prepare an electronic agenda (the **meeting agenda**) for each DAP meeting.
- 3.1.2 At least seven days before a DAP meeting, the DAP secretariat is to circulate the meeting agenda to:
- each member of the DAP who is to attend the meeting;
 - the responsible authority that is the author of a responsible authority's report relating to a DAP application to be determined at the meeting;
 - each applicant in relation to a DAP application to be determined at the meeting;
 - any person who has been invited, in accordance with 3.5, to make a submission or present information at the meeting;
 - each local government of a district in respect of which the DAP will be considering a DAP application.
- 3.1.3 At least seven days before a DAP meeting:
- the DAP secretariat is to publish the meeting agenda on the DAP website; and
 - each local government of a district in respect of which the DAP will be considering a DAP application is to publish the meeting agenda on the local government's website.

Reference: r. 39

Division 2 Arrangements for reports, presentations or deputations to be considered or heard at DAP meeting

3.2 Provision of responsible authority's report

- 3.2.1 The responsible authority for a DAP application is to provide to the DAP secretariat a responsible authority's report on the application, in the form required by regulation 12 of the DAP regulations.
- 3.2.2 The responsible authority's report is to be provided to the DAP secretariat within the timeframes set out in regulation 12(3):

Note 3: Regulation 12(3) states:

The report must be given –

- if the DAP application is made to the Commission or is not required to be advertised under a local planning scheme or local interim development order – within 48 days after the date on which the application was made; or
- if:
 - the DAP application is required to be advertised under a local planning scheme or local interim development order; and
 - the scheme or order provides that the application is deemed to be refused if it is not determined within a period of 90 days or more after the application is made, within the period that ends 12 days before the day on which the application would be deemed to be refused; or

- d. otherwise – within 78 days after the date on which the application was made.

In calculating when a responsible authority report is due, exclude the days upon which the authority requested further information from the application and exclude the days the applicant took to comply with this request.

- 3.2.3 The responsible authority's report is to include the material required by regulation 12(5) of the DAP regulations. Specifically, this includes:
- a recommendation as to how the application should be determined; and
 - copies of any advice received by the responsible authority from any other statutory, public or planning authority consulted in respect of the application; and
 - any other information that the relevant authority considers is relevant to determining the application.

Reference: r. 12(5)

- 3.2.4 On receipt of a responsible authority's report and associated material, the DAP secretariat is to:
- inform both the responsible authority in writing that the report has been received; and
 - insert the report and associated material, into the relevant meeting agenda at which the application is to be determined.

3.3 Consideration of responsible authority's report and requests for further information

- 3.3.1 On receipt of a meeting agenda, a DAP member is to review the responsible authority's report and associated material.

- 3.3.2 If, following review of the material, a DAP member requires further information:
- from the applicant - the member's request is to be made to the Presiding member who may put the request to the applicant in writing, via by the DAP secretariat; or
 - from the responsible authority - the DAP secretariat is to issue a direction in writing from the presiding member of the DAP to provide technical advice or assistance, or further information in writing (**a regulation 13(1) direction**).

Reference: r. 13(1)

- 3.3.3 The regulation 13(1) direction is to specify the service required and the time within which the responsible authority is to comply with the direction.

Reference: r. 13(2)

3.4 Delay in providing responsible authority's report or further information

3.4.1 If the DAP secretariat becomes aware that:

- a. a responsible authority's report under 3.3 will not be provided in time; or
- b. further information requested will not be provided in sufficient time for it to be considered before the DAP meeting at which the relevant application is to be considered;

the DAP secretariat is to contact the responsible authority to establish when the relevant information will be able to be provided and notify each member of the DAP who is attending the meeting.

3.4.2 If a responsible authority's report on a DAP application is not provided in time for inclusion as part of the meeting agenda, the DAP may determine the application in the absence of the report.

Reference: r. 12(7)

3.5 Submissions or presentations at DAP meeting

3.5.1 The presiding member of a DAP may invite a person to be present at a meeting of the DAP to advise or inform, or make a submission to, the DAP.

Reference: r. 40(3)

3.5.2 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.

3.5.3 A presentation request is to:

- a. identify the DAP application in respect of which a submission is sought to be made, and
- b. summarise the content of the submission, and
- c. contain contact details, including telephone and email contacts, for the person or a representative of the group.

3.5.4 As soon as practicable on receipt of a presentation request, the DAP secretariat is to forward it to the presiding member of the relevant DAP. If the presiding member is not available, the DAP secretariat is to forward the application to the deputy presiding member.

3.5.5 As soon as practicable on receipt of a presentation request, the presiding member or deputy is to:

- a. approve or decline the request, and
- b. inform the DAP secretariat as to whether the request is approved or declined.

3.5.6 As soon as practicable on being informed under 3.5.5 the DAP secretariat is to advise the person or representative as to whether the request has been approved or declined.

3.5.7 Advice that a request has been approved is taken to be an invitation for the purposes of regulation 40(3) of the DAP regulations.

3.6 DAP correspondence

- 3.6.1 Any correspondence received by a DAP member relating to a DAP application or otherwise to the business of a DAP (**DAP correspondence**) is to be forwarded to the DAP secretariat.
- 3.6.2 DAP correspondence that relates to a DAP application to be determined by a DAP is to be forwarded to the presiding member of the DAP.
- 3.6.3 On receipt of correspondence forwarded under 3.6.2, the presiding member is to determine whether or not the correspondence requires a specific response.
- a. if the correspondence does not require a specific response, a standard response is to be sent to the correspondent by the DAP secretariat.
 - b. if the correspondence does require a specific response, the presiding member is to instruct the DAP secretariat as to the content of the response. The DAP secretariat is then to arrange for a response to be prepared by the appropriate departmental officer in line with the presiding member's instruction. The draft response is to be circulated to all members of the relevant DAP and sent to the correspondent.

Part 4 - Order of business during DAP meetings

4.1 Order of business

4.1.1 Unless otherwise decided by informal resolution of the DAP members present, the order of business is to be conducted as follows:

- a. declaration of opening;
- b. apologies;
- c. members in leave of absence;
- d. noting of minutes;
- e. declaration of due consideration in accordance with 4.5;
- f. disclosures of interest in accordance with Part 6;
- g. submissions and presentations by persons invited to advise, inform, or make a submission to a DAP in accordance with 3.5;
- h. consideration of responsible authorities' reports and determination of DAP applications;
- i. report of the presiding member on minor amendments of DAP determinations in accordance with regulation 17 of the DAP regulations;
- j. report of the presiding member on SAT reviews;
- k. general business (as specified in the meeting agenda), including consideration of any correspondence;
- l. closure.

4.1.2 Business that is not specified in the relevant DAP meeting agenda cannot be transacted at a DAP meeting.

4.2 Item: declaration of opening

A DAP meeting is open once a quorum is formed, a minute taker is confirmed and all DAP members confirmed to be attending are present.

4.3 Item: leave of absence

Any leave of absence granted by the Minister under regulation 33 of the DAP regulations is to be noted in the minutes.

4.4 Item: noting of previous minutes

The confirmed minutes of the previous meeting are to be made available for noting by DAP members.

4.5 Item: declaration of due consideration

4.5.1 Any DAP member who is not familiar with the substance of any report or other information provided for consideration at a DAP meeting must declare that fact at the time declarations of due consideration are called or otherwise before the meeting considers the matter.

4.5.2 In the event of a declaration made under 4.5.1 the relevant matter may be deferred for later consideration at that DAP meeting so as to allow an opportunity for any DAP member making a declaration to become familiar with the relevant report or other information.

4.5.3 If the delay in 4.5.2 has not allowed sufficient time for the DAP member to give due consideration to the matter, the DAP member is to leave the meeting room before the matter is considered and is put to the vote.

4.5.4 Where a DAP member withdraws from a DAP meeting, the presiding member may invite the withdrawn DAP member's alternate member, if the alternate member is present, to participate in accordance with 5.14.2.

4.6 Item: disclosures of interest

4.6.1 Disclosures of interest made under Part 6 are to be called for, and any disclosures made, including details of the type and extent of the interest disclosed, are to be recorded in the minutes.

4.6.2 Notwithstanding 4.6.1, a disclosure of interest made under Part 6 may be made at any time during the meeting if a member becomes aware of the existence of a conflict.

4.7 Item: submissions or presentations by external parties

4.7.1 Any person, or group of persons, invited by the DAP to advise, inform, or make a submission to the DAP (an **external party**), should be given the opportunity to provide the advice, information or a submission prior to the DAP application being determined at a DAP meeting.

4.7.2 Any verbal submission being made by an external party who is attending the DAP meeting following a written request under 3.5 is not to exceed five minutes, unless an extension of time is granted by the presiding member.

4.7.3 A representative of a responsible authority or departmental staff member attending a DAP meeting in relation to a DAP application that is the subject of advice

or information or a submission from an external party may, on the request of the presiding member, make a comment or provide advice on any matters raised by the external party.

4.7.4 The meeting minutes are to record the names of any external party attending at a DAP meeting.

4.7.5 The applicant, or a representative of the applicant, and a representative of the responsible authority, is entitled to be present whenever an external party is present at a DAP meeting in relation to the applicant's DAP application.

Reference: r. 40(3)

4.8 Item: consideration of responsible authorities' reports and determination of DAP applications

4.8.1 The DAP is to determine a development application before it as if it were the responsible authority making a decision under the Act and the planning instrument under which the application is made.

Reference: r. 8(1)

4.8.2 In its consideration of a responsible authority's report, a DAP is to have regard to, but is not bound to give effect to, the recommendation included in the report.

Reference: r. 12(6)

4.9 Item: presiding member's report on minor amendments

- 4.9.1 A DAP may amend a previous DAP determination, on application by the applicant, if the DAP considers that the amendment is of a minor nature. The procedure for dealing with minor amendments is dealt with at 7.2.

Reference: r. 17

- 4.9.2 If the DAP has amended a determination in accordance with regulation 17 of the DAP regulations, the meeting minutes are to reflect the content of the report.

- 4.9.3 If the DAP has amended a determination at a meeting not open to the public, in accordance with regulation 40(4) of the DAP regulations, the presiding member of the DAP is to report on the amendment at the next occurring DAP meeting, and the meeting minutes are to reflect the content of the report.

4.10 Item: presiding member's report on SAT review

- 4.10.1 An applicant for development approval may apply to the State Administrative Tribunal (**SAT**) for a review of a determination of a DAP.

Reference: r. 18

- 4.10.2 The presiding member is to report at a DAP meeting on the outcome of any SAT review of a DAP determination that has been decided by the SAT since the last occurring meeting of the DAP.

4.11 Item: general business and consideration of correspondence

- 4.11.1 A DAP member may raise any item of general business at a DAP meeting. A member addressing the meeting as to general business is to confine remarks to the business raised, and not digress.

- 4.11.2 An item of general business can only be raised if it is specified on the relevant meeting agenda.

4.12 Item: meeting closure

At the conclusion of all business, or at a time otherwise determined by the members present at a meeting, the presiding member is to declare the meeting closed, and the closing time is to be recorded in the minutes.

Part 5 - Conduct of business during DAP meetings

Division 1 DAP minutes

5.1 DAP minutes

5.1.1 The local government hosting a DAP meeting is to ensure that accurate minutes are taken of the meeting, unless the Director General approves of a person other than a local government officer keeping minutes.

Reference: r. 44

5.1.2 The content of minutes of a DAP meeting must include the following:

- the names of the DAP members present at the meeting;
- the time of entry and departure of any DAP member;
- details of each motion moved at the meeting, the mover and the outcome of the motion;
- details of each decision made at the meeting and the reasons given for each decision;
- any other matter that these Practice Notes state is to be recorded in the minutes of a meeting.

Reference: r. 44(1A) identifies that the content in 5.1.2(d) is mandatory

5.1.3 In the case of a meeting of a JDAP in which local government members are to be rotated to ensure a required constitution, as referred to in 2.7.2, the minutes are to contain sufficient detail that the identity of members considering and voting on a particular DAP application can be readily ascertained.

5.1.4 Regulation 44 (1) requires accurate minutes to be kept. If, at any point in the proceedings, the minute taker requires further information to ensure the accuracy of the minutes, the minute taker is to request the information from the presiding member.

5.1.5 The local government hosting the DAP meeting, or the person taking the minutes, is to provide the DAP secretariat with a draft of the minutes within five ordinary days after the meeting.

Reference: r. 44(2)

5.1.6 On receipt of the draft minutes, the DAP secretariat is to circulate the draft to all DAP members within 24 hours. DAP members are to advise the DAP secretariat of any suggested changes to the draft minutes. The DAP secretariat is then to forward the amended draft minutes to the presiding member for confirmation and signature.

5.1.7 Within ten ordinary days of a DAP meeting, the minutes are to be:

- confirmed and signed by the presiding member, and
- published on the DAP website.

Reference: r. 44(4)

Division 2

Determination of DAP applications and acceptance of recommended conditions

5.2 Determination of DAP applications

A DAP application may be determined by resolution of the DAP in one of the following ways:

- a. by approving the application subject to conditions;
- b. by approving the application without any conditions;
- c. by refusing the application with reasons.

5.3 Adoption of recommendations in reports

5.3.1 If a DAP adopts a recommendation contained in a responsible authority's report, either with or without amendment, the recommendation so adopted is taken to be a determination of the DAP.

5.3.2 A DAP may approve, by a single resolution, all the recommendations or a group of recommendations from a responsible authority's report, without amendment, after having first identified whether any of the recommendations:

- a. are related to an interest disclosed by a member;
- b. have been the subject of a submission or presentation to the DAP;
- c. have been identified by a member as a matter requiring further discussion or clarification.

5.3.3 A DAP must consider any of the matters referred to in 5.3.2 (a), (b) or (c) separately.

Division 3

Motions

5.4 Definitions

In this Division:

amending motion means a motion that proposes an amendment to a primary motion.

motion includes a primary motion, amending motion and procedural motion.

mover, in relation to a primary or amending motion, means the DAP member who first moved the motion.

primary motion means a motion that is not an amending motion or a procedural motion.

seconded, in relation to a primary or amending motion, means the DAP member who seconded the motion.

5.5 Moving a motion

5.5.1 A DAP member wishing to move a motion in relation to a DAP application being considered by the DAP is to:

- a. state the substance of the motion before speaking on it, and
- b. put the motion in writing if:
 - (i) in the opinion of the presiding member, the motion or amendment represents a significant departure from the relevant recommendation of a responsible authority's report; or
 - (ii) the presiding member otherwise requires it.

5.5.2 The terms of a written motion are to be given to the presiding member and recorded in the minutes.

- 5.5.3 The presiding member may require a complex motion to be broken down and put in the form of more than one sequential motion.
- 5.5.4 No motion is to be put while another motion is being debated.
- 5.5.5 Only one motion is to be debated at any one time.

5.6 Motions to be seconded

- 5.6.1 A motion is not to be debated until it has been seconded.
- 5.6.2 A member seconding a motion retains the right to speak on the motion later in the debate.
- 5.6.3 A motion is not to be amended by the mover without the consent of the seconder.

5.7 Opposed and unopposed motions

- 5.7.1 Immediately after a motion has been moved and seconded, the presiding member is to ask the meeting if any other member opposes the motion. If no member opposes the motion, the presiding member may declare it carried without debate or voting.
- 5.7.2 If a member opposes a motion:
- it is to be debated in accordance with this Division; and
 - the minutes are to record the identity of the member or members opposing.

5.8 Withdrawing a motion

- 5.8.1 A motion may be withdrawn by the mover, with the consent of the seconder. No member is to speak on a motion after it has been withdrawn.
- 5.8.2 If an amending motion has been made, the primary motion it proposes to amend cannot be withdrawn, other than by consent of a majority of members, until the amending motion has been itself withdrawn or, after a vote, is not carried.

5.9 Amending motions

- 5.9.1 A DAP member may move an amending motion at any time during debate on a primary motion, except:
- if the mover has been called by the presiding member to exercise the right of reply, or
 - if the member has already spoken on the primary motion, or
 - if another amendment to the primary motion is being debated, or has not been withdrawn, carried or lost.
- 5.9.2 A DAP member moving an amending motion must first state the reasons for the amending motion.
- 5.9.3 An amending motion must be relevant to the primary motion it proposes to amend and must not have the effect of negating that primary motion.
- 5.9.4 An amending motion may not be moved in relation to a procedural motion made under 5.10.
- 5.9.5 An amending motion must take one of the following forms:
- that certain words be omitted from a primary motion;

- b. that certain parts be omitted from a primary motion and other parts substituted or added;
- c. that certain words be added to a primary motion.

5.9.6 Only one amending motion is to be debated at a time, but there is no limit to the number of sequential amending motions that may be moved to a primary motion before the primary motion is put to the vote.

5.9.7 If an amending motion is carried, the primary motion as amended is to be treated as the primary motion for the purposes of subsequent debate.

5.10 Procedural motions

5.10.1 A member may move any of the following procedural motions:

- a. that a motion be deferred; or
- b. that the meeting now adjourn; or
- c. that the debate now close; or
- d. that the motion be now put; or
- e. that the meeting proceed to the next item of business; or
- f. that a member be no longer heard; or
- g. that an item be dealt with behind closed doors; or
- h. that Standing Orders be suspended.

5.10.2 If carried, a procedural motion:

- a. that a motion be deferred - has the effect that all debate on the relevant motion is to cease and the motion is to be resubmitted at a time and date specified in the motion;

- b. that the meeting now adjourn - has the effect that the meeting is adjourned to the time and date specified in the motion or, where no time or date is specified, the next ordinary meeting;

- c. that the debate now close - has the effect that all debate on the relevant motion is to cease and the matter is to be put to vote;

- d. that the motion be now put - has the effect that the presiding member is to offer the right of reply and then immediately put the matter to vote without further debate;

- e. that the meeting proceed to the next item of business – has the effect that debate on the relevant motion is to cease;

- f. that a member be no longer heard - has the effect that the speaker against whom the motion is moved may not speak any further on the relevant motion, except to exercise any right of reply if he or she was the mover of the relevant motion;

- g. that an item be dealt with behind closed doors - has the effect that the matter is considered privately or other means necessary as may be required for the purposes of compliance with a direction or requirement of the *State Administrative Tribunal Act 2004*, or any other statutory requirement or to receive and consider legal advice; and

- h. that Standing Orders be suspended - has the effect that further debate can continue, allowing members to speak more than once on the same item.

5.10.3 A member moving a procedural motion is to speak on the motion for no more than two minutes. A member seconding a procedural motion is not to speak other than to formally second the motion.

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- 5.10.4 There is to be no debate on a procedural motion.
- 5.10.5 A member who has moved, seconded, or spoken on a primary motion or amending motion may not move any procedural motion which, if carried, would close the debate on the primary motion or amendment.

Division 4 Debate and voting on DAP applications

5.11 Law governing determination of DAP applications

A DAP's determination of a DAP application is made under the Act and the applicable local planning scheme. Accordingly, the DAP must comply with the provisions of the Act and the applicable scheme when making a determination.

5.12 Order of call in debate

Except where modified by a procedural motion, the presiding member is to call speakers to debate a motion or amendment in the following manner -

- a. the mover to state the motion;
- b. a seconder to the motion;
- c. the mover to speak to the motion;
- d. the seconder to speak to the motion;
- e. other speakers against and for the motion, alternating in view, if any;
- f. the mover takes right of reply which closes debate; and
- g. the matter is put to the vote.

5.13 Voting on DAP applications

- 5.13.1 Each DAP member, including the presiding member, has a single vote on a decision to be made on the DAP, except in the case of an equality of votes, in which case the presiding member has a casting vote.

Reference: r. 42(1)

5.13.2 A matter to be decided by a DAP must be decided by a majority of votes.

Reference: r. 42(2)

5.13.3 Each DAP member attending a meeting must vote on a matter that is put to the vote.

5.13.4 The presiding member, in taking a vote on any motion, is to:

- a. put the motion, first in the affirmative and then in the negative; and
- b. determine whether the affirmative or the negative has a majority of votes and, in the case of an equality of votes, make a casting vote; and
- c. declare the result of the vote.

5.13.5 The result of a vote is to be determined on a show of hands.

5.13.6 The meeting minutes are to record each member's voting preference in relation to each DAP application.

5.13.7 DAP members must exercise their vote independently and based on the information provided and the merits of the individual application. Members are not to take into consideration the policy or positions adopted by any other organisations to which a member may belong.

Division 5

Other matters relating to conduct of meeting

5.14 Loss of quorum during meeting

5.14.1 If, for any reason, a member (the **departing member**) leaves a meeting with the result that a quorum is no longer present (for instance, following disqualification on disclosure of interest), the presiding member is to suspend the meeting as soon as practicable after becoming aware of the fact.

5.14.2 The presiding member is then to invite the departing member's alternate member, if the alternate member is present, to participate in the meeting in place of the departing member for the duration of that member's absence.

5.14.3 If the departing member's alternate member is not present a quorum cannot be formed and the presiding member is to adjourn the meeting to a future time and date.

5.15 DAP member attending meeting as observer

5.15.1 A DAP member may attend the meeting of any DAP as an observer.

5.15.2 A DAP member attending a DAP meeting as an observer may, with the consent of the presiding member, speak at the meeting, but:

- a. is not entitled to vote on any motion before the DAP, and
- b. must sit in an area set aside for observers and separated from the sitting DAP members.

- 5.15.3 The requirements of the DAP Code of Conduct, and of Part 6 of these Practice Notes, relating to identification and disclosure of conflicts of interest, apply to a DAP member attending a DAP meeting as an observer in the same way they apply to a DAP member attending a meeting in the performance of the DAP member's functions under the Act.

5.16 No recording of meeting

A person must not use any electronic, visual or audio recording device or instrument to record the proceedings of a DAP meeting unless the presiding member has given permission to do so.

If the presiding member permits the minute taker to record the meeting for the purposes of preparing the minutes, the presiding member must be aware that such recording may need to be retained for up to 1 year to comply with obligations under the *State Records Act 2000*.

5.17 Conduct of DAP members at meetings

During a DAP meeting, a DAP member must not:

- a. make a statement that a local government or departmental employee is incompetent or dishonest; or
- b. use any offensive or objectionable expression in reference to a local government or departmental employee.

Reference: r. 47

5.18 Presiding member to preserve order

- 5.18.1 The presiding member is to preserve order and, whenever he or she considers it necessary, may call any member or other person to order. Conduct that is out of order includes, without limitation, the following:

- a. discussion of a matter before the meeting;
- b. offensive or objectionable language;
- c. comments which adversely reflect on the character or actions of another member or employee of the department or local government;
- d. conduct contravening any law or the DAP Standing Orders.

- 5.18.2 Depending on the nature of the point of order, the presiding member may request that the member withdraw a comment and make a satisfactory apology.

- 5.18.3 If a member:

- a. persists in any conduct that is out of order; or
- b. fails to comply with a direction from the presiding member,

the presiding member may direct the member to refrain from taking any further part in that meeting, other than by voting, and the member must comply with that direction.

5.19 Prevention of disturbance

- 5.19.1 A reference in this clause to a person is to a person other than a DAP member.
- 5.19.2 A person addressing the DAP must extend due courtesy and respect to the DAP and the processes under which it operates and must comply with any direction from the presiding member.
- 5.19.3 A person must not interrupt or interfere with the proceedings of any DAP meeting, whether by expressing approval or dissent, by conversing or by any other means.
- 5.19.4 The presiding member may warn a person who fails to comply with this clause.
- 5.19.5 If:
- a. after being warned, the person again acts contrary to this clause; or
 - b. a person refuses or fails to comply with a direction by the presiding member,

the presiding member may expel the person from the meeting by ordering him or her to leave the meeting room.

Part 6 - Disclosure of conflict of interest before and during DAP meetings

6.1 Disclosure of interest generally

- 6.1.1 Section 266 of the Act, and Part 3 of the DAP Code of Conduct, set out specific obligations on DAP members relating to the identification and disclosure of conflicts of interest.

As a general principle, a conflict of interest exists when a person has a private interest that could corrupt or undermine his or her performance of a public duty. As a decision maker must bring an open mind to deliberations required by a particular statute, he or she cannot be affected by such an improper influence. For this reason, DAP members must be alert to any private circumstances which could affect, or be seen to affect, the exercise of their judgement. Such interests must be declared and may be of a sufficient magnitude to preclude the member from participating in the decision.

This section is written to assist members to identify when they may have such an interest in a matter. Members can then consider whether the existence of that private interest places them in a position of conflict vis-a-vis their public duty as a DAP member and, as a general rule, should always declare such interests to the presiding member.

- 6.1.2 In this Part:

close associate of a DAP member means a person who:

- a. operates a business in partnership with the member; or
- b. employs the member; or
- c. is a beneficiary under a trust, or an object of a discretionary trust, of which the member is a trustee; or

- d. is a body corporate:

- (i) of which the member is a director, secretary or executive officer, or
- (ii) in which the member holds shares with a total value exceeding \$10,000 or 1 per cent of the total value of the issued share capacity of the body corporate, whichever is the lesser; or

- e. is the spouse, de facto partner, child or close relative of the member; or

- f. has a relationship of a kind specified in any of paragraphs (a)–(e) in relation to the member's spouse or de facto partner if the spouse or de facto partner is living with the member.

For the purposes of this part, a DAP member has an interest in a matter if either -

- (a) that DAP member; or

- (b) a close associate of that DAP member, has -

- (i) a direct or indirect pecuniary interest in the matter;

- (ii) a proximity interest in the matter; or

- (iii) an impartiality interest in the matter.

direct pecuniary interest is one where a person has an interest in a development application where it is reasonable to expect that the application, if dealt with by a DAP, will result in a financial gain, loss, benefit or detriment for the person.

indirect pecuniary interest is one where it is reasonable to expect that a person may receive a benefit or incur a loss, measurable in monetary terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.

impartiality interest means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of a member with such an interest and includes an interest arising from kinship, friendship, partnership, or membership of an association, that is connected to a development application that is before the relevant DAP or which may come before that DAP in future.

proximity interest, in relation to a DAP member, means an interest of the member, or of a close associate of the member, in a development application if the application concerns land that is adjoining the person's land or is directly across a thoroughfare from the person's land .

Reference: Part 3, DAP Code of Conduct

6.2 Disclosure of interest identified before DAP meeting

6.2.1 A DAP member who identifies a direct or indirect pecuniary interest, an impartiality interest or a proximity interest, relating to any DAP application to be determined at a DAP meeting that the member is to attend, is to notify the DAP secretariat in writing of the existence and nature of the conflict it poses as soon as practicable after becoming aware of the conflict.

Reference: item 3.3, DAP Code of Conduct

6.2.2 A DAP member who notifies the DAP secretariat of a direct or indirect pecuniary interest, or a proximity interest is not entitled to be present during the consideration or discussion of the application, or to vote on the application.

Reference: item 3.3, DAP Code of Conduct

6.2.3 On receipt of a notification under 6.2.1, the DAP secretariat is to:

- a. notify the presiding member of the relevant DAP of the existence and nature of the pecuniary, impartiality interest or proximity interest, and
- b. in the case of a direct or indirect pecuniary interest or a proximity interest - make arrangements for a suitable alternate member to attend the relevant DAP meeting to perform the functions of the member making the notification in relation to the DAP application giving rise to the conflict or proximity interest.

6.2.4 A DAP member who has a direct or indirect pecuniary interest or proximity interest relating to an application to be determined at a DAP meeting is not prevented from performing the member's functions under the Act in relation to any other application to be determined at the same meeting in relation to which the member does not have a conflict of interest.

6.2.5 Upon being notified of an impartiality interest, the presiding member (or, if the member disclosing the interest is the presiding member, the deputy presiding member) is to decide whether the interest is sufficient to give rise to a reasonable perception that the member's decision may not be made impartially. If the presiding member or deputy presiding member decides that the interest is sufficient:

- a. the member disclosing the interest is not entitled to be present during the consideration or discussion of the application, or to vote on the application, but is not prevented from performing the member's functions in relation to any other application to be determined at the same meeting in relation to which the member does not have an impartiality interest;

- b. the presiding member is to notify the DAP secretariat;
- c. the DAP secretariat is to notify the member;
- d. the DAP secretariat is to make arrangements for an alternative member in accordance with the procedure set out in 6.2.3(b).

6.2.6 In the event that a presiding member and/or deputy presiding member is absent or have both submitted an impartiality interest, a presiding member of another DAP is to decide whether the interest is sufficient to give rise to a reasonable perception that the member's decision may not be made impartially.

6.3 Disclosure of interest identified during DAP meeting

- 6.3.1 Section 266 of the Act:
- a. requires a DAP member who has a direct or indirect pecuniary interest in a DAP application to be determined at a DAP meeting to disclose the interest as soon as possible after the relevant facts have come to the member's notice to the other members participating in the meeting; and
 - b. prohibits the member from being present during any further consideration or discussion of the application, and from voting on the matter.
- 6.3.2 Contravention of section 266 of the Act is an offence with a maximum penalty of \$5,000.

Reference: s. 266 of the Act

6.3.3 The DAP Code of Conduct:

- a. requires a DAP member who identifies an impartiality interest or a proximity interest relating to any DAP application during the meeting at which the application is being considered to notify the presiding member as soon as possible after the relevant facts have come to the member's attention, and
- b. in the case of a proximity interest, prohibits the member from exercising the member's functions in relation to the application, and
- c. in the case of an impartiality interest, prohibits the member from exercising the member's functions in relation to the application if the interest is sufficient to give rise to a reasonable perception that the member's decision may not be made impartially.

Reference: item 3.3, DAP Code of Conduct

6.3.4 If a member discloses an impartiality interest during the course of a DAP meeting, the presiding member (or, if the member disclosing the interest is the presiding member, the deputy presiding member) is to decide whether the interest is sufficient to give rise to a reasonable perception that the member's decision may not be made impartially. If the presiding member or deputy presiding member decides that the interest is sufficient, the member disclosing the interest is not entitled to be present during the consideration or discussion of the application, or to vote on the application, but is not prevented from performing the member's functions in relation to any other application to be determined at the same meeting in relation to which the member does not have an impartiality interest.

Reference: item 3.3, DAP Code of Conduct

Part 7 - Administrative matters

7.1 Notification of development application determination

As soon as practicable after the DAP has made a determination on a DAP application and the minutes of the relevant meeting have been confirmed and signed as required by regulation 44 of the DAP regulations, the DAP secretariat is to:

- a. ensure compliance with the making and notification requirements of the planning instrument under which the DAP application was made; and
- b. give a copy of any written notice to the responsible authority.

Reference: r. 16

7.2 Applications for amendment to a DAP determination

Following the determination of a DAP application, the applicant can apply for an amendment of the determination in certain respects. This application is designed to permit amendments to a determination which are of a minor nature.

Reference: r. 17

7.3 Public comment

Only the presiding member may publicly comment on the operations or determinations of a DAP. However, the presiding member may nominate others such as a DAP member to speak on specific matters concerning the DAP.

Reference: r. 48

7.4 Presiding member to ensure compliance

The presiding member is to ensure compliance with the DAP Standing Orders and that:

- a. all material relevant to a decision has been made available to all members; and
- b. all matters are well considered; and
- c. all members are able to contribute to the discussion of any matter; and
- d. the decision on the matter is understood by all DAP members.