

Western Australia

Planning and Development Act 2005

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

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Planning and Development (Development Assessment Panels) Regulations 2011

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Planning and Development (Development Assessment Panels) Regulations 2011

Part 1 — Preliminary

1. Citation

These regulations are the *Planning and Development (Development Assessment Panels) Regulations 2011*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *Approval and Related Reforms (No. 4) (Planning) Act 2010* Part 3 comes into operation.

3. Terms used

- (1) In these regulations —

administrative officer, in relation to a DAP, means the administrative officer who provides services to the DAP under regulation 49;

alternate member means a person appointed under regulation 28;

applicant means a person who makes a DAP application;

CEO means the chief executive officer of the department;

DAP application means —

- (a) a development application prescribed under regulation 5; or
- (b) a development application prescribed under regulation 6 in respect of which the applicant has made an election under regulation 7;

DAP member means —

- (a) a specialist member or local government member of a LDAP; or
- (b) a specialist member or local government member of a JDAP,

and includes an alternate member;

DAP website has the meaning given in regulation 51;

department means the department of the Public Service principally assisting the Minister in the administration of the Act;

deputy presiding member, in relation to a DAP, means the person appointed as deputy presiding member of the DAP under regulation 27(1);

excluded development application means a development application for approval of —

- (a) construction of —
 - (i) a single house and any associated carport, patio, outbuilding and incidental development;
 - (ii) less than 10 grouped dwellings and any associated carport, patio, outbuilding and incidental development;
 - (iii) less than 10 multiple dwellings and any associated carport, patio, outbuilding and incidental development;

or

- (b) development in an improvement scheme area; or

- (c) development by a local government or the Commission;
or
- (d) development in a district for which —
 - (i) a DAP is not established at the time the application is made; or
 - (ii) a DAP has been established for less than 60 days at the time the application is made;

local government member means —

- (a) in relation to a LDAP — a person appointed as a member of the LDAP under regulation 23(1)(a);
- (b) in relation to a JDAP — a person included on the local government register;

local government register means the register maintained under regulation 26;

member, in relation to the council of a local government, has the meaning given by the *Local Government Act 1995* section 1.4;

planning instrument has the meaning given in section 171A(1) of the Act;

presiding member, in relation to a DAP, means the person appointed as presiding member of the DAP under regulation 27(1);

R-Codes means the *State Planning Policy 3.1 Residential Design Codes (Variation 1)* made under section 26 of the Act, including any amendments made to the policy;

specialist member means —

- (a) in relation to a LDAP, a person appointed as a member of the LDAP under regulation 23(1)(b);
 - (b) in relation to a JDAP, a person appointed as a member of the JDAP under regulation 25(1)(b).
- (2) In these regulations the following terms have the meaning given to them in the R-Codes —

r. 4

carport

dwelling

grouped dwelling

incidental development

multiple dwelling

outbuilding

patio

single house

Note: The terms DAP, JDAP, LDAP and responsible authority and other terms defined in the *Planning and Development Act 2005* section 4(1) have the same respective meanings as in that provision.

4. Notes not part of the law

Notes in these regulations are provided to assist understanding and do not form part of the regulations.

Part 2 — Development applications and determinations

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

Any development application that —

- (a) is not an excluded development application; and
- (b) 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 \$15 million or more; and
- (c) in the case of an application for development in a district outside of the district of the City of Perth — is for the approval of development that has an estimated cost of \$7 million or more,

is of a class prescribed under section 171A(2)(a) of the Act.

6. Optional DAP applications (Act s. 171A(2)(ba))

Any development application that —

- (a) is not —
 - (i) an excluded development application; or
 - (ii) a development application in respect of which the responsible authority has under regulation 19 delegated the power of determination;

and

- (b) 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 \$10 million or more and less than \$15 million; and
- (c) in the case of an application for development in a district outside of the district of the City of Perth — is for the approval of development that has an estimated cost of \$3 million or more and less than \$7 million,

is of a class prescribed under section 171A(2)(ba) of the Act.

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7. Election in respect of r. 6 application

- (1) An applicant making a development application of a kind prescribed under regulation 6 may elect to have the application determined by a DAP.
- (2) The election must be made by —
 - (a) completing the notice of election in the form of Part A of Form 1 in Schedule 3; and
 - (b) attaching it to the development application.

8. Applications to be determined by DAPs

- (1) Despite any other provision of the Act or a planning instrument, any DAP application for approval of development within a district for which a DAP is established —
 - (a) must be determined by the DAP as if the DAP were the responsible authority under the relevant planning instrument in relation to the development; and
 - (b) cannot be determined by the local government for the district or the Commission.
- (2) If a DAP application made under a region planning scheme or regional interim development order is for approval of development in more than one district for which a DAP is established, the application is to be determined by the DAP established for the district in which the greater land area of the development is proposed.

9. Making of applications and initial procedures unaffected

These regulations do not affect —

- (a) the manner and form in which a development application or an application for amendment or cancellation of a development approval must be made under a planning instrument; or
- (b) the requirements under a planning instrument as to notification, advertising and consultation procedures

prior to determination of a development application or an application for amendment or cancellation of a development approval.

10. Making a DAP application: notice and fees

- (1) An applicant making a DAP application to a responsible authority for development approval under a planning instrument must, when lodging the application —
 - (a) give to the local government with which the application for development approval is lodged a completed notice in the form of Form 1 in Schedule 3; and
 - (b) pay to the local government the relevant fee in Schedule 1.
- (2) The form required under subregulation (1) is required in addition to any application form required under the planning instrument.
- (3) The fee payable under subregulation (1) is payable in addition to any fees, costs and expenses that are imposed by a local government in accordance with the *Planning and Development Regulations 2009* in relation to the development application.
- (4) If a DAP application in respect of the same development is required to be made under both a local planning scheme and a region planning scheme, or under both a local interim development order and a regional interim development order, the fee referred to in subregulation (1)(b) is payable once only.
- (5) The local government must, within 30 days after the date on which it receives the DAP application, remit to the department the fee paid under subregulation (1).

11. Local government must notify DAP of DAP application

A local government must, within 7 days after the date on which it receives a DAP application, give the administrative officer of the DAP that will determine the application the following —

- (a) a copy of the DAP application;

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- (b) a copy of the notice given under regulation 10(1) and completed by the local government;
- (c) confirmation that the applicant has paid the fee under regulation 10(1).

12. Responsible authority must report to DAP

- (1) For the purposes of this regulation, a development application that is forwarded by a local government to the Commission in accordance with a region planning scheme is taken to have been made to the Commission.
- (2) A responsible authority to which a DAP application is made must give the presiding member of the DAP that will determine the application a report on the application in a form approved by the CEO.
- (3) The report must be given —
 - (a) 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 50 days after the date on which the application was made; or
 - (b) if —
 - (i) the DAP application is required to be advertised under a local planning scheme or local interim development order; and
 - (ii) 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 10 days before the day on which the application would be deemed to be refused; or
 - (c) otherwise — within 80 days after the date on which the application was made.

- (4) Despite subregulation (3), the presiding member of the DAP may, by notice in writing given to the responsible authority and with the consent of the applicant, extend the period within which the report on a DAP application must be given.
- (5) The report must provide sufficient information to enable the DAP to determine the DAP application, including —
 - (a) a recommendation as to how the application should be determined; and
 - (b) copies of any advice received by the responsible authority from any other statutory or public authority consulted by the responsible authority in respect of the application; and
 - (c) any other information that the responsible authority considers is relevant to determining the application.
- (6) A DAP that receives a report under subregulation (2) must have regard to, but is not bound to give effect to, the recommendation included in the report.

13. Further services from responsible authority

- (1) The presiding member of a DAP may, after receiving a report on a development application from a responsible authority under regulation 12, direct the responsible authority to give the DAP any or all of the following services —
 - (a) technical advice or assistance in connection with the application; or
 - (b) further information in writing in connection with the application.
- (2) The direction must be in writing and must specify —
 - (a) the services required; and
 - (b) the time within which the responsible authority must comply with the direction.

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- (3) A responsible authority must comply with a direction given to it under this regulation.

14. Costs and expenses incurred by responsible authority

The costs and expenses incurred by a responsible authority in giving a report under regulation 12, or advice, assistance or information in compliance with a direction under regulation 13, are, to the extent that they are not payable by an applicant under the *Planning and Development Regulations 2009* regulation 49, to be borne by the responsible authority.

15. Notification to applicant

The administrative officer of a DAP must notify an applicant of the following dates —

- (a) the date on which a report under regulation 12(2) on a DAP application made by the applicant is received by the DAP;
- (b) any date on which the DAP directs a responsible authority under regulation 13(1) to give advice, assistance or further information in respect of the application;
- (c) the date of the meeting at which the DAP will consider the application.

16. Determination by DAP

- (1) The provisions of the Act and the planning instrument under which a DAP application is made apply to the making and notification of a determination by a DAP to whom the application is given under regulation 11 as if the DAP were the responsible authority in relation to the planning instrument.
- (2) The administrative officer of a DAP must give the responsible authority a copy of any written notice of a determination of a DAP application, together with approved plans and other ancillary documents, given under subregulation (1) to an applicant.

17. Amending or cancelling development approval

- (1) An owner of land in respect of which a development approval has been granted by a DAP pursuant to a DAP application may apply for 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.
- (2) An application under subregulation (1) —
 - (a) may be made during or after the period within which the development approved must be substantially commenced; and
 - (b) must be made in the form of Form 2 in Schedule 3; and
 - (c) must be accompanied by the relevant fee set out in Schedule 1; and
 - (d) must be lodged with the local government with which the DAP application was lodged.
- (3) Unless otherwise provided in this regulation, regulations 10 to 13 apply to an application under subregulation (1) as if the application were a DAP application.
- (4) The DAP may determine an application under subregulation (1) by —
 - (a) approving the application with or without conditions; or
 - (b) refusing the application.
- (5) As soon as practicable after the application is determined, the presiding member must give the applicant, the relevant

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responsible authority and the administrative officer of the DAP written notification of the determination which must include the following —

- (a) the date of the determination;
 - (b) the determination;
 - (c) the terms of any condition to which the approval is subject;
 - (d) reasons for any refusal;
 - (e) unless the application is granted unconditionally, a statement of the effect of regulation 18.
- (6) The administrative officer of the DAP must ensure that the notification is published on the DAP website.
- (7) A development approval granted by a DAP pursuant to a DAP application cannot be amended or revoked by a local government.

18. Review by State Administrative Tribunal

- (1) In this regulation —
- decision-maker*** has the meaning given in the *State Administrative Tribunal Act 2004* section 3(1);
- deemed refused DAP application*** means a DAP application that is taken under the Act or a planning instrument to have been refused because a determination of the application was not made, or notice of the determination was not given to the applicant, within the time allowed under the Act or planning instrument.
- (2) A person who has made a DAP application or an application under regulation 17 may apply to the State Administrative Tribunal for a review, in accordance with Part 14 of the Act, of —
- (a) a determination by a DAP to refuse the application; or

- (b) any condition imposed by a DAP in the determination of the application; or
 - (c) a deemed refused DAP application,
- as if the determination or deemed refusal were a determination of a responsible authority.
- (3) Despite section 171A(3) of the Act and any other provision of these regulations, for the purposes of the *State Administrative Tribunal Act 2004*, a DAP is —
- (a) the decision-maker in respect of a determination of a DAP application by the DAP or a deemed refused DAP application; and
 - (b) the respondent in any application for review of the determination or deemed refusal.

Part 3 — Delegation to DAPs

19. Determination of certain development applications may be delegated to DAP

- (1) Any development application that —
- (a) is not an excluded development application; and
 - (b) 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 \$10 million or more and less than \$15 million; and
 - (c) in the case of an application for development in a district outside of the district of the City of Perth — is for the approval of development that has an estimated cost of \$3 million or more and less than \$7 million,

is of a class prescribed for the purposes of this regulation.

- (2) A local government may, by written instrument, delegate to a DAP established for the district of the local government —
- (a) the power of the local government to determine a development application of a class prescribed under subregulation (1) that is made to the local government; and
 - (b) the power of the local government to amend or cancel determinations of applications of that kind.
- (3) The power to delegate can be exercised by a local government only by or in accordance with a decision of an absolute majority (as defined in the *Local Government Act 1995* section 1.4) of the council of the local government.
- (4) The Commission may, by written instrument, delegate to a DAP —
- (a) the power of the Commission to determine development applications prescribed under subregulation (1) that are made to the Commission; and

- (b) the power of the Commission to amend or cancel determinations of applications of that kind.
- (5) The local government or Commission may delegate the power either generally or as provided in the instrument of delegation.
- (6) A local government or the Commission must not make a delegation under this regulation or amend such a delegation without the prior consent of the CEO.
- (7) A DAP to which a power is delegated under this regulation cannot delegate that power.

20. Commencement and publication of delegation

- (1) An instrument of delegation under regulation 19, and any instrument amending or revoking the delegation, takes effect on the day specified in the instrument, being a day that is not earlier than the day on which notice of the instrument is published in the *Gazette* under this regulation.
- (2) A body that delegates to a DAP under regulation 19 must give a copy of the instrument of delegation to the CEO.
- (3) The CEO must cause the notice of the instrument to be published in the *Gazette* and on the DAP website.
- (4) The body that delegated the power must pay the costs of publication of the notice in the *Gazette*.

21. Effect of delegation

- (1) Nothing in regulation 19 or 20 or this regulation prevents or limits the application of the *Interpretation Act 1984* sections 58 and 59 to a delegation made under regulation 19.
- (2) If a local government or the Commission has delegated under regulation 19 the power to determine a development application —
 - (a) the applicant must, in addition to any application required under the planning instrument under which the

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application is made, give to the local government with which the application is lodged a notice in the form of Form 1 in Schedule 3; and

- (b) regulations 11 to 16 apply as if the application were a DAP application.
- (3) If a local government or the Commission has delegated under regulation 19 the power to amend or cancel the determination of a development application —
 - (a) the applicant for amendment or cancellation must, in addition to any application required under the planning instrument under which the application is made, give to the local government with which the application is lodged an application in the form of Form 2 in Schedule 3; and
 - (b) regulations 11 to 16 apply as if the application were a DAP application.
- (4) A DAP exercising a power that has been delegated to the DAP under this regulation is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) A power exercised by a DAP pursuant to a delegation under this regulation is taken to be exercised by the body that delegated the power.

22. Payments in respect of exercise of delegated power

- (1) Subject to any agreement made under subregulation (3), a local government that under this Part delegates a power to determine a development application must pay to the department in respect of each application that is determined by a DAP pursuant to the delegation an amount equal to the amount that would have been payable under regulation 10 by the applicant if the application were made under that regulation.
- (2) Subject to any agreement made under subregulation (3), a local government that under this Part delegates a power to amend or cancel a development application must pay to the department in

respect of each application that is determined by a DAP pursuant to the delegation an amount equal to the amount that would have been payable under regulation 17 by the applicant if the application were made under that regulation.

- (3) The CEO may enter into an agreement with a local government as to the payments under subregulation (1) or (2).

Part 4 — Development assessment panels

Division 1 — DAP members

23. LDAP members

- (1) The members of a LDAP are —
 - (a) 2 persons appointed to the LDAP as local government members; and
 - (b) 3 persons appointed to the LDAP as specialist members.
- (2) The members must be appointed in writing by the Minister.
- (3) Regulation 24 applies to the appointment of local government members.
- (4) Regulation 37 applies to the appointment of specialist members.

24. Local government members of LDAP

- (1) Whenever it is necessary to make an appointment under regulation 23(1)(a), the Minister must —
 - (a) in writing, request the local government of the district for which the DAP is established to nominate a member of the council of the local government for appointment; and
 - (b) unless subregulation (2) applies, appoint the person so nominated.
- (2) If, within 40 days after the date on which the Minister makes a request to a local government under subregulation (1) or such longer period as the Minister may allow, the local government fails to nominate a person for appointment in accordance with the request, the Minister may appoint under regulation 23(1)(a) a person who —
 - (a) is an eligible voter of the district for which the LDAP is established; and

- (b) the Minister considers has relevant knowledge or experience that will enable that person to represent the interests of the local community of that district.
- (3) For the purposes of subregulation (2)(a) a person is an eligible voter of a district if that person is eligible under the *Local Government Act 1995* section 4.29 or 4.30 to be enrolled to vote at elections for the district.

25. JDAP members

- (1) The members of a JDAP, at any meeting of the JDAP to determine or otherwise deal with a development application or an application to amend or cancel a determination of the JDAP, are —
 - (a) the 2 local government members included on the local government register as representatives of the relevant local government in relation to the development application; and
 - (b) 3 persons appointed to the JDAP as specialist members.
- (2) In subregulation (1)(a) —
relevant local government, in relation to a development application, means the local government of the district in which the land to which the development application relates is situated.
- (3) The specialist members must be appointed in writing by the Minister.
- (4) Regulation 37 applies to the appointment of specialist members.

26. JDAP local government member register

- (1) The Minister must cause to be established and maintained a register of local government members of JDAPs.
- (2) Subject to subregulation (4), the register must include the names of 2 members of the council of each local government of a district for which a JDAP is established.

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Division 1 DAP members

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- (3) Whenever it is necessary to include a member of a council of a local government on a local government register under subregulation (2), the Minister must —
 - (a) in writing, request the local government to nominate a member of the council of the local government for inclusion on the register; and
 - (b) unless subregulation (4) applies, include on the register the name of the person nominated.
- (4) If, within 40 days after the date on which the Minister makes a request under subregulation (3) or such longer period as the Minister may allow, the local government fails to nominate a person for inclusion on the local government register in accordance with the request, the Minister may include on the register as a representative of the local government a person who —
 - (a) is an eligible voter of the district of the local government; and
 - (b) the Minister considers has relevant knowledge or experience that will enable that person to represent the interests of the local community of that district.
- (5) For the purposes of subregulation (4)(a) a person is an eligible voter of a district if that person is eligible under the *Local Government Act 1995* section 4.29 or 4.30 to be enrolled to vote at elections for the district.

27. Presiding member and deputy presiding member

- (1) The Minister must appoint —
 - (a) one of the specialist members of a DAP with experience and a tertiary qualification in planning as the presiding member of the DAP; and
 - (b) another of the specialist members with that experience and qualification as the deputy presiding member.

- (2) The deputy presiding member must act as presiding member when the presiding member is unable to do so by reason of illness, absence or other cause.
- (3) No act or omission of the deputy presiding member acting as presiding member is to be questioned on the ground that the occasion for his or her so acting had not arisen or had ceased.

28. Alternate members

- (1) The Minister may, in writing, appoint —
 - (a) an alternate member for any person appointed under regulation 23(1)(a); and
 - (b) an alternate member for any person included on the local government register under regulation 26; and
 - (c) such number of persons eligible to be appointed as specialist members as the Minister considers necessary to form a pool of alternate members for specialist members.
- (2) Regulation 24 applies in relation to an appointment under subregulation (1)(a).
- (3) Regulation 26 applies in relation to an appointment under subregulation (1)(b).
- (4) An alternate member for a local government member of a DAP may act in the place of the local government member if the local government member is unable to perform the functions of the member by reason of illness, absence or other cause.
- (5) If a specialist member other than the presiding member is unable to perform the functions of the member by reason of illness, absence or other cause, an alternate member from the pool referred to in subregulation (1)(c) may, on the request of the presiding member, act in the place of the specialist member.

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- (6) A person cannot act in the place of a specialist member of a DAP if the person is —
 - (a) employed under the *Local Government Act 1995* section 5.36 by the local government of a district for which the DAP is established; or
 - (b) a member of the council of the local government of a district for which the DAP is established.
- (7) An alternate member acting under this regulation may despite anything in these regulations, continue to act, after the occasion for so acting has ceased, for the purpose of completing any determination of a DAP application.
- (8) An alternate member, while acting in the place of a DAP member, has the same functions and protection from liability as a DAP member.
- (9) No act or omission of a person acting in place of another under this regulation is to be questioned on the ground that the occasion for so acting had not arisen or had ceased.

29. Term of office

- (1) A DAP member holds office for the term specified in the member's instrument of appointment.
- (2) The term of office specified in an instrument of appointment must not exceed 2 years.
- (3) A person's eligibility for reappointment as a DAP member or the term for which a person may be reappointed is not affected by an earlier appointment.

30. Training of DAP members

- (1) A person who is appointed as a DAP member cannot perform any functions as a member of that DAP until the CEO is of the opinion that the member has satisfactorily completed the training for DAP members provided by the department.

- (2) Subject to subregulation (3), a DAP member who satisfactorily completes training for DAP members provided by the department is entitled to be paid the amount specified in Schedule 2 item 7.
- (3) Unless the Minister has given written consent to the payment, the amount referred to in subregulation (2) is not payable to a DAP member who is —
 - (a) an employee as defined in the *Public Sector Management Act 1994*; or
 - (b) an employee of a department or other agency of the Commonwealth; or
 - (c) a local government employee; or
 - (d) a judicial officer or retired judicial officer; or
 - (e) an employee of a public academic institution.

31. Fees and allowances for DAP members

- (1) Subject to subregulation (6), a DAP member who attends a DAP meeting is entitled to be paid the fee set out in Schedule 2 item 1 or 2, as the case requires.
- (2) Subject to subregulation (6), a DAP member who attends a DAP meeting to determine an application under regulation 17 is entitled to be paid the relevant fee set out in Schedule 2 item 3 or 4 but is not entitled to be paid the fee set out in Schedule 2 item 1 or 2.
- (3) Subject to subregulation (6), a DAP member who, at the invitation or requirement of the State Administrative Tribunal, attends a proceeding in the Tribunal in relation to the review of a determination of the DAP is entitled to be paid the fee set out in Schedule 2 item 5 or 6, as the case requires.
- (4) A DAP member is entitled to be reimbursed for motor vehicle and travel expenses at the rate decided from time to time by the Public Sector Commissioner for members of Government boards and committees.

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

Part 4 Development assessment panels

Division 1 DAP members

r. 32

- (5) Fees and allowances for DAP members are payable by the department.
- (6) Unless the Minister has given written consent to the payment, fees are not payable under this regulation to a DAP member who is —
 - (a) an employee as defined in the *Public Sector Management Act 1994*; or
 - (b) an employee of a department or other agency of the Commonwealth; or
 - (c) a local government employee; or
 - (d) a judicial officer or retired judicial officer; or
 - (e) an employee of a public academic institution.

32. Casual vacancies

- (1) The office of a DAP member becomes vacant if the member —
 - (a) dies, resigns or is removed from office under this regulation; or
 - (b) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
 - (c) is convicted of an offence punishable by imprisonment for more than 12 months; or
 - (d) is convicted of an offence against section 266 of the Act.
- (2) A DAP member may at any time resign from office by giving a written resignation to the Minister.
- (3) The Minister may, by notice in writing given to the member, remove a DAP member from office on the grounds of —
 - (a) neglect of duty; or
 - (b) misconduct or incompetence; or
 - (c) mental or physical incapacity to carry out the member's duties in a satisfactory manner; or

- (d) absence without leave granted under regulation 33 from 3 consecutive meetings of the DAP of which the member had notice.
- (4) Failure to comply with regulation 45(2), 46(2) or (3), 47 or 48 is capable of constituting misconduct for the purposes of subregulation (3)(b).
- (5) The Minister must, by notice in writing given to the member, remove a DAP member from office if the member ceases to hold a position or qualification by virtue of which the member was appointed.
- (6) A notice given under subregulation (3) or (5) must specify the ground of removal.
- (7) The removal takes effect on the day on which the member is given the notice or on such later day as is specified in the notice.

33. Leave of absence

The Minister may grant leave of absence to a DAP member on the terms and conditions determined by the Minister.

34. Extension of term of office during vacancy in membership

- (1) If the office of a DAP member becomes vacant because the member's term of office expires, the member is taken to continue to be a member during that vacancy until the date on which the vacancy is filled (whether by reappointment of the member or appointment of a successor to the member).
- (2) However, subregulation (1) ceases to apply if the member resigns or is removed from office under these regulations.
- (3) The maximum period for which a DAP member is taken to continue to be a member under this regulation after the member's term of office expires is 3 months.

Division 2 — Specialist members

35. Register of persons eligible to be specialist members

- (1) The Minister must cause to be compiled and maintained a register of persons who —
- (a) have experience in one or more of the following areas of expertise —
 - (i) town planning;
 - (ii) architecture;
 - (iii) urban design;
 - (iv) engineering;
 - (v) landscape design;
 - (vi) environment;
 - (vii) law;
 - (viii) property development or management;and
 - (b) have —
 - (i) a tertiary qualification relevant to their area of expertise and experience practising or working in their area of expertise that is, in the opinion of the Minister, sufficient to allow them to perform the duties of a specialist member; or
 - (ii) extensive experience practising or working in their area of expertise that is, in the opinion of the Minister, sufficient to allow them to perform the duties of a specialist member;and
 - (c) are willing to hold office as a specialist member of a DAP.

-
- (2) The following persons are not eligible to be included on the register —
- (a) an officer of the department;
 - (b) a member of a parliament as defined in the *Local Government Act 1995* section 2.20.
- (3) The register must include the following details in relation to each person on it —
- (a) the name of the person;
 - (b) the qualifications and experience of the person;
 - (c) any other details the Minister considers appropriate.
- (4) The Minister may from time to time add a person to the register.
- (5) The Minister may remove a person from the register —
- (a) on the written request of that person; or
 - (b) if the person is removed from office as a DAP member under regulation 32; or
 - (c) if the person is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
 - (d) if the person is convicted of an offence punishable by imprisonment for more than 12 months; or
 - (e) if the Minister is satisfied that the person is no longer eligible to be included on the register or willing to hold office as a specialist member of a DAP.

36. Short-list of persons recommended for appointment

- (1) When it is necessary to appoint a specialist member of a DAP or an alternate member of a DAP under regulation 28(1)(c) the Minister must, in writing, request the working group established under regulation 38(1) to submit a short-list of persons recommended for the appointment.

- (2) The working group must, within such time as is specified by the Minister, submit to the Minister a short-list of one or more persons selected by the working group from the register maintained under regulation 35.
- (3) The short-list must not include a person who is —
 - (a) employed under the *Local Government Act 1995* section 5.36 by the local government of a district for which the DAP is established; or
 - (b) a member of the council of the local government of a district for which the DAP is established.

37. Appointment of specialist members and alternate specialist members

- (1) The Minister, when appointing a person as a specialist member of a DAP under regulation 23(1)(b) or 25(1)(b) or an alternate member under regulation 28(1)(c) —
 - (a) must have regard to the short-list submitted under regulation 36; and
 - (b) if the Minister does not appoint a person listed on the short-list, must appoint a person selected by the Minister from the register maintained under regulation 35.
- (2) The Minister must not appoint as a specialist member of a DAP a person who is —
 - (a) employed under the *Local Government Act 1995* section 5.36 by the local government of a district for which the DAP is established; or
 - (b) a member of the council of the local government of a district for which the DAP is established.
- (3) A person may hold office as a specialist member of more than one DAP at the same time.
- (4) At least 2 of the specialist members of each DAP must have experience, and a tertiary qualification, in town planning.

38. Short-list working group

- (1) A working group is established to submit to the Minister under regulation 36 short-lists of persons recommended for appointment as specialist members of DAPs.
- (2) The working group consists of the following members —
 - (a) the CEO or an officer of the department nominated by the CEO;
 - (b) a person nominated by WALGA and appointed by the Minister or, if subregulation (5) applies, a person appointed in accordance with that subregulation;
 - (c) a person nominated by the WA Division of the Planning Institute of Australia Incorporated and appointed by the Minister or, if subregulation (5) applies, a person appointed in accordance with that subregulation;
 - (d) a person appointed by the Minister from nominations submitted under subregulation (4) or, if subregulation (5) applies, a person appointed in accordance with that subregulation.
- (3) When it is necessary to appoint a person under subregulation (2)(b) or (c), the Minister must request WALGA or the Planning Institute of Australia Incorporated, as the case requires, to nominate a person for appointment.
- (4) When it is necessary to appoint a person under subregulation (2)(d), the Minister must request each of the following bodies to nominate a person for appointment —
 - (a) the Housing Industry Association;
 - (b) the Urban Development Institute of Australia;
 - (c) the Property Council of Australia;
 - (d) the Real Estate Institute of Western Australia;
 - (e) the Master Builders Association of Western Australia.
- (5) If, within 14 days after the date on which the Minister makes a request under subregulation (3) or (4) for nomination for

appointment, no nomination has been made, the Minister may appoint any person the Minister thinks fit.

- (6) The member referred to in subregulation (2)(a) is the presiding member of the working group.
- (7) A working group member, including the presiding member, has a single vote on a decision to be made by the working group and, in the case of an equality of votes, the presiding member also has a casting vote.
- (8) A matter that is to be decided by the working group must be decided by a majority of votes.
- (9) A decision is a valid decision of the working group even though it is not made at a meeting of the working group, if each member of the working group agrees in writing to the proposed decision.
- (10) Subject to any direction of the Minister, the working group may determine its own procedures.
- (11) Regulations 29, 32, 33 and 34 apply in relation to a member of the working group appointed under this regulation as if any reference in those regulations to a DAP member were a reference to a member of the working group.

Division 3 — Meetings

39. Notice of meetings

- (1) The time, date and location of each DAP meeting, and the agenda for the meeting, must be published at least 5 days before the meeting —
 - (a) on the DAP website; and
 - (b) by each local government of a district in which development under a development application will be considered at the meeting —
 - (i) on its website; or

- (ii) if the local government does not have an operating website, by means approved by the CEO.
- (2) The administrative officer of the DAP must notify local governments of the details necessary to enable the local governments to comply with subregulation (1)(b).

40. General procedure concerning meetings

- (1) At a meeting of a DAP, the DAP may determine —
 - (a) one or more development applications; or
 - (b) one or more applications under regulation 17.
- (2) Any DAP meeting to determine a development application is to be open to the public.
- (3) The presiding member of a DAP may invite a person to advise or inform, or make a submission to, the DAP in respect of a development application.
- (4) Unless the presiding member otherwise directs, a DAP meeting to determine an application under regulation 17 —
 - (a) is to be held by each other person at the meeting being simultaneously in contact by telephone, or other means of instantaneous communication; and
 - (b) is not open to the public.
- (5) The CEO may issue practice notes about the practice and procedure of DAPs and each DAP must comply with those practice notes.

41. Quorum

- (1) At a meeting of a LDAP, 3 members of the LDAP including —
 - (a) the presiding member; and
 - (b) another specialist member; and

(c) a local government member,
constitute a quorum.

- (2) At a meeting of a JDAP, 3 members of the JDAP including —
- (a) the presiding member; and
 - (b) another specialist member; and
 - (c) one of the local government members referred to in regulation 25(1)(a),

constitute a quorum.

42. Voting

- (1) A DAP member at a DAP meeting, including the presiding member, has a single vote on a decision to be made by the DAP and, in the case of an equality of votes, the presiding member also has a casting vote.
- (2) A matter that is to be decided by a DAP at a meeting of a DAP must be decided by a majority of votes of the members present.

43. Attending meeting remotely

If the presiding member of a DAP consents, the presence of a person at a meeting of the DAP need not be by attendance in person but may be by that person and each other person at the meeting being simultaneously in contact by telephone, or other means of instantaneous communication.

44. Minutes

- (1) Accurate minutes of a meeting of a DAP must be kept, in a form approved by the CEO, by —
 - (a) an officer of the local government at whose offices the DAP meeting is held; or
 - (b) another person approved by the CEO.
- (2) The local government at whose offices a meeting of a DAP is held, or the person who takes the minutes, must give the

administrative officer of the DAP a copy of the minutes of the meeting within 5 days after the date of the meeting.

- (3) The minutes of a meeting given under subregulation (2) must be confirmed and signed by the person who was the presiding member at the meeting.
- (4) The minutes that are confirmed and signed under subregulation (3) must be published on the DAP website within 10 days after the date of the meeting.
- (5) If —
 - (a) the presiding member is not available to confirm and sign the minutes of a meeting; and
 - (b) the deputy presiding member was present at that meeting,the deputy presiding member may confirm and sign the minutes.
- (6) The administrative officer of the DAP must give the local government a copy of the signed minutes.
- (7) The local government must publish a copy of the signed minutes —
 - (a) on its website; or
 - (b) if the local government does not have an operating website, by means approved by the CEO.

Division 4 — Conduct of DAP members

45. Code of conduct

- (1) The CEO must make and maintain a written code of conduct in respect of DAPs.
- (2) Each person performing functions as a DAP member must comply with the code of conduct.
- (3) The CEO may amend the code of conduct from time to time.

46. Gifts

- (1) In this regulation —

gift has the meaning given in the *Local Government Act 1995* section 5.82(4) except that it does not include a gift from a relative as defined in section 5.74(1) of that Act;

notifiable gift, in relation to a DAP member, means —

- (a) a gift worth more than \$50 and less than \$300; or
- (b) a gift that is one of 2 or more gifts given to the member by the same person within a period of 6 months that are in total worth more than \$50 and less than \$300;

prohibited gift, in relation to a DAP member, means —

- (a) a gift worth \$300 or more; or
- (b) a gift that is one of 2 or more gifts given to the member by the same person within a period of 6 months that are in total worth \$300 or more.

- (2) A person who is a DAP member must not accept a prohibited gift from a person who —

- (a) is undertaking development approved by the DAP; or
- (b) is seeking to undertake development requiring approval by the DAP; or
- (c) it is reasonable to believe is intending to undertake development requiring approval by the DAP.

- (3) A person who is a DAP member and who accepts a notifiable gift from a person who —

- (a) is undertaking development approved by the DAP; or
- (b) is seeking to undertake development requiring approval by the DAP; or
- (c) it is reasonable to believe is intending to undertake development requiring approval by the DAP,

must notify the CEO of the acceptance in accordance with subregulation (4) as soon as practicable after the member

becomes aware that the person has made or is intending to make the application for approval.

- (4) Notification of the acceptance of a notifiable gift must be in writing and must include the following —
- (a) the name of the person who gave the gift;
 - (b) the date on which the gift was accepted;
 - (c) a description, and the estimated value, of the gift;
 - (d) the nature of the relationship between the DAP member and the person who gave the gift;
 - (e) if the gift is a notifiable gift under paragraph (b) of the definition of **notifiable gift** in subregulation (1) (whether or not it is also a notifiable gift under paragraph (a) of that definition) —
 - (i) a description; and
 - (ii) the estimated value; and
 - (iii) the date of acceptance,of each other gift accepted within the 6 month period.
- (5) The CEO must maintain a register of gifts in which details of notices received under subregulation (4) are recorded.

47. Relations with local government and public sector employees

A DAP member attending a DAP meeting must not, either orally, in writing or by any other means —

- (a) make a statement that a local government or public sector employee is incompetent or dishonest; or
- (b) use offensive or objectionable expressions in reference to a local government or public sector employee.

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

Part 4 Development assessment panels

Division 4 Conduct of DAP members

r. 48

48. Public comment

- (1) A DAP member, other than the presiding member, must not publicly comment, either orally or in writing, on any action or determination of a DAP.
- (2) Subregulation (1) does not apply to comments made at a meeting of a DAP.

Part 5 — Administration

49. Administrative officer

- (1) In this regulation —

departmental officer means a public service officer employed in the department;

employed in the department includes seconded to perform functions or services for, or duties in the service of, the department;

public service officer has the meaning given in the *Public Sector Management Act 1994* section 3(1).

- (2) Each DAP is to have an administrative officer.
- (3) The CEO must make a departmental officer available to provide services to a DAP as its administrative officer.

50. Other staff and facilities

If a DAP is established for the district of one or more local governments, the local governments must —

- (a) make available at least one local government employee to provide administrative support to the DAP at meetings of the DAP; and
- (b) provide the DAP with such facilities at an office of the local governments as the DAP may reasonably require to perform its functions including —
- (i) an appropriate venue for DAP meetings; and
 - (ii) electronic equipment; and
 - (iii) catering.

51. DAP website

The CEO must establish a website (the *DAP website*) containing —

- (a) information required under these regulations to be published on the website; and
- (b) such other information about DAPs as the CEO considers appropriate.

52. Minister may require information

(1) In this regulation —

document includes any tape, disk or other device or medium on which information is recorded or stored;

information means information specified, or of a description specified, by the Minister that relates to a DAP application.

(2) The Minister is entitled —

- (a) to request a local government to obtain information; and
- (b) to have information in the possession of a DAP or a local government; and
- (c) if the information is in or on a document, to have, and make and retain copies of, that document; and
- (d) to give to a DAP information furnished under this regulation or under section 18 of the Act.

(3) For the purposes of subregulation (2) the Minister —

- (a) may request a local government to obtain information; and
- (b) may request a DAP or a local government to furnish information to the Minister; and
- (c) may request a DAP or a local government to give the Minister access to information; and

- (d) for the purposes of paragraph (c), may make use of staff of the local government to obtain the information and furnish it to the Minister.
- (4) A DAP must comply with a request made under subregulation (3) and the relevant local government is to make its staff and facilities available for the purposes of subregulation (3)(d).

53. Annual report

- (1) The CEO must include in the annual report prepared by the CEO for the purposes of the *Financial Management Act 2006* Part 5 a report on the operations of each DAP for the financial year.
- (2) The report must include details of the following —
 - (a) the number, nature and outcome of DAP applications received by each DAP;
 - (b) the time taken to determine each DAP application;
 - (c) the number of determinations made by each DAP that have been the subject of an application for review by the State Administrative Tribunal;
 - (d) any other information the CEO considers relevant.

Part 6 — Miscellaneous

54. Amendment or revocation of order establishing DAP: transitional provisions

- (1) If an order made under section 171C of the Act establishing a DAP is revoked, any DAP application of which the DAP has been notified under regulation 11 and which has not been determined by the DAP must —
 - (a) if, at the same time as the order is revoked, another DAP is established for the district in which the development is proposed, be determined by that DAP; or
 - (b) otherwise, be determined by the responsible authority to which the application was made.

- (2) If an order made under section 171C of the Act establishing a JDAP is amended so that it is no longer established for a district, any DAP application for development in that district of which the JDAP has been notified under regulation 11 and which has not been determined by the JDAP must —
 - (a) if, at the same time as the order is amended, another DAP is established for the district in which the development is proposed, be determined by that DAP; or
 - (b) otherwise, be determined by the responsible authority to which the application was made.

55. Review of fees

The CEO must —

- (a) cause a review of the fees prescribed under Schedule 1 to be carried out as soon as practicable after each anniversary of the day on which these regulations come into operation; and
- (b) cause a report on the review to be prepared; and

- (c) provide a copy of the report, and any relevant information used for the purpose of the review, to the Minister.

Schedule 1 — Fees for applications

[r. 10, 17]

Item	Application	Fee
1.	A DAP application where the estimated cost of the development is —	
	(a) not less than \$3 million and less than \$7 million	\$3 376
	(b) not less than \$7 million and less than \$10 million	\$5 213
	(c) not less than \$10 million and less than \$12.5 million	\$5 672
	(d) not less than \$12.5 million and less than \$15 million	\$5 834
	(e) not less than \$15 million and less than \$17.5 million	\$5 996
	(f) not less than \$17.5 million and less than \$20 million	\$6 158
	(g) \$20 million or more	\$6 320
2.	An application under r. 17	\$150

Schedule 2 — Fees for DAP members

[r. 30, 31]

- | | | |
|----|---|-------|
| 1. | Fee for presiding member per meeting to determine development applications | \$500 |
| 2. | Fee for any other member per meeting to determine development applications | \$400 |
| 3. | Fee per meeting for presiding member to determine applications to amend or cancel determination | \$100 |
| 4. | Fee per meeting for any other member to determine applications to amend or cancel determination | \$50 |
| 5. | Fee for presiding member attending proceeding in State Administrative Tribunal | \$500 |
| 6. | Fee for any other member attending proceeding in State Administrative Tribunal | \$400 |
| 7. | Fee for training | \$400 |

cl. 1

Schedule 3 — Forms

**1. Notice of development application to be determined by DAP
(r. 7, 10, 21)**

<p><i>Planning and Development Act 2005</i> <i>Planning and Development (Development Assessment Panels)</i> <i>Regulations 2011</i></p> <p>Notice of development application to be determined by DAP</p>	
To	[Name of local government or WAPC]
Planning scheme(s)	[Name of planning scheme(s) that applies to the land described below]
Land	[Lot number or other relevant description]
Details of development application made to responsible authority	[Number and date of development application]
Estimated cost of development	[\$]
<p>PART A Notice of election to have development application determined by DAP (r. 7 — to be completed if required)</p>	
I give notice that I elect to have the development application that is attached to this notice determined by a DAP.	
Applicant's signature:	
Date:	

PART B	
Acknowledgment of initiation of development application to be determined by DAP	
[To be completed and signed by applicant in the presence of a local government officer]	
Notice	I give notice that I [please tick one of following]: <input type="checkbox"/> understand that this is a mandatory DAP application (r. 5) <input type="checkbox"/> have elected to have the development application that accompanies this notice determined by a DAP as an optional DAP application (r. 7) <input type="checkbox"/> understand that this is an application of a class delegated to a DAP for determination (r. 19)
Applicant's signature:	
Date:	
PART C	
Acknowledgment by local government	
[To be completed and signed by a local government officer in the presence of the applicant]	
Development application	[Confirmation of intended recipient of development application made to responsible authority] <input type="checkbox"/> Local government <input type="checkbox"/> WAPC <input type="checkbox"/> Dual local government and WAPC
DAP fee	<input type="checkbox"/> DAP fee that has been paid by the applicant \$..... (Schedule 1) <input type="checkbox"/> Amount to be paid by local government \$..... [delegated applications only (r. 22)]
Name of officer:	Signature:
Position/Title:	Date:

cl. 2

**2. Application for amendment or cancellation of a DAP
determination (r. 17, 21)**

<p><i>Planning and Development Act 2005</i> <i>Planning and Development (Development Assessment Panels)</i> <i>Regulations 2011</i></p> <p>Application for amendment or cancellation of a DAP-determined application</p>	
<p>How to complete this form This form is for the amendment or cancellation of a development application that has been determined by a Development Assessment Panel (DAP). Please ensure that all fields have been completed correctly. Once completed the applicant must submit this form together with the relevant fees to the local government.</p>	
<p>Part 1: Amended or cancelled development application details</p>	
Estimated cost of development:	\$
Description of proposal:	
Lot number:	
Street number and name:	
Town/suburb:	
Existing use:	
Proposed use:	
Original DAP determination date: ____/____/____	
<p>Part 2: Applicant details</p>	
Title:	
Given name/s:	
Family name:	
Organisation/Company name [if applicable]:	
Postal address:	Postcode:

Telephones:	Work:	Mobile:	Home:
Fax number:	Email address:		
Please note: unless otherwise requested, DAP secretariat will contact you using your nominated email address.			
Part 3: Owner Declaration			
I declare that all the information provided in this application is true and correct.			
Signature:		Date:	
OR Letter of Consent attached <input checked="" type="checkbox"/>			

Notes

- ¹ This is a compilation of the *Planning and Development (Development Assessment Panels) Regulations 2011*. The following table contains information about those regulations.

Compilation table

Citation	Gazettal	Commencement
<i>Planning and Development (Development Assessment Panels) Regulations 2011</i>	24 Mar 2011 p. 1039-90	r. 1 and 2: 24 Mar 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 25 Mar 2011 (see r. 2(b) and <i>Gazette</i> 24 Mar 2011 p. 1035)