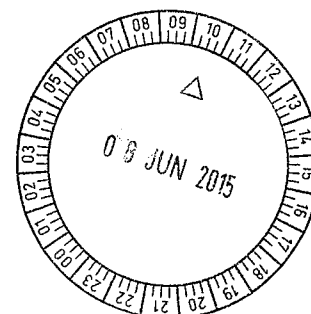




Enquiries: Fiona Mullen
Your Ref: PDR
Our Ref: FM 1710393

3 June 2015

Hon Kate Doust MLC
Chair
Standing Committee of Uniform
Legislation and Statutes Review
Parliament House
Perth WA 6000



By post and email: unileg@parliament.wa.gov.au

Dear Ms Doust

Planning and Development (Development Assessment Panels) Regulations 2011

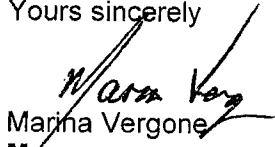
I refer to your letter of 6 May, 2015 in relation to the hearing of the Standing Committee on Uniform Legislation and Statutes Review on 4 May, 2015 and your request that three questions posed by the Committee be considered by Council with a response provided by Monday 18 May, 2015.

At the meeting of Council meeting held on Tuesday 26 May 2015, Council resolved that the following resolution and report (copy of report and draft minute enclosed), form the City of Mandurah's response:

That:

1. The Standing Committee on Uniform Legislation and Statutes Review inquiry into the Planning and Development (Development Assessment Panels) Regulations 2011 be advised that the City of Mandurah welcomes the opportunity to provide a supplementary submission to the Inquiry in relation to the operation of the Regulations.
2. The report forms the supplementary submission to the Inquiry, noting that the following forms the basis of Councils' submission:
 - 2.1 Council is supportive of the introduction of third party rights of appeal against decision made by DAPs, by local governments only.
 - 2.2 It is considered that the role of elected Councillors on the DAPs has not been clearly articulated and the removal of the term 'representative' from the Regulations when used to describe the local government member is recommended, with the word 'nominee' a suggested replacement.

Yours sincerely


Marina Vergone
Mayor

Enc: Copy of Council report and draft minute

| | | |
|----------|---------------------------|---|
| 2 | SUBJECT: | Submission to the Standing Committee on Uniform Legislation and Statutes – <i>Planning and Development (Development Assessment Panels) Regulations 2011</i> - Supplementary questions |
| | CONTACT OFFICER/S: | Fiona Mullen / Mark Newman |
| | AUTHOR: | Fiona Mullen |
| | FILE NO: | 1702537 |

Summary

The City recently made a submission to the Standing Committee on Uniform Legislation and Statutes Review (the Committee) in relation to an inquiry into the *Planning and Development (Development Assessment Panels) Regulations 2011* (the Regulations) and the Hon Councillor Riebeling, Councillor Knight and officers attended a Hearing of the Standing Committee in May 2015, to present the submission made by Council and answer a number of supplementary questions.

During the course of the Hearing, the Committee posed three questions in relation to Third Party Appeals and the Role of local Councillors in the Development Assessment Panel (DAP) process, and the Committee suggested that Council may wish to provide a formal response to the Hearing in relation to these particular matters.

Council is therefore requested to endorse this report as the City of Mandurah's submission to the Committee in relation to these matters.

Disclosure of Interest

Nil

Previous Relevant Documentation

- J.15/1/15 20 January 2015 Council made a submission to the Standing Committee on Uniform Legislation and Statutes – *Planning and Development (Development Assessment Panels) Regulations 2011*.

Background

As part of the State Governments aim to streamline and improve the planning approvals process, the Approvals and Related Reforms (No 4) (Planning) Act commenced on 22 November 2010.

In January 2015, the City made a submission to the Standing Committee on Uniform Legislation and Statutes Review who commenced an inquiry into the *Planning and Development (Development Assessment Panels) Regulations 2011* (the Regulations) and will report back to the Legislative Council at a future date.

On 1 May 2015, the *Planning and Development (Development Assessment Panels) Amendment Regulations 2015* (2015 DAP Amendment Regulations) came into operation.

Comment

On 4 May 2015, Hon Councillor Riebeling, Councillor Knight, Tony Free, Director Sustainable Development and Fiona Mullen, Manager Planning & Land Services, attended a Hearing before the Standing Committee on Uniform Legislation and Statutes Review in relation to the City of Mandurah's submission.

During the course of the Hearing, the Committee posed three questions in relation to Third Party Appeals and the Role of local Councillors, and the Committee suggested that Council may wish to provide a response to the Hearing in relation to these matters.

In particular, the following questions were posed:

Third Party Appeals

1. *Some submitters have stated that an appeal right should be extended to persons other than the applicant aggrieved by the determination of an applications by the DAP who have a special interest in the outcome. This is on the basis that, unlike before the Regulations were made, the representatives of the Community no longer control the decision-making process (which provided some justification in restricting the right of review to an applicant aggrieved by the local government).*
 - *Taking into account this point of view, what is the City's position on interested parties having a right of appeal against the decisions of DAPs, including local governments and members of the community?*

Whilst third party rights of appeal exist elsewhere in Australia, in Western Australia, generally the current State Legislation does not provide third party appeal rights against a decision made by Council and there are currently no third party rights of appeal within the City of Mandurah's Town Planning Scheme (the Scheme).

In relation to planning decisions or proposals, neighbours and adjoining occupiers may be of the opinion that they will be negatively impacted by a proposed development and in order to minimise this potential, the City consults with residents and then assesses the various submissions received. Likewise in relation to Forward Planning, the City advertises and consults extensively with the aim that residents understand changes in zoning and land designations, however ultimately decisions are made that may impact others. This process is also followed in relation to relevant DAP applications and it is considered on that basis that the views of the community are taken into consideration in the assessment of DAP applications and the subsequent Responsible Authority Report (RAR).

Potential Position – Not Supportive (Option 1)

As stated in Planning Bulletin 106/2011 – *New legislative provisions for development assessment Panels*, DAPs were initially established to streamline and improve the planning approvals process in Western Australia. Furthermore, it was considered that the introduction of DAPs would improve the planning system by “...providing more transparency, consistency and reliability in decision-making...” and “...strike an appropriate balance between local representation and professional advice in decision-making by ensuring that decisions made by the panel are based on planning merits of an application.” it is considered therefore that to introduce third party rights of appeal, whether they be restricted to local governments alone or the wider public, would potentially delay the planning process, and given that the initial decision was made based on material planning grounds, serve no purpose.

It is therefore recommended that the following response be provided:

1. Council is not supportive of the introduction of third party rights of appeal against decision made by DAPs, by local governments or members of the community.

Potential Position – Partial Support (Option 2)

Whilst third party rights of appeal exist elsewhere in Australia, in Western Australia, generally the current State Legislation does not provide third party appeal rights against a decision made by Council and there are currently no third party rights of appeal within the City of Mandurah's Town Planning Scheme (the Scheme).

It is considered that local governments should have the opportunity to appeal a decision by the DAP, particularly if a decision is made that is contrary to the view of Council. It is evident on attending DAPs that whilst the RAR is considered by the DAP, Councils views of the proposal, i.e. whether the RAR is endorsed or not, is not considered by the DAP. Whilst it is acknowledged that decisions at DAPs are

made on planning grounds, and a comprehensive report is provided by officers, it is submitted that local governments may provide an insight into local matters that may be material to the decision.

In addition, if such a process was introduced, and a decision is made which is contrary to the RAR, reasons for decisions that are contrary to the recommendation or conditions contained within the RAR, would assist in local governments determining whether to appeal a decision.

If Council wished to request that local governments have appeal rights against DAP decisions, then the response (replacing recommendation 2.1) should be:

Response

Council is supportive of the introduction of third party rights of appeal against decision made by DAPs, by local governments only.

If Council wished to allow for community members to also have the opportunity to appeal against the decision of a DAP, the words: "and community members" should be added after "local governments"

Role of local councillors

1. *Does the City believe the role of elected councillors on the DAPs has been clearly articulated (given they are required to make their own independent decision on the planning merit of an application as well as be representative of the local government)?*
2. *Does the City believe there is an inconsistency between what is stated in Regulation 25 and clause 2.1.2 of the DAP Code of Conduct (Regulation 25 referring to local government DAP members being 'representative of the relevant local government' and clause 2.1.2 of the DAP Code of Conduct stating a local government member 'must exercise independent judgement') in a scenario where a DAP may decide not to follow the recommendation in the RAR as well as the views of the local government council?*

In response to both questions, it is considered that the role of elected Councillors has not been adequately addressed within the guidance and explanatory documents although the difficulty of the situation is acknowledged in the DAP Training Notes 'Making Good Planning Decisions' (4.6.1(b)). :

"The role of the local government representative is made difficult by their dual roles of local government Councillor and DAP member"

However, at 4.6.2(b), it is stated that:

"It is important to note that a DAP is not a local government, and a DAP member is not a Councillor. Unlike Councillors at local government, a DAP member is a decision-maker and not a representative of their constituents."

In particular, throughout the explanatory notes and guidelines, the term 'representative' is reiterated and it is this wording that it is considered to result in confusion as to the role of local government Councillors who sit on DAPs.

Under the provisions of Clause 26(4) of the Regulations, the Minister may, if the local government fails to nominate two local Councillors within the relevant timeframe appoint, as a "...representative of the local government..." a person who is an eligible voter in the district and is considered to have sufficient knowledge of the local community. This would therefore imply that the "representative of the local government" is not representative of the *electors* but of the local community only and is therefore not representing electors per se.

However, notwithstanding this nuance, it is considered that further clarification is required in relation to the role of local Councillors on DAPs.

It is therefore recommended that the following response to Questions 2 and 3 be provided:

Response

Council considers that the role of elected councillors on the DAPs has not been clearly articulated and the removal of the term 'representative' from the Regulations when used to describe the local government member is recommended with the replacement of the word 'nominee'.

Statutory Environment

- Planning and Development (Development Assessment Panels) Regulations 2011 (as amended).

Policy Implications

Nil

Economic Implications

Nil

Strategic Implications

The following strategies from the *City of Mandurah Strategic Community Plan 2013 – 2033* are relevant to this report:

Leadership:

- Demonstrate leadership on major regional, state and national issues.

Organisational Excellence:

- Deliver excellent governance and financial management.

Conclusion

The City is supportive of an Inquiry into the operations of the Regulations and appreciates the opportunity to provide a further response to assist the Hearing.

Council is requested to endorse the recommendations of this report as the City of Mandurah's supplementary submission to the Standing Committee on Uniform Legislation and Statutes Review inquiry into the *Planning and Development (Development Assessment Panels) Regulations 2011*. Committee in relation to these matters.

RECOMMENDATION

That:

1. The Standing Committee on Uniform Legislation and Statutes Review inquiry into the Planning and Development (Development Assessment Panels) Regulations 2011 be advised that the City of Mandurah welcomes the opportunity to provide a supplementary submission to the Inquiry in relation to the operation of the Regulations.
2. This report forms the supplementary submission to the Inquiry, noting that the following forms the basis of Councils' submission:
 - 2.1 Council is not supportive of the introduction of third party rights of appeal against decision made by DAPs, by local governments or members of the community;
 - 2.2 It is considered that the role of elected Councillors on the DAPs has not been clearly articulated and the removal of the term 'representative' from the Regulations when used to describe the local government member is recommended, with the word 'nominee' a suggested replacement.

G.24/5/15

**SUBMISSION TO THE STANDING COMMITTEE ON UNIFORM
LEGISLATION AND STATUTES – PLANNING AND DEVELOPMENT
(DEVELOPMENT ASSESSMENT PANELS) REGULATIONS 2011 -
SUPPLEMENTARY QUESTIONS (MRN / FM) (DOC NO 1702537)
(REPORT 2)**

The City recently made a submission to the Standing Committee on Uniform Legislation and Statutes Review in relation to an inquiry into the *Planning and Development (Development Assessment Panels) Regulations 2011* and the Hon Councillor Riebeling, Councillor Knight and officers attended a Hearing of the Standing Committee in May 2015, to present the submission made by Council and answer a number of supplementary questions.

During the course of the Hearing, the Committee posed three questions in relation to Third Party Appeals and the Role of local Councillors in the Development Assessment Panel (DAP) process, and the Committee suggested that Council may wish to provide a formal response to the Hearing in relation to these particular matters.

Council was therefore requested to endorse the report as presented to Council as the City of Mandurah's submission to the Committee in relation to these matters.

Recommendation set out in Report:

That:

- 1 *The Standing Committee on Uniform Legislation and Statutes Review inquiry into the Planning and Development (Development Assessment Panels) Regulations 2011 be advised that the City of Mandurah welcomes the opportunity to provide a supplementary submission to the Inquiry in relation to the operation of the Regulations.*
- 2 *The report forms the supplementary submission to the Inquiry, noting that the following forms the basis of Councils' submission:*
 - 2.1 *Council is not supportive of the introduction of third party rights of appeal against decision made by DAPs, by local governments or members of the community.*
 - 2.2 *It is considered that the role of elected Councillors on the DAPs has not been clearly articulated and the removal of the term 'representative' from the Regulations when used to describe the local government member is recommended, with the word 'nominee' a suggested replacement.*

Councillor Knight moved the recommendation set out in the report, which was seconded by Hon Councillor Riebeling, subject to the inclusion of the following amendment:

That clause 2.1 be changed to read "Council is supportive of the introduction of third party rights of appeal against decision made by DAP's, by local governments only".

In moving the Motion, Councillor Knight advised that the reason for the amendment Motion was because she believed the amended clause to be more in line with transparent, consistent and reliable decision making, and reflective of Council's need for a right of appeal.

MOTION: C Knight / F Riebeling

That:

- 1 The Standing Committee on Uniform Legislation and Statutes Review inquiry into the Planning and Development (Development Assessment Panels) Regulations 2011 be advised that the City of Mandurah welcomes the opportunity to provide a supplementary submission to the Inquiry in relation to the operation of the Regulations.**
- 2 The report forms the supplementary submission to the Inquiry, noting that the following forms the basis of Councils' submission:**
 - 2.1 Council is supportive of the introduction of third party rights of appeal against decision made by DAP's, by local governments only.**
 - 2.2 It is considered that the role of elected Councillors on the DAPs has not been clearly articulated and the removal of the term 'representative' from the Regulations when used to describe the local government member is recommended, with the word 'nominee' a suggested replacement.**

CARRIED UNANIMOUSLY: 9/0