
Part 2 Overview of DAPs

2.1 Legislative framework

The Approvals and Related Reforms (No. 4) (Planning) Bill 2010 was passed by Parliament on 10 August 2010. The Bill amended the Planning and Development Act 2005 (as amended) (Act) to introduce a range of new planning reforms to streamline the approval process. Part 3 of the Act provides the enabling powers required to establish DAPs in Western Australia.

Sections 171A to F of the Act provides for the development of regulations that specify the powers and operations of DAPs. The DAP Regulations 2011 make provisions for the operation, constitution and administration of DAPs. These were gazetted on 24 March 2011.

On 2 May 2011, by publication of a Ministerial Order, the Minister for Planning established 15 DAPs that cover every local government in Western Australia.

DAPs are independent entities answerable to the Minister and do not sit under the Department or the WAPC.

All DAPs determine applications as if they are the responsible authority under the relevant planning instrument, such as the local planning scheme or region planning scheme, where applicable. Under the DAP Regulations, any application which qualifies as one that can be determined by a DAP cannot be determined by local government or the WAPC.

2.2 What is a DAP legally?

A DAP is an entity brought into existence by a Ministerial order under section 171C of the Act and constituted from time to time by a meeting of sufficient members to form a quorum. A DAP's primary function is to decide DAP applications by resolution. A DAP is, therefore, not a separate legal entity with the capacity to act in its own name.

It is unlike a company or statutory body, which enjoys a separate legal personality to that of its shareholders, employees and directors, and has the capacity to take action or respond to matters in its own name. Administratively, a DAP functions by certain individuals or organisations carrying out tasks or responsibilities on behalf of the DAP. DAP members report to the Minister and are not employed by the Department or the WAPC.

2.3 Purpose and objectives of DAPs

The key function of a DAP is to determine significant applications for development approval.

The DAP model has been introduced to achieve the following:

- streamline the determination process for particular types of development applications by eliminating the requirement for dual approval under both the local and region schemes;
- involve independent technical experts in the determination process; and
- encourage an appropriate balance between independent professional advice and local representation in decision-making for significant projects.

The DAP model is designed to strengthen the approval process which will in turn contribute towards the growth and development of Western Australia as a whole.

2.4 Types of DAPs

There are two different types of DAPs: Local Development Assessment Panels (LDAPs), and Joint Development Assessment Panels (JDAPs). The Minister established 15 DAPs under section 171C of the Act (as amended) for each local government area, by the publication of an Order in the Gazette on 29 April 2011. Pursuant to the Order these DAPs were officially created on 2 May 2011.

2.4.1 LDAPs

An LDAP is established to service a single local government, where it is deemed to be a high-growth local government where the volume of development applications necessitates its own DAP. There is currently only one LDAP which covers the City of Perth.

2.4.2 JDAPs

JDAPs are established to service two or more local governments. There are 14 JDAPs, which cover all areas of the State.

A list of local governments comprising each JDAP is provided in Appendix A.

2.5 DAP applications

There are four (4) types of DAP applications that can be determined by a DAP. These are:

- mandatory DAP applications;
- optional DAP applications;
- delegated applications; and
- applications for amending or cancelling DAP development approval.

2.5.1 Mandatory DAP applications

These are development applications which must be determined by a DAP. Mandatory applications cannot be determined by a local government and/or the WAPC.

Mandatory DAP applications are for development which is not an 'excluded development application' as defined under regulation 3 of the DAP Regulations and where the

estimated cost of the development is as per regulation 5 of the DAP Regulations.

2.5.2 Optional DAP applications

These are development applications which may be determined by a DAP at the applicant's choice. If an applicant does not choose the DAP to determine the application, it is determined by the local government and/or the WAPC in the normal manner.

An applicant may submit an optional application for DAP determination if the proposed development is not an 'excluded development application' as defined under regulation 3 of the DAP Regulations, is not automatically delegated to a DAP by the authority (under regulation 19) and, where the estimated cost of the development is as per regulation 6.

2.5.3 Applications delegated to a DAP

The WAPC and local governments may choose to delegate their decision-making authority for applications, which fit the 'opt in' criteria for DAP applications, to a DAP. Therefore a DAP will also determine applications of a type that either of these bodies has chosen to delegate their authority on.

Reference: r19

The applicant's position

Where a responsible body has delegated its decision-making authority to a DAP, the applicant has no choice and must submit the application to the DAP.

It is important to note that an applicant will not have to pay the DAP application fee if their application is determined by a DAP as a result of the delegation process. Where a local government and/or WAPC chooses to delegate to the DAP responsibility for determining applications within the 'opt in range', they will be liable to pay the normal DAP fees. This is subject to any written agreement that the local government may enter into with the Director General.

Reference: r21, r22

How is the authority delegated?

Either of these bodies may take advantage of this option by following the process of formally delegating their authority to a DAP.

To achieve this, a written instrument outlining the terms and the extent to which that body's authority is transferred to the DAP must be prepared. Also, in the case of a local government, an absolute majority of the local government's council must support the decision to delegate that body's authority, before such delegation can occur. The authority must then obtain the consent of the Director General to such a delegation.

Once these steps are completed, the DAP Secretariat will prepare a notice of delegation on the responsible body's behalf and will require a copy of the council's resolution in order to do so.

The final step in the process is for the written instrument of delegation to be published in the Government Gazette, which the DAP Secretariat will organise. The local government or the WAPC will be required to pay the gazettal fee.

Reference: r20

A DAP which is authorised by either the local government or WAPC to decide delegated applications cannot then hand over that authority to another organisation. The DAP will be responsible for deciding such applications and must treat them in the same way as any other DAP application.

2.5.4 Amending or cancelling DAP development approval

These are applications which seek to:

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

Reference: r17

2.5.5 Excluded applications

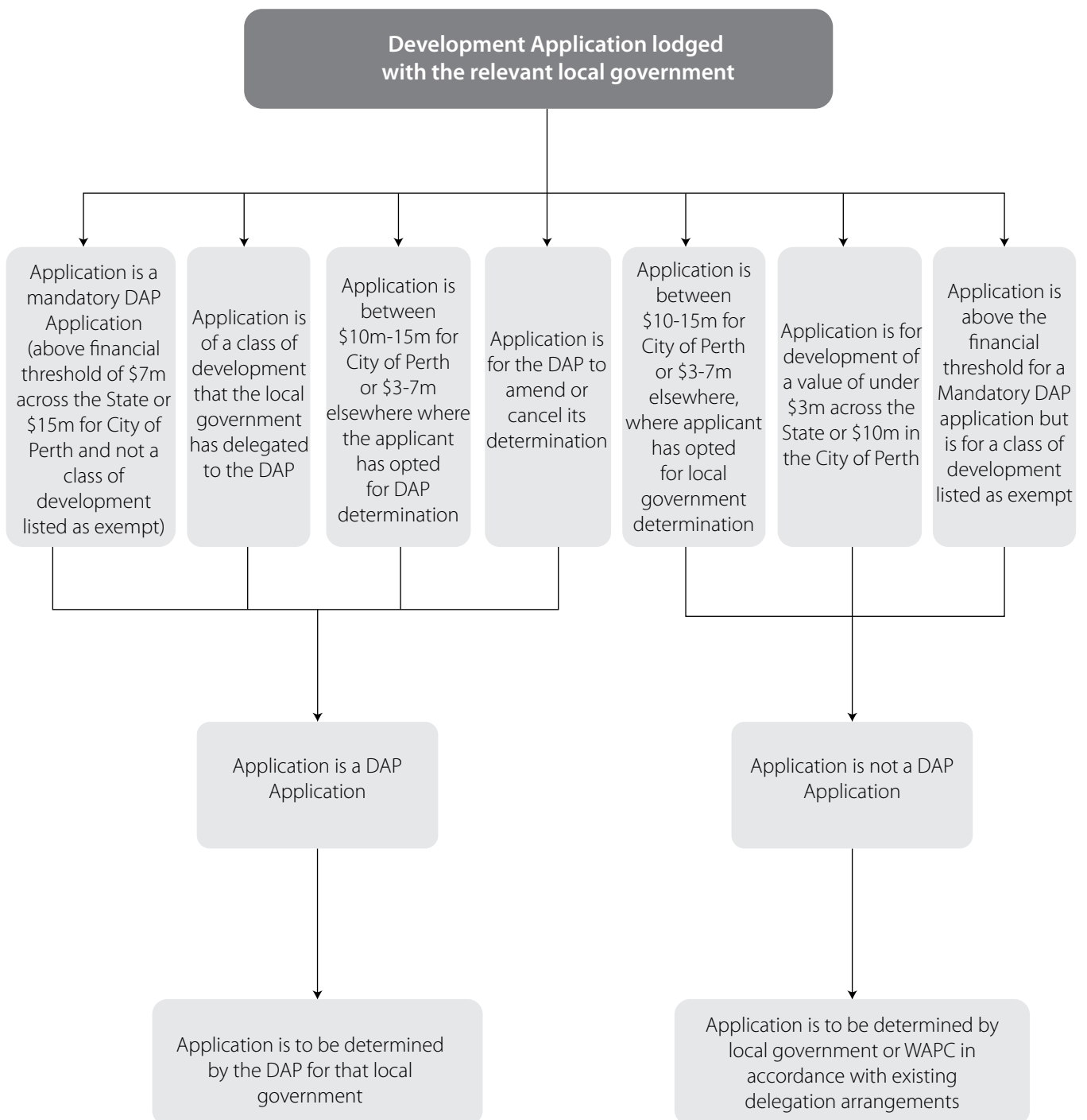
Regulation 3 of the DAP Regulations identifies the types of development applications which cannot be determined by a DAP. Refer to the 'Definition' section.

DAPs do not apply in improvement schemes and in redevelopment areas that have been established under other Parliamentary Acts such as East Perth, Subiaco, Midland, Armadale, Hope Valley-Wattleup and Perry Lakes.

All excluded applications, irrespective of their value, are to be determined by the local government and/or the WAPC.

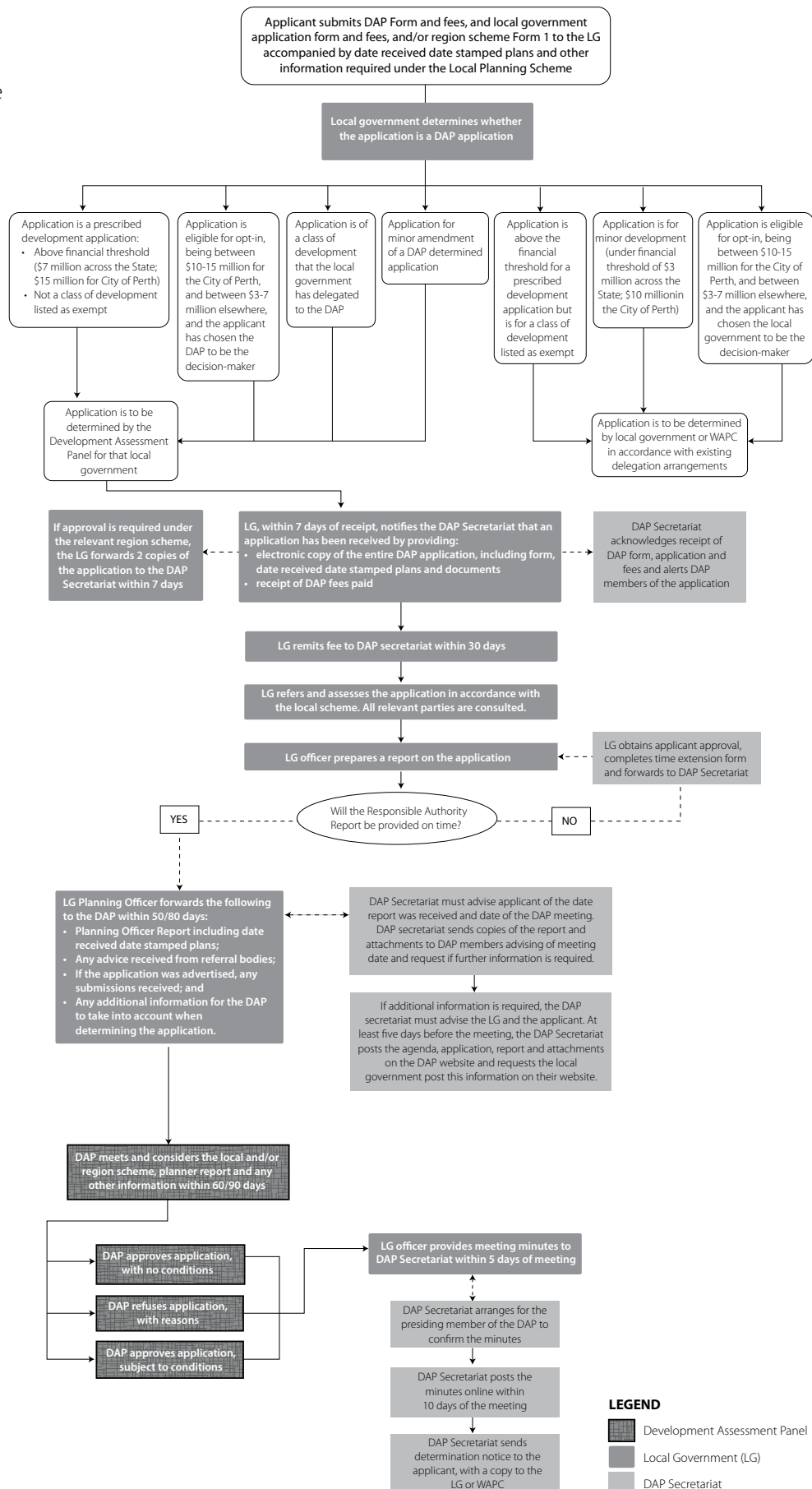
Flowchart 1

Provides an overview of the process by which applications are addressed, depending on whether they are a DAP application or not.



Flowchart 2

Provides an overview of the DAP application process.



Part 3 DAP Membership

This section gives an overview of the different categories of DAP membership and the various qualifications and characteristics relating to each.

3.1 Types of Panel Members and Quorum

Each DAP comprises of five members: three specialist members, one of which is the Presiding Member, and two local members that are nominated by the local government.

At a meeting of a DAP, a quorum is constituted by three DAP members, including:

- The presiding member; and
- Another specialist member; and
- One local government member.

Reference: r41 and r25

3.1.1 Specialist DAP Members

A specialist member is an individual who has been appointed by the Minister for Planning to one or more DAPs, after being nominated for such a role from a short list of candidates who successfully submitted their details for inclusion in a register of individuals with suitable qualifications and/or experience for the role.

A specialist member may also be appointed to the following positions:

Presiding Member

The Presiding Member of a DAP is a specialist member with both experience and a tertiary qualification in town planning. In addition to the responsibilities of being a specialist member, Presiding Members must also chair DAP meetings, confirm DAP meeting minutes and where the DAP decision is appealed to the SAT, they will be the appropriate individual to represent the DAP in a hearing. These are just some of the additional responsibilities and tasks a Presiding Member must undertake.

Reference: r27(1)(a)

Deputy Presiding Member

A Deputy Presiding Member is a specialist member with extensive experience and a tertiary qualification in town planning who will act in the place of the Presiding Member if they are unable to act because of illness, absence or any other cause.

Reference: r27(1)(b)

Alternate Specialist Members

An Alternate Specialist Member is a specialist member who will be called on when another member is absent for any reason or an issue of quorum arises. An Alternate Specialist Member without town planning experience cannot act for either the Presiding or Deputy Presiding Member. Only individuals with town planning experience and qualifications are eligible to act as a Presiding or Deputy Presiding Member.

Reference: r28 and r37

There will be three specialist members appointed to each DAP. The third specialist member may come from a different discipline including architecture, urban design, engineering, landscape design, environment law and property development or management.

Exclusion from Specialist Membership

There are some people who cannot be appointed as specialist members. These include:

- An officer of the Department; and
- A member of a Parliament as defined in the *Local Government Act 1995* section 2.20.

Reference: r35(2)

Regulation 37(2) excludes a person who is employed under the Local Government Act 1995 section 5.36 from being a DAP member in the same JDAP as the local government of their employment. In effect, this means that a person employed at a local government may be listed on the specialist member register but cannot be appointed as a member on the DAP to which their local government reports.

Regulation 37(2) also excludes any local government councillor from being a specialist member on the same

DAPS as the local government that they represent. For example, if a councillor is elected at the City of Wanneroo, where they already serve as a specialist member, they cannot sit on the North West JDAP as a local government member.

Reference: r37(2)

3.1.2 Local DAP members

Local members are elected members of a local government council who are nominated by a local government for a DAP position and then subsequently appointed by the Minister to a DAP. Local representation is a vital component of the DAP. The relevant local government nominates four local government representative members for their DAP, from the local government's pool of elected members (councillors).

Two councillors will be local members, and two will be alternate local members. Alternate local members will be used when an issue of quorum arises or when a local DAP member is unable to act by reason of illness, absence or any other cause.

Note: Alternate local members cannot sit in the place of specialist members, just as alternate specialist members cannot sit in the place of local members.

3.2 DAP Members Appointment/ Reappointment Process

All DAP members will be appointed to a particular DAP for a term of not more than two years. If a specialist member is nominated to sit on more than one panel, their appointment letter will detail all of the DAPs they were appointed to. All DAP members will be listed on the DAP website.

Reference: r29

3.2.1 Process for specialist members

When it is necessary to appoint specialist DAP members, the Minister will call for expressions of interest from suitably qualified individuals who wish to occupy this role. The expression of interest process will be commenced

at least three months before the existing specialist members' terms of office expire.

The names and details of all individuals who apply and are eligible for DAP specialist member appointment will be placed on a register. A working group, called the 'Short List Working Group', will then be convened by the Minister. This group will consider the candidates listed on the register and submit a short list of names to the Minister for appointment. The candidates the Minister selects for appointment will be presented to Cabinet for approval before formal appointment can be finalised.

Reference: r36, r37, r38

The Short List Working Group will consist of the Director General (or nominee), a representative from WALGA, and one from PIA (WA). The final member of the working group will be an individual chosen by the Minister from the representatives submitted by stakeholders in the development industry. These stakeholders include HIA, UDIA, the PCA, REIWA and the MBA WA.

The Regulations allow the Minister to re-appoint a specialist member once their initial term of office has been completed.

Reference: r29

Reappointment is not automatic and the member must engage in the expression of interest and subsequent appointment process in order to be eligible. This process is conducted in anticipation of the members' terms of office expiring.

If a casual vacancy arises in the office of a DAP member, the Minister will convene the Short List Working Group. This group will review the specialist members' register and compile a list of candidates for the Minister to consider appointing as a replacement member for the duration of the former member's term. The recommended specialist member will be presented to Cabinet for approval before their appointment is finalised.

Casual vacancies can arise due to circumstances which are described under the section 3.5 'Casual Vacancies' (these include members resigning or being removed from office). It is important to distinguish this process from that conducted when members' terms of office are due to expire.

3.2.2 Process for local members

Local government DAP members can also be appointed for a term of not more than two years. Following the expiration of a local member's initial term, the Minister will ask the relevant local government to provide nominations for two local government members and alternate members.

Reference: r24

When it is necessary to appoint a local DAP member, the Minister will give 40 days' notice for the local government to provide his office with the names of their nominees. The Minister will appoint the local government representatives in accordance with the local government's nomination. If the local government fails to provide such nominations, the Minister can appoint community representatives as a local DAP member. This will ensure local representation is always present on a panel. The DAP Regulations require that these alternate representatives are residents of the local area and an eligible voter of the District, and have relevant knowledge or experience that, in the opinion of the Minister, will enable them to represent the interests of their local community.

Reference: r24(2)

Prior to formal appointment, the Minister will present the local DAP member nominees to Cabinet for approval.

Existing DAP local members can be re-nominated by the local government (provided that they remain elected members of the local government's council). Local government elections may result in a change to the DAP membership if current councillors, who are DAP members, are not re-elected. Where a DAP local member is not re-elected as a councillor, the local government will be invited to nominate another elected member for appointment to the DAP. However, the nominee will only be appointed for the balance of the previous DAP member's term.

Reference: r29 and r32

All JDAPs local members will be listed by the DAP Secretariat on a DAP local government register.

Reference: r26

3.2.3 Alternate members

Alternate specialist members are selected and appointed following the same process, as described in Part 3.2.1, for specialist members generally.

Reference: r37

Local alternate members are appointed by the Minister and the same appointment process as described in Part 3.2.2 is followed.

Reference: r28, r26

3.3 DAP member training

A DAP member cannot sit as a member of a DAP until they satisfactorily complete the training for DAP members provided by the department.

Reference: r30

3.3.1 What the training will involve

There will be two aspects to the DAP training sessions:

- planning and the law; and
- the DAP process.

Part One will cover:

- the principal acts under which DAP members make decisions;
- relevant local and state government planning instruments;
- appropriate planning considerations and legal requirements in decision-making; and
- the State Administrative Appeals process.

Part Two will cover training material on the planning and development assessment process, as well as DAP operating procedures, the DAP Standing Orders, Code of Conduct – including conflicts of interest and professional ethics, and the DAP Procedures Member Manual. The training session will include a number of case studies relating to appropriate planning considerations in the DAP context, and the legal ramifications of DAP decisions.

The training will consist of a half-day session, usually lasting up to four hours.

3.4 Leave of absence

Any member who may be on leave for a substantial period of time (being an absence from three or more consecutive meetings), must request a leave of absence from the Minister or their delegate.

Reference: r33

If the request is refused, and the member is absent for three consecutive meetings, the Minister will have grounds to remove them from office.

Reference: r32(3)(d)

If the Minister or their delegate grants the leave request, the DAP Secretariat will notify that member and the Presiding Member of the DAP to which they are appointed. The DAP Secretariat will arrange for an alternative member to attend on the absent member's behalf. The Leave of Absence template is attached at Appendix B.

3.5 DAP member vacancies, removal and resignation

3.5.1 Casual vacancies

The office of a DAP member becomes vacant:

If the member:

- dies, resigns or is removed from office;
- becomes bankrupt or their affairs fall under insolvency law;
- is convicted of an offence punishable by imprisonment for 12 months; or
- is convicted of an offence against section 266 of the Act (which prohibits dishonest dealings, failure to disclose interests and incorrect disclosure or misuse of information).

Reference: r32(1)

If a DAP member's term of office expires, that member's term is extended for a maximum of three months, or until it is filled either by reappointment of the same member, or by appointment of a replacement member. This extension does not apply in instances where the DAP member resigns or is removed from office.

Reference: r34

3.5.2 Removal from a DAP appointment

The Minister can remove a DAP member from their position if the member:

- neglects their duty
- engages in misconduct or is incompetent
- is mentally or physically incapable of performing their duties in a satisfactory manner; or
- is absent without leave for three consecutive meetings of a DAP of which the member had notice.

Reference: r32(3)

If the member ceases to hold a position or qualification by virtue of which the person is eligible for the position, e.g. a local government councillor who is not re-elected, then the Minister must remove them from their appointment as a DAP member.

Reference: r32(5)

To remove a DAP member the Minister must provide that member with written notice specifying the grounds for their removal. That member's appointment will terminate either on the day the notice is given to them, or on such later date as may be specified in the notice.

Reference: r32(6) and r32(7)

3.5.3 Resignation

A DAP member may resign from office at any time by providing a written notice of resignation to the Minister.

Reference: r32(2)

Whilst the DAP Regulations permit a member to resign 'at any time', members are encouraged to provide the Minister with reasonable notice of their intended

resignation. To resign, a member must write a letter to the Minister, informing him of their resignation and the date when their resignation takes effect. Any resignation notices are to be submitted to the DAP Secretariat in the first instance.

3.5.4 Replacement of DAP members

Where the office of a DAP member becomes vacant, the Minister will appoint a new member in accordance with the procedures discussed under the heading, 'Part 3.2 DAP Member appointment / reappointment process'. Depending on the circumstances, the vacancy will either be filled through the use of an alternate member or by the appointing of a new member.

3.6 DAP Member remuneration and reimbursement

3.6.1 Remuneration

DAP members are entitled to be paid for their attendance at DAP training, DAP meetings and at any SAT hearings, unless they fall within a class of members excluded from payment by the Regulations.

Reference: r30, r31 and sch 2

Members of that class include federal, State and local government employees, active or retired judicial officers and employees of public institutions. DAP members are not entitled to be paid unless the Minister so consents, and such consent can only be given with the prior approval of Cabinet. This position is in accordance with the Premier's State Government Boards and Committees Circular (2010/02) and is supported by the rationale that individuals already on the 'public payroll' should not receive extra payment for services that could reasonably fall within the scope of their existing duties. However, the Minister has discretion, with Cabinet's approval, to permit such a member to be paid if the circumstances justify a departure from this policy. A copy of this circular can be located at Appendix C.

The payment rates are different depending on a member's role, see schedule 2 of the DAP Regulations.

Reference: r31, sch 2

Members will be paid the fee applicable to them plus superannuation. Superannuation will be paid into an account established with the Government Employee Superannuation Board, unless the member nominates another fund.

3.6.2 Reimbursement

Reimbursement is treated separately to remuneration. All DAP members are entitled to reimbursement of their expenses, even if they fall within the class of members excluded from receiving fees by the DAP Regulations.

All DAP members will be entitled to reimbursement of their travel and motor vehicle expenses in accordance with the Public Sector Commissioner's Circular (2009-20). A copy of this circular can be located at Appendix D.

In accordance with this circular, a claim of up to 75c per kilometre can be made if a member uses a private vehicle to attend a DAP metropolitan meeting and where the round trip exceeds 50 km. The 75c rate is based on the current rate relevant to such expenses as set by the Australian Taxation Office.

For regional DAP meetings, the DAP Secretariat will organise any accommodation and travel arrangements, such as flights, that may be necessary. Regional travel may be required where DAP members live in the Perth metropolitan area and have to attend a regional DAP meeting. In such cases, the Department will provide taxi vouchers to DAP members to enable them to travel from their place of residence to Perth airport. Other travel, food and accommodation expenses will be met by the Department directly, thus reducing the inconvenience to a DAP member of incurring expenses and then having to seek reimbursement. As of 1 July 2012, DAP members will be reimbursed for costs incurred with the printing of the agenda and responsible authority reports for DAP meetings. DAP members are encouraged to view the attachments to the reports electronically.

DAP members must complete and lodge a reimbursement claim form with the DAP Secretariat. The DAP Secretariat will attend to the processing of the request. The claim form is available from the DAP website and a copy can be located at Appendix E.

It is important to note that DAP members are reimbursed for their travel expenses incurred in relation to DAP

matters, but NOT in relation to travel expenses incurred in undertaking DAP training.

3.7 Reimbursement for local government hosted DAP meetings

The local government will be reimbursed for agreed expenses incurred for each DAP meeting and DAP application fee transaction cost. After each DAP meeting held at the local government, the local government is required to complete the LG DAP Meeting Costs Reimbursement Form contained in Appendix F and forward it along with a copy of the tax invoice and any receipts to the DAP Secretariat.

Only one invoice covering all agreed expenses will be processed by the DAP Secretariat for payment to the local government. The DAP Secretariat will check the invoice and telephone the local government to pay the invoice via credit card. The local government is to provide a receipt to the DAP Secretariat to confirm payment was received.

Catering costs for light refreshments at DAP meetings will be reimbursed by the DAP Secretariat. The catering allowance is set to a maximum of \$100 for each JDAP meeting.

Minute taking at a DAP meeting, minute preparation and finalisation will be reimbursed at a rate of \$28 per hour, up to a maximum of four (4) hours.

Where the Presiding Member of a DAP has requested security for a DAP meeting, the local government is to arrange security and will be reimbursed at a rate of \$50 per hour up to a maximum of four (4) hours.

Goods and services tax (GST) applies to all the above approved expenses.

Note: All prescribed costs incurred by the local government will be paid by the DAP Secretariat upon receipt of an invoice. Any additional costs incurred by local government which are not outlined above will not be reimbursed.

3.8 Reimbursement for remission of DAP fees

The local government will be reimbursed \$50 for each Form 1 DAP application it receives, to cover transaction costs incurred in remitting the DAP application fee for each application to the DAP Secretariat.

No transaction fee reimbursement applies to any delegated applications or Form 2 DAP application fees.