

## PRACTICE NOTE 5

### Regulation 12 Responsible Authority Reports

#### What is this document?

1. This document is a practice note issued by the CEO of the Department of Planning (**'Director General'**) under regulation 40(5) of the *Planning and Development (Development Assessment Panels) Regulations 2011* (**'DAP Regulations'**), which states:

The CEO may issue practice notes about the practice and procedure of DAPs and each DAP must comply with those practice notes.

2. If you need help in understanding this document please contact the DAP Secretariat, comprising officers of the Department of Planning, at [daps@planning.wa.gov.au](mailto:daps@planning.wa.gov.au) and (08) 6551 9919. Readers are also encouraged to view the document *Development Assessment Panel – Questions and Answers*, which is regularly updated and can be found at <http://daps.planning.wa.gov.au/30.asp>.

#### What is a regulation 12 responsible authority report ('RAR')?

3. Regulation 12 of the DAP Regulations require each responsible authority, being the relevant local government and/or the Western Australian Planning Commission (**'WAPC'**), to provide a responsible authority report (**'RAR'**). The RAR is to include an assessment and provide a recommendation, with sufficient information to enable the DAP to determine the application:

#### 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.

## **What issues surround the publication of r.12 responsible authority reports?**

4. The issue of r.12 responsible authority reports has recently been raised. In particular, questions include:
  - (a) Who is to submit RAR?
  - (b) Should the responsible authority take steps to ensure a RAR is submitted within the prescribed timeframes under r.12(3)?
  - (c) Can an extension of time request under r.12(4) also extend the deemed refusal period under a relevant planning instrument?
  - (d) What may occur if a responsible authority fails to provide a RAR within the prescribed timeframe?
  - (e) Does an RAR need to be published on the DAP website at all, or should it be deferred for publication, given r.39 requires agendas to be published 5 days before a DAP meeting?
  - (f) What happens if the agenda, including the RAR, cannot be published on the local government website, including by a temporary fault?

## **Who is to submit the RAR?**

5. Ultimately, it is a matter for each responsible authority, being the relevant local government and/or the WAPC, to decide who is to submit the RAR.
6. It was the original intention of the DAP Regulations that the report be provided by a local government planning officer, not necessarily by Council. However, it has been suggested that absent any delegation arrangements, Councils may or shall endorse a RAR prepared by the planning officer. Whenever possible, Councils are encouraged to have sufficient delegation arrangements in place to facilitate a timely approvals process.
7. From the perspective and role of DAP Secretariat, provided the RAR:
  - (a) contains sufficient information to enable the DAP to determine the matter, as prescribed under r.12(5);
  - (b) is submitted within the timeframe prescribed under r.12(3);
  - (c) is in the format approved by the Director General prescribed under r.12(2); and
  - (d) is submitted by a person purporting to act on behalf of the responsible authority under r.12(2),the DAP Secretariat will presume the report is the duly authorised RAR for the purposes of complying with the DAP Regulations.
8. The legal and administrative responsibility resides with the responsible authority to ensure it submits a RAR that conforms to the requirements of the DAP Regulations.

## **Should the responsible authority take steps to ensure a RAR is submitted within the prescribed timeframes under r.12(3)?**

9. Yes, the responsible authority should take steps to ensure a RAR is submitted within the prescribed timeframes under r.12(3).
10. A responsible authority should take necessary steps to ensure the RAR is submitted within the mandated timeframes. This may include issuing appropriate instruments of delegation or the holding of special Council meetings if required. However, it is a matter for each responsible authority to decide how it will proceed to submit a RAR, which must comply with the requirements of the DAP Regulations.
11. Given the Presiding Member and other DAP members have a very limited period to review a RAR, including the possibility of requesting further information under r.13, it is important that the responsible authority complies with the prescribed timeframes, wherever possible.

## **Can an extension of time request under r.12(4) also extend the deemed refusal period under a relevant planning instrument?**

12. No, the extension of time under r.12(4) does not extend the deemed refusal period under a relevant planning instrument – it only extends the period within which the RAR must be submitted. Therefore, the intention is that a Presiding Member would only grant a r.12(4) request sparingly.

13. Where a responsible authority seeks an extension of time for the RAR, it should be remembered that r.12(4) requires the applicant's consent. Moreover, where an extension of time request is made, it may be prudent for the responsible authority to also seek an extension of the deemed refusal period under the relevant planning instrument.
14. Where extensions are sought, a responsible authority should contact the DAP Secretariat, who have various templates and can otherwise assist.

### **What may occur if a responsible authority fails to provide a RAR within the prescribed timeframe?**

15. If a responsible authority fails to provide a RAR within the prescribed timeframe, at least two possibilities may occur:
  - (a) The delay may result in the application being considered a deemed refusal period under r.18 and the relevant planning instrument, affording the applicant a right of review to the State Administrative Tribunal ('SAT'). It should be observed that where this occurs, the responsible authority may in effect be abrogating its influential role in participating in the decision-making process. In effect, the decision will be made by one specialist – the SAT member.
  - (b) The Minister may intervene by issuing a direction under r.52, requesting documents or information from a responsible authority. It should be observed that this includes a Ministerial power to use local government staff and facilities directly, for the purpose of furnishing the requested information.
16. If it appears that a responsible authority may not be able to provide the RAR within the prescribed timeframe, it should contact the DAP Secretariat as soon as practicably convenient. This will provide the best opportunity to determine appropriate courses of action, including the possibility of an extension of time.

### **Does a RAR need to be published on the DAP website at all, or should it be deferred for publication, given regulation 39 requires agendas to be published 5 days before a DAP meeting?**

17. Unless there are unusual circumstances (e.g. confidential matters such as trade secrets), an RAR should be published on the DAP website as part of the agenda 5 days before each DAP meeting. Where a RAR requires further clarification through a r.13 request, both the Presiding Member's written request and the responsible authority's response will also be published on the DAP website.

## Updating or revoking this practice note

18. In accordance with its commitment to continual improvement, the Director General will endeavour to ensure this practice note is updated or revoked as circumstances arise.

A handwritten signature in black ink, appearing to read 'Eric Lumsden', with a long horizontal flourish extending to the right.

**Eric Lumsden PSM**

CEO and Director General

Department of Planning

26/7/2012