

AGENDA

Special Council Meeting

21 June 2016

Notice of Meeting

To: The Mayor and Councillors

The next Special Council meeting of the City of South Perth Council will be held on Tuesday 21 June 2016 in City of South Perth Council Chamber, Cnr Sandgate Street and South Terrace, South Perth commencing at 7.30pm.

The purpose of the meeting is to consider:

- Review of Western Australian Planning System – Western Australian Local Government Association Annual General Meeting
- City of South Perth v ALH Group Property Holdings Pty Ltd (*Confidential*)



GEOFF GLASS
CHIEF EXECUTIVE OFFICER

17 June 2016



Our Guiding Values

Trust

Honesty and integrity

Respect

Acceptance and tolerance

Understanding

Caring and empathy

Teamwork

Leadership and commitment

Disclaimer

The City of South Perth disclaims any liability for any loss arising from any person or body relying on any statement, discussion, recommendation or decision made during this meeting.

Where an application for an approval, a licence or the like is discussed or determined during this meeting, the City warns that neither the applicant, nor any other person or body, should rely upon that discussion or determination until written notice of either an approval and the conditions which relate to it, or the refusal of the application has been issued by the City.

Further Information

The following information is available on the City's website.

- **Council Meeting Schedule**

Ordinary Council Meetings are held at 7.00pm in the Council Chamber at the South Perth Civic Centre on the fourth Tuesday of every month between February and November. Members of the public are encouraged to attend open meetings.

- **Minutes and Agendas**

As part of our commitment to transparent decision making, the City makes documents relating to meetings of Council and its Committees available to the public.

- **Meet Your Council**

The City of South Perth covers an area of around 19.9km² divided into four wards. Each ward is represented by two Councillors, presided over by a popularly elected Mayor. Councillor profiles provide contact details for each Elected Member.

www.southperth.wa.gov.au/Our-Council/

Contents

1.	DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS	4
2.	ANNOUNCEMENTS FROM THE PRESIDING MEMBER	4
2.1	STANDING ORDERS LOCAL LAW 2007	4
2.2	AUDIO RECORDING OF THE COUNCIL MEETING	4
3.	ATTENDANCE	4
3.1	APOLOGIES	4
3.2	APPROVED LEAVE OF ABSENCE	4
4.	DECLARATIONS OF INTEREST	4
5.	PUBLIC QUESTION TIME	4
6.	DEPUTATIONS	4
7.	REPORTS	5
7.6	STRATEGIC DIRECTION 6: GOVERNANCE, ADVOCACY AND CORPORATE MANAGEMENT	5
7.6.1	Review of Western Australian Planning System - Western Australian Local Government Association Annual General Meeting	5
8.	MEETING CLOSED TO PUBLIC	9
8.1.1	City of South Perth v ALH Group Property Holdings Pty Ltd	9
8.	CLOSURE	10

Special Council Meeting - Agenda

1. DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

2. ANNOUNCEMENTS FROM THE PRESIDING MEMBER

2.1 STANDING ORDERS LOCAL LAW 2007

This meeting is held in accordance with the City's Standing Orders Local Law 2007 which provides rules and guidelines which apply to the conduct of meetings.

2.2 AUDIO RECORDING OF THE COUNCIL MEETING

The meeting will be audio recorded in accordance with Council Policy P673 "Audio Recording of Council Meetings" and Clause 6.15 of the Standing Orders Local Law 2007 "Recording of Proceedings".

3. ATTENDANCE

3.1 APOLOGIES

3.2 APPROVED LEAVE OF ABSENCE

4. DECLARATIONS OF INTEREST

Conflicts of Interest are dealt with in the *Local Government Act, Rules of Conduct Regulations* and the *Administration Regulations* as well as the *City's Code of Conduct 2008*. Members must declare to the Presiding Member any potential conflict of interest they have in a matter on the Council Agenda.

5. PUBLIC QUESTION TIME

6. DEPUTATIONS

7. REPORTS

7.6 STRATEGIC DIRECTION 6: GOVERNANCE, ADVOCACY AND CORPORATE MANAGEMENT

7.6.1 Review of Western Australian Planning System - Western Australian Local Government Association Annual General Meeting

Location:	South Perth
Ward:	Not Applicable
Applicant:	Council
File Ref:	D-16-41619
Lodgement Date:	15 June 2016
Date:	21 June 2016
Author:	Geoff Glass, Chief Executive Officer
Reporting Officer:	Geoff Glass, Chief Executive Officer
Strategic Direction:	Governance, Advocacy and Corporate Management -- Ensure that the City has the organisational capacity, advocacy and governance framework and systems to deliver the priorities identified in the Strategic Community Plan
Council Strategy:	6.5 Advocate and represent effectively on behalf of the South Perth community.

Summary

This report seeks Council's consideration of a recommendation to the 2016 Annual General Meeting of the Western Australian Local Government Association requesting an independent review of the Western Australian Planning System, including the role of local government, delegated authorities, Joint Development Assessment Panels and the State Administrative Tribunal appeal process.

Officer Recommendation

That Council endorse the following recommendation and submit it to the 2016 Annual General Meeting of the Western Australian Local Government Association:

That the City of South Perth request the Western Australian Local Government Association to advocate for an independent review of decision making in the Western Australian Planning System, including the roles of local government, delegated authorities, Joint Development Assessment Panels and State Administrative Tribunal appeal processes that gives consideration to:

- 1.1 How the aspirations or values of the community are incorporated into the decision making framework;
- 1.2 Improvements to the statutory framework, including Local Planning Schemes, that would improve the transparency, certainty and consistency of the decision making process;
- 1.3 Ensure that decision making occurs at appropriate levels that promotes good and efficient decisions for the community;
- 1.4 Ensure that Local Governments have a third party right to present local community views to the State Administrative Tribunal;

1.5 The erosion of the roles of Local Government in planning for their communities,

In the event that the State Government is unwilling to pursue an independent review of the decision-making process, request the Western Australian Local Government Association to engage with members and advocate for practical reforms that will ensure greater accountability, transparency and procedural fairness for ratepayers through the Joint Development Assessment Panel's decision making processes.

Background

The Council has previously resolved in March 2016 to advocate for the abolition of or making appropriate changes to Joint Development Assessment Panels (JDAPs) to ensure that local communities are better represented and their views are given greater weight in the decision making process.

Comment

The local government sector has raised concerns including the erosion of the roles of local government and the decisions being made by JDAPs, whereby poor planning outcomes are resulting and the communities are left blaming the local council representatives who are the minority on the JDAPs. Issues such as having a majority of government appointees on JDAPs is perceived to be creating a culture of lack of care and limited responsibility for the outcomes of planning decisions upon the community or the longer term ramifications.

JDAPs are not required to look at any other aspects other than the application before it. This is perceived to be leading to decisions being made that will adversely impact on broader community future planning outcomes.

A number of metropolitan local government Mayors at recent forums have outlined a range of issues being encountered by JDAPs. The key issue raised are:

- Chair of JDAPs are not independent;
- Council policies are not being considered in deliberations;
- Council reporting officers are having to make a recommendation and an alternative recommendation which enables the JDAPs to be selective in their decision making;
- JDAPs are taking longer and costing the community more; and
- Developers are using JDAPs to put through incomplete and inferior planning applications

Some local governments are now questioning what could be done to raise the profile of this issue and as a result recently the City of Vincent passed a resolution on the matter. The City of Belmont is also considering a report regarding the issues they are experiencing and will be sending all their community complaints to the Department of Planning for their review.

The City of South Perth recently dealt with a 29 storey tower development through its JDAP which resulted in Supreme Court action by local residents. The developer subsequently re-submitted an application for a 44 storey building on the same site which has led to issues with the State Administrative Tribunal (SAT) excluding the City of South Perth from a directions hearing stating the City of South Perth was not a party to the action.

7.6.1 Review of Western Australian Planning System - Western Australian Local Government Association Annual General Meeting

The common theme being reiterated by many local governments dealing with JDAPs, SAT and the Western Australian planning system functions in general, is that communities are being disengaged from the decisions and believe leveraging broader community support will be the only way the local government can get a commitment from the State Government to look at its planning decision making processes.

The planning system should be focussed on good decisions. Whilst consideration to abolishing the JDAPs system has been called for, this gives no guarantee in and of itself that the decisions would be better. Clearly, locally elected councillors have a far better understanding of the impacts of developments on the community than appointed persons, however, in some circumstances, the added expertise may be warranted for some decisions.

By way of an example, some local authorities in Western Australia represent less than 1000 people and deal with relatively few applications per year. If an application for major infrastructure was applied for, understandably, the Council may not be able to gauge how their planning scheme should be applied, or what appropriate conditions may be applied, due to a lack of familiarity with the system. On the other hand, very large local authorities such as Stirling manage a population 40% of the State of Tasmania, but are not allowed to deal with a \$2 million shed, if the applicant seeks a JDAP determination. The system put in place by the State is a one size fits all planning system, rather than one that supports decision making at the appropriate level.

As has been pointed out by the State Government and numerous developer lobbies, the JDAPs are bound by the Local Planning Schemes, which whilst approved by the Minister for Planning, in most cases have been drafted by the local authorities. This would be the most appropriate place to start any review of the planning decision process. Much of the issue comes from planning schemes, which give significant amounts of discretion, with little guidance on how it should be applied. For example if a scheme simply says that the height of a development can be increased, but gives no reason as the circumstances in which this variation can happen, of course there will be debate about whether it was appropriate if that discretion is applied.

Clearly the elected members have a better understanding of the strategic intent of certain provisions of their planning schemes and this knowledge should be respected and clearly articulated. There is significant context set out in the strategic plans of the local governments that should be incorporated into the decision making process.

The advent of JDAPs was largely due to criticism by the development industry that some Councils were anti-development and incorrectly refusing applications, forcing the need for review at State Administrative Tribunal (SAT). Whilst this analysis is debatable, the other reforms that occurred over the same period were changes to the Local Government Act, which allows for the Minister for Local Government to suspend Councils or individual Councillors and mandate training to assist in their decision making.

Local governments through their lead body WALGA would recommend that any review of decision making not be limited to the JDAPs system, but should look at how better decisions can be made across all levels of decisions in the planning system, from Ministerial decisions down to delegate decisions by officers and also the appeal processes undertaken by SAT.

7.6.1 Review of Western Australian Planning System - Western Australian Local Government Association Annual General Meeting

A previous parliamentary inquiry was held into the functionality of the regulations surrounding JDAPs, however the scope of the review did not allow for a true investigation into the need for such a mechanism. The parliamentary inquiry was not seen by the local government sector as being broad enough to deal with all the issues being experienced and also not seen as being truly independent nor giving voice to the community. Further review will find improvements to the planning system which will benefit the community and developers alike.

In conclusion, if the local government industry wants to see real changes in JDAPS and SAT they must also look at the planning system as whole. All local governments must be prepared to support reforms across the entire system otherwise the issues surrounding JDAPS will continue unless fair compromise between State Government and local government can be reached.

It is fair to say that if the State Government does not agree to partner with local government to undertake an independent and thorough review of the entire planning system then the loggerhead will continue.

Consultation

This matter has previously been considered by the Council in March 2016.

Policy and Legislative Implications

Any changes to JDAP's would require the State Government to amend the *Approval and Related Reforms (No. 4) (Planning) Act 2010*.

Financial Implications

Nil.

Strategic Implications

This report is aligned to the City's [Strategic Community Plan 2015-2025](#).

Sustainability Implications

This report is aligned to the City's [Sustainability Strategy 2012-2015](#).

Attachments

Nil

8. MEETING CLOSED TO PUBLIC

The Chief Executive Officer advises that there are matters for discussion on the Agenda for which the meeting may be closed to the public, in accordance with section 5.23(2) of the Local Government Act 1995.

Reports regarding these matters have been circulated separately to Councillors.

8.1 MATTERS FOR WHICH THE MEETING MAY BE CLOSED

8.1.1 City of South Perth v ALH Group Property Holdings Pty Ltd

*This item is considered **confidential** in accordance with the Local Government Act 1995 section 5.23(2) (d) as it contains information relating to "legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting"*

Location:	243 Canning Highway, South Perth
Ward:	Como Ward
Applicant:	N/A
File Ref:	D-16-41529
Date:	21 June 2016
Author:	Phil McQue, Manager Governance and Administration
Reporting Officer:	Geoff Glass, Chief Executive Officer
Strategic Direction:	Governance, Advocacy and Corporate Management - - Ensure that the City has the organisational capacity, advocacy and governance framework and systems to deliver the priorities identified in the Strategic Community Plan
Council Strategy:	6.5 Advocate and represent effectively on behalf of the South Perth community.

Summary

This report considers the outcome of the City of South Perth v ALH Group Holdings Pty Ltd Supreme Court Application.

Officer Recommendation

That Council adopt the Officer Recommendation as per the **Confidential** Report.

8.2 PUBLIC READING OF RESOLUTIONS THAT MAY BE MADE PUBLIC

8. CLOSURE