

ATTACHMENT TO AGENDA ITEM

Ordinary Meeting

15 September 2015

Agenda Item 9.5	Appointment of a Replacement Alternate Councillor Member to the Development Hearings Panel
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9. SUSTAINABLE DEVELOPMENT DIRECTORATE

9.1 Development Hearings Panel - Seeking Permission to Proceed Prior to Appointing Independent Qualified Persons

Disclosures of conflicts of interest in relation to advice provided in this report
Under section 80C of the *Local Government Act 1989* officers and persons engaged under a contract providing advice to Council must disclose any conflicts of interests, including the type and nature of interest.

No Council officers or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

Council Officers involved in producing this report

Author: Team Leader Statutory Planning

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Approved by: Chief Executive Officer

Executive Summary

At the 2014 Ordinary February Council Meeting Council resolved to establish a new Development Hearings Panel (DHP) and include two Independent Qualified Persons (IQP's) on this DHP.

At the 2014 Ordinary June Council Meeting Council resolved to endorse the selection panel members and adopt new guidelines for the DHP to include the IQP positions. At the same time the resolution endorsed the selection criteria for the IQP's.

Nominations for the IQP positions were sought via advertisement between 27 June 2014 and 11 July 2014. This advertisement period failed to attract any nominations for consideration.

Council officers seek to re-run the recruitment process, but in the meantime the DHP remains inoperable due to no IQP's being appointed. While the DHP remains inoperable a number of planning permit applications need to go to Council for a final decision. This is resulting in a reduction in the efficiency of the running of the statutory planning operation and is also causing applicant frustration at time delays. It is estimated that up to 10-15 applications will need to be referred to a Council meeting for a decision in the coming three months.

It is important that the DHP is available to perform its functions and therefore the purpose of this report is to:

- Update council on the recruitment process to date;
- recommend that Council appoint a new DHP made up of 6 Council officers and 1 Councillor (or alternate);
- Adopt modified Guidelines for the DHP, consistent with earlier adopted Guidelines, except for the modification to the DHP membership.
- Seek Council permission for Council officers to continue to pursue the potential for 2 Independent Qualified Persons to form part of a future DHP including assessment of options for appointment and payment of same, and to bring this back before Council for consideration at the applicable time.



9. SUSTAINABLE DEVELOPMENT DIRECTORATE

9.1 Development Hearings Panel - Seeking Permission to Proceed Prior to Appointing Independent Qualified Persons (continued)

RECOMMENDATION

That Council resolves:

1. The Development Hearings Panel established by resolution of Council on 18 February 2014, including all guidelines for the operation of that Development Hearings Panel be revoked.
2. Pursuant to section 86 of the *Local Government Act 1989*, a special committee of the Council be established, to be known as the Development Hearings Panel ("DHP").
3. The DHP is made up of:
 - a. 6 Officer members; and
 - b. 1 Councillor;
 as otherwise specified in these resolutions.
4. To constitute a valid meeting of the DHP the necessary quorum is not less than 4 members (in accord with section 91(3A) of the *Local Government Act 1989*), and must include the 1 Councillor member.
5. Those members of Council staff holding or acting in the following positions are appointed as a member of the DHP, the:
 - a. Director Sustainable Development;
 - b. Manager Planning;
 - c. Statutory Planning Team Leader;
 - d. Strategic Planning Team Leader;
 - e. Development Team Leader; and
 - f. Principal Strategic Planning.
6. The Council will by resolution, from time to time, appoint a Nominated Councillor to be the Councillor member on the DHP. It is further resolved:
 - a. the Nominated Councillor from the date of this resolution, until further resolution, is Cr Adem;
 - b. the Council will by resolution, from time to time appoint an Alternate Councillor as the alternate Councillor member of the DHP if or when the Nominated Councillor is unable or otherwise fails, to attend a DHP meeting;
 - c. the Alternate Councillor appointed from the date of this resolution, until further resolution, is Cr Polan.
7. The attached guidelines applying to the Development Hearing Panel ("**Guidelines for DHP**") are adopted as Council policy and the DHP must operate in accordance with those Guidelines for DHP.
8. The Nominated Councillor (or the Alternate Councillor) is appointed as the Chair of the DHP.
9. The purpose of the DHP is to consider and determine all matters in respect of which it holds delegations from the Council. Such determination must be in accordance with:



9. SUSTAINABLE DEVELOPMENT DIRECTORATE

9.1 Development Hearings Panel - Seeking Permission to Proceed Prior to Appointing Independent Qualified Persons (continued)

- (a) the Guidelines for the DHP adopted in this resolution; and
 - (b) the adopted policies and strategies of Council in all matters in respect of which it holds delegations from the Council.
10. For the avoidance of doubt, it is confirmed that Council has delegated, or by this resolution the Council delegates, to the DHP each duty and/or function and/or power specified in respect of the DHP in the Instrument of Delegation to Members of Council Staff and DHP adopted by Council on 18 February 2014.
11. That Council officers continue to continue to pursue the potential for 2 Independent Qualified Persons to form part of a future DHP including assessment of options for appointment and payment of same, and to bring this back before Council for consideration at the applicable time.

Moved by Cr Summer Seconded by Cr Adem

That Council resolves:

1. The Development Hearings Panel established by resolution of Council on 18 February 2014, including all guidelines for the operation of that Development Hearings Panel be revoked.
2. Pursuant to section 86 of the *Local Government Act 1989*, a special committee of the Council be established, to be known as the Development Hearings Panel ("DHP").
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 - a. Director Sustainable Development;
 - b. Manager Planning;
 - c. Statutory Planning Team Leader;
 - d. Strategic Planning Team Leader;
 - e. Development Team Leader; and
 - f. Principal Strategic Planning.
6. The Council will by resolution, from time to time, appoint a Nominated Councillor to be the Councillor member on the DHP. It is further resolved:
 - a. the Nominated Councillor from the date of this resolution, until further resolution, is Cr Adem;



9. SUSTAINABLE DEVELOPMENT DIRECTORATE

9.1 Development Hearings Panel - Seeking Permission to Proceed Prior to Appointing Independent Qualified Persons (continued)

- b. the Council will by resolution, from time to time appoint an Alternate Councillor as the alternate Councillor member of the DHP if or when the Nominated Councillor is unable or otherwise fails, to attend a DHP meeting;
 - c. the Alternate Councillor appointed from the date of this resolution, until further resolution, is Cr Polan.
7. The attached guidelines applying to the Development Hearing Panel ("**Guidelines for DHP**") are adopted as Council policy and the DHP must operate in accordance with those Guidelines for DHP.
 8. The Nominated Councillor (or the Alternate Councillor) is appointed as the Chair of the DHP.
 9. The purpose of the DHP is to consider and determine all matters in respect of which it holds delegations from the Council. Such determination must be in accordance with:
 - (a) the Guidelines for the DHP adopted in this resolution; and
 - (b) the adopted policies and strategies of Council in all matters in respect of which it holds delegations from the Council.
 10. For the avoidance of doubt, it is confirmed that Council has delegated, or by this resolution the Council delegates, to the DHP each duty and/or function and/or power specified in respect of the DHP in the Instrument of Delegation to Members of Council Staff and DHP adopted by Council on 18 February 2014.
 11. That Council officers continue to advertise for 2 Independent Qualified Persons to form part of a future DHP including assessment of options for appointment and payment of same, and to bring this back before Council for consideration at the applicable time.

CARRIED.

Background

During 2013 concerns were raised about the appointment of the Development Hearings Panel ("DHP").

The concerns were investigated, including via legal advice, and it was indicated that the addition of new members to the DHP in the Council resolution of 18 December 2012 may have impacted upon the effectiveness of the appointment of the DHP and its ability to make decisions.

To resolve this, the Council, at its meeting of 18 February 2014, proposed to create a new DHP, to adopt new Guidelines for that DHP and then resolve to make appropriate delegations to that DHP in accordance with Council's general Instrument of Delegation to Members of Council Staff and DHP. This is described as "S6.Instrument of Delegation" and was adopted at the Council meeting of 18 February 2014.

In its resolution of 18 February 2014, arising from Councillor suggestion, rather than appointing 8 Council officers and 1 Nominated Councillor (with an Alternate Councillor also appointed) it was suggested that two Independent Qualified Persons or "IQP's" be appointed.



9. SUSTAINABLE DEVELOPMENT DIRECTORATE

9.1 Development Hearings Panel - Seeking Permission to Proceed Prior to Appointing Independent Qualified Persons (continued)

Subsequent to the Council meeting officers prepared an appropriate selection criteria and instigated a process whereby it could seek to find interested parties to be one of the IQP's making up the DHP. This process was endorsed at the 2014 Ordinary June Council Meeting.

There has been no interest expressed in relation to either of the IQP positions available.

Some consideration is being given to whether these might be offered as paid positions, to encourage interest, however this is still under consideration, including seeking legal advice.

Council Plan/Key Strategic Activity

Addressing the identified technical deficiencies of the DHP supports Objective 3 under High Performing Organisation (Leadership and Governance) "*ensure strong internal systems and processes to ensure best practice delivery of service for the community*".

Risk Management

Addressing the identified deficiencies ensures that decisions of the DHP are valid, legal and assists in planning decisions being made in a timely manner.

Policy Considerations

The proposed changes to the DHP must be exercised in accordance with the Council's Exercise of Delegations policy and includes new Guidelines for DHP.

Financial Implications

There are no direct financial implications arising from the proposed changes to the DHP. Failure to address the identified technical deficiencies could expose the Council and ratepayer to the cost of any actions challenging or associated with, the validity of the DHP.

Legal/Statutory Implications

Addressing the identified technical deficiencies of the DHP will ensure that decisions made by the DHP are legally compliant.

Environmental/Sustainability Impacts

There are no Environmental/Sustainability impacts relating to the proposed recruitment process.

Social Implications

There are no Social impacts relating to the proposed recruitment process.

Economic Impacts

With the DHP inoperable a number of applications that would ordinarily have been decided on by the DHP have been referred to a Council meeting for a decision. This has delayed the decision making process on these applications.

Delays in the planning system can impact financially on applicants and have flow on economic impacts within the community.

Planning permit applications that are controversial in nature or are of significant public interest should continue to be decided by the Council. Current and proposed delegation arrangements allow for this. The majority of planning permit applications do not fall within this category and should receive a timely decision.



9. SUSTAINABLE DEVELOPMENT DIRECTORATE

9.1 Development Hearings Panel - Seeking Permission to Proceed Prior to Appointing Independent Qualified Persons (continued)

Solution

The recommendation contained in this report is that the Council reduce the number of DHP members to a total of 7, made up of:

6 Council officers as follows:

- (a) Director Sustainable Development;
- (b) Manager Planning;
- (c) Statutory Planning Team Leader;
- (d) Strategic Planning Team Leader;
- (e) Development Team Leader; and
- (f) Principal Strategic Planning, and a Nominated Councillor (with an Alternate Councillor).

The proposed Nominated Councillor is Cr Adem and the Alternate Councillor is Cr Polan.

As an aside, it is recommended that Council officers continue to pursue interest in nominations for the IQP positions. If at some stage in the future interest from potential IQP's (including a paid amount) is enlivened then a further, new DHP can be adopted.

Consultation

As discussed in the background material above, attempts to establish interest for persons to become an IQP has been unsuccessful.

Council officers have obtained further legal advice and that has confirmed earlier advice that the DHP cannot operate at the present time without effectively being re-created as a new DHP without the two IQP positions described within it.

Strategic Links

a) Greater Shepparton 2030 Strategy

The report highlights the importance of achieving best practice and reduced time delays.

b) Other strategic links

The report highlights the need for performance improvements in line with goal number 5 of the Council Plan – High Performing Organisation.

Options for Consideration

1. Adopting the recommendation listed above.
2. Not adopting the recommendation. This would mean bringing every single DHP delegated matter before the Council for determination. This is currently occurring and is leading to significant delays both in the processing of the applications and Council's own processes.
3. Deciding to not further pursue nominations for the appointment of Independent Qualified Persons.

Conclusion

That the recommendations set out in the resolution are adopted by Council to help ensure the timely commencement of the new Development Hearings Panel.

Attachments

Guidelines for Development Hearings Panel -with IQP's removed)

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**GUIDELINES FOR
DEVELOPMENT HEARINGS PANEL**



Development Hearings Panel

Review Date: 11 August 2014

Responsible Officer: Manager Planning

Approval Date: 16 September 2014

1. SUMMARY

The Development Hearings Panel ("**DHP**") has been formed to consider and determine, as a delegate of Council, various matters under the Planning and Environment Act 1987, the Greater Shepparton Planning Scheme and other relevant regulations. In particular this includes:

- planning permit and permit amendment applications where up to 5 objections are received (*for 6 or more objections these must go to Council*);
- any permit or permit amendment application, secondary consent, request for extension of time or other determination of an officer (under a delegated authority) which is recommended for refusal by an officer;
- any relevant matter referred to the DHP by an officer.

The DHP is a special committee of the Council established under section 86 of the Local Government Act 1989 and exercises powers delegated to it by Council, from time to time.

2. OBJECTIVES

To establish policy and related processes for the DHP for its decision making as the delegate of Council in respect of various planning and development matters in order to:

- avoid delays in decision making where consideration by a Council meeting is not appropriate or as directed;
- create a body to consider applications where objections (up to 5) have been received, rather than under Officer delegation;
- provide a forum for presentation of views of relevant parties; as applicable (eg applicants, objectors, other government agencies);
- act as a check and review in respect of potential refusals by Council of applications and other decision making.

3. DEFINITIONS

"Responsible Authority" has the same meaning as Responsible Authority under the *Planning and Environment Act 1987*;

"The DHP" means the Development Hearing Panel, the Special Committee of Council established by Council, as described in these Guidelines;

"Officer" means a member of Council Staff;

"Nominated Councillor" means the Councillor nominated by Council resolution, from time to time, as the Councillor member on the DHP;

"Alternate Councillor" means the Councillor nominated by Council resolution, from time to time, as the alternate (to the Nominated Councillor) Councillor member on the DHP;

**GUIDELINES FOR
DEVELOPMENT HEARINGS PANEL****4. TERMS OF REFERENCE****4.1 Expected / Definite life of the Committee**

- The DHP established by the Council is intended to continue until its existence is discontinued by the Council.

4.2 Members of the Special Committee

The 7 Members of the DHP are the:

- Director Sustainable Development,
- Manager Planning;
- Statutory Planning Team Leader;
- Strategic Planning Team Leader;
- Development Team Leader;
- Principal Strategic Planner;
- Nominated Councillor or Alternate Councillor, appointed.

A meeting of the DHP will also be validly constituted at the time of the meeting by:

- the attendance of an Officer "acting" in one of the officer position descriptions above;
- failing the attendance of the Nominated Councillor, the Alternate Councillor attending.

4.3 Meeting Attendance

- The Chair of the DHP is the Nominated Councillor or Alternate Councillor.
- The Nominated Councillor is principally responsible to attend the DHP. The Alternate Councillor will only be called on to attend if the Nominated Councillor is unable to attend a meeting.
- A majority of the 7 DHP members are required to form a quorum (that is 4) provided present at any DHP meeting must be:
 - not less than 3 Officer appointees; and
 - the Nominated Councillor or the Alternate Councillor.
- Meetings are open to the public other than in circumstances where the DHP resolves to close the meeting in accordance with section 89 of the *Local Government Act 1989*.

**GUIDELINES FOR
DEVELOPMENT HEARINGS PANEL****4.4 Authority of the Committee**

- The DHP is a special committee of the Council established under section 86 of the *Local Government Act 1989*.
- The DHP exercises power delegated to it, including under the *Planning and Environment Act 1987*, pursuant to an Instrument of Delegation adopted by resolution of the Council from time to time.

4.5 Meetings

- The DHP operates under Local Law No 2, with such modifications and adaptations as the DHP deems necessary for the orderly conduct of meetings.
- The Chair will give reasonable notice of any proposed meeting to the public, which must not be less than 7 days.
- All DHP members have 1 vote at a meeting.
- Decisions of the DHP are by ordinary majority resolution. If a vote is tied the Chair of the DHP has the casting vote.
- The process for submitters to be heard by the Panel shall be:
 - the officer to present the report
 - referral authority to present a submission as relevant
 - the objectors to present a submission
 - the applicant to present submissionsunless otherwise directed by the Chair.
- Applicants and objectors are to be limited to three minutes per person unless otherwise directed by the Chair.

4.6 Secretariat

- The Chair of the DHP is responsible for the convening of meetings, ensuring written minutes are kept and implementation of decisions of the DHP.

4.7 DHP Decision Options

The DHP may:

- determine a matter; or
- decide (whether before, during or after the hearing and consideration of a matter at a DHP meeting) to refer the matter to a Council meeting for determination.

**GUIDELINES FOR
DEVELOPMENT HEARINGS PANEL****4.8 Information to Councillors**

- On a quarterly basis all Councillors must be provided with a list of matters considered by the Panel.
- Where objections are lodged, the Council officers will often hold mediation meetings with applicants and objectors in an attempt to resolve differences or reach compromise, subject to Council's decision. Where an objection is withdrawn it will no longer be considered (or counted) as an objection provided that if it is withdrawn subject to condition(s) it will require a decision in accordance with such condition(s) to constitute a withdrawn objection.