



Minutes

of the

Special Meeting of

Council held

on Thursday  
8 March 2018

In

The Council Chambers  
Honour Avenue Wyalkatchem

*Our Purpose*

*The Council of Wyalkatchem works with the Community to protect and enhance the quality of life for current and future generations*

## **Council's Vision**

That Wyalkatchem is an inclusive, dynamic community where all share in a thriving economy and a sustainable, safe and valued environment.

## **Our Purpose**

The Council of Wyalkatchem works with the community to protect and enhance the quality of life for current and future generations.

## **Our commitment**

Council will provide leadership, including community engagement with stakeholders, to ensure the long-term sustainability of our community. We are mindful of the social, environmental and economic impacts of our decisions and will work to ensure future generations benefit from our decisions. We will practise good governance and meet recognised standards of excellence and work diligently to achieve excellence in every aspect of our activities.

## **Our Guiding Principles**

Respect for diverse community interests based on active listening and mutual understanding

Leaving a positive legacy for future generations and Councils

Balancing a flexible, can-do, innovative and professional approach with achieving outcomes efficiently

Responsible financial management

Informed, evidence-based and representative decision making; and,

Effective communication and engagement.

## **Our Goals**

Healthy, strong and connected communities

A prosperous and dynamic district

A sustainable natural and built environment

An effective voice

A well-managed and effective organisation

Facilities and assets that are well used and effectively managed

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Minutes of the Special Meeting of Council held in Council Chambers, Cnr Honour Avenue and Flint Street, Wyalkatchem held on Thursday 8 March 2018.

### **1. DECLARATION OF OPENING**

**1.1 The Shire President declared the Meeting open at 3.11pm**

**1.2 The Shire of Wyalkatchem disclaimer will be read aloud.**

*"No responsibility whatsoever is implied or accepted by the Shire of Wyalkatchem for any act, omission or statement or intimation occurring during this meeting. It is strongly advised that persons do not act on what is heard at this Meeting and should only rely on written confirmation of Council's decisions, which will be provided within ten days of this meeting".*

### **2 Public question time**

**2.1 Response to previous questions taken on notice**

Not applicable

**2.2 Declaration of public question time opened 3.11pm**

**2.3 Declaration of public question time closed 3.11pm**

### **3 Record of attendance, apologies, and approved leave of absence**

**3.1 Present:**Cr Davies, Cr Garner, CR Gamble, Cr Butt, Cr Metcalfe, Cr Holdsworth

**3.2 Apologies:**Nil

**3.3 On leave of absence:**Nil

**3.4 Staff:** Ian McCabe, Craig Harris, Ella McDonald

**3.5 Visitors:**Nil

**3.6 Gallery:**Nil

**3.7 Applications for leave of absence:**Nil

**4.1 Petitions** Nil

**4.2 Deputations** Nil

**4.3 Presentations** Nil


**5.0 Confirmation of Minutes from Previous Meeting Nil**

**6.0 Announcements by Presiding Person Nil**

**7.0 Matters for which meeting may be closed Nil**

## 8.1 LAND USE AND PLANNING

### 8.1.1 LAND USE AND PLANNING – PLANNING – DEVELOPMENT ASSESSMENT PANELS – WALGA CONSULTATION

<b>FILE REFERENCE:</b>	18.5.2
<b>AUTHOR'S NAME AND POSITION:</b>	Ian McCabe Chief Executive Officer
<b>AUTHOR'S SIGNATURE:</b>	
<b>NAME OF APPLICANT/RESPONDENT/LOCATION:</b>	WALGA
<b>NOTIFICATION TO APPLICANT:</b>	Required
<b>DATE REPORT WRITTEN:</b>	21 February 2018
<b>DISCLOSURE OF INTEREST:</b>	The author has no financial interest in this matter.
<b>Strategic Community Plan Reference:</b>	3. A sustainable natural and built environment; 4. An effective voice.

#### SUMMARY:

#### That Council resolve the following:

1. Support the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels;
2. Authorise the CEO to provide written advice to WALGA of this resolution.

#### Appendix:

1. Request from WALGA to consider Third Party Appeal Right sin Planning;
2. WALGA report on consultation outcomes in relation to Third Party Appeal Rights.

#### Background:

The President of WALGA wrote to the Shire President seeking the support of Council for the introduction of appeal rights where a Development Assessment Panel (DAP) makes a determination. This would exclude appeal rights from Decisions by a Council. Applications to DAP's are mandatory for project thresholds exceeding \$10 million and 'opt in' where the value exceeds \$2 million. This makes it very unlikely a development application in

Wyalkatchem would result in referral to a DAP. WALGA has requested feedback by 15 March 2018.

**Comment:**

Third Party Appeal rights in planning occur where parties not directly involved in a planning matter appeal a planning decision. WALGA consulted the sector and considered the matter at State Council.

The WALGA President has made a written request for Councils to support the introduction of third party appeal rights at DAP's which reserves the appeal mechanism for larger projects. It is very unlikely a project in Wyalkatchem would be subject to a DAP application and therefore unlikely it would be subject to this appeal mechanism.

The only current Wheatbelt project subject to a DAP Application is the Allawuna Farm Landfill, Great Southern Hwy, St Ronans (York).

**Consultation:**

Full Council

**Statutory Environment:**

Planning and Development Act 2005

**Policy Implications:**

No direct policy implication.

**Financial Implications:**

There is no financial implication of this recommendation.

**Strategic/Risk Implications:**

There is no risk to the local government involved in accepting this recommendation.

**Voting Requirements:** Simple Majority

**Council Decision Number:** 25/2018

**Moved:** Cr Garner

**Seconded:** Cr Holdsworth

**That Council Resolve the Following:**

1. Support the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels;
2. Authorise the CEO to provide written advice to WALGA of this resolution.

**Vote:** 6/0



18.06



1 December 2017

Our Ref: 06-06-01-0001 GC

Cr Quentin Davies  
President  
Shire of Wyalkatchem  
PO Box 224  
**WYALKATCHEM WA 6485**

Dear President Davies

### **CONSULTATION WITH MEMBERS – THIRD PARTY APPEAL RIGHTS IN PLANNING**

Please find attached the Western Australian Local Government Association's (WALGA) report on the outcomes of consultation with members on Third Party Appeal Rights in Planning.

In December 2016, WALGA State Council resolved to undertake research on third party appeals around Australia and further consult with members regarding its current policy position. The Association prepared a discussion paper which provided background on the development of WALGA's position and a review of the arguments both for and against third party appeals which was then circulated to the Local Government sector for comment and feedback.

Feedback was presented to State Council at its 8 September 2017 meeting, where it was resolved that (92.9/2017) -

1. *State Council notes that there is increased support for the introduction of some form of Third Party Appeal rights.*
2. *WALGA undertakes further consultation with members on Third Party Appeal Rights, including Elected Member workshops, discuss the various concerns and suggestions raised in response to the discussion paper, the form and scope of any such appeal right should include the appropriate jurisdiction including JDAPS, SAT and WAPC to determine a preferred model.*
3. *The findings to be distributed for comment and the Item then be reconsidered by State Council.*
4. *WALGA continue to advocate that an independent review of decision making within the WA planning system is required, including the roles and responsibilities of State and Local Government and other decision making agencies, Development Assessment Panels and the State Administrative Tribunal appeal process.*

The submissions received on the discussion paper were collated into four options which broadly capture the range of responses in support of Third Party Appeals (see accompanying report for the complete list of options). Two workshops were held on 1 November 2017, and a webinar held on 9 November 2017 to review these options with members and determine a preferred model for any proposed rights. The workshops had 40 attendees (35 officers and 5 Elected members), representing 25 local governments. The attached report discusses the outcomes of this consultation process.

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[www.walga.asn.au](http://www.walga.asn.au)

The purpose of the consultation was to determine members' preferred model for any proposed appeal rights. Based on the outcomes of the workshops, the Association is requesting that members consider the following as the preferred model for Third Party Appeal Rights in Planning in Western Australia:

***Support the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels***

Members are requested to advise their support or otherwise of this model of Third Party Appeal Rights by Council Resolution, to be returned to the Association no later than **15 March 2018**.

Upon receipt of the resolutions, a report will be presented to State Council for further consideration.

Council resolutions can be sent to the Planning and Development Team via email at [planning@walga.asn.au](mailto:planning@walga.asn.au) or by mail to WALGA directly at PO Box 1544, West Perth WA 6872, Attention Planning and Development Team.

Any questions or comments can be sent to the above email or call on 9213 2000 to discussion with a member of the Team.

Yours sincerely



**Cr Lynne Craigie**  
**President**



# Outcomes of Consultation

## Third Party Appeal Rights in Planning

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## Brief

At its September 2017 meeting, State Council noted that there is increased support for the introduction of some form of Third Party Appeal Rights in Planning in Western Australia. State Council requested that:

1. Further consultation with members be undertaken on the various concerns and suggestions which were raised in response to WALGA's *Third Party Appeal Rights in Planning Discussion Paper* ([link](#)); and
2. A review of the various forms of third party appeal rights which were proposed by members to develop a preferred model.

Two workshops were held on 1 November 2017, and a webinar held on 9 November 2017. This paper will discuss the outcomes of the consultation.

## 2.0 Background

In December 2016, WALGA State Council resolved to undertake research on third party appeals around Australia and further consult with members regarding the current policy position. The Association prepared a discussion paper which provided background on the development of WALGA's current policy position and a review of the arguments both for and against third party appeals which was circulated to the Local Government sector for comment and feedback.

The feedback received from members was presented to State Council at its 8 September 2017 meeting, where it was resolved that (92.9/2017) -

1. *State Council notes that there is increased support for the introduction of some form of Third Party Appeal rights.*
2. *WALGA undertakes further consultation with members on Third Party Appeal Rights, including Elected Member workshops, discuss the various concerns and suggestions raised in response to the discussion paper, the form and scope of any such appeal right should include the appropriate jurisdiction including JDAPS, SAT and WAPC to determine a preferred model.*
3. *The findings to be distributed for comment and the Item then be reconsidered by State Council.*
4. *WALGA continue to advocate that an independent review of decision making within the WA planning system is required, including the roles and responsibilities of State and Local Government and other decision making agencies, Development Assessment Panels and the State Administrative Tribunal appeal process.*

## 3.0 Consultation

The submissions received on the discussion paper were closely divided between support for some form of Third Party Appeals and opposition to their introduction. Further, amongst the submissions in favour of Third Party Appeals, the level of support varied from limiting its application to specific circumstances, such as DAP decisions, to broad appeal rights similar to the Victorian system. The range of options and ideas presented were incredibly varied, and there was no clear consensus on the form and/or scope any such rights should take. This feedback was collated into four options which broadly capture the range of responses in support of Third Party Appeals. These four options were then used to guide workshop discussions. The options discussed, from narrowest to most broad, are as follows:

1. **Support the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels:** Under this system, third party appeals would be broadly similar to the New South Wales system ([link](#)) whereby appeal rights are limited to uses such as major developments where the development is high impact and possibly of state significance. This would include the ability to appeal amendments to an existing approval.
2. **Support the introduction of Third Party Appeal Rights for decisions where discretion has been exercised under the R-Codes, Local Planning Policies and Local Planning Schemes:** Under this system, third party appeals would be broadly similar to the Tasmanian system ([link](#)) whereby third party appeals are limited to development applications where discretion has been exercised. This would include the ability to appeal an amendment to an existing approval.
3. **Support the introduction of Third Party Appeal Right against development approvals:** Including all development application approvals made by Local Governments, JDAPs and the Perth DAP, MRA or WAPC. This would include appeal rights for affected neighbours and community groups for applications and the ability to appeal amendments to an existing approval.
4. **Support the introduction of Third Party Appeal Rights against development approvals and/or the conditions or absence of conditions of an approval:** Under this system, third party appeals would be broadly similar to the Victorian system ([link](#)) whereby the provision of third party appeal rights cover most development applications and the use of, or lack of, any conditions being imposed. This would include the ability to appeal an amendment to an existing approval.
5. **Other** – as a range of options were provided by members, any alternate versions to the above, or combination of the above could be proposed, including maintaining WALGA's current policy position of not supporting Third Party Appeal Rights.

It should be noted that any form of Third Party Appeals which could be introduced into the Western Australian planning system would need to include criteria that:

- Ensures that appeals are only made on valid planning grounds and are not made for commercial or vexatious reasons.
- Limits Third Party Appeals Rights to those parties which previously made a submission on that development application during the advertising period.
- Require a short window in which to appeal (for example 14 days).

The exact details of such criteria would need to be established before any system of Third Party Appeals in Planning is implemented, however the focus of the workshops was to discuss the possible scope and form any such appeal rights should take in order to determine a preferred model.

The workshops followed a 'market place' format, whereby each of the options had its own table and facilitator to guide discussion. Workshop participants circulated between tables so that they could discuss the strengths and weaknesses of each option. There was also an opportunity for participants to provide a 'fifth option' if they had a preferred model which was not captured by the four options provided. Webinar participants were presented and

provided an opportunity to discuss each option, and were given the opportunity to present their own preferred models.

During the workshops, there was a general consensus on the benefits that the introduction of Third Party Appeal Rights would provide. These included:

- Greater accountability of decision-makers, including Local Government, Development Assessment Panels and the State;
- Greater transparency in the planning decision-making process;
- Improved consultation by applicants;
- Increased community confidence in the planning system and planning decisions; and
- More equity between applicants and appellants.

There was also general agreement on areas of concern should some form of Third Party Appeals be introduced. These included:

- Increased costs, in terms of both staff resources and financial requirements;
- More time required for a development to receive a planning approval in order to allow for third party appeals;
- Introduction of Third Party Appeal Rights would be counter to current efforts to streamline the planning process;
- Introduction of Third Party Appeal Rights would create uncertainty for the development industry;
- Removal of decision making power from Local Government;
- Raises community expectations which may not be met in practice;
- Creates an adversarial/litigious environment around planning decisions; and
- Introduction of Third Party Appeals does not address most of the underlying concerns regarding the current planning system.

It was also clear from the discussions that any system of Third Party Appeals would need to be carefully constructed and provide clear guidance on several issues, including:

- When and how a third party can lodge an appeal, and the types of appeals that would be supported;
- Ensuring appeals are only lodged for proper planning grounds, and not for vexatious or competitive purposes;
- Whether 'deemed-to-comply' decisions would be appealable; and
- Would third party appellants be provided some form of 'legal aid' to assist in lodging appeals, to keep the process from being cost prohibitive?

A complete list of comments for each option, as well as possible modifications and suggested 'Fifth Options' is included in **Attachment 1**.

After reviewing all of the options and discussing the advantages and disadvantages of each, participants were asked to vote for their preferred model. Voting was via secret ballot for workshop attendees and via confidential messaging for webinar participants. Participants were also asked to indicate whether they were Elected Members or Officers, so that the results could be captured separately.

### **3.1 Voting and Preferred Model**

In total, 30 votes were cast by participants, 27 by officers and three by Elected Members.

A breakdown of the votes are as follows:

- **Option 1** = 9 votes
- **Option 2** = 6 votes
- **Option 3** = 3 votes (includes 2 Elected Member votes)
- **Option 4** = 1 vote (includes 1 Elected Member vote)
- **Option 5** = 11 votes

It must be noted that although Option 5 received the most votes, this option allowed members to provide their own Third Party Appeal Rights model. Subsequently, of the 11 votes for Option 5, six of these votes were in support of no Third Party Appeal Rights of any kind, while the remaining five votes were each for differing versions of Third Party Appeal rights which those participants supported.

As such, the option which received the greatest level of clear support was Option 1 in support of the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels. A summary of the most common remarks, both for and against, is provided below (for a complete list see Attachment 1).

### **Option 1: Third Party Appeal Rights for decisions made by Development Assessment Panels**

For	Against
Local Government would be able to appeal a DAP decision and defend the merits of their policies and enforceability of their conditions.	Will still require increased staff and resources.
Addresses community concerns that decisions are being made 'removed' from the local community, leading to improved community confidence in the system.	Possibility that the minister could remove Elected Members from DAPs if Local Government can appeal anyway. Possible conflict of interest for Elected Member panellists.
More transparent process with more accountable DAP members, in both decision making and condition setting.	Elected Members may be pressured to initiate an appeal, rather than the community initiating an appeal.
Could allow for appeal on conditions that may have been removed from a RAR.	Reduces certainty in the decision making process.
A good first stage approach for the introduction of Third Party Appeal Rights - could be expanded later.	Possibility for more than one person to want to appeal - how to manage multiple appeals/appellants, and determine degree of impact?
Limits appeal rights to larger, more complex applications and would filter out 'smaller' impact applications which could potentially overburden system.	Only applies to DAP determinations, does not include applications for \$2-\$10 million that are determined by Council. If applicant does not opt in to DAPs then they avoid Third Party Appeal Rights.
May rarely be used in rural areas, is almost the status quo.	Could undermine the reason for DAPs being set up originally.
Likely that more applications will be decided by Council.	Adds another layer to an already complex system.



As can be seen, Option 1 generated strong arguments both for and against the introduction of Third Party Appeal Rights, even in limited scope.

#### **4.0 Feedback Sought and Next Steps**

As noted, the purpose of the consultation was not to develop the full details and criteria by which any system of Third Party Appeal Rights in Planning would operate, but to determine a preferred model for any proposed rights.

As such, the Association is requesting that members consider the following as the preferred model for Third Party Appeal Rights in Planning in Western Australia:

##### ***Support the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels***

Members are requested to advise their support or otherwise of this model of Third Party Appeal Rights by Council Resolution, to be returned to the Association no later than **15 March 2018**.

Upon receipt of the resolutions, the outcome will be reported back to State Council.

Council resolutions can be sent to the Planning and Development Team via email at [planning@walga.asn.au](mailto:planning@walga.asn.au) or by mail to WALGA directly at PO Box 1544, West Perth WA 6872, Attention Planning and Development Team.

Any questions or comments can be sent to the above email or call on 9213 2000 to discussion with a member of the Team.

## 5.0 Attachment 1: Third Party Appeals Workshops and Webinar collected comments

Workshops attendance: 40 Attendees, 35 Local Government Officers, and 5 Elected Members, from 25 Local Government areas including:

- City of Stirling
  - City of Wanneroo
  - City of Vincent
  - City of Subiaco
  - City of Fremantle
  - City of Kalamunda
  - City of Cockburn
  - City of Belmont
  - City of Bayswater
  - City of South Perth
  - City of Rockingham
  - City of Mandurah
  - 
  - Town of Mosman Park
  - Town of Cambridge
  - Town of East Fremantle
  - Town of Cottesloe
  - Shire Wyndham East Kimberley
  - Shire of Wongan
  - Shire of Beverley
  - Shire of Toodyay
  - Shire of Serpentine
  - Jarrahdale
  - Shire of Peppermint Grove
  - Shire of Albany
  - Shire of Kalgoorlie-Boulder
- City of Joondalup

### Option 1 Comments

#### Pros

- Local Government would be able to appeal a JDAP decision + can defend the merits of their policies created (developed under construction) - and enforceability of the conditions.
- Could address community concerns that decisions are made 'removed' from the local community – more influence in the process.
- Confidence in the decision making process - reinstate community confidence in the decision making process - different at each Local Government depending on the make-up/location.
- More transparent process + more accountable JDAP members, in decision making + condition setting.
- Community members can appeal decisions.
- Form 2's included in the process - ability to appeal the amendment + the conditions setting.
- More applications will come back to council.
- Legal nexus between Local Government /State policies + decision making -> TPAR would give this.
- Spread the costs between the applicants/developers/appellants/third parties.
- Could appeal on conditions that may have been removed from a RAR - (i.e. cash-in-lieu conditions removed from RAR).
- Submissions of more compliant applications /outcomes of better developments -> possible costs and time savings for developers.
- 1st stage approach for TPAR - could be expanded later.
- Community satisfaction that JDAPs' can be appealable - feeling of loss of inclusion in the process.
- Community can appeal to JDAP to enable better transparency of decisions.

- Local Government can appeal a decision (particularly when RAR is overturned + conditions).
- JDAPs - can appeal any decisions that don't align with strategic vision.
- Being limited to those complex applications/complicated issues.
- Justify the argument against the development before an appeal can be lodged - direct impact needs to be shown.
- Direct impact needs to be shown.
- Good balance.
- Appellants would have to pay for their own costs.
- Takes out the decisions that are political.
- Applications could then just go to council in the \$2-\$10 range.
- Would filter out 'smaller' impact applications which could potentially overburden system.
- May be rarely used in rural areas - almost status quo – (is it even worth having?).
- Not supportive of Third Party Appeal Rights - BUT would reluctantly support this option.

### Cons

- Only DAPs - not includes \$2-10 for council determinations.
- Political only fix.
- Form 2 process back into Local Government now - so decision could then be appealed? Even if Local Government originally didn't like it. Quantitative measure for whether it is then appealable.
- Resource hungry for all involved - particularly for Local Governments.
- Not all JDAP members would be brought to SAT - only Chair.
- If Local Government supports - but the item is appealed - Local Government would be dragged in.
- Lack of certainty in the decision making process.
- Possibility for more people to be attending an appeal - how to manage? Does it become a numbers game?
- Elected Members may be pressured to put in an appeal rather than the community initiating an Appeal.
- Possibility that the minister could remove Elected Members from JDAP if Local Government can appeal anyway.
- Conflict of interest for Elected Member who sits on the panel if the Local Government appeals it.
- Conditions - in or out?
- More applications will come back to council.
- Odd paradigm to be appeal a decision - Local Government appealing JDAP when they are making a decision on their behalf.
- Could undermine the whole reason for DAPs being set up in the beginning.
- Who would prepare the appeal? Independent? Or Local Government?
- What level of strategic oversight would be included - is it local or regional benefits.
- Multiple appeals? Degrees of appeal issues.
- State or regional policy provisions/what takes precedence?
- Connection to structure planning provisions within the system - 'due regard' less weight.
- Costs unknown.
- Uncertainty for development industry.
- Advertised applications only - would JDAP then have all applications as 'advertised'?  
Greenfield sites/deemed to comply.
- Resources of JDAP's - who submit the appeal and manages the process?

- Could undermine the purpose of DAPs.
- Could reduce the pool of quality DAP panel members.
- Another layer to add to the system.
- Don't get many DAP applications in smaller areas.
- If applicant does not opt in to DAPs then they avoid Third Party Appeal Rights.

### **Modifications**

- Would have to review the \$ amount? - If they opt in then all should be considered for review.
- Change new Form 2 'amendment of conditions' changes to the Regulations would be needed.
- Clarify that it's back through SAT.
- All JDAP panellists would have to be part of the appeal.
- Removal of compulsory nature of all JDAP's.
- Clarify around 'petitions' versus 'individual' vs 'interest groups'.
- Modification to what JDAP actually looks at -> review of the criteria and \$ levels-> State/regional Significance.
- RAR's to council/RAR's to have a council input.
- RAR's to include departures from policy.
- Review of DAPS/Abolish DAPs.
- Structure planning regulations.
- Clarity around the levels/type of developments.
- Renew of JDAP \$\$ types -> what should be appealable.
- Criteria for the type of appellants & JDAP consideration of whether they can appeal – possible independent panel to review before it goes to an appeal.
- Joining of appeals (relates to above). Does it impact type of applicants?
- Only ones with discretion can be appealed, - this would need to be clarified/clearly defined. Is there a threshold of discretion significance?
- Danger of including optional thresholds would be a disincentive for applicants to go to DAPs.
- Possibly modify triggers for regional areas - either dollar value lowers or have size triggers such as XXX square metres.

### **Option 2**

#### **Pros**

- Gives ability to challenge objectivity.
- Maximise compliant applications.
- May encourage early applicant engagement with neighbours.
- Limits number of appeals, compared to other models.
- Gives better understanding within council about their decisions.
- Holds councils accountable for their use of discretion.
- Reasonable balance between applicant cost and community involvement.
- Better discussion between neighbours.
- Improve the quality of decision making – accountability of decision makers.
- One step better than the Victorian system.
- Staged approach – 'dipping toe' in to Third Party Appeals.  
Improved criticisms/content of Policy.
- Provides the community with some assurance.
- If delegation is used less – people present to council – maybe reduce number of appeals.

## Cons

- Lack of clarity on what is discretion.
- Does the nature of the planning system, with its broad discretion, make this model redundant?
- Poorly framed model - But could be improved if only utilised against discretion against state & local policy.
- It's undemocratic - lesser rights than an applicant.
- It's not the Victorian model.
- Doesn't foster orderly and proper planning.
- Resource intensive - cost, delays, certainty.
- Lack of clarity around what is a discretion.
- There is a large number of discretionary decisions.
- Resource issue for council/staff resources.
- Lack of clarity around who is an affected party.
- Undermines existing discretionary mechanisms.
- Doesn't allow for appeal against incorrect assessments – would still need to go to Supreme Court.
- Too open for abuse.
- Limit creativity – is deemed provisions always the best outcome?
- Flow-on effect to tighten up discretion, leading to more prescriptive outcomes.
- Not all discretionary decisions are advertised.
- Vexatious.
- Using a planning issue to hide the real reason for appeal – appeal for non-reason.
- Could lead to officers using their delegation less, give the responsibility back to council – 'unstreamlines' Planning/leads to more political bias.
- Doesn't apply to non-LG decision makers.
- Unless the application is advertised prior to the decision being made, it is unlikely that neighbours would even know to appeal.
- Local Governments use a lot of discretion - opens a lot of applications to Third Party Appeals.
- Discretion used to manage areas with difficult landscape (e.g. slope & overlooking) and areas such as beach from development - these are always contentious and TPAR will make them very difficult to deal with.
- Opens 'run of the mill' applications to Third Party Appeals, slows the process up.
- Cost of defending decisions to the Local Government will be large.

## Modifications

- A clearer framework on where it applies (advertised, in policy, LDP).
- Excludes ability to appeal on amendment.
- Application of costs - to reduce vexatious appeals.
- Limited to applications that are advertised – appeals then limited to those who were advertised to.
- Appeal limited to people who are directly affected.

- Party lodging the appeal must demonstrate that they are adversely affected – decided by SAT.
- Applicant has to defend the proposal – council can opt out?
- Independent assessment body to determine if an appeal is valid.
- Defining what a significant variation is – this is a whole other topic of discussion.
- Categories? Thresholds? □ Scope needs to be constrained – SAT should only assess the matter of discretion.

### Option 3

#### Pros

- MRA + WAPC inclusion -> (Local Government would have some involvement) in State planning decisions with some access to decision making process.
- Community opportunity to be involved with/on WAPC/State Gov decisions.
- Limits the number of vexatious issues (compared with Option 4).
- Encourage JDAPs to give greater consideration to community value/local planning policies.
- Foster orderly and proper planning.
- Faster compliant applications (reduce time for staff) and costs.
- Local Governments made more accountable.
- MRA + WAPC and JDAP - decision makers more accountable.
- Consistent approach to "accountability". -> Both State and Local.
- Clear to the community as to what can be appealed -> every decision made rather than limited value/size?
- Should improve quality of applications
- Should improve planning processes - consultation etc., - clear strategic direction, education of community.

#### Cons

- Broad in scale and range. No understanding of what the impact may be.
- Resourcing the system.
- The inclusion of amendments makes the model more complicated.
- Would require robust assessment process for determining who has Third Party Appeal Rights. Who has rights (directly affected/adjacent to?) to make submission? [formal system to determine who has third party appeal rights]
- Wonder about costs? Could have a profound impact on Local Government -> additional costs on planning + development. All costs -> substantial!
- Overlap with Building Act?
- What is the point of appealing deemed to comply?
- Not Victorian model.
- Not 'equal rights' between applicants and 3rd parties, same access to the system.
- On 'planning grounds'.
- Development uncertainty.
- Everything could go to SAT.
- Costs of going to appeal for third party
- Equity of access.

## Modifications

- Deemed to comply out.
- Clear criteria - applicable/clearly understood -> 'grounds and rights'.
- Clearer system for determining appeal rights (right to appeal decisions...).
- SAT -> would need someone to assess 'rights'/leave to appeal, - 3 member panel review?
- What about the costs? Who pays? Should you award cost against? Need to consider nature of Third party appellant.
- Education on what is 'valid planning grounds'.
- Advocacy 'legal aid'.
- Modest fee, 'to be determined'.
- Accessible/understandable/affordable - [shouldn't be free].
- Seek advice 'practitioner' [independent bureau to provide advice to appellant].
- Multiple third parties -> who takes precedence? -> how do you determine priority of appellants?
- Should be some criteria on what 'value' of development could be (rather than everything).

## OPTION 4

### Pros

- Gives community absolute + complete community engagement.
- \*Will/Might' get better outcome if issues surface that weren't previously considered.
- \*Will' (above) improve the whole process (more considered) - circumvent approvals that shouldn't be given.
- That may go beyond those who have already made a decision.
- Considers community values & 'buy-in' to ultimate decision.
- Enables community to engage with the planning system at a level they can relate to.
- Makes developer more accountable about what is presented.
- It will hold the decision makers accountable.
- Could address the disillusionment of the community - those that don't feel they have a 'say' – not aware of process until decision has been made.
- Allows community the option to engage where comfortable.
- Assessment process will improve.
- Didactic role with the community - (they) gain understanding of process and are involved.
- Brings the 'local' into the current JDAP system. Makes JDAP accountable to the community.
- Would be positive to have a system that allows appellant to be 'heard'.
- Councillors (EM) would become better informed - be a part of the planning process (proper justification).
- Acknowledge community involvement in planning and policy development.
- Only legal nexus available to the individual (third party).
- Disengaged in the development process.
- Makes the system accountable/transparent.
- Costs = initial spike for 2 years, then it flattens out so only 'early' costs - will get more and consistent compliant DA applications.

- Leave provisions would 'weed' out the vexatious claims. Third Party Appeal Rights allows there to be equally between applicants and appellants.
- Appeal is the tail end of the process - community should be at the start. Provides 'balance' as some approvals are made as can't resource going to SAT.
- No confusion about what can be appealed.
- Applicant will pay more attention to application.
- Makes developer more accountable at the start with community.
- Make a decision making body more careful of their process - i.e. not risk their reputation.
- Lawyers/expert witnesses will do well.
- Merit in someone appealing when new information comes forth.
- Benefits to the community - can appeal anything - currently seen as silent.
- Allowing the community to have their say on issues for the greater good even if not overly affected.
- Encourage planners, JDAPs etc., to be more transparent - i.e. an appellant would be more aware of what to appeal.
- Bringing it in as Victorian model gets through the pain of strain - however equitable.
- Should be able to appeal against amendments (e.g. form 2) - minor amendments.

## Cons

- Resources required to appeal a decision particularly conditions - would require extra staff/people.
- Has potential to frustrate 'all' development.
- Has potential to delay decisions.
- Adds cost to development.
- Planning system is already guided by community.
- Potentially flawed as only those who have already had an opportunity to contribute can appeal.
- Becomes a neighbourhood dispute or forum for stakeholder to 'vent' and address 'other' issues rather than 'planning'.
- Conditions - becomes very subjective about what is a valid or invalid appeal (justification) e.g. amenity, e.g. not to do with the structure more about the use of the structure.
- So many conditions are 'standard'.
- No option for a 'deemed to comply' examples shouldn't be able to be appealed. □ No certainty for a developer.
- Could allow appellants more 'creative' in their appeals. □ Takes power away from Local Government.
- Decisions that are made in good faith are challenged.
- Could act as a 'policing' option - a pressure to act differently - don't always have the threat of appeal hanging over head.
- Admission that the current system is flawed - more people saying that they are voiceless. Does that mean policies currently developed don't reflect?



- Higher level planning is currently strong and represents communities views - have due regard to Community.
- Application against the DA.
- All decisions would be advertised.
- Why another level of appeal for decisions - timing/costs/etc.? □ Logistics of how community would engage in the DA process.
- Additional costs to SAT as well as LG + community - What are the resources going to be needed?  
Large developers lodging appeals to edge out smaller developers - availability to \$.

Developers likely to pass on any potential costs to the end user/quality of products/unexpected Consequences.

- Generally goes against the whole streamlining of the planning process.
- Concerns around raising expectations of community that they can change something they can't.
- If you place this much pressure at the end, does it detract from the strategic planning at the start?
- Takes away the applicants rights in some instances.
- Creates a litigious environment.
- Community is represented by council - therefore decisions by councils should not be included.
- What about non-discretionary decisions? Goes against broader strategic aims.
- Considering non-planning issues to satisfy community.
- Implications of costs/efficiencies - massive cost to the system.
- Implications of third parties appealing after the fact who haven't objected already - do they actually have a valid reason for appeal?
- How long is the review period going to be? Longer?
- Loss of certainty for applicants - approval doesn't always mean approval with appeals.
- Inequitable - e.g. affluent areas may have more \$\$ ability to initiate appeals.
- May attract the attention of large community groups. (Community involvement vs. activism).
- Reactive to the 'short term' rather than taking a positive approach early in the strategic process.
- Unrealistically raising community expectations to fully change a decision.
- What about multiple third parties?
- Who is directly affect? Direct impact?
- The case by case mature of 'carte blanche' approach.
- Concern around third parties coming up with conditions - e.g. non-planning basis.
- Contradictory to moves towards streamlining planning processes. □ From nothing to fully appealable is a stretch - massive shift.
- Elongated process currently don't support satisfaction with outcomes, i.e. tokenistic.
- Not a problem with the system, it's the perception of the system.
- Developers 'may' put up 'best of' hoping something will slip through. □ Local Government becoming too conservative.
- End up with a lot of 'deemed to comply' - doesn't always result in good planning outcomes.
- To open to abuse.
- Could stifle innovation in design.
- Creates an atmosphere of distrust in decision makers.
- Puts into question the whole consultation process.

## Modifications

- Winding back - e.g. not including conditions in the appealable rights - i.e. standard planning conditions that protect amenity e.g. 'stormwater condition'.
- Require a balance between cost & community's right to appeal - this option goes too far.
- Requires the ability to award cost.  
The paper base (document trail) would remain the key.  
Local Government gets to appeal against WAPC decisions on sub-divisions that affect the locality/finances/budget.
- Any third party appellant may do so in their own right (i.e. without lawyers).
- Perhaps a combination of experts & community/individual.
- More decisions to be published to keep community more informed & transparent.
- Third part appeal parameters as long as better planning outcomes.
- Where there is a decision made? Connect the appellant & applicant with the decision maker stepping back.
- Mediation rather than appeal.
- [Triangle diagram with decision maker/applicant/appellant as points] :-
  - When decision is made in the affirmative, do not defend the decision, the applicant has to defend.
  - If successful costs are borne by the decision maker.
  - Leads to correct decisions being made in the first instance (sound).
- Decision maker needs to be able to set the parameters.
- Should be able to appeal against amendments.
- Creates even greater uncertainty, especially at the strategic level.
- Don't know how people will use TPAR - the cost/time associated are unknown - So fear of unknown and broadening scope increases uncertainty.

## OPTION 5

- No Third Party Appeals but improve the existing decision making process. E.g. (below):
  - Compulsory training for decision makers in planning; ○ Better policy basis - should be included; ○ scheme provisions consistency; ○ community education in planning; ○ transport planning at State level to establish planning framework; ○ upfront consultation or draft of scheme + LP Strategies -(scheme as a community document);
  - Scheme amendments - what will it look like - honest representation.
- New Options (below) ○ Option 2 + Conditions + all agencies (decision makers).
  - Option 2 + all other planning decisions including subdivision, rezoning, structure plans, LDPs WITH the following features (below):
    - 21 days to submit to SAT appeal;
    - SAT refers to decision making to applicant, decision maker and consultation agencies;


- 21 days to respond;
  - appeal on the papers only;
  - total time is set as per original approval; ▪ SAT fresh decision.
- Option- for decisions made under delegation by council. - SAT consider reconsider by council. - Also could apply to private certifiers' discussion in the future (not 1-4). □
- Option 1 + SAT decisions - Minister (bodies not elevated by community).
- Option 2 - Discretion however third party needs to demonstrate that they directly impacted and how the use of discretion impacted on the appellant.  
Improved consultation will address a lot of community concerns.  
Status Quo OR Option 1 with modified triggers for country areas.
- Would Option 1 really matter for country areas?
- SAT members would require better training on planning matters.

### **Parked Items**

- Give LSP the force and effect of the Scheme in Development zones.
- Planning Ombudsman -> for small scale objections.
- Review of the planning system (independent).
- More education of decision makers on their role in the planning decision making process.
- Define what 'due regard' is.
- Give reasons how an alternative achieves the policy outcomes.
- Link between strategic directions (objectives) and decisions.

## 8.2 FINANCIALS

### 8.2.1 FINANCIAL MANAGEMENT – DEBTORS – WRITE OFFS – Anthony and Charlotte Tucker

<b>FILE REFERENCE:</b>	12.8.10
<b>AUTHOR'S NAME AND POSITION:</b>	Ian McCabe Chief Executive Officer
<b>AUTHOR'S SIGNATURE:</b>	
<b>NAME OF APPLICANT/RESPONDENT/LOCATION:</b>	Not Applicable
<b>NOTIFICATION TO APPLICANT:</b>	Not Required
<b>DATE REPORT WRITTEN:</b>	21 February 2018
<b>DISCLOSURE OF INTEREST:</b>	The author has no financial interest in this matter.
<b>Strategic Community Plan Reference:</b>	5.1.2 Mitigation of risk 5.4.2 Ensure efficient use of resources

#### SUMMARY:

#### That Council resolve the following:

1. Authorise the write off of outstanding debts to the Shire of Wyalkatchem in the names of Anthony and Charlotte Tucker to the amount of \$619.94.

#### Appendix:

There is no attachment to this item.

#### Background:

Mr Anthony Tucker and Mrs Charlotte Tucker signed a lease with the Shire of Wyalkatchem starting 9 May 2016 for 10 Honour Avenue Wyalkatchem. They were in breach of that lease by 5 December 2016 for unpaid rent. A breach notice was issued on that occasion.

Subsequent issues with payments, unacceptable property inspections and unlicensed dogs resulted in two breach notices in February 2017. The tenants gave three weeks' notice of termination but left the district without making payment and without providing forwarding details. All requirements of the Residential Tenancies Act 1987 (WA) were met by the Shire of Wyalkatchem.

**Comment:**

Mr and Mrs Tucker have proved evasive and cannot be located. It is known they are in Adelaide but have disconnected their mobile numbers and there is no known address. Contact with the Courts in South Australia did not produce results.

There is no legal course to place a court order against him without a known address and therefore no method of 'blacklisting' them as tenants without a court order.

The Shire of Wyalkatchem has claimed the bond against outstanding rent but the amount of \$619.94 remains unpaid. It should be noted that the disgusting state of the property when abandoned by these people resulted in additional unrecovered costs of \$2,039.40 for cleaning (see council's agenda 11 July 2017).

Any action to locate and recover these amounts will result in additional costs and outweighs the benefit to ratepayers. Accordingly, Council is asked to support the writing off of the amount still outstanding, being \$619.94.

**Consultation:**

Mrs Claire Trenorden Corporate Services Manager

Ms Ella McDonald Governance and Emergency Services Officer

Court Administration Authority South Australia

**Statutory Environment:**

Local Government Act 1995

Residential Tenancies Act 1987

**Policy Implications:**

No direct policy implication.

**Financial Implications:**

The financial implication of this recommendation is limited to the amount of \$619.94. The amount is within the CEO delegation but this item has been prepared for reasons of transparency.

**Strategic/Risk Implications:**

There is no risk to the local government involved in accepting this recommendation.

**Voting Requirements:** Simple Majority

**Council Decision Number** 26/2018

**Moved:** Cr Metcalfe                      **Seconded:** Cr Gamble

**That Council Resolve the Following:**

1. Authorise the write off of outstanding debts to the Shire of Wyalkatchem in the names of Anthony and Charlotte Tucker to the amount of \$619.94.

**Vote:** 6/0

**8.3 OFFICER REPORTS - NO ITEMS THIS MEETING**

**8.4 MONTHLY OFFICER REPORTS - NO ITEMS THIS MEETING**

- 9. Motions of which previous notice has been given Nil**
- 10. Questions by members of which due notice has been given Nil**
- 11. New business of an urgent nature introduced by the presiding person Nil**
- 12. Matters for which the meeting may be closed Nil**
- 13. Closure of Meeting 3.17pm**