



DEVELOPMENT ASSESSMENT PANEL

CODE OF CONDUCT 2024

UNDER THE PLANNING AND DEVELOPMENT (DEVELOPMENT ASSESSMENT
PANELS) REGULATIONS 2011



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INTRODUCTORY STATEMENT

This Code of Conduct (the Code) sets out principles to guide the behaviour of members of Development Assessment Panels (DAPs) established under Part 11A of the *Planning and Development Act 2005* (the Act).

DAP members are required, under regulation 45 (2) of the Planning and Development (Development Assessment Panels) Regulations 2011 (DAP Regulations), to comply with this Code.

Other legal requirements applying to DAP members are contained in the Act and DAP Regulations.

Where requirements of the Act or DAP Regulations are relevant to matters dealt with in this Code of Conduct, the relevant provisions are referred to in the text of the Code for information purposes. However, the references in this Code, Act or DAP Regulations are not intended to be a comprehensive statement of all legal obligations applying to DAP members.

It remains the responsibility of each DAP member to be aware of the legal obligations that apply to them in the performance of their functions under the Act.

This Code of Conduct is made under Regulation 45(1) of the DAP regulations.

16 April 2024



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PART 1 – PRELIMINARY

1.1 Citation

This Code of Conduct may be cited as the *Development Assessment Panel Code of Conduct 2024*.

1.2 Purpose

This Code of Conduct establishes a set of principles to guide the behaviour of members of DAPs.

1.3 Application of Code

1.3.1 This Code of Conduct applies to a person performing functions as a DAP member.

Note: see regulation 45 (2) of the DAP Regulations

1.4 Definitions

1.4.1 In this Code, unless otherwise defined, words and phrases have the same meanings as they have in the Act, the DAP Regulations and the *Development Assessment Panel Standing Orders 2024* (DAP Standing Orders).

1.4.2 In particular:

- (a) **DAP** means a **development** assessment panel established under Part 11A of the *Planning and Development Act 2005*.
- (b) **DAP executive director** means a departmental officer appointed by the Director General in accordance with regulation 49 of the DAP regulations.
- (c) **DAP member** means a specialist DAP member or a local government DAP member of a DAP.
- (d) **DAP regulations** means the *Planning and Development (Development Assessment Panels) Regulations 2011*.
- (e) **DAP Standing Orders** means the *Development Assessment Panel Standing Orders 2024*.
- (f) **DAP Secretariat** means the department officers made available to assist, under the direction of the DAP executive director, the DAPs and the DAP executive director in the performance of their functions as outlined in regulation 49(6) of the DAP regulations.
- (g) **Department** means the Department of Planning, Lands and Heritage.
- (h) **Deputy presiding member** means the DAP member designated to perform the functions of a deputy presiding member under regulation 24 of the DAP regulations.
- (i) **Director General** means the Director General of the Department.



- (j) **presiding member** means the DAP member presiding at a meeting of a DAP under regulation 27 of the DAP Regulations.
- (k) **relevant DAP**, in relation to a DAP member, means the DAP of which the member is sitting as a member.
- (l) **the Act** refers to the *Planning and Development Act 2005*.



PART 2 – PERSONAL BEHAVIOUR AND COMMUNICATION

DIVISION 1 – PERSONAL BEHAVIOUR

2.1 DAP Member behaviour

2.1.1 Each DAP member, when carrying out the member's functions as a DAP member, must:

- (a) act with due care and diligence;
- (b) act honestly, ethically and responsibly;
- (c) be open and accountable to the public;
- (d) consider issues consistently, comprehensively, promptly and fairly;
- (e) base decisions on relevant and factually correct information;
- (f) treat others with respect and fairness;
- (g) uphold the highest standards of professional behaviour;
- (h) not seek to improperly influence other DAP members;
- (i) not engage in fraudulent or corrupt behaviour; and
- (j) act in accordance with the law and the provisions of this Code of Conduct.

Note: Section 266(2) of the Act requires a DAP member, at all times, to act honestly in the performance of a function under the Act. There is a \$5,000 penalty for non-compliance with section 266.

2.1.2 A local government DAP member is not bound by any previous decision or resolution of the local government in relation to the subject-matter of a DAP application. The local government DAP member must exercise independent judgment, and consider the application on its planning merits, in deciding how to vote.

2.1.3 A DAP member is not bound by any confidential discussions that occurred as part of a State Administrative Tribunal process. The member must exercise independent judgment, and consider the application on its planning merits, in deciding how to vote.

2.1.4 A DAP member must not make improper use of the member's position:

- (a) to gain, directly or indirectly, an advantage for the member or for any other person; or
- (b) to cause detriment to the DAP or to any other person.



- 2.1.5 A DAP member must not make improper use of information obtained in the course of their member duties, or duties or use such information for direct or indirect personal or commercial gain, or to harm another person.

Note: see section 266 (6) of the Act

- 2.1.6 No DAP member, in their private capacity, is to represent an applicant in relation to a DAP application that is before the relevant DAP.
- 2.1.7 A DAP member must not make any statement that is critical, or that could be understood as being critical, of the Minister, the Director General, a local government, a local government employee, departmental employee, a DAP or another DAP member.
- 2.1.8 Any departmental resources provided for use in the performance of the member's duties under the Act must be used effectively and economically.
- 2.1.9 A DAP member must not use any departmental resources provided for use in the performance of the member's duties under the Act for private purposes, unless such use is authorised in writing by the Director General.

DIVISION 2 COMMUNICATION

2.2 Definitions

In this division, an applicant, in relation to a development application, includes the person making the application and a representative or associate of that person.

2.3 Communication with local government and departmental staff

- 2.3.1 A DAP member, other than a local government DAP member performing functions as a member of the local government, is not to have any involvement with a development application that is before the relevant DAP, or which the DAP member is aware may come before that DAP in future, during the assessment of the application by the local government or the Department.
- 2.3.2 A DAP member must not, in relation to a development application that is before the relevant DAP or which the DAP member is aware may come before that DAP in future, attempt to direct the action or influence the conduct of a person who is a local government or departmental employee, in the person's capacity as an employee.
- 2.3.3 A DAP member who is a ratepayer or an elector in a local government district in relation to which the relevant DAP is constituted:
- (a) must not request preferential treatment by the local government due to his or her membership of the DAP; and
 - (b) must avoid making any statement, doing or omitting any act that could suggest to a member of the public that such preferential treatment has been received.



2.4 Communication in relation to applications

- 2.4.1 A DAP member is not to approach an applicant in relation to any application that is before the relevant DAP, or which the member is aware may come before that DAP in the future, otherwise than in the circumstances set out in the provisions of the DAP Standing Orders.
- 2.4.2 A DAP member must not make a representation to any person that the member commits, or purports to commit, his or her vote on an application that is before the relevant DAP or which the member is aware may come before that DAP in the future.
- 2.4.3 If a DAP member is approached with a request to commit his or her vote on an application the member must inform the presiding member of the DAP of the details of the approach.
- 2.4.4 Subject to 2.4.5, a DAP member is not to accept an invitation from an applicant to attend any meeting in relation to an application that is before the relevant DAP or which the member is aware may come before that DAP in the future.
- 2.4.5 A DAP member must not participate in:
- (a) a discussion with an applicant, formally or informally, in person or otherwise; or
 - (b) a site visit, private meeting, briefing, discussion or similar event with any other DAP member
- in respect of a development application that is before the relevant DAP or which the member is aware may come before that DAP in future, UNLESS the discussion, visit, meeting or similar event has been consented to by the presiding member of the relevant DAP and arranged by the DAP secretariat.
- 2.4.6 In the case of DAP members participating in a site visit, private meeting, briefing, discussion or similar event:
- (a) no DAP member may express a view that may suggest pre-judgment of the relevant development application; and
 - (b) the members must ensure that a written record of the event is prepared and submitted to the DAP secretariat for discussion at the next DAP meeting during which the relevant application is discussed.
- 2.4.7 If a DAP member participates in a site visit, private meeting, briefing, discussion or similar event and later becomes aware that a DAP application has been made that relates to the meeting, briefing, discussion or event, the member is to ensure that a written record of the event is prepared and submitted to the DAP secretariat for discussion at the DAP meeting during which the relevant application is discussed.
- 2.4.8 Nothing in this Code of Conduct prevents DAP members from communicating with local government or departmental staff members in accordance with Part 3 of the DAP Standing Orders prior to a DAP meeting, or during the discussion of any matter at a DAP meeting.



- 2.4.9 Nothing in this clause prevents a local government DAP member from performing functions as a member of a local government.
- 2.4.10 Nothing in this clause prevents a DAP member from performing functions as part of the State Administrative Tribunal process.

2.5 Communication with the general public

- 2.5.1 A DAP Member must not publicly comment on the operations or determinations of the DAP. A DAP member must not publicly comment, either orally or in writing, on any action or determination of a DAP

Note: This is a requirement under regulation 48 of the DAP Regulations.

- 2.5.2 If a member of the public attempts to initiate discussion on the operations or determinations of a DAP with a DAP member, the DAP member is not to make any comment.

2.6 Site Visit

- 2.6.1 If the DAP executive director consents, all DAP members may be invited to a site visit prior to a DAP meeting and the DAP secretariat must then give all DAP members at least 3 days prior notice in writing to attend such a site visit.
- 2.6.2 A site visit shall be limited to either:
- (a) DAP members only, accompanied by any officers of the DAP Secretariat or a local government providing administrative support only; or
 - (b) all parties/persons with an interest in the development application (DA), which may include the landowner/applicant and consultants, local government representatives, and all submitters for and against the DA.
- 2.6.3 A site visit is not a formal public meeting for the purposes of regulation 40(2) and DAP members must ensure they do not conduct themselves in a way that would construe the site visit as a formal public meeting or undermine or pre-judge a subsequent formal public meeting being conducted with procedural fairness.
- 2.6.4 The purpose of a site visit is to allow DAP members to factually inspect the subject land as a group before a DAP meeting determines the DA.
- 2.6.5 During a site visit, DAP members may discuss facts relevant to the DA and the subject land during a site visit but are not permitted to engage in any 'editorial comment' or discuss any matters in issue regarding the DA.
- 2.6.6 During a site visit, each DAP member bears a responsibility not to discuss any matter in issue and must not pre-judge the DA.
- 2.6.7 DAP members are not permitted to enter upon the subject DA land unless the DAP secretariat has obtained the written consent of the landowner.



- 2.6.8 Each DAP member must travel independently to the location of the site visit unless the DAP secretariat is able to provide a vehicle of sufficient size to accommodate all attending DAP members in one vehicle.

2.7 Protecting confidential or sensitive information

- 2.7.1 A DAP member must maintain confidentiality and not divulge information deemed confidential or sensitive, other than as required by law or where proper authorisation is given.
- 2.7.2 A DAP member is to respect confidential information and observe any restrictions agreed by the presiding member (subject to *Freedom of Information Act 1992* requirements).



PART 3 – CONFLICTS OF INTEREST AND DISCLOSURE PROCEDURES

3.1 DEFINITIONS

3.1.1 In this section:

close associate of a DAP member means a person who:

- (a) operates a business in partnership with the member; or
- (b) employs the member; or
- (c) is a beneficiary under a trust, or an object of a discretionary trust, of which the member is a trustee; or
- (d) is a body corporate:
 - (i) of which the member is a director, secretary or executive officer; or
 - (ii) in which the member holds shares with a total value exceeding \$10,000 or one per-cent of the total value of the issued share capacity of the body corporate, whichever is the lesser; or
- (e) is the spouse, de facto partner, child or close relative of the member; or
- (f) has a relationship of a kind specified in any of paragraphs (a) to (e) in relation to the member's spouse or de-facto partner if the spouse or de-facto partner is living with the member.

3.1.2 For the purposes of this part, a DAP member has an interest in a matter if either –

- (a) that DAP member; or
- (b) a close associate of that DAP member, has –
 - (i) a direct or indirect pecuniary interest in the matter;
 - (ii) a proximity interest in the matter; or
 - (iii) an impartiality interest in the matter.

direct pecuniary interest is one where a person has an interest in a development application where it is reasonable to expect that the application, if dealt with by a DAP, will result in a financial gain, loss, benefit or detriment for the person.

indirect pecuniary interest is one where it is reasonable to expect that a person may receive a benefit or incur a loss, measurable in monetary terms, as a consequence of a benefit received, or loss incurred by another person who has a direct or indirect interest in the matter.



impartiality interest means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of a member with such an interest and includes an interest arising from kinship, friendship, partnership, or membership of an association, that is connected to a development application that is before the relevant DAP or which the member is aware may come before that DAP in future.

proximity interest, in relation to a DAP member, means an interest of the member, or of a close associate of the member, in a development application if the application concerns land that is adjoining the person's land or is directly across a thoroughfare from the person's land.

3.2 Members to identify conflicts and interests

3.2.1 As a general principle, a conflict of interest exists when a person has a private interest that could corrupt or undermine his or her performance of a public duty. As a decision maker must bring an open mind to deliberations, they cannot be affected by an improper influence. For this reason, DAP members must be alert to any private circumstances which could affect, or be seen to affect, the exercise of their judgment. Such interests must be declared and may be of a sufficient magnitude to preclude the member from participating in the decision.

3.2.2 On account of the principles above, a DAP member must identify any:

- (a) direct or indirect pecuniary interest; or
- (b) impartiality interest

that the member has, or may reasonably be perceived to have, in relation to any development application that is before the relevant DAP or which the member is aware may come before that DAP in the future.

3.2.3 A DAP member must identify any proximity interest that the member has in relation to any development application that is before the relevant DAP or which the member is aware may come before that DAP in the future.

3.3 Disclosure of conflicts of interest

3.3.1 Pecuniary or Proximity interests

Before a meeting:

- (a) A DAP member who identifies they have a pecuniary or proximity interest should disclose this to the DAP executive director as soon as possible.
- (b) Such interests can give rise to a reasonable apprehension that the DAP member may be biased and so unable to bring an impartial mind to the deliberations.
- (c) Accordingly, the DAP executive director may arrange for another member to participate in deliberations on the matter which gives rise to the conflict of interest.



- (d) The DAP member can perform their functions in relation to any other applications before the same meeting, if no conflict of interest arises in relation to those applications.

During a meeting:

- (a) A DAP member who identifies they have a pecuniary or proximity interest in the application being considered:
 - (i) is to disclose the interest to the other members as soon as possible after the relevant facts have come to the member's knowledge; and
 - (ii) following the disclosure, is not to be present during any consideration or discussion of the relevant matter or to vote on the matter.

Note 1: This is a requirement under section 266(3) of the Act. There is a \$5,000 penalty for non-compliance with section 266.

Note 2: The size of person's pecuniary interest appears irrelevant. The Act simply states that it applies to "direct or indirect financial interests." Therefore, disclose any financial interest, be it of one dollar or a million.

3.3.2 Impartiality interests

Before a meeting:

- (a) A DAP member who identifies he or she has an impartiality interest should disclose this to the DAP executive director as soon as possible.
- (b) The DAP executive director will decide whether the interest is of a magnitude that could give rise to a reasonable apprehension that the DAP member may be biased and so unable to bring an impartial mind to the deliberations.
- (c) If the interest is considered sufficient to give rise to such an apprehension, the DAP executive director may arrange for an alternative member to perform the members functions in relation to that application.
- (d) The DAP member can perform their functions in relation to any other applications before the same meeting if no conflict of interest arises in relation to those applications.
- (e) If the DAP executive director does not consider the impartiality interest significant, the DAP member can continue to participate in the matter.

During a meeting:

- (a) A DAP member who becomes aware that they have an impartiality interest should disclose the existence, and nature, of the interest to the other members as soon as possible.
- (b) The presiding member (or, if the member disclosing the interest is the presiding member, the deputy presiding member) will determine whether the interest is sufficient to preclude the member from further participation.



3.4 Disclosure of communication

- 3.4.1 Any correspondence received by a DAP member relating to a DAP application or otherwise to the business of a DAP (DAP correspondence) is to be forwarded to the DAP secretariat.
- 3.4.2 DAP correspondence that relates to a DAP application to be determined by a DAP is to be forwarded to the DAP Secretariat. The DAP Secretariat, in consultation with the DAP executive director will determine whether or not the correspondence requires a specific response.
- 3.4.3 If the correspondence does not require a specific response, a standard response is to be sent to the correspondent by the DAP secretariat.
- 3.4.4 if the correspondence does require a specific response, the DAP executive director is to instruct the DAP secretariat as to the content of the response. The DAP secretariat is then to arrange for a response to be prepared by the appropriate departmental officer in line with the DAP executive director's instruction. The draft response is to be circulated to all members of the relevant DAP and sent to the correspondent.



PART 4 – GIFTS

4.1 General principles relating to gifts

- 4.1.1 A DAP member is not to seek any gift for themselves or any other person in connection with the exercise of the member's functions under Part 11A of the Act.
- 4.1.2 A DAP member is not to accept any gift from a person in connection with the exercise of the member's functions under Part 11A of the Act, otherwise than in the circumstances set out in regulation 46 of the DAP Regulations.

4.2 Notifiable gifts and prohibited gifts

- 4.2.1 As provided in regulation 46 (1) of the DAP regulations:
- (a) a notifiable gift is:
 - (i) a gift worth more than \$50 and less than \$300; or
 - (ii) a gift that is one of two or more gifts given to a DAP member by the same person within a period of six months that are, in total, worth more than \$50 and less than \$300.
 - (b) a prohibited gift is:
 - (i) a gift worth \$300 or more; or
 - (ii) a gift that is one of two or more gifts given to a DAP member by the same person within a period of six months that are, in total, worth \$300 or more.
- 4.2.2 As provided in regulation 46 (2) & (2A) of the DAP Regulations, a DAP member must not accept a prohibited gift from a person who is undertaking, seeking to undertake, or is reasonable to believe is intending to undertake development that will require the determination of a development assessment by a DAP. Notification is to accord with regulation 46 (4) of the DAP Regulations
- 4.2.3 As provided in regulation 46 (3) & (3A) of the DAP regulations, a DAP member who accepts a notifiable gift from a person who is undertaking, seeking to undertake, or it is reasonable to believe is intending to undertake development that will require the determination of a development assessment by a DAP, is required to notify the Director General of the acceptance of the gift. Notification is to accord with regulation 46 (4) of the DAP Regulations
- 4.2.4 As provided in regulation 46 (5) of the DAP Regulations, the DAP executive director is to maintain a register of notified gifts.

Note: Regulation 46 of the DAP Regulations imposes requirements, as summarised above, in respect to notifiable and prohibited gifts. These requirements are based on the provisions regarding gifts that local government councillors are subject to under the Local Government Act 1995 and associated regulations.



PART 5 – DEALING WITH MISCONDUCT AND BREACHES OF THIS CODE

5.1 Reporting suspected breaches of the Code

Suspected breaches of this Code can be reported to the Department who will investigate the matter in accordance with their complaint-handling policy.

A complaint may be lodged via the [interactive form](#) on the [Department's website](#), in writing (including via email), via telephone or in person.

When a complaint is received by a DAP Member, it must be sent directly to the DAP Secretariat to action in accordance with the Department's complaint handling policy.

Complaints should be made directly to the Department. However, nothing prevents any member or any other person from making a complaint directly to the Office of the Ombudsman for Western Australia.

Complaints may be made under the *Public Interest Disclosure Act 2004* which enables disclosures to be made within defined forms of misconduct within the State Public Sector, local government and public universities without fear of reprisal.

5.2 Application of Corruption, Crime and Misconduct Act 2003

5.2.1 The Corruption and Crime Commission (CCC) has statutory powers to investigate and deal with allegations of serious misconduct by public officers as defined in section 4 (a), (b) or (c) of the Corruption, Crime and Misconduct Act 2003 (CCM Act) including where a public officer:

- (a) acts corruptly or corruptly fails to act in the course of his or her duties; or
- (b) corruptly takes advantage of his or her position for the benefit or detriment of any person; or
- (c) commits an offence which carries a penalty of two or more years imprisonment.

5.2.2 The Public Sector Commission (PSC) has statutory powers to investigate and deal with allegations of minor misconduct by public officers as defined in section 4 (d) of the CCM Act. Minor misconduct occurs if a public officer engages in conduct that:

- (a) adversely affects the honest or impartial performance of the functions of a public authority or public officer, whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct;
- (b) involves the performance of functions in a manner that is not honest or impartial;
- (c) involves a breach of the trust placed in the public officer; or
- (d) involves the misuse of information or material that is in connection with their functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person; and



- (e) constitutes, or could constitute, a disciplinary offence providing reasonable grounds for termination of a person's office or employment.

- 5.2.3 The main difference between serious and minor misconduct is that serious misconduct must involve corrupt intent and/ or criminal conduct.
- 5.2.4 DAP members are public officers within the meaning of the CCM Act.
- 5.2.5 Accordingly, DAP members may be subject to the scrutiny of the CCC and the PSC in relation to the exercise of their functions under the Act.

5.3 Consequences of misconduct or contravention of Code

- 5.3.1 Section 266 of the Act imposes penalties for DAP members in relation to:
 - (a) failure to act honestly in the performance of a function under the Act (s 266 (2);
 - (b) unlawful disclosure of information acquired in connection with the carrying out of functions under the Act (s 266(5);
 - (c) making improper use of information to gain an advantage or to cause a detriment.
- 5.3.2 Under regulation 32 (1) of the DAP Regulations, a DAP member's office automatically becomes vacant on the following grounds (among others):
 - (a) conviction for an offence punishable by imprisonment for at least 12 months; or
 - (b) conviction for an offence against section 266 of the Act.
- 5.3.3 The Minister may, under regulation 32 (3) of the DAP Regulations, remove a DAP member from office on the following grounds (among others):
 - (a) neglect of duty; or
 - (b) misconduct or incompetence.