

29 January 2015



The Honourable Catherine Doust MLC
Chairperson
Uniform Legislation and Statutes Review Committee
Legislative Council of Western Australia
Parliament House
WEST PERTH WA 6005

Dear Ms Doust

Public submission - Parliamentary inquire: DAP Regulations 2011

I am a landowner and resident in the City of Subiaco.

I have read the parliamentary debate that preceded the introduction of the DAP system. The government who proposed its introduction did so on the grounds that it would be transparent and accountable. The DAP that operates in Subiaco is neither.

In my direct experience, DAPs are not transparent. Much wheeling and dealing is done out of public view and without disclosure. For example, when approving a development in Catherine Street Subiaco the DAP had a site meeting with the developer. It was not advertised, the public was not invited to observe, the public was not given similar access to the panel members and the panel did not comply with its own regulations by filing a report at its next meeting. Moreover the building façade and balconies included on the building presented to the public for public submission were completely different to what was put before the panel. I sought judicial review in the Supreme Court. That process was extremely expensive and very limiting as I had no substantive rights of appeal. I lost the case and had to pay substantial costs orders.

DAPS are not accountable as the 3 appointed members are not elected and there are no third party appeal rights.

It is concerning to see members of DAPs swapping sides of the table when it suits them. I have seen a permanent DAP member in Subiaco present to the same panel he usually sits on. The camaraderie between him and the 3 panel members, who approved the development he was being paid to spruik, was on display prior to and after the meeting. It was all very matey, matey! It highlighted to me the reality that it is the development industry (not government) that is making development decisions in respect of applications that qualify for DAP consideration.

The behind closed doors wheeling and dealing that goes on under the cloak of the SAT is most concerning. The SAT is being used as an excuse for secrecy.

During parliamentary debate and in a Ministerial Media Statements (16/9/2009) Minister John Day said that Local governments would continue to play an important role, in the strategic planning

framework for their local government, through preparation and amendment to local planning schemes and setting local planning policy.

However, what we have seen in Subiaco is that the DAP has supplanted the council's planning scheme and policies by approving substantially non-complying developments against the recommendation of the local planning staff. It does so by using the general discretion clause in the planning scheme. It does so without recording the justifications for its decision against the actual planning scheme or the policies. The most concerning aspect of this in Subiaco is the DAP's propensity to approve applications where floor space that should be used for residential is instead being used for offices. These decisions are unjustifiable given the requirements that residential be increased in Subiaco by 2031 and yet there is nothing anyone (including the planning authority – the Local government) can do about it because there are no appeal rights.

In my view, the DAP system is not appropriate in a democracy. Planning and development should be controlled by Local government not by the development industry. However, if a DAP system is to remain it ought to be reformed to ensure it is properly accountable to the people who are directly affected by its decisions. The introduction of equal rights for such people to appeal to the SAT should be a matter of priority.

Perhaps another way to bring some balance back would be to allow Local governments to appoint the expert DAP members and allow them to be dismissed if they do not adhere to the town planning scheme and policies of the Local government to the satisfaction of the elected members of the Local government?

In the meantime, the Regulations that apply to the DAP need to be reformed to require DAPS to do everything (including SAT negotiations) out in the open and to document and make available all discussions and negotiations that occur with developers. Moreover there needs to be enforcement of those Regulations and the Codes of Conduct etc.

Yours faithfully

Angela Hamersley