

**STANDING COMMITTEE ON
UNIFORM LEGISLATION AND STATUTES REVIEW**

**PLANNING AND DEVELOPMENT
(DEVELOPMENT ASSESSMENT PANELS) REGULATIONS 2011**

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 4 MAY 2015**

SESSION FOUR

Members

**Hon Kate Doust (Chair)
Hon Brian Ellis (Deputy Chair)
Hon Mark Lewis
Hon Amber-Jade Sanderson**

Hearing commenced at 2.34 pm**Ms ALLISON HAILES****Executive Manager, Planning and Community Development, Western Australian Local Government Association, sworn and examined:****Ms VANESSA JACKSON****Manager, Planning and Improvement, Western Australian Local Government Association, sworn and examined:**

The CHAIR: Firstly, welcome back. We appreciate you coming back and we certainly appreciate the fairly extensive submission that you have provided to us on this occasion. We need to get your full name, contact address and the capacity in which you appear before the committee, and I will also ask you to indicate whether or not you would like to take the oath or the affirmation.

[Witnesses took the oath or affirmation.]

The CHAIR: You will have signed a document entitled “Information for Witnesses”. Have you read and understood that document?

The Witnesses: Yes.

The CHAIR: These proceedings are being recorded by Hansard and a transcript of your evidence will be provided to you. To assist the committee and Hansard, if you are able to, please quote the full title of any document that you refer to during the course of this hearing for the record, and just be aware of the microphones and try and talk into them and ensure that you do not cover them up with papers or make noise near them. I also remind you that your transcript will be a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Welcome along. We would have provided you with some questions, so what I intend to do is to go through each of the questions and have you respond, and there may be other questions that arise from those answers. Then, at the very end, if there is anything else that you want to make comment on, we welcome that as well. We will kick off. The first question is in relation to the development of DAPs. The committee understands that WALGA was a member of the DAP regulations working group and the DAP fees working group and that both working groups gave their support to the regulations and the fees. Can you set out for us any concerns that you relayed to the government during the consideration of these working groups?

Ms Hailes: Thank you to the committee. I was actually WALGA’s representative on both of the so-called working groups and I have to say that they did not operate as working groups per se; rather, they were groups of people that were established by the Department of Planning and used to present information to. At no point was I asked to formally approve or support either the regulations or the fees themselves. In fact, when it came to the development of the regulations for DAPs, throughout that process both at the working group meetings and, separately to that, through meetings with the Minister for Planning, WALGA expressed concerns about the approach that was being proposed.

We provided both the department and the minister with evidence that was contrary to the reasons that were being put forward as to why DAPs were needed. We were unable to influence the policy intent that the government was to go ahead with.

[2.40 pm]

In relation to the fees and charges, the working group, from memory, only met on a handful of occasions. At the first meeting, the department introduced consultants Ernst and Young, who the department had appointed to develop the model for the fees and charges. The methodology that the consultants were to use was presented at that meeting. I raised a number of questions and concerns about how costs incurred by local government would be considered. The consultants went off and did their work and came back with a model and some recommendations that were provided to the department in a report. That report was never made available to the working group members. As far as I understand, it was kept internal to the department and subsequently set aside. The department then developed up its own methodology internally and presented that to the working group essentially as a *fait accompli*.

During the development of the regulations and the fees, WALGA advocated a number of concerns it had about the proposed DAP model, which is set out in the association's submission. But the key concerns that the association had was that the DAP model was based on a number of assumptions rather than evidence, and that those assumptions were fundamentally flawed or incorrect. The sector did not consider that there were substantive delays in the processing of applications. It did not consider, and in fact demonstrated through statistics to the department, that the majority of decisions were being made by planning officers under delegation rather than matters having to go to a full council, and that there was sufficient expertise within the local government sector, through planning officers, to ensure that appropriate advice was given to elected members when they were making those decisions.

The CHAIR: You touched on a few points there and you probably referenced those in your submission as well. Did you have any concerns about the level of current optional and mandatory thresholds that might attract a preponderance of applications of a local residential nature and not those of regional or state significance?

Ms Hailes: We did. Key issues for the sector were what the criteria for referral to DAPs would be. Whilst the association's position was that it opposed DAPs in the form proposed, WALGA and its members could see that in certain circumstances—for instance matters of state or regional significance—there could be merit in having an independent body at least advise the relevant local government or the WAPC; if not actually making the decision. We also felt that given the value of much of today's residential development, the thresholds were very low and that in particular areas this would mean that a lot of residential and small local developments would get captured and be referred to a DAP rather than major or particularly significant or complex applications going to a DAP.

The CHAIR: Whilst there were thresholds in place, the issue around regional or state significance are two different things. Is it not putting a monetary value on a property that has state significance or treating it differently because of its significance? I know we have had that comment made by a local government body earlier today. How do you deal with those matters? Are the DAPs only looking at it from a monetary threshold?

Ms Hailes: No. The association's position would be that you have a definition of "state and regional significance" and that those are the matters that are considered and determined by a DAP. We do not believe that monetary value actually is directly related to, for instance, the complexity or the contentiousness of an actual application. The association did not support initially a monetary threshold being introduced as part of the criteria for DAPs. We subsequently compromised our position to try to meet the Department of Planning in the middle, if you like, and we would much prefer that there was not a monetary value, that the DAP system focused just on matters of state and

regional significance in accordance with definitions that are set and are clear to everybody, and that there be a calling power for other matters that may be of a lesser monetary value, or may be quite a low monetary value but are particularly complex or fall into issues that perhaps cross over local government boundaries or, where a local government believes that it does not have the expertise or capacity to make a determination, they can actually refer the matter to a DAP.

The CHAIR: We have a whole series of questions now about the submission that you have given us. Are we able to be provided with a copy of WALGA's best practice delegation guidelines that you referred to on page 15 of your submission? Can you also explain to us what relevance do you see these guidelines having to DAPs?

Ms Hailes: We have brought hard copies with us. We are also happy to send an electronic copy.

The relevance of these guidelines is that during the discussions about the establishment of DAPs, there was a lot of speculation and assertion that some elected councils were not adequately putting delegation arrangements in place for matters to be determined by officers under delegated authority. Certainly, there is a significant difference in the levels of delegation in place across local government, and the association acknowledges that. There are some local governments that 95 per cent or more of development applications would be determined by an officer under delegation; then there are others where perhaps 50 per cent of matters would be considered and determined by a meeting of the full council.

[2.50 pm]

WALGA has developed the guidelines for planning delegations under the planning improvement program that we introduced three years ago. The reason for the planning improvement program is to support the sector to lead and implement its own improvements and reforms. We intend that the guidelines will be used by councils in reviewing their existing delegation arrangements and that it will assist councils to determine which matters can be determined by an officer and which matters are more appropriately considered by a council. We are trying to ensure that local governments have an appropriate strategic and statutory planning policy arrangement in place that enables as much of the decision-making to be done by officers under delegation and fewer matters to go to the elected members. These actually address the concerns that were explained to us originally and are intended to, if there are examples of lack of delegation, address that across the sector.

The CHAIR: Do you have any suggestions as to what independent organisations should conduct the cost-benefit analysis of the DAP system as recommended in your submission?

Ms Hailes: The association would recommend that the Economic Regulation Authority conduct the review. We believe that it is set up for this kind of purpose and it has conducted a number of other similar cost-benefit analyses and therefore has the experience and the resources.

The CHAIR: Have you presented the results of your data analysis and survey to the Department of Planning; and, if you have, what was their feedback?

Ms Hailes: We have not presented those details to the department as we understood that they were still confidential as part of this process. We have not sought the committee's approval to release that information to the department. However, if the committee is agreeable, we would be happy to do that.

The CHAIR: We have just made the document public so they will likely be able to get a copy fairly quickly. By all means—it is your document. I just assumed that you might have sent that off to them already.

Ms Hailes: No. Could I also add that the department was undertaking its review of development assessment panels back in 2013. From meetings since 2013 with the minister and with the department, we have been given to understand that that review had been finalised and therefore any additional information could not be received.

The CHAIR: That is a bit of the difficulty we are currently dealing with. When this referral was made in October last year and we sought submissions and we received them by the end of January, we were reviewing the regulations as they stood at that time. As of last Friday, a new lot of regulations are in place. The questions we are going through today and we will go through for the next few weeks are still looking at the broader issues around DAPs but we will also be asking for feedback on the current changes that have just occurred. I know it is still probably too fresh to get appropriate feedback but quite possibly we will be seeking additional responses in the next few weeks. We just had not expected that last Friday.

Just coming back to your submission, it was stated that the results of the survey indicate that a significant proportion of DAP's resources are going towards determining residential and development applications of little state or regional significance but of considerable local significance. It also states on page 9 that many survey respondents identify that the use of a monetary figure to determine state significance is rudimentary. WALGA recommends consideration be given to the New South Wales system of hauling in an application and that the threshold be raised to \$30 million. Can WALGA suggest a definition of what constitutes regional or state significance and what specific changes could be made to the DAP regulations to ensure only developments that can be characterised in this way are considered by DAPs?

Ms Hailes: The association has recommended that the New South Wales system be reviewed. That system includes definitions for matters of state and regional significance. We believe that they would be appropriate for adoption in Western Australia. The criteria that are included in the New South Wales provisions are equally relevant to Western Australia. I have a list of them, if you would like me to read those out now.

The CHAIR: Perhaps table them and then we can distribute them and review them.

Ms Hailes: Just briefly, they relate to whether an application falls into an identified strategic location, is critical in advancing the nominated strategic direction or achieving a nominated strategic outcome contained in a relevant state policy plan or strategy, whether the proposal delivers major public benefits such as large-scale essential transport, whether the proposal is of significant economic benefit to a region, the state or the national economy, and whether the proposal is geographically broad in scale, including whether it crosses over multiple boundaries. The list goes on. Those are the types of applications that we would envisage to be of state and regional importance and therefore warrant consideration by a group broader than representatives of one local government.

The CHAIR: Perhaps at the end we might get you to table that information for us.

The committee also noted that page 2 of the April 2010 policy statement "Implementing Development Assessment Panels in Western Australia" states —

... some applications with a lower development value are complex and may raise issues of particular state, regional or local significance that are appropriate for consideration by a development assessment panel.

Local significance is also mentioned on page 1 of the explanatory memorandum to the Approvals and Related Reforms (No. 4) Planning Bill 2009. Given the number of references in WALGA's submission to regional or state significance, is it WALGA's position that there was a shift in policy subsequent to this policy statement and the release of the explanatory memorandum to only focus on developments of regional or state significance or is WALGA just saying that the focus of DAPs should be on applications of regional or state significance?

Ms Hailes: The association is saying that there has been a shift in policy focus and the intent of the DAP system. We believe that the purpose of DAPs should be substantially to focus on matters of state or regional significance but we recognise and accept that there may be times when an application primarily impacts at a local level. However, there are other broader considerations from

a state or regional perspective that are relevant and require consideration. Additionally, there may be some local governments, particularly those in regional areas—so very small country councils that perhaps have planning officers employed but rather use consultants where needed—that could have the option to refer those types of applications to a DAP for determination. That would ensure that the local representation and expertise applied to the determination of that application.

[3.00 pm]

The CHAIR: Are you able to expand for us on recommendation 6 on page 5 of WALGA's submission that a system be introduced to temporarily remove the planning powers of a council due to ongoing poor performance, and DAPs be utilised to process development applications that cannot be dealt with under delegated authority during the suspension period? Is there no existing power for this to be undertaken, and do you have any examples you can refer to where this has occurred?

Ms Hailes: I will go through those in order. Firstly, a system is being introduced to temporarily remove the planning powers of a council due to ongoing poor performance: the amendments to the Planning and Development Act that came into force in 2009 include a head of power for regulations to be made that require performance reporting by local governments. That head of power and those regulations have never been implemented. WALGA's assertion is that if we had performance reporting for all stakeholders in the development approvals process—so local governments, plus referral agencies and the applicants themselves—we would get a true and accurate picture of how the system was working, and if there were issues and delays, where and why they were occurring, and those could then be appropriately addressed. So, it would inform investment into the reform or amendment to powers in the assessment process. The association's advocacy to the state has been that DAPs are a one-size-fits-all mechanism to remove decision-making powers from local governments. If there are indeed local governments that are not performing their planning functions in an efficient way and if we had the performance reporting mechanism in place, those councils could be identified and either provided with support at that point to make changes or could have their decision-making powers suspended. During that period of suspension, the DAP would be the responsible decision-making authority, and the local government would be provided with support and capacity building to review its planning policies, processes and procedures to enable it to address the shortcomings and improve its performance for the future. They would then have their decision-making powers restored. The system we have at the moment penalises all local governments, rather than directing resources to where there is evidence of actual issues.

The second question was about whether there is an existing power for this to be undertaken. There are two powers in the Planning and Development Act and the WAPC act at the moment. Firstly, the WAPC can withdraw its delegation arrangements to a local government, as local governments are delegated WAPC powers over development control and approval functions under the relevant region schemes and through section 16 of the Planning and Development Act. Secondly, the Planning and Development Act includes provision for the Minister for Planning to call in specific development applications; that is under sections 246 and 247. There are options currently in place that could be used, but it is the association's view that a more appropriate mechanism would be through performance reporting by all participants in the assessment process.

The CHAIR: Tell me, where a council has commissioners installed and the councillors and the mayor are removed, does the planning area just proceed on as normal, or can that capacity be dealt with differently in those situations?

Ms Hailes: Where a local government has been suspended under the Local Government Act and commissioners are put in place, the commissioners adopt the usual powers of the elected council. Therefore, if a matter is not able to be determined under the existing delegation's policy to officers, it is the commissioners who would make that determination.

The CHAIR: Regarding finding 2 on page 9 of your submission, are you able to provide a summary of the comments of those who are of the view that the DAP system is achieving its stated objectives?

Ms Jackson: When we ran the survey with our members, we actually gave them some options of things to choose, so they could tick one or more of the choices for “transparent”, “consistent”, “reliable” or ticking “none of the above”. The respondents were also given the opportunity to provide any comments in some drop-down tags; no detailed comments were given to us about the members who thought they were achieving their set objectives. The responses we received: there was one response on “transparent”, four responses on “consistent” and five on “reliable”. On “consistent and reliable” there were two; “transparent and reliable” there was one, and there were a few other options as well. But “none of the above” had 36 responses. The overwhelming majority was that they were not feeling that it was meeting the objectives.

The CHAIR: Thank you for that. Finding 8 on page 9 of your submission states that one of the objectives of the DAP system was to provide a balance of independent professional advice and local government representation. However, 55 per cent of respondents said there is an imbalance, with more independent professionals on a panel than elected members. This is seen to create a scenario of poor community representation, and an over-representation of the interests of the developer. On what basis does WALGA think there is a perception that more independent professionals on a panel than elected members constitutes an over-representation of the interests of the developer, given that they are described as “independent professionals”?

Ms Hailes: I think the key to this is perception, and because there are three independent expert members and two local government members, the perception is that the independent expert members can always outvote the local government representatives. I think our view would be that if there was to be an amendment to the constitution of development assessment panels, consideration should be given to having three independent experts, three local government members and a presiding member, with the presiding member only being required to vote in the event that there is a tie amongst the other members. That would be seen to be a more fair and equitable arrangement. Having said that, the sector also believes that the objective of the DAP system to provide a balance of independent professional advice and local government representation is already achieved through the existing local government system, whereby independent professional planning officers who work within a local government provide advice to elected members who make decisions. So we do not see that there is a significant difference in expertise from planners employed by local government to those who may be operating as independent experts on a panel, and in fact a number of past employees of local governments are members of development assessment panels. So it is the very same expertise, in many cases, that is being brought to the table.

Hon BRIAN ELLIS: Just on that it—it has come up a couple of times today—one suggestion was that actually the councillors complement the independent body and advisers as well, particularly as the councillors are meant to come with an open mind and not perceived views. So why would having three of each make any difference if they all come with an open mind and have a probably, as I say, complementary view to each other?

[3.10 pm]

Ms Hailes: I might refer to a response that we would give to another question. The elected members are elected by the members of their community to provide for the good governance of the people in that district, and one of their roles relates to planning and development in that area. There seems to be confusion—or there is confusion—about whether the requirements of the local government elected member under the Local Government Act prevail over the requirements of an elected member when they are sitting on a development assessment panel as a member of that panel and are guided by the DAP regulations. The local government elected members will consider the responsible authority report and the technical advice that is provided about an application, and then

they also bring with them an understanding of community views and aspirations and an ability to apply an appropriate level of discretion when making decisions on a particular application. I think with the independent experts, it is acknowledged that they do have expertise and experience in particular areas, whether that is planning or architecture or engineering et cetera. But for the most part they would have little knowledge or understanding of a local community and its aspirations. So I think that having an equal split of technical expertise, together with the community knowledge and representation, provides an opportunity for a fairer outcome to be realised.

The CHAIR: Given our time constraints, I am probably going to skip ahead to a couple of other areas, and then at the end we might just talk about how we can manage the responses to the outstanding questions, if that is all right. So I might just jump ahead and talk to you about third party appeals. Some submitters have stated that an appeal right should be extended to persons other than the applicant aggrieved by the determination of an application by a DAP who have a special interest in the outcome. This is on the basis that, unlike before the DAP regulations were made, the representatives of the community no longer control the decision-making process—which provided some justification in restricting the right of review to an applicant aggrieved by a local government. Taking into account this point of view, what is WALGA's position on interested parties having a right of appeal against decisions of DAPs, including local governments and members of the community?

Ms Hailes: WALGA's position on third party appeals has been in place for a number of years, and it is indicated in our submissions on the private member's bill, the planning and development amendment third party appeals bill in 2007. Local government does not support the introduction of third party appeal rights in Western Australia. It is considered that the current strategic and statutory planning processes in WA, and consideration of applications by local governments, already take into account the views of affected parties and the community generally. There is no justification for third party appeals legislation, and there are significant negative implications for local government, industry and the community, and as such local government continues to oppose the introduction of third party appeal rights. We look to the eastern states and the complications and delays that inevitably arise as a consequence of third party appeal rights —

The CHAIR: I think Victoria has third party appeals, does it not?

Ms Hailes: — and New South Wales—and do not consider that there is sufficient requirement for them to be introduced in WA.

The CHAIR: Thank you for that. We understand that there are few, if any, local planning schemes in WA that grant third party appeal rights against planning decisions and that there were calls for such rights before the introduction of DAPs; and you have already just referred to a couple of pieces of legislation where there was that type of discussion. Do you believe the absence of third party appeal rights has in any way compromised the position of those who claim they are adversely affected by the planning decisions of local governments and DAPs and has also resulted in the DAP regulations operating in an ineffective way?

Ms Jackson: In answer to that first question, there are actually no planning schemes within WA that have third party appeal rights. The City of Albany was the last local government, when they amalgamated their two consolidated planning schemes into one, and that was in 2014. That was the last council that actually had third party appeal rights. So rather than introducing third party appeals, the DAP process should actually create an environment in which the broader community views are able to be better considered in the determination process. At the moment it feels like the community are being shut out of the process and they do not feel like they are engaged in the decision-making process. So planning decisions should actually be cognisant of all views, factors and considerations, including those of the affected individuals, because the community is feeling like they are a little bit outside the DAP process, because of the way they run their meetings. The way the schedules of meetings are held, they have to do a 72-hour pre-nomination process to

say they want to present at a DAP meeting; and if the DAP meeting is only advised five days before the meeting is held, sometimes by the time a local government has the chance to actually tell the elected members or the other interested parties that they can attend, it may only be a day or two notice. So it is a very difficult time line to actually encourage people, whereas council meetings are open to the public at all times, they are usually set at regular events, and anyone can attend those; they can just turn up.

The CHAIR: Just looking into cost recovery, I know this is an issue that you have touched upon earlier, and I know from your earlier submissions before DAPs were created that there was substantial comment made about this. The committee has received evidence that raises concern about the financial sustainability of the DAP system and the fact that full cost recovery is not being applied. Do you believe that fees for applications are currently set at a reasonable level and that full cost recovery should be applied; and, if so, why; and, if not, why not?

Ms Hailes: The association does not believe that full cost recovery is being applied, and this means that other aspects of government are subsidising the system and the processing of independent or individual development applications. How much this subsidisation is and who is actually paying for that subsidisation is unknown at this stage. So we do not believe that the question can be answered or really considered without a cost–benefit analysis being undertaken. The cost–benefit analysis would ensure that all costs for the development assessment panel system can be identified and taken into consideration; and that is not just the costs that are incurred by the state government but also by the community, a local government, a developer or proponent, and all of these should be identified and calculated as the full cost of the DAP system. Once we understand the total costs, then we can have a look at the benefits that are actually being derived and whether those benefits are in the broad public interest or in an individual’s interests and what the appropriate level of cost recovery should actually be.

[3.20 pm]

The CHAIR: Are local governments operating at full cost recovery for planning applications on which they are the decision-maker; and are you able to provide any details?

Ms Hailes: Local governments are not operating at full cost recovery at the moment. The maximum fees that local governments can charge is actually regulated by the state government under the regulations. The sector has been advocating for a number of years that the regulations for local government fees and charges must be reviewed to enable local governments to achieve full cost recovery. About three years ago, WALGA funded a study by an independent consultant into the level of cost recovery that was being achieved by local government under the current regulations, and we provided a report with recommendations and the outcomes of the research to the Department of Planning and to the Minister for Planning advocating that the regulations should be modified to enable a better setting of fees and cost recovery by local government. Unfortunately, the advocacy is ongoing and we as yet have been unsuccessful in having the fees reviewed. The situation at the moment is that I think three financial years ago, based on the information from our study, the state approved a one-off CPI increase to the fees and charges, but it has essentially frozen local governments’ fees and charges until a full review is undertaken. We have asked the department and the minister to undertake that review on a number of occasions and are advised that the department does not have the resources to undertake that review at this point in time. As a consequence of that, the association has advocated to the minister, to the Treasurer and to the Premier for the review of all local government fees and charges that are regulated by the state to be undertaken by the ERA, and this has now been progressed. So, it is our understanding that the ERA will be doing a review of fees and charges under the regulations.

The CHAIR: Just looking at timeliness of decision-making, do you think that the stop-the-clock mechanism, which has been introduced by the Planning and Development (Development Assessment Panels) Amendment Regulations 2015—which came in last Friday—to apply in

circumstances where an incomplete application is received with the consent of the applicant, will address WALGA's concerns about the timeliness of decision-making? If not, what changes does WALGA recommend be made to address the concerns?

Ms Jackson: WALGA's view is that it is probably a better way just to achieve better numbers for the system for the processing times, but our view is: why are the incomplete applications actually being lodged in the first place if they have not received all the information up-front; or there are quite a number of times where the development assessment panel receives very late information, like on that day or the day before they receive a full traffic report or something of that nature which requires quite a lot of detail for the officer to go through. So it puts undue pressure on the local government's planning system to actually be holding these applications for a significant amount of time. It should be that the applicant has already provided all that information up-front or has been given the opportunity to discuss the information first with the officers to then be able to present that through to the DAP system. So the whole processing system and administrative burden on local government needs to be considered as part of the cost-benefit review that we are recommending.

The CHAIR: Are you aware of any applications being made to the State Administrative Tribunal for a review by an applicant due to there having been a deemed refusal by a DAP because it has not made a determination within the time lines required by the relevant planning scheme?

Ms Jackson: WALGA is not aware of any examples at this stage, but perhaps that should be checked with the State Administrative Tribunal to see if there was any.

The CHAIR: I am just going to skip ahead to the role of elected councillors. Does WALGA believe the role of elected councillors on DAPs has been clearly articulated, given they are required to make their own independent decision on the planning merits of an application as well as be representatives of the local government?

Ms Hailes: No, we do not believe that elected councillors' roles on DAPs have been clearly articulated. During the development of the regulations and the code of conduct, the association raised a number of queries with the department about whether requirements under the Local Government Act or the DAP regulations prevailed when it came to the role and powers of an elected member. When they sit on a DAP, are they there representing either the position of the local government or the interests of that local community, or are they there as an independent person who happens to be an elected member of that council? Certainly, there would not be any other circumstances in which an elected member made an independent decision on behalf of a council. Matters would always be considered and voted on by a full council, or a delegated committee with that authority. A number of local governments have actually received legal advice about what the elected member's role on the DAP is, and the advice that they have received is that they cannot put their own personal view or decision forward; that they need the authority of the council in order to respond to an application, and, therefore, those councils will put the applications to council meetings and form a council decision prior to a DAP meeting, and then the DAP representative would present that as his or her position at the DAP meeting. We would like clarity on whether there is any conflict between the requirements under the various regulations when it comes to elected members and their participation in DAP meetings.

The CHAIR: We have also received evidence from some submitters that DAP members have represented developers in applications before DAPs on which they sit, having been excused on that occasion from sitting on the DAP due to having a conflict of interest. It has been argued that this creates a negative community perception and there should be a blanket ban on doing so in the area of the DAP they are appointed to. What is WALGA's view on this?

Ms Jackson: Any changes to the DAP member panel criteria to remove any perceived or real interest would be something that WALGA would support. It has been clear to local government for some time that the community interest and the primacy of local planning schemes are gradually being diminished under the pressure from those with a short-term commercial interest. So the state

and the local government have a responsibility to represent the interests of all the stakeholders in balancing the development of the built environment with the environment that the community needs, the cultural values and the economic sustainability. One suggestion made to us that might be an appropriate response to get rid of some of the perceived impartiality of some of the DAP members is that there could be the establishment of a peer review process for DAP members. Informally from our members, there have been complaints about some individual members—not entire panels but just some individual members of DAP panels—specifically about how they vote. A couple have been advised that regardless of the planning outcomes, the merits of the proposal or the impact on the local community—regardless of that—they have supported the planning application which actually would have poor outcomes. And they have been seen to be pro-development at any cost, which is obviously contrary to the planning system. The peer review process would possibly take an opportunity for an audit of the DAP members so that they could comment on each other's performance, which could be a nice quality assurance check via DAP peer members themselves and to actually strengthen the professionalism of the DAP members.

[3.30 pm]

Ms Hailes: If I could add to that, I think if there were to be more detailed minute keeping of DAP meetings, perhaps it would become more transparent whether that was actually occurring.

The CHAIR: That is probably another question all on its own, really. Given the time constraints, I will ask you two more questions and then we will sort out the others.

Another area is about lack of qualifications. Views have been expressed to the committee that local government councillors lack the qualifications to make planning decisions on DAPs and that the training they undertake pursuant to regulation 30 is inadequate. The committee also notes the results of WALGA's survey regarding training, on pages 32 and 55 of its submission. Does WALGA believe the training afforded to local government DAP members by the department is adequate?

Ms Hailes: The training that is provided to DAP members—the local government DAP members—is actually based on the training program that the association offers to all elected members. WALGA has a suite of elected member training modules, and one of them is an up to three-day course in land-use planning. A component of that particularly relates to how the planning system works and making decisions based on planning merit et cetera. The Department of Planning requested details of WALGA's training materials prior to developing their training and it is our understanding that a significant proportion of the training is the same.

Having said that, local government elected members undertake a wide variety of training and the training that they participate in as a DAP member would only be a small proportion of the overall training that they complete. Having said that, the association, as part of its systemic sustainability study and its position on reform of local government has said that it supports compulsory training for local government elected members in specific areas—so the Local Government Act, financial regulations, land-use planning et cetera—but that has not been adopted by the state at this stage.

The other issue in relation to this is that local government elected members are required to make decisions based on the technical analysis that has already been completed by a planning officer in that local government, so they have the experience and background of community views, they have the technical advice provided by officers and then they have the various levels of training that are undertaken, so we do not believe there is a shortfall, or any substantial differentiation between an elected member's ability to make a decision or a DAP expert member's ability to make a decision.

The CHAIR: Thank you. The final question is in relation to the changes that occurred. As you are aware, a range of amendments were made to the regulations that came into effect as of last Friday, 1 May. Some of those changes go along the lines of a lowering of the opt-in threshold of \$2 million for all DAPs, a quorum being any three DAP members including the presiding member, the regulations prevail over any planning instrument to the extent of any inconsistency, and the

introduction of a stop-the-clock mechanism whereby the time period for submission of the RAR to the DAP does not include the time between the applicant being given a notice to provide specified information or documents. I appreciate that it has only been a few days, but I would be interested in knowing what WALGA's view is on those amendments?

Ms Hailes: The association was disappointed to see that those amended regulations were introduced. We had requested that they be held in abeyance until this committee had completed its inquiry. The amendments that have been made do not address the concerns of local government in any way, and, in fact, will further exacerbate some of the concerns that local governments have and entrench a system that we do not believe is operating effectively at the moment. We believe that it will ensure the DAP system moves further away from focussing on strategic and regionally significant development and further undermine local government decision-making and community input.

The CHAIR: Thank you for that. We still have a couple more hearings to go, and I know a couple of people are sitting in the back of the room, waiting. I know we still have quite a few questions that we have not covered. I am wondering whether or not you have some of those responses written. I might ask if you are able to table that document for us. You might just tell us the name of that document or give it a name?

Ms Hailes: The title of the document is "Presentation to Standing Committee on Uniform Legislation and Statutes Review".

The CHAIR: Thanks very much for that. The other document that you were providing to us, with the blue binder, could you read out the heading for that as well?

Ms Jackson: That one is "The Guide for Planning Delegations Development Applications", part 1 and part 2.

Hon MARK LEWIS: I have a little bit of a correction for Hansard, mainly, but while the WALGA people are here, may I make that? I stated in one of the previous sessions that your survey said there was something like 99 per cent of DAPs approvals were approved. I correct the record, because it is actually 98 per cent in regional areas and 91 per cent in metro areas.

The CHAIR: That is fine.

Hon MARK LEWIS: I was not on the money. I needed to correct that.

The CHAIR: On behalf of the committee, we certainly thank you again. You have both provided us with an enormous amount of detail in your responses, and we certainly appreciate that information. Given that this inquiry will be ongoing and we will not be tabling until September, it may be that we call you back in for another opportunity at a later stage, with some additional questions. We certainly thank you for what you have been able to provide for us today and we will probably see you again in the future. Thank you very much. That was very good evidence you provided.

Ms Hailes: Thank you very much to the committee for the opportunity, and we would be very pleased to provide any other information required.

The CHAIR: Thanks for that.

Hearing concluded at 3.38 pm
