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Samantha Parsons

Committee Clerk

Standing Committee on Uniform Legislation and Statutes Review

By email: unileg@parliament.wa.gov.au

Dear Ms Parsons

TRANSCRIPT OF EVIDENCE: DAP REGULATIONS HEARING 19 JUNE 2015

I refer to the abovementioned matter concerning the public hearing held on Friday, 19 June 2015.

Corrected Transcript

A copy of the corrected, marked-up transcript is attached. The proposed corrections encompass comments by both Ms Gail McGowan and Mr Stephen Ferguson.

Corrected and Additional Information

Corrected and additional information includes the following.

1. On page 6 of the uncorrected transcript Ms McGowan says the fee for a regulation 17 minor application is \$50 Pursuant to Schedule 1, item 2 of the DAP Regulations, the fee is actually \$150. It is rather the DAP sitting fee for a regulation 17 minor application under Schedule 2, item 4 which is \$50
2. On page 7 Mr Ferguson gives evidence about why regulation 17 was introduced, and how without such a provision applicants were using applications for retrospective approval to mitigate the limitations of *functus officio*. The Committee may wish to peruse the SAT decisions of *Aznavour Pty Ltd v City of Mandurah* (2002) 124 LGERA 173, *Bakker and City of Nedlands* [2005] WASAT 106 and *Price & Anor and Shire of Gingin* [2008] WASAT 210, where these issues were explored In particular, the Tribunal's comments in *Price & Anor* at [40] to [43] are probably the most helpful in framing some of the context
3. On page 9 Ms McGowan mentions a change in Departmental position concerning closed reconsideration meetings under section 31 of the SAT Act. Mr Ferguson similarly mentions practice note 7. All DAP practice notes can be downloaded from its website at:

<http://www.planning.wa.gov.au/Development-Assessment-Panels.asp>

The Committee may also be assisted by being directed to paragraphs 29 and 30 of DAP practice note 7, which was drafted in consultation with legal advisers and SAT itself, which explicitly states:

Must the DAP have an open meeting when complying with a Tribunal invitation to reconsider a decision under section 31 of the SAT Act?

29 Yes.

30. *A meeting of a DAP to consider an invitation to reconsider its decision under section 31 of the SAT Act is effectively a meeting for the DAP to 'reconsider' or 'remake' the application that is before SAT. Therefore, the meeting is subject to regulation 40(2) of the DAP Regulations, which requires a meeting be open to the public.*

- 4 Furthermore, on page 9 Mr Ferguson discusses the rare circumstances where a DAP will have a meeting or a part of a meeting behind closed doors. The Committee may be assisted by being directed to paragraphs 33 and 34 of DAP practice note 7, which was drafted in consultation with legal advisers and SAT itself, which explicitly states:

Will there be circumstances where a DAP may be required to have a private meeting?

33. Yes.

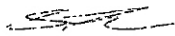
34 *There may be circumstances where a DAP may be required to proceed to discuss matters in private without members of the public present. These circumstances may include but are not limited to the following:*

- a. *A Form 2 determination under regulation 17 and 40(4).*
 - b. *As part of a SAT review, if questions arise during a section 31 reconsideration going to confidential material arising from previous SAT mediation. If discussion of such matters is necessary, the DAP should ensure that that portion of the meeting is conducted without members of the public present.*
 - c. *As part of a SAT review, an applicant is prepared, for the sake of achieving settlement by consent, to make concessions by way of amended plans, but if not acceptable to the DAP, the applicant wishes to rely on the original plans at a subsequent full hearing.*
 - d. *A DAP is to receive legal advice or give instructions to SSO, being necessary for the DAP to fulfil its role as respondent in particular SAT review applications under regulation 18 where it is identified material must remain confidential.*
- 5 On page 11, Mr Ferguson makes a comment about which regulation provides the basis for the Minister to remove a DAP member. After consulting the DAP Regulations, it can be confirmed that it is in fact regulation 32 that provides the Minister this power.

6. On page 12, Mr Ferguson discusses a practice note prepared to deal with a procedural issue that had arisen concerning websites. The Committee may be assisted in being further informed if it is DAP practice note 2
7. On page 13 Mr Ferguson answers a question about the application of State planning laws over Commonwealth land used as airports. The Committee may be further assisted to know major legislation in question, within a Perth context, includes for example the *Perth International Airport whereby the Airports Act 1996 (Cth)* and the *Airports (Environmental Protection) Regulations 1997 (Cth)*. It is the *State laws: Commonwealth Places (Application of Laws) Act 1970* and *section 190 of the Commonwealth of Australia Constitution*, which enshrines the principle of Federal legislation prevailing over State legislation to the extent of any inconsistency. However, the question of whether Federal legislation is inconsistent with State legislation is a question of fact and degree in any given circumstance
8. On page 14 Mr Ferguson mentions SEPPs in NSW. The acronym stands for State Environmental Planning Policies
9. On page 17, Mr Ferguson mentions DAP members being potentially removed by the Minister if they miss three meetings in a row. The Committee might be assisted in knowing the provision is regulation 32(3)(d), which states:
 - (3) *The Minister may, by notice in writing given to the member, remove a DAP member from office on the grounds of —*
 - (d) *absence without leave granted under regulation 33 from 3 consecutive meetings of the DAP of which the member had notice.*

If there are any further matters the Committee requires assistance with please do not hesitate to contact me.

Yours sincerely



Stephen Ferguson
Senior Solicitor

2 July 2015