STANDING COMMITTEE ON
UNIFORM LEGISLATION AND STATUTES REVIEW

PLANNING AND DEVELOPMENT
(DEVELOPMENT ASSESSMENT PANELS) REGULATIONS 2011

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
FRIDAY, 19 JUNE 2015

SESSION ONE

Members

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

Hearing commenced at 10.24 am

Ms GAIL McGOWAN
Director General, Department of Planning, sworn and examined:

Mr STEPHEN FERGUSON
Senior Solicitor, Department of Planning, sworn and examined:

The CHAIR: Welcome back again. This is part of our inquiry into the DAP regulations. I will just introduce my colleagues again—Hon Amber-Jade Sanderson, Hon Brian Ellis, Hon Mark Lewis; and Mr Alex Hickman. I welcome both of you back to a hearing again today. We have had a series of meetings with a range of people, and we just thought it would be useful to bring you back in to perhaps go over some of the matters that have been canvassed during some of our earlier hearings. It may be that at a later stage we need to call you back in again before we finish. Before we commence the hearing we just need to go through some formal matters. This is a public hearing, and before we commence I have to ask both of you to take either the oath or the affirmation.

[Witnesses took the oath or affirmation.]

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

Ms McGowan: I have.

Mr Ferguson: Yes.

The CHAIR: Thank you. These proceedings are being recorded by Hansard, and a transcript of your evidence will be provided to you. To assist both the committee and Hansard, please quote the full title of any document that you refer to during the course of this hearing for the record. If you would just be aware of the microphones and try to talk into them and ensure that you do not cover them with papers or make noise near them. I remind you that your transcript will become a matter for the public record, and 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.

I probably will not ask you to make an opening statement, because I know that we have provided you with a long list of questions. I think there are about 56 questions in total. I know that you have got written responses to those questions. What we are going to do is that given the time period that we have got, we know that we will not get through that volume, so we are actually just going to cherrypick some of those questions, if you like—those questions that specifically relate to the regulations—and to get your responses on the Hansard. But I would fully expect that the written document that you have you would provide and table at the end of the hearing because we would still like the responses to the other questions that we have put to you. I think to start off with we might take the second question of that document that we gave you. I just wanted to go through a little bit of background before we move into more specific questions about the regulations. One area that we wanted to cover is just going a little bit back into the history of the origins of DAPs. You note that in question 2 we talk about the rationale for the introduction of DAPs. There is

a series of questions about that. We just wondered if you could put on the record and provide detail of the work undertaken by the department before the introduction of DAPs to assess the performance of local governments and the WAPC in approving development applications that demonstrated there were systemic issues with the existing system in terms of transparency, consistency, reliability and timeliness, justifying the production of DAPs, and if the committee could have a copy of any documentation underpinning any analysis taken. We might just start with that first.

[10.30 am]

Ms McGowan: Thank you. Just by way of that additional background, the Development Assessment Forum, which is an Australia-wide group, was formed in 1998. There is a whole-of-government exercise aimed at streamlining development assessment and cutting red tape. It actually provided some advice and recommendations that, in a sense, were the genesis of the development assessment panels in Western Australia, and we have provided reference to that. I think in general terms they talked about the greater use of objective rules and tests, a single point of assessment and professional determination for most applications, including the introduction of expert panels. And that was also followed in 2011 by a report by the Productivity Commission on performance benchmarking of Australian business regulation, and we have provided reference to that as well. The Productivity Commission emphasised the importance of good governance and also noted that planning is complex, involves many players and affects many aspects of the livability of cities and the ease of doing business. So they are some very broad concepts.

In relation to the specific question 2, basically there is quite an extensive amount of detailed investigation in the nature of case studies, public and stakeholder consultation and public information workshops and training sessions and also the practice in other jurisdictions. The case studies included Binningup desalination plant; Cinema City redevelopment in Perth; Rowe Road, Witchcliffe; 4 Burns Place, Burns Beach; 48 to 68 Cantonment Street, Fremantle; and Tassels Place, Innaloo. The studies in a broad sense identified some issues in terms of the delays caused by the need to obtain dual approval from two planning authorities—that was, in that instance, both local government and the Planning Commission—and the need to balance sensitive local issues against broader public interest and the technical complexity of applications, which would benefit from independent experts, especially on issues of design innovation. That is broadly speaking, and we can certainly provide information on those case studies. In terms of the public and stakeholder consultation, three separate documents which are included in your pack today include the "Building a Better Planning System" consultation paper, which was released by the department in March 2009—one of the reforming issues then was the suggested written instruction of development assessment panels; a further discussion paper specifically on implementing development panels in Western Australia, dated September 2009; and then a report on the submissions that we received, and I think it was 177 submissions, that was released in 2010. That was used as the basis. I will not go into the full detail because I will be here for the full time, but we held public information sessions throughout the state from Northam, Albany, Perth, Bunbury, Mandurah, Geraldton and Broome. The systemic issues were again, as I say, the dual approvals being reduced to a single decision maker, the increased technical expertise among planning decision makers and effectively reducing the political influence over planning merit in decisions. Unless you particularly want me to go into the details of the case studies, I will leave that for the written submissions.

You asked the question also in terms of can we provide all that information. I am suggesting that we provide the consultation documents and case studies and if there are other specific things, because we have got thousands and thousands of pages —

The CHAIR: I think that would be sufficient.

Ms McGowan: Yes, if there is extra.

The CHAIR: When the minister made the announcement to introduce DAPs he put out a press release. In that press release he made reference to the removal of red tape and inefficiency. Are you able to give us any examples of what he was actually referring to when he used those words?

Ms McGowan: Certainly some of those issues that I have referred to earlier, particularly in terms of the work of the Productivity Commission as well, emphasised as one of the areas for improvement the reduction of red tape and lowering costs in both development of major projects and housing.

Mr Ferguson: If I can assist the committee?

The CHAIR: Sure.

Mr Ferguson: If I recall correctly, in his second reading speech to the introduction of the heads of power in the 2010 amendments he specifically referenced the Binningup desalination plant, so that is a very specific example of what perhaps he had in mind.

Ms McGowan: In terms of a very quick overview of that, there was a $995 million project for a new desalination plant—obviously a major water resource for Perth. It would have required dual approvals from both the government and the Planning Commission. One of the things that was certainly evident with Binningup and with some of the other major projects is that the local government decision-makers were probably not familiar with that level of sophisticated plant and the complexities around it and obviously the contentious nature of the development as well as the foreseen benefit of having some technical expertise or independent expertise being brought to that decision-making process. Similarly, another issue would be 4 Burns Place in Burns Beach, where there was proposed 14 two-storey group dwellings. Again this was the sort of issue that still comes up in terms of technical issues around traffic, vehicle access and variations to the R-codes. In that instance the local government officers recommended approval of the development but the council determined refusal and cited too many variations to the R-codes.

The CHAIR: Can I just ask, if there was such a level of concern about this dual system and perhaps people involved in the process at a local government level not having enough technical knowledge, be they staff or elected members, did the government give consideration to other alternative arrangements for the decision-making in these areas? I mean, did they give consideration to removing this capacity entirely from the local government sector and just having it back in your patch, if you like?

Ms McGowan: I will ask Stephen to elaborate. My understanding is certainly that with the work of both the Productivity Commission and development assessment forums all sorts of models were looked at, and this is the one that on balance was arrived at.

Mr Ferguson: I joined the department after the most of the work on the DAPs. With that limitation in mind, I do understand that they did look at a number of different models. One model was to essentially use the Planning Commission and remove local government involvement in its entirety. I think the decision was made. Again, that was really a question of public policy, but that would be seen as too punitive against local governments to remove them from the process; whereas under the DAPs they are really still the major player, to be honest. They are the ones getting the lodgement and doing the assessment—they have representatives on the panel—as opposed to the commission for the process.

The CHAIR: But I must say, based on the evidence given to us, people are still concerned about how that works. Given that one of your changes has been to alter the quorum requirement, so you could actually have a DAP operating where you do not have local government representation at that meeting, you might only have the specialist, if you like, in the chair. So there might be some occasions when they are excluded anyway.

Ms McGowan: We would see that as unlikely, simply because there are two local government representatives nominated and then there are alternate members. The question of government policy in terms of the composition and the quorum arrangements of the three independents and two local

governments, I think from a planning theory perspective, equal membership between experts and local government does not necessarily lead to a better outcome. And of course the planning merits of any decision need to take into account the local community, the broader community and sometimes the broader state interest or public interest there as well. I think the important aspect is that you do get that local government input that you actually are able to determine an application on its planning merits to take into account that context. Now, probably the critical issue to be aware of there is that the development assessment panel can only stand in the shoes of the original decision-maker—either the local government or the Western Australian Planning Commission, as it were. So they can only apply the rules, as it were, of the local scheme. They cannot step beyond that local scheme.

[10.40 am]

The CHAIR: So what happens, Gail, where a local government has actually opposed a project, not once but perhaps more than once, and they have the backing of their local community in opposition to a project and then a DAP approves it: is it only approved on the basic technical requirements even though it is an outrageously unpopular change? Both from the evidence provided to this committee and a number of other things that are happening across the community at the moment, that seems to be a fairly regular outcome.

Ms McGowan: I have got some figures on the number of applications determined by DAPs in total in each of the years. I would say, just as an observation, I have now been director general of the department for about 15 months, so I think probably in terms of written complaints about the DAPs I would have three so far as I have been able to test or recall. The issue is—Stephen can elaborate—that if the local government has refused an application or has not recommended an application, because they cannot refuse it because it is dealt with by the DAP, the development assessment panel can only apply the rules of the local scheme, so it must mean the local scheme has the discretion for that application to be approved. The issues that the development assessment panel must balance may well be something such as a project or situation that spans a couple of local government boundaries. It might have broader application across the state. It might be something that, as I say, is much more in the national interest, but the important issue is that the rules of the local government scheme are the rules that the DAP applies. Stephen, do you need to explain that further?

Mr Ferguson: No, Gail. I think you explained that well. I guess the only point to add, which Gail has already explained, is that it is important not to conflate issues in the sense that sometimes a DAP decision is not well received, and it is important to stress that it is not as often as people think, but often the issue is that the local government really needs to tighten up their own rules because it is their rules which are in the DAP and sometimes the DAP is seen in a negative light when it is just applying the rules.

Hon MARK LEWIS: I assume that in putting that local planning scheme together there has been a pretty broad consultation process and general agreement at that level before that LPS is signed off, so the local government and the community would have set those rules, I assume.

Ms McGowan: Yes, and that is very much the case.

Hon MARK LEWIS: Which then the DAP, standing in its shoes, have to apply?

Ms McGowan: Absolutely, yes. Just going back to that question, certainly there is a perception. I think there was a comment in one of the questions around unfettered discretion. I know that we actually have not seen a lot of the evidence, so it is difficult to actually comment on specific issues, and certainly we as the departmental officers cannot at law comment on specific issues, but in the 2013–14 financial year there were 321 matters dealt with by DAPs, so it was worth about $4 billion. Of those I can certainly think of some that cause a degree of contention in the community, but by and large I think the overwhelming majority went through without any degree of angst.

Likewise, up until about April this year we have had about 319 applications. Again, it is a very small proportion of those that actually provoke any sort of sense of community outrage. But it does need to be emphasised again that the development assessment panel is only applying the rules that were set through that local planning scheme process.

The CHAIR: Is this part of the issue—maybe it could have been addressed at the beginning—where when the minister was talking about removing red tape and inefficiencies, one of the complaints has always been about the diversity of regulation across the local government sector. So you go from one council to another to another and there will be entirely different regulations around town planning schemes, heritage issues and plot ratios and all the other things. Is that something that perhaps could have been resolved, that might have enabled better processes, if you like, for decisions to be made? Is that the big elephant in the room that still has to be tackled about having uniformity in regulations?

Ms McGowan: Because planning by necessity is complex and you do try to devolve decision-making to the lowest level possible, it will always have some of that complexity and it is a process of continuous improvement. That said, as a result of planning reform phase 1 and phase 2, which has also been subject to quite extensive public consultation, we are in the process of introducing the local planning scheme regulations, which come into effect later this year. The draft was out for public comment in about November of last year and the beginning of this year. That will include a lot of model provisions that we would encourage local government to adopt in their schemes, but it will also include deemed provisions that the minister can automatically insert into local planning schemes. One of the reasons that is being done is to address some of those issues of inconsistency, but is also a matter of balancing local needs against the broader needs as well.

Hon MARK LEWIS: Before we move off question 2, I do not know whether we skipped over that dot point 4—they may well be in here—but if you could give us a couple of examples that may well sit within these documents. We have only just got these this morning. We will read them. But what systemic issues with planning decisions made by local government and their planning officers as well as the WAPC were the introduction of DAPs endeavouring to resolve? We are going back in history here a bit, and that is the idea of this question.

Ms McGowan: I think, broadly speaking, there were the three issues of reducing the need for dual approvals, which has taken a lot of time and effort of a lot of parts; certainly increase in the expertise among decision-makers, and I will come back to that in a second; and then trying to reduce political influence over planning merit in decisions and in some instances, and I think it is also important to note, that actually can in a sense work to the advantage of local councils in some areas. This is the experience from my past life or past roles. Something like the Browse LNG precinct. That is one where the local council at the administrative level I think were clearly concerned that they lacked the expertise to be able to make a judgement. I think it was put to me at one stage. They were very confident when it came to setbacks and zonings and things in a residential sense, but for an LNG plant not so much so. But of course that was something of considerable angst in quite a divided council in terms of the community and the community pressure. So being able to step back and say to an independent group to assess it on its planning merits, it can actually work to advantage.

Hon MARK LEWIS: Wheatstone too.

Ms McGowan: Yes.

[10.50 am]

Hon BRIAN ELLIS: In particular around regulation 17—this is question 44—we have had some letters that have questioned whether certain applications under regulation 17 which have been decided upon by DAPs have amounted to minor amendments, and in one case an amendment brought the estimated value below the minimum monetary threshold at the time. Another submitted

was of the view that minor amendments should be dealt with by local government without the need for another decision by a DAP, to improve the timeliness of the process of freeing up DAP resources. If there is a reasonable question over whether a regulation 17 application is the subject of a minor amendment and the DAP decides it has jurisdiction, does the department believe an appeal is open to the Supreme Court on the basis that the DAP has committed a jurisdictional error? What other avenues may be open to challenge the exercise of this discretion?

Ms McGowan: I will probably let Stephen give a bit more of a technical explanation from the legal point of view, but broadly speaking, there was a very deliberate introduction in the DAP system for minor amendments so that they would not cost a whole lot of time and money when they could be dealt with as minor, and certainly a person of sufficient standing could bring an application to the Supreme Court for review. There is a practice note that does explain how that process works, but I will ask Stephen to elaborate on it a little bit more.

Mr Ferguson: The difficulty for us to answer, I guess, is that it is a question of planning merit. When we were looking into regulation 17 during the consultation quite a number of advices from various prominent lawyers made the point that it is really a question of planning merit and, therefore, it is a question for the independence of the DAP whether it is major or minor. The problem is, if you set it in conceptually, whether something is major or minor is very much dependent upon the facts of the case, so if in Perth you are adding one storey to a 20-storey skyscraper, then you would think that is quite minor. If you are dealing with a one-storey building and adding one storey, it is quite major, if you know what I mean. So it is a question of planning merit based on individual facts. As Gail said, if the DAP is making the wrong decision, it is no different from any other decision, in the sense that a third party really would now need to put in an application for judicial review by the Supreme Court to challenge that. Otherwise, it is a question of planning merit for the DAP to decide on a case-by-case basis.

Hon BRIAN ELLIS: So really it is just a matter of opinion of the DAP?

Mr Ferguson: It is a matter of planning expertise whether it is major or minor. That is the key point.

Hon BRIAN ELLIS: Would that be in the DAP —

Mr Ferguson: It is within the DAP.

Hon BRIAN ELLIS: — falling back on the experts within the DAP for that opinion?

Mr Ferguson: That is right.

Ms McGowan: Would I be right in saying that the same thing would apply in the application for the local government to think that something would be major or minor and that would be dealt with ordinarily at a council or is that a different matter?

Mr Ferguson: That is a different matter.

Hon BRIAN ELLIS: Just following on from that, why are DAP meetings to decide applications under regulation 17 not open to the public, as provided in regulation 40(4)(b). In terms of transparency, should third parties not have the same opportunity to make presentations as for regular applications?

Ms McGowan: The challenge there would be that the introduction of the minor amendment stream was to make sure we reduced costs and kept timeliness, and as a consequence, I think we set a fee of $50 for those minor amendments, as opposed to the full fee for a DAP application. It would mean that rather than being an administratively simple process it would actually become a full meeting and have all the costs involved in it. Yes, it is possible that you do away with the minor stream, but it would certainly reduce the administrative efficiency and increase costs.

Mr Ferguson: This is again based on the best of my recollection, but I think I remember at the time there were a few well-known examples and one was an apartment complex in Perth where because building materials were not available, they could not comply with the condition, and it was a very minor aspect. Technically, under the old system before the minor amendment process, they should have gone through and put a new application in and gone through the whole process again. You can imagine a proponent is not keen to do that when really what we are talking about is a very minor aspect. So what they did is they did not get any approval; they just went ahead and made the change and did not tell anyone. When they were discovered, the proponents were putting in applications for retrospective approval. As you can imagine, in terms of transparency, I can very much understand your point and concern, but I guess that if we do not have some sort of expeditious mechanism for proponents to make some minor changes, then unfortunately we will see the old practices of some proponents not getting any approval for any changes and we will never hear about it. And if they get caught, they will just put in an application for retrospective approval. So that is what we have tried to do in terms of the regulation 17 process. A lot of them are dealt with publicly because they just deal with them at the same time as an ordinary form 1 application, so they are discussed publicly, but the regs do allow for instantaneous consideration effectively of these minor issues. Whether we need to re-look at that again is probably in relation to the point, but that at least is the intent of the system and why we introduced it.

Hon BRIAN ELLIS: So in light of what you have said and because they are not open, we have had in submissions and hearings complaints about the quality of the minutes. I was looking at regulation 44. It does seem a fairly thorough process that should be gone through to the quality of the minutes, but that is not what we are hearing back. What is your experience of that, particularly as the form has to be approved by the director general? What is your experience with the quality of the minutes then?

Ms McGowan: It is certainly not a matter that has been raised with me in terms of any concern. That said, I have not been privy to the particular evidence. It is not something that has come up.

Hon BRIAN ELLIS: It actually has come up quite a few times that there is not much detail, and that has been a common complaint to us.

Ms McGowan: Sorry. When I meant it has not been raised with me directly as an issue, it is certainly something I am quite comfortable in having a look at in terms of our role of supporting the administration of the DAP system, but, as I say, it has not been specifically raised with me at this point. Stephen, are you aware of anything?

Mr Ferguson: I am aware of something—not with a reg 17 issue—but this is quite some years ago. Somebody complained that there was not a transcript or verbatim and it might be offending Horsley's laws of procedure—making clear that a minute does not have to be a transcript. But I take your point in saying that we can improve things. That is probably an easy thing for us to allay some people's concerns.

Hon BRIAN ELLIS: If the quality of the minutes is not up to the satisfaction of other people outside of the meeting—because there is an administrator and also a local government rep in there as well—and the minutes are not up to standard, whose fault is it? How do we improve it? There is quite a fallback position in regulation 44.

Ms McGowan: I have adopted a practice of meeting on a fairly regular basis with the presiding members two or three times a year. I am due to meet with them probably in early August. I can raise that, but I can also raise it with our administrative support staff, and I am quite happy to have a look at some of the minutes, and if there is a need to do something about it, we can.

The CHAIR: I think that would be very helpful because, as my colleagues say, it has been consistently raised. People have been concerned about the lack of information or lack of detail that has been provided. I actually think the regulation as it is laid out is quite good. I do not know

whether it is a case of providing some sort of guidelines to the DAPs as to what type of information or level of detail could be provided. Some people are very good at taking minutes of meetings and others may not necessarily have the experience. So I think in terms of recording the detail of a DAP's meeting for posterity so that people can have access to the information and can see the flow of discussion and thought that led to an outcome, we would think that would be a very positive change that would come out.

Hon BRIAN ELLIS: It may lead to lesser complaints where the people can see reasons or understand the decision-making.

Hon MARK LEWIS: And alternatively, because we are inquiring into the regs, if there is not sufficient robustness in the regs, then we need to know as well. My reading of the regs is that there seems to be plenty of grist to the mill in terms of the regulations but it is probably the local government administrator who sits on the DAP or is provided to the DAP who is not fleshing out the minutes to where we are hearing the complaints come from, so it is more of an administrative issue, in my view, than being bound by the regulations. But if that is not the case, we would certainly like to know as well so that we can advise any changes to the regulations that are required and that might be a formal version of the minutes.

[11.00 am]

Ms McGowan: Yes, and I would suggest that probably it would be more applicable in cases where there is decision that is not in keeping with the report or the recommendations from the officers, because it is the reason for that departure. Generally, and again the quality does vary with the responsible–authority reports, but there is quite a bit of detail in those, and it is probably in the instances where there is a departure from those recommendations.

The CHAIR: There is no template for these types of minutes?

Ms McGowan: No, there has not been a template to date. We have been very conscious of the almost quasi-judicial role of the development assessment panels and the need for the department to provide administrative support but not direct the activity of the DAPs.

Hon MARK LEWIS: Just on a point of clarification, is it your understanding that for the responsible authority, which is the local government, that the administrator or person provided by them is actually the person who does the minutes?

Ms McGowan: That is generally the case, yes.

Mr Ferguson: Just to hone in on your earlier point, you are correct in relation to a lot more DAP meetings in the first few years. With some councils—obviously there is a huge diversity—in terms of minute-taking ability, let us say, there is also a wide variety of skill and ability in that as well, as one could imagine. So perhaps you are correct in terms of the department providing additional support in that sense. Gail spoke about reasons. I think perhaps part of the issue is that perhaps you are correct in your inquiry as to the reasons given, especially when it is contrary to the recommendation of the —

The CHAIR: Yes, I think so. And one of the other issues that flow on from what Hon Brian Ellis canvassed about having everything documented so that people can see the flow of a discussion during the meeting was issues around public access to some of DAP's hearings. We have had it put to us that there are occasions when public are excluded from certain decision-making processes or parts of the DAP's meeting. In terms of transparency, that is obviously of concern to members of the community. I would imagine, particularly if it was a controversial matter in that area, that people would say, "Why can't we be present when these things are being discussed or decisions being made?" I do not know whether you have given any thought as to how that gets managed or why would these parts of the DAP's meetings be closed to the public?

Ms McGowan: I think there has been some change in practice since the examples cited from 2012, and those samples that you have provided actually appear to involve section 31 reconsiderations from the State Administrative Tribunal and they are not original decisions by the DAP, and in that case the thinking was that they are matters governed by the SAT through its mediation process and there was a need for confidentiality. However, from 2012 there were discussions with the State Administrative Tribunal and it was agreed that those examples would not apply today. The issue we do have, though, is the understanding that some local governments, for those reconsiderations of matters from SAT, have continued the practice of private meetings for those. So it is not something we have included in the regulations. It seems to be a practice from local governments at this point in time.

Mr Ferguson: That is practice note 7. As a response to those incidents and examples you gave and from a fair bit of discussion with SAT, we did have a new look. The regulations are probably already sufficient. So practice note 7 gives a very detailed look into this issue and the only times that you can have an aspect of the meeting that is closed are limited and pretty much the regulation 17 example and really when you are getting legal advice.

Hon MARK LEWIS: Is that by a practice note or by regulation?

Mr Ferguson: The regulation already says that it has to be open. At the time there was some doubt because our reading of the SAT act seemed to be in conflict with that, and that is why we thought it was part of the SAT process and the SAT process required it to be behind closed doors.

Hon MARK LEWIS: So would there be a need to add a subsection of a regulation to give some more clarity?

Mr Ferguson: Probably not now, to be honest, because the regulations do say that it has to be an open meeting and we are having open meetings.

The CHAIR: So what you are saying is that it is really the local governments that need to resolve that issue.

Mr Ferguson: Part of the reason why also we were having to add context for these decisions behind closed doors—my understanding is because we were following what committees of local governments were doing—section 31 reconsiderations behind closed doors. Really it is a matter for local government what they do in their own practice but for the DAPs they are all open meetings now. So that issue has substantially been resolved, I believe.

The CHAIR: All right. We might just move on and talk about some other issues. Another matter that has come up in a number of discussions that we have had—we have received evidence from a number of people—is that they believe there have been instances where DAP members have had to excuse themselves from deciding on an application because they were representing an applicant. Some submitters were of the view that this creates negative community perceptions and recommended there should be a blanket ban on them doing so in the area of the DAP that they are appointed to. So this would be the case where a member was representing a developer. I just wonder what your position on that type of evidence would be and whether you have developed any guidelines other than what has been stated in the DAP code of conduct to govern this.

Ms McGowan: I certainly have not been given a copy of that evidence, but in terms of government policy, specialist DAP members primarily do come from the private sector. With the management of conflicts of interest, we actually have a code of conduct, we have standing orders and we have practice note 6, which specifically address the issue. Conflicts of interest are also discussed in member training. I am in the process of looking at that issue of conflict of interest and with the new local government elections coming up in October, we are actually revisiting the entire training for DAPs and obviously training for new members, and conflict of interest will clearly need to be a part of that, because the concern is something that I am aware of.

The CHAIR: So if a specialist member declares a conflict and they step away from being a participant in that DAP process, do you simply replace them with somebody else or are you just down a number?

Ms McGowan: No, they should be declaring a conflict of interest ahead of it, and if they were to step away, there can be a different member. We often do that in the case of someone who has declared a conflict of interest. There will be another member appointed for that particular issue.

The CHAIR: How much notice are they given, before they are formally sitting on a DAP meeting, of what the matter is so that they have got a time, if you like, between being notified and actually needing to make that declaration? Is it a long period of time?

Mr Ferguson: No, with respect, it is not. In fairness to the members, it is not long. I think you have got other questions about this. I think it is between 10 and five days. The reason for that—I think your other question has gone into this—is that you still have to keep in mind that the "cake", in terms of the time, is derived by what the local planning scheme says. The local planning scheme can say 90 days for refusal. The system we have designed is to give the local government 90 per cent of that time, and they really have got 90 per cent of the time to get it, to assess it and to prepare the responsible–authority report, which means by the time the department gets all the information and comports it to the members, there is only 10 per cent of that part left, so only at that late stage a member might be aware that actually they have got a conflict here and then they will excuse themselves. Some of your questions touch admittedly on a difficult issue.

[11.10 am]

The CHAIR: How often have you had somebody declare a conflict of interest in a DAP situation?

Mr Ferguson: I would not know the statistics, to be honest.

The CHAIR: Is it formally recorded?

Mr Ferguson: It is formally recorded, yes.

Ms McGowan: And they are also bound by the planning act as well as the public administrative law, so there is a requirement to formally declare.

Mr Ferguson: The most common conflict is impartiality interest, which is just one of association. Given Perth is so small it is not uncommon for that to occur. I am not talking just about specialists—even councillors as well. When you ask how often it is, often I have gone to a DAP meeting and it has been a councillor or a specialist who has quickly come up to me 10 minutes before the hearing and asked if they have a conflict. Most times there is not one, or it is impartiality interest where the presiding member gets to make the call. But practice note 6 gives some guidelines that they should declare it openly at the meeting and the presiding member responds openly so it is all open and transparent.

Hon MARK LEWIS: Just a follow up question. Given that this is a review into the regulations, what are the requirements in the regulations on this issue? It seems to be that is done more by practice note and codes of conduct and thus. Is there any requirement to add to the regulation powers now? It does not seem that the regulations are explicit in this area.

Mr Ferguson: No, you are correct. With any design of regulations there is always a tension whether you should put everything down in the regulation, but if we realise that we should have added something extra, obviously it is a lengthy, arduous process to change it versus whether we should create a mechanism in the regulations but the actual details in a separate document that the director general can change. I take your point; it is a tension we always face when designing legislation.

Hon MARK LEWIS: So you are saying that you do not think there needs to be any addition?

Mr Ferguson: I do not think there needs to be. If someone was flagrantly disregarding the code of conduct, I think that would be grounds under the regulations for the minister to remove the member. I think that comes under regulation 36 or 33, off the top of my head.

The CHAIR: What happens if somebody proceeds to participate in the DAP, not having declared a conflict of interest, and the decision is made and then it is only afterwards they find out that they should not have been involved at all. There is obviously no penalty attached to that, other than their removal.

Mr Ferguson: That is correct. The regulations do not provide for any penalty other than removal. As you would probably imagine, that would be quite a momentous decision for a minister to do that. I think in reality if there were an issue, counselling in a more formal sense is how it is dealt with. If there was a decision in that scenario you are talking about, where someone did have a conflict, under administrative law principles it calls into question the legality of the decision; that is correct.

The CHAIR: I just want to move on to another area that has been canvassed with us. Number 22 in your document on page 32 refers to res judicata in planning applications. The committee has received evidence that there has been no principle of res judicata, which has been explained to me as being something already decided—I am sure you know what that is, Stephen—with regard to planning applications in Western Australia. A refusal on a planning application does not prevent the same application being made at a subsequent time. What is the intention behind the regulations that an applicant who opts for a DAP deciding its application has the option should the DAP refuse its application to make a subsequent application to the local government or even to the same DAP again?

Ms McGowan: I am going to let Stephen respond to this one.

Mr Ferguson: I share your concerns. When the system was designed, with the first of these duplicate applications, I personally counselled refusal because I also thought it was an abuse of process. But when it went to SAT, effectively by agreement it was overturned. The reason given to me was that, in not just planning, but general government decision making, the principal of res judicata should not apply. I guess if you get a refusal from any decision-maker, the law should be open for you to put in a brand new application, as long as you pay the fee. It is worth noting—again this is based on information that was said publicly at these DAP hearings and that I know to the best of my ability—that the applicants were making it clear that the issue actually was not with the DAP or the local government, but with SAT. What was happening was that they were putting in an application to the local government and it was being refused, and instead of going to SAT, which you would imagine was the mechanism they should be following, they knew that SAT took so long that they thought it would be a more expeditious outcome to go through the DAP. So there really is not DAP as a de facto SAT.

The CHAIR: So is this an area where consideration is being given to the new regulations tightening up the existing arrangements in some way?

Mr Ferguson: It is a hard one because, as I said, if you get a refusal as a developer, it is hard to then say, "Well, you can't submit a new application." That is the legal principle; that original decision-makers should always be open to new applications as long as someone is willing to pay the fee. That is really the major mechanism. That is the argument put to me, at least.

The CHAIR: I think you have already mentioned this issue around complaints, and I think you have said that you only had —

Ms McGowan: Formal —

The CHAIR: This is the area of complaints under 25.

Ms McGowan: I think there are probably a number of issues here. There are obviously formal and informal complaints and things that we do hear that cause concern, and clearly matters are often raised, as I understand it, informally with presiding members and with staff in a general sense. They may not translate through to a formal complaint. Most of those raised matters are beyond the department's ability to investigate. Issues of planning merit obviously we cannot go into because under regulation 48 of the DAP regulations we cannot comment on the planning merit of matters. Sometimes they will be about government policy or the system as it operates more generally, so it is not about a specific outcome. The couple I have referred to that have come through more by way of someone writing in with a complaint have been difficult because they have been much more subjective about the tone of voice, the language and the conduct of the meeting. The issue there is that generally there will either be a local government member or one of our staff there. Certainly, I have not had people come to me. It has been very difficult to substantiate those sorts of issues. You have also got complaints that might go through to the Ombudsman, and I am dealing with one at the moment where the Ombudsman has asked us for further information. But, as I say, if it is just a matter of the administration of a meeting, one of our staff will probably deal with the matter, and if it is procedure, we can deal with those. As I say, I think we have actually had 824 form 1 DAP applications since the introduction or thereabouts of the system in 2011. We were aware of only two or three formal complaints made through the processes.

The CHAIR: Do you log the informal complaints where it is just a phone call or letter; do you log them at all?

Ms McGowan: No. It is probably something we could do better. We certainly have not. And bearing in mind there are a number of avenues, including complaining to the Ombudsman, and it may be something dealt with at a meeting, which you might not be aware of. But we certainly could do some more work in logging claims.

The CHAIR: If members of the community phoned your office to make a complaint without lodging a formal written complaint, is feedback provided from that complaint to the members of the DAP?

Ms McGowan: Yes, if I am aware of them. Often the department or DAP officers will actually provide some feedback. In most instances we have had a couple of areas where we have also been conscious of potential defamation in some of the comments made, and in those instances we have not always raised it back with the member. We make a judgement call.

Hon MARK LEWIS: Just clarifying that there are only two or three formal complaints?

[11.20 am]

Hon AMBER-JADE SANDERSON: What is the formal complaint taken with?

Hon MARK LEWIS: Something written.

Ms McGowan: Just a written complaint. There is no form to fill in. As I say, with most people, if they are aggrieved it will generally be on a matter of them not agreeing with the decision on planning merit, which is something we cannot get involved in.

Hon MARK LEWIS: I suppose you do not get any people writing in saying that you are doing a good job. We don't get any of those!

Mr Ferguson: If it is a procedural thing, we have had them in the past and we do deal with them quite quickly and I think quite well. For example, when people complained about some website issues in the early days, we took that on board and issued a practice note and we have a new website. Those are the things that are easy for us to deal with but, yes, the planning area is unfortunately sort of outside our control.

Ms McGowan: I will add that we actually have had quite a number of compliments for some of the DAPs administration, because it is a small team and they do quite a good job. So we do get the odd "well done".

Hon MARK LEWIS: Oh, good.

The CHAIR: I just want to move on to have a talk about the monetary thresholds, which we know now have been amended with the recent reg changes. A significant number of people have questioned the appropriateness of the thresholds as criteria to determine the types of applications. But I must say, quite different comments have been made about city versus country in terms of threshold figures as well. They regard them as being arbitrary and have stated that it is more about the nature of the project and that the value is not necessarily a determinant of complexity. This is bearing in mind that the DAPs have been established to decide significant developments. For those who believe that such criteria are appropriate, some witnesses have submitted that the thresholds should be much higher to appropriately capture development applications of state, regional or local significance. We just want to know whether the department believes there are any other ways of determining what applications may have a significant determination by a DAT rather than just an arbitrary monetary threshold. I understand that there is a different arrangement in New South Wales.

Ms McGowan: New South Wales does have a call-in system. It is a difficult issue generally as to what the most objective determinant might be, and I recognise the comments on different costings between regional, particularly remote regional, and the metropolitan. This is largely a question of government policy that has had the approach with monetary thresholds, and certainly that combined with definitions of some excluded development as well. I think in the document "Review of the Development Assessment Panels—summary of submissions and outcomes of review" the notion of issues of call-in was discussed, and it was felt that that would be more subjective or possibly challenged for being more subjective. The acknowledgement there, I think, and I quote from that report —

> A number of submissions noted that such an approach could become very complex given the lack of consistency across Western Australia in local government planning schemes, and the fact that actual development proposals may include vagaries that make consistent classification difficult. One submission gave the example of a $100 million supermarket distribution centre with very significant traffic impacts, which could potentially be excluded because it would be classed as a 'warehouse' use, despite it being the kind of development that should be considered by a DAP.

So there is always a tension.

The CHAIR: That just gives rise to a separate question. The warehouse development is an interesting idea because I know there have been a significant number of warehouse developments that have popped up out of the commonwealth land near the airport, and there are also a number going up on commonwealth land in the Jandakot Airport area. Do DAPs apply to that over commonwealth land?

Mr Ferguson: To the best of my knowledge and ability, I do not think they do apply. I think that the commonwealth, because of the federal system, is outside.

The CHAIR: I just wanted to be clear on that. So if it is too complex a system to pick up the calling-in system that they have in New South Wales—it has obviously been working in New South Wales. I am not too sure why it would be so different here.

Ms McGowan: Not so much so different. It is a matter of government policy, so I cannot really comment on the final determination, but I think in the discussions on balance it came down to that at least a monetary threshold was an objective measure, albeit the people have some, I suppose, disagreements or different views over what went in and what was out.

Mr Ferguson: They do have a different system in New South Wales. My understanding of just one example is that they do not have a planning commission. We have state planning policies here which must be given due regard by local government but local governments otherwise keep apart from them. In New South Wales they have SEPPs—I cannot remember the acronym—and they apply it automatically. So it is hard to compare oranges to oranges always.

The CHAIR: Given that the threshold has been dropped to $2 million, a lot of people questioned that figure and there is a question of how appropriate $2 million would be considered of sufficient significance to warrant determination by a DAP. We just want to know what the department's view was. Again, you come back and you talk about the difference between a city development that would cost $2 million, which you would expect to be a reasonable-sized development, versus, say, a development in Karratha that would cost $2 million which might not be of the same —

Hon MARK LEWIS: It would be a shed.

The CHAIR: That is right. A reasonably nice shed, I would hope. But when you think that during the boom up there it would cost $1 million or more to build a house, given the evidence that we have had, and I am sure that if you go onto our website you will be up to read it, there has been I think a sufficient amount of commentary about the differences between those two areas and the significant costs attached to building those areas. Will the department give consideration to perhaps having different levels with one maybe for the city and one for the regions to manage that?

Ms McGowan: I think that is really a matter for government policy, so it is certainly something I cannot comment on specifically, but I think the minister in his second reading speech noted that it was both consistency and reliability on complex development applications, not necessarily simple. But $2 million is an opt-in figure and the mandatory figure kicks in, so I think that does give an option to the proponent to determine which process they go through. But as I say, applications of the lower monetary threshold are not necessarily indicative of the complexity, and we have had a number of comments through the various public discussion processes that actually make that point; that something of a lower value can be quite complex and far more difficult to determine. The question of the country versus the metro is probably a matter for government policy.

The CHAIR: I think that is just a very simple example. We were given other types of examples of projects of significance to the state or to the local area.

Hon AMBER-JADE SANDERSON: I think the $2 million was in conflict with the general purpose of DAPs from the community's point of view, which was to do with the significance to the state or regional areas, whereas $2 million is not a lot today in terms of the development.

Ms McGowan: I think the only comment I can make there is that is an optional opt-in threshold.

Mr Ferguson: That is right, and it is maybe a misconception that it is only to deal with issues of significance. It actually also deals with issues of complexity, and issues of complexity may not be of significance in some sense but they might be of complexity and the government policy is that that is best determined by a local proponent voting with their feet, so to speak, by what stream they choose the matter to go to.

Hon MARK LEWIS: Like an acid production plant; maybe one that is complex but not necessarily significant regionally. But I would hope that there were some considerable safeguards around the building of an acid production plant which govern them.

The CHAIR: I just want to move on, given the time, and have a look at a couple of other areas. One area—this is at point 30—was about the valuing of applications to achieve the threshold. Some people have suggested that there have been instances of applicants providing an estimate of the value of their application in order to achieve a DAP threshold and suggesting that all estimates should be subject to an assessment by the relevant local government planning office before the application can be decided upon by a DAP. The validity of a DAP application has also been

questioned should it later be determined that the value was actually below the minimum opt-in threshold. Do you have a view on that?

[11.30 am]

Ms McGowan: I think it works at the margins to some degree both ways. Generally speaking, the application is forwarded to the local government who accepts the application and assesses it, so I suppose if they have concerns over the value, that is the point. It does not tend to come to the DAP members until later in the piece, but the local government has to assess the value of it because that entry forms the basis for the fee they charge in terms of dealing with it there. So that has not changed in terms of the DAP system.

Mr Ferguson: No, so the DAP system actually does not change the longstanding processes. It is the local government who does that assessment because, as Gail said, they charge a fee for themselves, so they have to make that initial assessment. We take everything you say on board. That is part of the reason we introduced that regulation 11A mechanism, because it is hard for the counter staff to —

The CHAIR: Make that decision.

Mr Ferguson: On the spot. In the previous system, on the spot they would have to make the assessment and then accept the fee or not. We have tried to listen to those concerns, and so we have introduced a mechanism to give local government a bit more breathing space on that issue.

The CHAIR: I just want to go through some general matters that are being canvassed so far as we have gone through the hearings and then listed on page 12 of the document of the questions we have. There has been this sort of theme as we go through the hearings from members of the community that a lot of people actually feel quite disenfranchised with the DAP system, and the reasons they have given us is they feel it is fundamentally undemocratic and unaccountable to the people. And that has been a theme through the hearings. We have had a fairly high degree of frustration emitted to us via the presentations that we have had about the DAP process. I was just wondering how do you respond to that?

Ms McGowan: I will probably ask Stephen to give you a dissertation on Edmund Burke and representative democracy.

The CHAIR: I appreciate that, but this is something that is coming up. They are framing their frustration predominantly around various aspects of the regulations, but that has been a consistent view. If that is the case, does the department have a process, a plan or a view about how they can address those types of matters being canvassed? This process was put in place to improve the planning decisions and to make it more transparent, more accountable and more accessible, and the feedback we are getting via this process is that it is not reaching those benchmarks, if you like. What do you do to fix that?

Ms McGowan: I think it is a very legitimate issue in terms of making sure that people understand what the system is and how it works, and I think some of the things we have canvassed this morning in terms of even some of the reasons for refusal or departure from the recommendations are part of that. I think there is always going to be a tension, and I think the Productivity Commission summed it up in their comments where they say, “One of the challenges facing the planning sphere is many property owners want maximum flexibility in doing what they want to their property and minimum flexibility for new entrants to the neighbourhood.” I do not think we can overstate at any point in time how important it is for the community to be involved or to feel as though there is engagement. The process is designed to be transparent. The reality probably of the environment that we operate in today is that there are often real tensions between what particular groups in multiples feel and what the planning system allows based on actually establishing a clear framework. Both the Productivity Commission and the Development Assessment Forum report are around that issue of balancing the need to streamline the approvals process and reduce costs but also making sure that

the community is engaged. It is probably continuing to do work around almost the early strategic setting of schemes and plans as well. I think member Ellis raised it before in terms of, if in fact the DAP is only applying the rules that are in the scheme, then how do people understand what rules apply to them? I am very sympathetic to the fact that many people actually know very little about the planning system or do not engage in the planning system until it actually impacts on them. So I think it is a far broader question.

The CHAIR: They then discover it is a vast jungle they probably wish they had not stepped into.

Hon MARK LEWIS: A follow-up question, if I may, Chair. It is a bit like if the local planning scheme has already been through a broad-based consultation process, it seems somehow to end up standing in the shoes of the responsible authority. What we are hearing is this disconnect of probably not the DAP but the actual local planning scheme. Am I right in that assumption? In terms of hierarchy, is there some work that needs to be done, probably outside of the work of the regulations for DAP that we are dealing with?

Ms McGowan: Absolutely. The best answer I can give to that is that the work that the department has just done on behalf of the Western Australian Planning Commission in terms of setting out the strategic framework of Perth and Peel in the metropolitan area and what we are going to look like at 3.5 million is actually designed to do just that in terms of trying to engage the community. But I think it is one of those issues, because as we confront some of these pressures of how we accommodate the growing population as some of the pressures around infill and other things come on and increase identification, it means there are potentially greater impacts in some local communities than might otherwise have been the case. I think to a large degree the development assessment panel process almost bears the brunt of that at the bottom end of that. It is one of those issues of understanding the system that the broader overall strategic framework is set at state level. Local government schemes need to fall into line with that. Short of having a very regimented scheme so that everyone has the same cookie-cutter approach, which would not work, I think it is a question of how we get people to engage at that sort of scheme and front end.

Hon BRIAN ELLIS: And hence then I suppose that led you to make amendments, as you have just done to some of the regulations, to try to improve the process.

Mr Ferguson: It is not even scheme amendments. Sometimes it is as simple as having appropriate local planning policies in place. I cannot speak on behalf of local governments, but that would be a lot easier than a scheme amendment, although of course the schemes are the things at law that have weight. So you are right; the schemes need to be up-to-date and schemes need to really reflect what the community wants.

Hon AMBER-JADE SANDERSON: A number of local government schemes have not been viewed for 20 years or so. Is there a role there for ensuring that those schemes are regularly reviewed and updated?

Ms McGowan: There certainly is, and it is something again that is being picked up with some of the planning reform. Two changes are being introduced. One is to actually make it simpler to update some of those schemes and make sure that process of review happens, and then some other things like having model scheme text and having deemed provisions will automatically allow the ability. I think it is really again important to just juxtapose the frustration and concern faced by both some members of the community and some of the local governments, because you referred to a lot of the WALGA submission, with work that is coming through both the Productivity Commission report et cetera about how we also impact on things like housing affordability and livability, because every change in every new regulation we introduce at one end seems to have the impact of potentially increasing costs at the other end. So I think if you juxtapose the figures that, for instance, the WALGA survey has highlighted in terms of levels of satisfaction or dissatisfaction or empowerment or disempowerment, the information from the Productivity Commission report or even some of our own responses to submissions, there is quite a contrary view around the need to

make sure the approval processes are simplified and streamlined and as timely as possible, and of course how that fits with making sure we also bring the community along is always going to be a struggle.

[11.40 am]

The CHAIR: I just have a couple of last little questions. Given the makeup of a DAP with two specialists and two representatives from local government, why was it decided not to have any WAPC representation on a DAP?

Ms McGowan: For the very reason of the independence of the DAPs, because the DAP will stand in the shoes not only of the local government but also stand in the shoes of the WAPC from time to time, and it was felt that that would actually take away from the independence of the DAP. So that is why we have made a very clear distinction between the role of the department in helping the minister with the framework around DAPs, but the WAPC has no role as such in the DAP system. Stephen, is there anything?

Mr Ferguson: The only other thing that we did put in our submission was if you keep in mind that the WAPC members are quite a large number of departmental heads and agencies, so really just to emphasise what Gail said, we wanted to emphasise that DAPs are actually independent even of a government process, so part of that quasi-judicial sort of idea.

The CHAIR: Have there been any DAP members who have been removed by the minister since the introduction of the regulations?

Ms McGowan: To my knowledge, no.

Mr Ferguson: Not to our knowledge, no.

The CHAIR: A question relating to that—is there a minimum number of meetings that DAP members have to attend in order to continue their membership? What do you do with regular non-attenders?

Ms McGowan: I would have to double check.

Mr Ferguson: The regulations say that if you miss three meetings in a row, the minister can remove you, I am pretty sure. Obviously for councillors, you may never have a DAP meeting in your area, but it is really specialists that we want to —

Ms McGowan: That is no different to missing a meeting, though.

Mr Ferguson: Yes, you are absolutely correct. But yes, the regulations already have a mechanism for that.

Ms McGowan: I spent quite a bit of time giving leave of absence or approving leave of absence.

The CHAIR: Is that right?

Ms McGowan: Only for someone going on an overseas holiday or through illness, so there is a mechanism that can —

The CHAIR: And so they are replaced by their —

Ms McGowan: Their alternate.

The CHAIR: Yesterday morning, as you will be aware, the Delegated Legislation Committee moved a motion to disallow your new tranche of regulations. I understand that will be up for debate sometime in October. Do you have any views on that?

Ms McGowan: I received information or notice yesterday about the concern they had. I have not yet had an opportunity to discuss it in full with the minister's office. From an administrative point of view—Stephen can elaborate—we do not have a problem with what they are suggesting, I suppose, is the easiest way to say it.

Mr Ferguson: My understanding is that the major concern is its regulation 16(2A), which is the provision that says that regulations override a local planning scheme. That is what has caused a lot of it. Our understanding is that you have to read that regulation in concert with regulations 8, 9 and 16, which makes it clear that DAP just stands in the shoes. My understanding is what they desire—and we are subject to what the minister decides—to really remove that from the DAP regs and to put that in the act, and probably to make it clear in the act that it is only dealing with procedural issues. The DAP cannot override the local planning scheme in terms of the merits.

The CHAIR: I am just thinking in terms of how we progress our inquiry into the regulations. Given that we already have a few little issues, it might be helpful to us that once you have got that advice and you know what you are going to do with it, you might provide that information to this committee as well, because we will be tabling our report prior to that motion being debated, and it might actually have an impact on what we say in our report.

Ms McGowan: Subject to the minister's concurrence, I am very happy once a decision has been made.

The CHAIR: Do we need perhaps to write to the minister and ask for that or is it enough that we ask you?

Ms McGowan: I think it is enough for you to ask us.

The CHAIR: Okay. I just think it would be helpful to this committee to have all that information made available to it. Any other questions?

Hon MARK LEWIS: One which sort of follows on from Amber-Jade's question about attendance and to do with the quorum and the changes to the quorum: is there any evidence that local government members are not attending DAPs to in fact veto the quorum of a DAP? Is that the reason why —

Mr Ferguson: I think the issue is actually in the reverse. The issue is actually specialists not attending at the last minute, mostly because of conflict. So to be honest, in terms of this concern, it is far more likely that you will end up with one presiding member and two local government councillors. To the best of my recollection, that has actually been the major issue. There have been issues when they have been absent too if a very controversial matter is there, especially in rural areas with wind farms. One comes to mind where he is going to front up at least to the quorum, but to be honest —

The CHAIR: I cannot possibly think who would not like wind farms!

Mr Ferguson: The reverse scenario is actually the much more likely scenario. The regs are designed so that it works both ways. We are not saying that we are going to have meetings without councillors; we are actually saying that we might have meetings with a presiding member and two councillors and expect no other specialist, if they pull out at the last minute.

Hon BRIAN ELLIS: It is probably by the by, but does that inhibit the performance of DAPs? Is your pool of specialists deep enough, because you said it is a small city, so in light of what you have just said, does it affect the quality of the performance of the DAPs?

Mr Ferguson: I think some of the recent regs have also tried to—I think we have changed it. For example, we have had issues with presiding members pulling out at the last minute and a deputy presiding member pulling out at the last minute, and currently under the old system the minister would have to frantically do a new appointment. I think we have changed the regulations now so that we can actually pull a presiding member from another DAP. I think the pool is sufficiently large. It is just on individual applications at the last minute where we have had some of these issues.

Ms McGowan: I think the same has happened with the quorum of most with a lot of unforeseen things, but generally I think the pool is large enough.

The CHAIR: We just need you to table your responses to all the questions, which are contained in the document, and we thank you very much for that; obviously if you just table them and identify them. You have also given us a number of documents in this pack, and I think you just need to identify and table those documents for us as well, just so that Hansard knows about it.

Ms McGowan: Yes, okay. The documents are a 2009 departmental consultation paper, "Building a Better Planning System"; a 2009 discussion paper called "Implementing Development Assessment Panels in Western Australia"; a 2010 report on submissions, "Implementing Development Assessment Panels in Western Australia"; a 2011 Ernst &Young report into fees and charges for DAPs; and a review of DAPs fees and charges for 2015–16.

The CHAIR: Thank you very much for the evidence you have provided to us today. We will work our way through this. It may very well be towards the end of our inquiry that we may ask you to come back in and finalise some questions for us at the very end.

Ms McGowan: Thank you very much.

The CHAIR: Thank you for your time.

Hearing concluded at 11.49 am