

5.2 Interim Submission – Planning and Development (Development Assessment Panels) Regulation 2011 (05-047-01-0016 OT)

By Oscar Thomson, Project Officer, Planning

Moved: Mayor Ron Yuryevich

Seconded: Cr Steve Wolff

That the interim submission to the Parliamentary Committee on Uniform Legislation and Statutes' Inquiry on the Planning and Development Act (Development Assessment Panels) Regulations 2011 be endorsed subject to the addition of point 9:

- **That the Department of Planning be required to provide detailed internal performance data (raw data) for all DAP applications, so that internal processing times can be considered by the Parliamentary Inquiry and any independent organisation engaged to do a cost-benefit analysis.**

RESOLUTION 3.1/2015

CARRIED UNANIMOUSLY

In Brief

- In October 2014, the Parliamentary Committee on Uniform Legislation and Statutes commenced an investigation into the operation and efficiency of Development Assessment Panels (DAPs). As part of that investigation, the committee called for submissions from concerned stakeholders.
- In order to guide the Association's development of a representative submission on behalf of the sector, WALGA sought feedback from members, and, in collaboration with the Local Government Planners Association (LGPA), conducted a comprehensive analysis of data that was gleaned from Development Assessment Panel agendas and minutes during their first three years of operation.
- The submission period closed on the 30 January 2015.

Attachment

Interim submission to the Legislative Council's Parliamentary Committee on the Planning and Development Act (Development Assessment Panels) Regulations 2011 (main report)

Interim Submission, Appendices One - Four can be accessed [here](#).

Relevance to Strategic / Business Plan

- Providing strong representation for Local Government
- Providing effective leadership for Local Government
- Building a positive profile for Local Government
- Enhancing the capacity of Local Government to deliver services

Policy Implications

The following State Council resolutions have been made on Development Assessment Panels: -

- Resolution 166.1/2013 – 6 March 2013. That WALGA advocate to the State Government for a review of Part 11A of the Planning and Development (Development Assessment Panels) Regulations 2011 to clarify uncertainties with respect to the responsibilities of Local Government.
- Resolution 138.6/2012 – 5 December 2012. That the results of the Development Assessment Panels – Local Government survey be noted and that WALGA advocate to the State

Government to consider amendments to the Development Assessment Panels eligibility criteria.

- Resolution 54.3/2010 – 2 June 2010. That amendments to the Development Assessment Panel system are accepted on the basis that the State Government works with Local Government on the development of the DAP regulations to ensure effective criteria for the referral, operation, fees, administration and appeals and that there is no cost shifting to Local Government.

Budgetary Implications

Nil.

Background

The Development Assessment Panels (DAPs) planning approval system was introduced in July 2011 with the intention of creating a more streamlined planning approval process and to establish a better balance between independent professional advice and Local Government representation through the involvement of independent technical experts in the determination of significant development proposals.

On 5 August 2014, three years after the DAP system commenced operations, WALGA wrote to the Legislative Council to request advice as to when the independent review of the DAP regulations, as required under section 171F of the *Planning and Development (Development Assessment Panels) Regulations 2011*, would be undertaken. This provision states that an appropriate standing committee will carry out a review of the Regulations as soon as practical after the first two years of operation.

As a result of WALGA's advocacy, on 21 October 2014 the Legislative Council referred a review of the DAP regulations to the Standing Committee on Uniform Legislation and Statutes. The Committee is required to provide a report by the 14 May 2015 and the findings are to be presented to the House of Representatives. The Association was invited to a preliminary meeting with the Standing Committee to discuss the scope of the review on 17 November 2014.

In collaboration with the Local Government Planners Association (LGPA), the Association conducted a comprehensive analysis of all DAP agendas and minutes from meetings held between July 1, 2011 and June 30, 2014.

Analysis of the 520 development applications dealt with by Development Assessment Panels during this period revealed that:

- there has been an increase in applicant fees by 19%;
- it takes longer than 100 days to process applications (on average);
- the process results in a high number of SAT appeals at great expense to the Department of Planning; and
- DAPs expended vast resources in determining a significant number of relatively straightforward and clear cut applications that could have easily been processed under delegated authority by Local Government officers.

The Association provided the summary of these findings, all raw data and suggested terms of reference to the Committee to assist with their investigation.

Later in November 2014, the Association conducted a follow up survey with Local Government planning officers and Elected Members to examine the sector's experience of DAPs three years into operation. This survey complemented an earlier survey conducted by WALGA in 2012 and the above data analysis.

In summary, survey results revealed that 84% of respondents disagree that the DAP system is streamlining the determination process, 66% do not believe the DAP system is fulfilling its stated objectives to improve the transparency, reliability and consistency of the determination process and

only 22% of Local Government respondents said they are able to recover the costs associated with processing DAP applications.

A plethora of anecdotal evidence was collected during the survey to support these claims, with many respondents calling for an opt-in system, a higher monetary threshold for referral of DA's to a DAP and other improvements to the DAP regulations.

Comment

The Association has utilised all of the information collected to prepare a comprehensive submission, including a number of recommendations for improvement, as requested by the Parliamentary Committee on Uniform Legislation and Statutes.

The attached submission recommends the following changes to the DAP system:

1. That a full and comprehensive cost-benefit analysis of the DAP system be conducted by an independent organisation as a matter of priority.
2. That the minimum monetary threshold for an application to be eligible for consideration by a DAP be increased to at least \$30 million.
3. That the DAP system be amended to be an opt-in only process, so that when an application does meet the minimum monetary threshold, the proponent still has to elect to have the application determined by a DAP. This will identify individual Local Governments that are unable to adequately satisfy applicant expectations and allow the industry to determine the relevance of DAPs.
4. That a procedure similar to that in NSW be introduced to 'call in' a development application where it has state or regional significance and should be determined by a DAP, even if it is below the monetary threshold.
5. That DAPs be permitted to process development applications that are below the new minimum monetary threshold, providing the application has been 'called in' as having either state or regional significance or referred by a Local Government.
6. 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.
7. That the Parliamentary Committee investigate specific examples of DAP decisions provided by Local Government members, in order to consider the transparency of the meeting process.
8. That the Department of Planning's proposed changes to the regulations as a result of their internal review of DAPs in 2013, be put on hold until a cost-benefit analysis of DAPs has been undertaken and the outcomes of this Parliamentary review are finalised.

The attached submission was presented to the Legislative Council's Parliamentary Committee before the 30 January 2015 deadline. In accordance with WALGA procedures, a copy of the submission was forwarded to State Council's Planning and Community Development Co-Chairs and the WALGA President for comment prior to submission. Support for the submission was obtained.

WALGA Submission to the Legislative Council on Uniform Legislation and Statutes

Planning and Development Act (Development Assessment Panels) Regulations 2011

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Executive Summary

WALGA welcomes the opportunity to provide comments on the effectiveness of the DAP regulations. In 2014, the Association completed a review of the first three years of operations of the Development Assessment Panel (DAP) system in Western Australia. The review informed this representative Local Government Submission.

A major change to the planning system was introduced in July 2011 with the implementation of Development Assessment Panels (DAPs). The system was introduced with the aim to improve the planning system by providing more transparency, consistency and reliability in decision making on complex development applications. Ultimately, the purpose of DAPs was to establish a better balance between independent professional advice and Local Government (LG) representation through the involvement of independent technical expertise in the determination of particular types of development.

The Department of Planning's (DoP) Development Assessment Panel Procedures Manual states:

"The DAP model has been introduced to achieve the following:

- streamline the determination process for particular types of development applications by eliminating the requirement for dual approval under both the local and region schemes;*
- involve independent technical experts in the determination process; and*
- encourage an appropriate balance between independent professional advice and local representation in decision-making for significant projects.*

The DAP model is designed to strengthen the approval process which will in turn contribute towards the growth and development of Western Australia as a whole."

A data analysis was conducted to measure the performance of DAPs by gathering and analysing data collected from all DAP meeting minutes and agendas since they commenced in 2011 until June 30, 2014. In addition to comprehensive data analysis, a survey was undertaken of WALGA members to identify the Local Government experience of DAPs more than three years into their operation. The survey undertaken by the Association has revealed that the majority of Local Government planning professionals and Elected Members believe that the DAP system is failing to achieve its stated objectives and in some cases, has created significant issues in the development assessment process in Western Australia (WA). Based on our assessment of the data and responses to surveys of Local Government members, the DAP approval process has added delays and complexity to the planning system and has failed to improve the reliability, consistency and transparency of the determination process. Additionally, the DAP system has failed to achieve its stated objective of streamlining the development assessment process and has reduced community input into development projects that have a high degree of local significance but questionable state or regional significance.

Having considered a diverse range of information collected on the operation of DAPs during their first three years of operation, including the benefits and disadvantages, the Association strongly recommends that prior to any changes to the DAP's regulations being considered, a full and comprehensive cost benefit analysis of the DAP system be completed by an independent organisation. The true cost of the DAP system to the State and Local Government, and the development industry is paramount to determining whether it provides an improved process and hence whether it is actually beneficial to the planning system in WA.

It is clear from an extensive review of the first three years of operation of the DAP system and feedback from a number of high level planning professionals and elected members, that the purported benefits of DAPs have not eventuated. WALGA's research finds:

1. There is little evidence to suggest the DAP system has added value to the approvals process as 95% of all DAP applications have been determined in accordance with the recommendation outlined in Responsible Authority Reports (RARs). (As prepared by Local Government planners).
2. The cost of development application fees due to the introduction of DAPs has increased by 19% to \$15.1 million because of the new value based DAP assessment fees collected during the development assessment process. While the increase in additional fees is substantial, the monies collected by the Department of Planning do not cover the full cost of operating the DAPs system and additional costs

are being borne by the Department of Planning and Local Government. The great majority of these DAP applications could have simply been processed by the existing Local Government system, reducing the additional costs and delays that have been passed onto Government and consumers through the DAP approval process.

3. The weighted average processing times of DAP applications have increased from 76 days in the first year of operation to 102 in the third year, excluding the minimum 10 days of administration required to distribute the decision. This indicates that it is currently taking over 110 days on average to process DAP applications. Each day of delay represents a significant cost to the developer, which is subsequently passed onto the consumer.
4. Over the first three years, 68 DAP decisions or 13.1% of all DAP applications were appealed to the State Administrative Tribunal (SAT) at the Department of Planning's expense. This could indicate that the DAP system is creating an uncertain and less reliable environment for planning approval applicants. Further, the Department is also absorbing the direct and indirect costs of an appealed DAP decision.
5. DAPs were introduced to consider applications of state or regional significance. However, the responses to WALGA's survey question about whether the DAP system achieves its objective of only processing state or regionally significant development applications, over 84% of respondents indicated they either disagree or strongly disagree while only 7% said they either agree or strongly agree.
6. Over half of all DAP applications were valued at less than \$15 million and only 16% were valued at more than \$50 million. An increase in the minimum threshold to at least \$30 million is required to exclude Development Applications (DAs) that are unnecessarily called before a DAP and simultaneously reduce the number of DAP meetings required.
7. While the DAP system was introduced to handle complicated development applications, the analysis finds that the most common category of development to be considered by DAPs was residential, closely followed by mixed use, which is often predominately residential. This type of development is rarely considered to have either state or regional significance but can have local significance as it affects local residents. Furthermore, survey respondents indicate that the local voice is decreased during the DAP process. Therefore, the result is a scenario where locally significant proposals are determined without decisions makers having due regard to local communities.
8. The survey analysis indicates that 83% of respondents do not believe that DAPs are streamlining the determination process, 66% believe that the system is not achieving its stated objective of being more transparent, consistent and reliable and only 22% believe their Local Government is able to recover the cost of processing DAP applications.

If the DAP system was introduced to overcome the perceived difficulties of developers with specific Local Governments, the result is a costly venture that penalises the state, developers and all Local Governments, the majority of which have a very good track record for processing development applications, whether they are of local, regional or state significance.

The Association's submission makes a number of recommendations to the Legislative Council committee on Uniform Legislation and Statutes for improvement to the DAP regulations, as follows:

1. That a full and comprehensive cost-benefit analysis be conducted by an independent organisation.
2. That the minimum monetary threshold be increased to at least \$30 million for when an application may be referred to a DAP.

3. That the DAP system be amended to be an opt-in only process, so that when an application meets the minimum monetary threshold, the proponent has to elect to have the application determined by a DAP (this would ensure that minor proposals are not submitted). This will identify individual Local Governments that are unable to adequately satisfy applicant expectations and allow the industry to determine the relevance of DAPs.
4. That a procedure similar to that in NSW be introduced to 'call in' a development application where it has state or regional significance and should be determined by a DAP, even if it is below the monetary threshold.
5. That DAPs be permitted to process development applications that are below the new minimum monetary threshold, providing the application has been 'called in' as having either state or regional significance or referred by a Local Government.
6. 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.
7. That the parliamentary committee investigate specific examples of DAP decisions provided by Local Government members, in order to consider the transparency of the meeting process.
8. That the Department of Planning's proposed changes to the regulations as a result of their internal review of DAPs in 2013 be put on hold until a cost-benefit analysis of DAPs has been undertaken and the outcomes of this parliamentary review are finalised.

Main Report

Introduction

A major change to the planning system was introduced in July 2011 with the implementation of Development Assessment Panels (DAPs). The system was introduced with the aim to improve the planning system by providing more transparency, consistency and reliability in decision making on complex development applications. Ultimately, the purpose of DAPs was to establish a better balance between independent professional advice and Local Government (LG) representation through the involvement of independent technical expertise in the determination of particular types of development. In 2012, WALGA conducted a survey with a number of elected members and planning officers that revealed a number of key concerns. In order to continue this initial examination of the DAP system three years on, in October 2014, the Local Government Planners Association (LGPA) and WALGA carried out an extensive data review in order to evaluate the performance of the DAP approval process. In November 2014, WALGA carried out an additional survey with a number of elected members and planning officers.

DAP Aims and Objectives

Amendments to the Planning and Development Act 2005 gave the Governor the necessary enabling powers to establish the DAP system as a means of approving development applications. DAPs began operating in 2011, with the establishment of 15 regional DAPs covering every Local Government in Western Australia.

The Department of Planning's (DoP) Development Assessment Panel Procedures Manual states:

"The DAP model has been introduced to achieve the following:

- *streamline the determination process for particular types of development applications by eliminating the requirement for dual approval under both the local and region schemes;*
- *involve independent technical experts in the determination process; and*
- *Encourage an appropriate balance between independent professional advice and local representation in decision-making for significant projects.*

The DAP model is designed to strengthen the approval process which will in turn contribute towards the growth and development of Western Australia as a whole."

The Association's investigation into DAPs focuses on these statements from the DAP procedures manual and the DAP regulations as a means of determining if the DAP system has achieved its objectives by using published data (Appendix One) and engaging directly with Local Government (Appendix Two).

Proposed Changes to Regulations in the DoP Review of the DAPs September 2013

It is noted that an internal review of the DAP system resulted in the identification of a number of changes that would be pursued by the Department. It is unclear whether any changes to the regulations have been drafted. The Association requests that any action to facilitate these amendments be placed on hold until a full and comprehensive cost benefit analysis of DAPs has been completed by an independent organisation.

- Amendment to the optional and mandatory monetary thresholds
- Changes to the regional groupings to create three regional DAPs
- Introduction of a 'stop-the-clock' mechanism
- DAP meeting quorum to be achieved if a presiding member and any other two members attend
- Director General given the capacity to nominate an alternative presiding member
- Modifications to DAP approvals or conditions of approval to be dealt with via electronic communication if necessary

Data Analysis Methodology

The LGPA and WALGA review of DAP operations was conducted using data on DAP activities from July 2011 to June 2014. The agendas and minutes of all DAP meetings during that period were gleaned of relevant data in order to develop actual figures that demonstrate the performance of DAPs against their establishment rationale of creating a more transparent, reliable and consistent planning system and streamlining the determination process. The review process included the collection of data about the dates that development applications were submitted and approved, their value in millions, the number that were appealed at SAT and the circumstances in which they were approved. Using this information a plethora of figures emerged, including the proportion of DAP decisions that aligned with Responsible Authority Report (RAR) recommendations, the proportion that opted in with proposals valued under \$7 million, the range of development categories that were assessed by DAPs and the proportion of DAP determinations that amended conditions prior to approval. The summary of all of the data is provided in Appendix One and the raw data was submitted to the Committee in December 2014.

Analysis Key Findings

Since the introduction of the DAP system, the number of DAP applications has increased from 93 in the first year to 219 in the third year, with a total of 520 DAs processed during 382 meetings or 1.36 DAs per meeting. Over half of all applications had their recommended conditions amended at least slightly, but in some cases, all conditions were amended. Overall, approximately 95% of all DAP applications were approved while 5% were refused with reasons. Importantly, DAP decisions aligned with the recommendation outlined in the RAR approximately 95% of the time. In regional areas this figure grew to 98% and in metro areas the figure was lower at 91%.

Approximately 14% of DAP applications were valued at less than \$7 million indicating that the developer 'opted in' to the DAP processing system in relatively few cases. Over half of all DAP applications were valued at less than \$15 million and only 16% were valued at more than \$50 million. The weighted average value for DAP applications over the first three years was \$32.5 million.

With regard to the processing time for DAP applications, calculating the difference between the date that an application was submitted to Local Government and the date a decision was made, reveals that over the first three years, it has taken a weighted average of 91.1 days to process DAP applications. Importantly, it takes a minimum of 10 days after the date of the decision before the final outcome is issued to the applicant due to a number of mandatory administration processes. Therefore, it has taken an average of 101.1 days to process DAP applications over the first three years of operation. Considering processing days year by year, the time taken to process DAP applications has increased consecutively, with a weighted average of 76.1 in year one, 86.1 in year two and 101.6 in year three. Therefore, the latest figure indicates that it is currently taking 111.6 days to process DAP applications including the minimum of ten days administration to deliver a DAP decision. The Planning and Development Act timeframes are 60 days (without advertising) and 90 days (with advertising) which the DAP's average is exceeding.

In 2010, amendments were made to the PD Act which included new heads of power under section 263(2) for the Governor to make regulations to provide for and regulate reporting by Local Government in relation to planning matters. In light of the planning reforms already underway, and Local Government reform process, now is an appropriate time to see the introduction of such reporting regulations. These statistics would enable the Local Government sector to demonstrate competence in their planning processes and provide a clear comparison between the two systems.

The analysis utilised the current DAP fee structure to estimate the cost of DAP fees during the first three years of operation. The analysis reveals that developers have paid approximately \$2,908,024 during the first three years of operation. A further estimation of the usual Local Government fees included in all planning applications reveals that there has been an increase of 19% in development assessment fees as a result of the introduction of DAPs.

The review also considered the proportion of DAP decisions that were appealed to the State Administrative Tribunal (SAT). This includes those appealed for refusal and those that appealed specific conditions attached to their given approval. Approximately 9.7% of DAP applications were appealed to SAT in the first year, 13.5%

in the second year, and 14.2% in the third year. Overall, 13.1% or 68 DAP decisions made during the first three years of operation were appealed and the proportion increased consecutively each year. It would be pertinent to compare the number of Local Government 'Council' determinations that were appealed to SAT during the same period, as WALGA found only 16 development applications that were appealed after consideration at a full Council meeting.

Summary of Key Findings

The following key points emerged during the data analysis:

1. There is little evidence to suggest the DAP system has added value to the approvals process as 95% of all DAP applications have been determined in accordance with the recommendation outlined in Responsible Authority Reports (RARs). (As prepared by Local Government planners).
2. The cost of development application fees due to the introduction of DAPs has increased by 19% to \$15.1 million because of the new value based DAP assessment fees collected during the development assessment process. While the increase in additional fees is substantial, the monies collected by the Department of Planning do not cover the full cost of operating the DAPs system and additional costs are being born by the Department of Planning and Local Government. The great majority of these DAP applications could have simply been processed by the existing Local Government system, reducing the additional costs and delays that have been passed onto the Government and onto consumers through the DAP approval process.
3. The weighted average processing times of DAP applications have increased from 76 days in the first year of operation to 102 in the third year, excluding the minimum 10 days of administration required to distribute the decision. This indicates that it is currently taking over 110 days on average to process DAP applications. Each day of delay represents a significant cost to the developer, which is subsequently passed onto the consumer.
4. Over the first three years, 68 DAP decisions or 13.1% of all DAP applications were appealed to the State Administrative Tribunal (SAT) at the Department of Planning's expense. This could indicate that the DAP system is creating an uncertain and less reliable environment for planning approval applicants. Further, the Department is also absorbing the direct and indirect costs of an appealed DAP decision.
5. Over half of all DAP applications were valued at less than \$15 million and only 16% were valued at more than \$50 million. An increase in the minimum threshold to at least \$30 million is required to exclude Development Applications (DAs) that are unnecessarily called before a DAP and simultaneously reduce the number of DAP meetings required.

2014 Survey Key Findings

In November 2014, following an extensive data analysis of DAP minutes and agendas, WALGA conducted a survey of members about Local Government experience of DAPs three years into their operation. This was similar to the survey conducted in 2012. By asking a number of the same questions, the Association was able to gauge any change in experience after the sector had had time to get used to the new system. The survey generated a strong response with a number of high level planning professionals and elected members providing responses. Responses represented nearly 40 metropolitan and regional Local Government areas. In total, there were 65 individual responses, 12% Elected Members and 88% planning professionals. Half the elected members were DAP members and the great majority of officer responses were from CEOs, directors, coordinators, executives, managers or senior planning officers.

A number of key findings emerged from the survey with results generally aligning with the results of the 2012 survey and the completed data analysis completed by the Association. The key issues raised during the survey reflect on the fundamental objectives of DAPs and to what extent the existing DAP system is achieving them.

The DAP system is identified as paying less regard to community input than when applications are processed by Local Government. In general, the combined results of various studies into DAPs reveal that the system is a burdensome and an administratively expensive scenario where the local community is losing its voice on those

development proposals that affect them most. This is because the DAP system seems to capture mostly locally significant proposals rather than state or regionally significant proposals as stated in their original justification.

The majority of the survey respondents generally support the position of the Association, i.e. that the DAP system should be amended to better achieve its intended objectives of balancing independent professional advice with local government representation and streamlining the determination process for state or regionally significant developments.

Summary of Key Findings

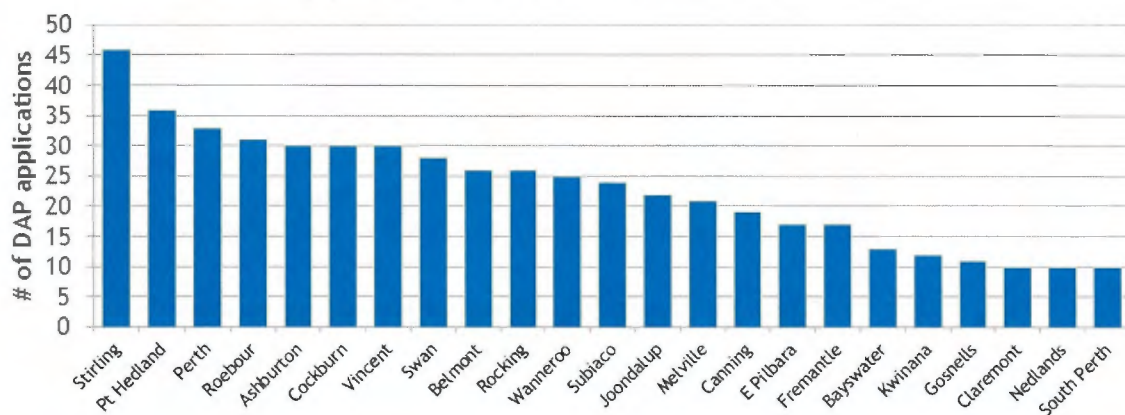
The following key points emerged during the analysis of the results:

1. Approximately 83% of respondents said that the DAP system is failing to achieve its stated objective to streamline the development application process, an increase from 63% when this question was asked one year after the DAP system commenced.
2. A total of 66% of respondents said that the DAP system is failing to achieve its stated objectives of making the determination process more transparent, reliable and consistent. Comments specified significant inconsistencies and poor reliability of the DAP system and identified a considerable lack of transparency where DAPs have been able to exercise discretionary clauses without giving reason and no transcript has been published in meeting minutes.
3. When asked if the DAP system only determines proposals of state or regional significance, 84% said they either disagree or strongly disagree. Many identified that the use of a monetary figure to determine state significance is rudimentary and the great majority of DAP applications so far have had local significance only, if any significance at all. Many applications that were processed by DAPs were identified to have been compliant with statutory provisions. This type of development would be normally be processed by the Local Government's internal development assessment systems with greater efficiency.
4. Approximately 75% of respondents said that DAP applications were delayed or put on hold either often or occasionally, and the great majority identified a lack of information from the proponent as the cause. Furthermore, respondents identify that the DAP system created a breakdown in communication between decision maker and proponent, where the Local Government system provides the opportunity for the two parties to engage prior to submission, ensuring the application is in order, the DAP system removes that important dimension of development assessment.
5. Over half of the respondents identified that the amount of senior planner time required to process each DAP application is in excess of 24 hours. The time required during preliminary assessment, dialogue with the applicant, modifications, administration, correspondence, negotiations and report writing consumes more time when preparing a RAR than when simply processing the application internally. If every DAP application took 24 hours in senior planner time to process, a conservative cost estimate of the first three years alone would be in excess of \$800,000, not including local government overheads or internal comments or review processes.
6. Over 90% of respondents said that DAPs modify conditions of approval either occasionally or often. Respondent comments identify that from the Local Government perspective, DAPs seem to be trying to justify their role by making minor modifications to development conditions when, while given the power to do so, this was never identified as a role for DAPs. Regardless, the development of a standard set of legally verified conditions of approval is already underway as part of the Association's Planning Improvement Program.
7. A total of 48% of respondents said that community concerns are never incorporated into the DAP application process. A number of development applications were specifically identified as having been approved despite significant community opposition and substantial non-compliance with statutory scheme provisions.
8. One of the objectives of the DAP system was to provide a balance of independent professional advice and Local Government representation. However, 55% 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.

Additional Information Collected

In December 2014, following the collection of the 2014 survey data, WALGA made contact with those Local Governments that processed the highest number of DAP applications during the first three years of operation. The purpose was to gather additional information the total number of Development Applications recorded and processed by the Local Government so they could be compared against DAP figures. A further aim was to determine how DAP applications would have been processed had they been proceed by Local Government. The Association collected the overall proportion of development applications that were processed under delegated authority, by DAPs and by full council meetings. Furthermore, the Association requested a senior level planning officer in each Local Government to determine which DAP applications would have been determined under delegated authority and which would have gone to a full council meeting.

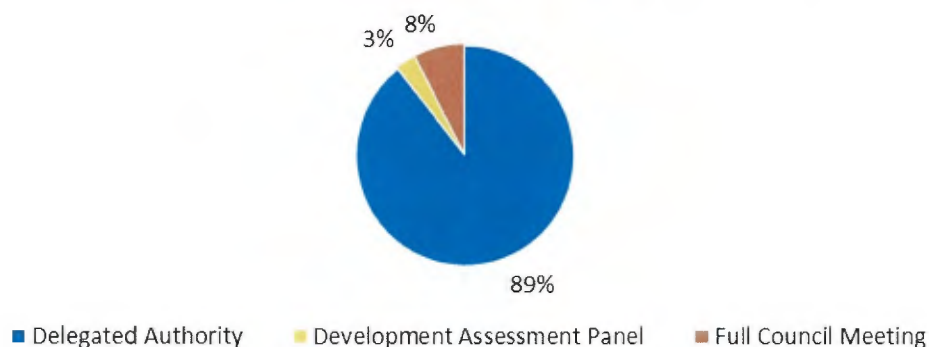
DAP Applications Per Local Government



City of Perth Example

The figures for the City of Perth indicate that the Local Government processed just over 1000 development applications during the three year period, of those, 89% were processed under delegated authority, 8% were processed at full council meetings and 3% were processed by DAPs. Of the 32 applications that were determined by a DAP during the three year period, the City of Perth indicated that 15% would have been processed under delegated authority while the remaining 85% would be have been processed by a full council meeting. However, the City of Perth LDAP is in a unique circumstance because of the major position that the capital city holds in the state. Consequently, the number of high level development applications that are brought before full council meetings would be higher than in other JDAP areas. This also indicates that the Elected Members and officers at the City of Perth are experienced at considering major development proposals and the city has a high rate of delegation to officers.

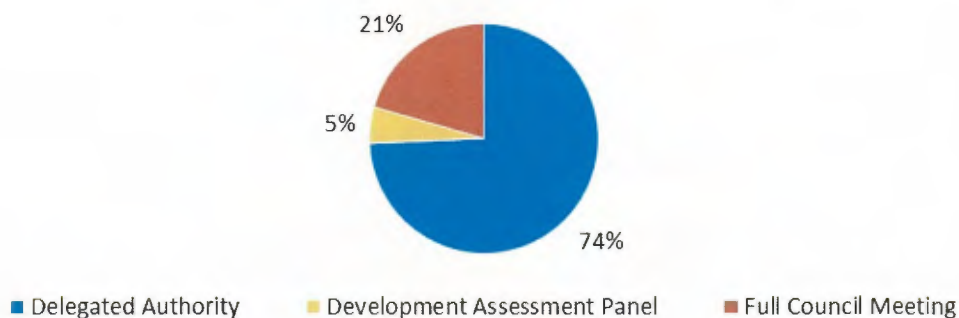
City of Perth Development Assessment Figures mid 2011 - mid 2014



City of Port Hedland Example

The figures for the City of Port Hedland indicate that the City processed just over 700 development applications during the three year review period and just over 74% were processed under delegated authority, 5 percent were processed by DAPs and just over 20% were processed by full council meetings. Furthermore, of the 36 DAPs that were processed during the three year period, the City of Port Hedland indicated that over 66% of them would have simply been processed under delegated authority. This is an indication that the DAP system is mainly attracting applications that have only local significance and are mostly compliant with the strategic and statutory framework. Essentially, the majority of the applications processed by DAPs could have been more efficiently processed by the Local Government Administration while those that were less compliant with the framework set out by the scheme and policies could have been processed by the democratically elected Council. It is unlikely that any of the DAP applications processed by the City of Port Hedland had any state or regional significance. One application was valued at a total of \$270 million, but this proposal was described as 'workforce accommodation', a generally straightforward application. This type of application is more likely to require environmental approval than planning approval from a panel of specialist experts and elected members, as it is in a remote location and would have little impact on existing communities. The second most valuable development was valued at \$69 million and consisted of 55 grouped dwellings, this type of development may have a high level of local significance, as the level of density required may affect those residents living in close proximity to the site. However, a large residential development like this is unlikely to be considered to have state or regional significance, which brings into question why it was required to be processed by a DAP, and why is a monetary threshold considered an appropriate measure of significance?

City of Port Hedland Development Assessment Figures Mid 2011 - mid 2014



Summary of Findings

This study discerns that the combination of a 95% alignment with RAR recommendations and the high delegation rate of most Local Government is an indication that technical expertise already exists in Local Government planning, therefore, DAPs are not currently adding any additional 'expertise' to this process. Therefore, the implementation of an opt in system and a higher monetary threshold will ensure that only applications that require the introduction of government appointed technical expertise in decision making or dual approval are processed through the DAP system.

Determining State or Regional Significance

The Association suggests that there are better alternatives than the use of a monetary figure to determine state and/or regional significance. For example, the NSW government has adopted a system for development applications to be called-in if they are identified as state significant proposals (SSD). The system is highly comprehensive and the focus is on ensuring that the Department determines only truly state or regionally significant proposals. If a proposal is successfully declared an SSD, the proposal is assessed by the

Department of Planning and Environment's 'Joint Regional Planning Panels' with input from Local Government, other NSW government agencies and the community as part of the assessment process.

The call-in system in NSW was enabled via amendment to the Environmental Planning and Assessment Act of 1979. The act enables the state to 'call-in' or 'declare' a development as State Significant Development (SSD). The Act also allows 'specified development on specified land' to be declared SSD and treated as such. The guideline sets out the process that proponents, councils and other bodies should follow in seeking to have development proposal called in as an SSD.

A similar set of criteria for WA could be considered to ensure only development applications of state significance are determined by a DAP. The NSW criteria and process is further outlined in Appendix Four.

Does the DAP System Satisfy its Aims and Objectives?

In its original discussion paper, the Department of Planning (DoP) contended that DAPs were introduced in order to streamline the determination process, involve independent technical experts in the determination process and to create a balance between independent professional advice and local representation in the decision-making process for significant projects.

There is clear evidence that the DAP system has failed to streamline the approval process with results from the 2014 survey indicating that 75% of respondents believe DAP applications were often or occasionally subject to delays and the data analysis indicating the average DAP application processing time is in excess of 100 days. A number of different issues have caused delays in the decision making process, however, the most frequent causes were a lack of information from the applicant, a lack of information from the DAP secretariat and delays in issuing the decision notice. Furthermore, the processing of form 2 applications presents a considerably more complex method than that operated by Local Government.

For instance, 22 of the 81 form 2 applications were determined in a DAP meeting where the form 2 was the only item on the agenda. In meeting fees alone this represents a cost of at least \$46,200, and only \$3300 was collected in fees, the majority of these could have easily been processed by the Local Government under delegated authority.

In the DAP procedures manual it is stated that the DAP model has been introduced to streamline the determination process for particular types of development applications by eliminating the requirement for dual approval under both the local and regional schemes. However, the data analysis reveals that in total, only 22 of all 520 or 4.2% of DAP applications during the first three years required dual approval.

While it could be argued that the DAP system has achieved its aim by introducing 'independent technical experts in the determination process', whether the system has achieved an appropriate balance between this advice and local representation in the decision making process is highly debatable. The majority of those who consider that the DAP system is failing to appropriately balance professional advice and Local Government representation, believe that this failure was caused by the imbalanced DAP membership bias of three technical experts versus two Local Government representatives. Even amongst those who thought that the DAP system does appropriately balance professional advice and Local Government representation, many recognise that there is a more widely held perception that local views are not well represented or heard.

The DAP eligibility criteria has failed to ensure that development proposals of regional or state significance progressed efficiently through the approval process. Respondents to the Association's survey identify a monetary figure as a poor measure of significance, and 84% of respondents said they disagree or strongly disagree that DAPs only determine state or regionally significant applications. Furthermore, the analysis reveals that the most common development category to be called before DAPs during the first three years was residential, accounting for 120 DAP applications. While some have significant local significance because these developments affect those living within the vicinity, very few of these would be considered to have state or regional significance. Additionally, the DAP system is identified by Local Government members to pay less due regard to community input. Therefore, the DAP system is reducing attention to community input on a number of locally significant applications.

The review of the past three years indicates real or perceived loss of Local Government representation in the DAP approval process, resulting in the loss of valuable local and historical knowledge of approvals relevant to a development proposal. Local knowledge and input is often important to ensuring quality and consistent decisions are made. Most Elected Members, particularly those with multiple years' experience, have a good understanding of the Local Planning Scheme provisions, however, a lot of DAP members' questions have related to the provisions within a Scheme or local planning policy. For development proposals in regional areas, because local representation is outweighed by Perth based technical experts, there are concerns, particularly amongst the locally Elected Members, that decisions are not always appropriately balanced and there is a strongly held perception that the DAP system has simply overridden planning at the local level. Several members have indicated that the merits of local planning policies are being questioned by DAP members rather than simply applying a policy that has undergone community consultation.

It is also important to recognise the dangers of the DAP system which could result in a more rigid, policy and scheme compliant approach. In particular, there is a risk that this approach prevents more innovative and imaginative development proposals and solutions from coming through the system. The DAP system is known to exercise the discretionary clause found in some planning schemes that enables them to approve a development regardless of whether or not it complies with the provisions of their scheme. Should this continue Local Government may elect to remove this clause themselves, therefore removing their own capacity to exercise discretion when a non-compliant, but innovative development application is submitted.

Furthermore, it is important to recognise that the previous approval system provided development proponents with the opportunity to engage, discuss and negotiate directly with the decision making authority. This offered greater flexibility and meant that innovative development proposals which, although not fully compliant with the provisions of the local planning scheme, could be sounded out, considered on the planning merits and progressed with greater certainty. High quality planning outcomes could be lost if the development assessment system loses sight of the bigger picture by only rigidly applying the Local Planning Scheme.

DAP Application Criteria

The data analysis reveals that 14% of all DAs processed by DAPs opted in with developments valued at less than \$7 million. Although it would be difficult to precisely ascertain, a more telling observation would be to determine the number of applications with a development value between \$3m and \$7m for which proponent's had chosen not to 'opt in' to a DAP determination. However, this would require further research in collaboration with WALGA's members. Overall, the analysis confirms that the number of DAP applications could be significantly reduced by significantly increasing the minimum value threshold.

Anecdotal evidence suggests that applicants are undertaking efforts to avoid the DAP system by staging developments to avoid the mandatory opt in threshold or by under valuing the cost of a development. This indicates that developers are either satisfied with the manner with which Local Government manage applications or that developers are reluctant to enter into the DAP process, or both. There are three possible explanations for this:

- Local Governments are more likely to determine an application quicker than a DAP
- DAP applications are more costly given the additional application fee and additional time taken to be approved
- Local Government is available to engage in discussions with the applicant

Many DAP applications have been relatively clear-cut and straightforward applications that are consistent with the provisions of the Local Planning Scheme. Therefore, under the provisions of the previous planning approval system, many applications would have been determined in a much more efficient manner by Local Government planning officers (under delegated powers). The efficiency of the DAP process is also questioned by the fact that only 5% of DAP determinations have been contrary to recommendations set out in RAR reports. This indicates that of the 520 DAP applications processed over the first three years, 493 would have had the same outcome had the DAP system never been introduced.

A significant proportion of DAP decisions were appealed at SAT, which questions the effectiveness of the DAP system, as the proportion of appeals has increased over time. It is also considered that the DAP system has introduced a higher degree of uncertainty into the planning approval process than previously existed. The previous approval system gave proponents the opportunity to create a dialogue with the Local Government who also represented the decision making authority. This allowed proponents to ask questions and gain more certainty of the likely outcome of a particular development proposal, and make amendments as required. However, the introduction of the DAP system and the inaccessibility of the decision making authority has removed this opportunity thereby possibly adding a high degree of uncertainty for proponents.

Given the complexities of the DAP approval system and its inefficient use of Local Government resources, together with the approval process, it is evident that the DAP application eligibility criteria should be revised.

Cost Benefit Analysis

The Association requests that as a priority, a full cost benefit analysis of the DAP system be conducted by an independent organisation. The purpose of this is to determine if the full costs of the DAP system have provided an equal or greater benefit to a range of stakeholders, as outlined below. Furthermore, the results of a full cost benefit analysis would enable a research/fact based approach to DAP reform, and consequently, a high level of benefit vs cost in the future. The cost benefit analysis could investigate the following points:

State Government <ul style="list-style-type: none"> • DAP staff • Office overheads • State Solicitors Office / Legal advice • Insurance • Member sitting fees • Training • Travel • Meals • Other Allowances • Publications / Training materials • Web management • General administration • DoP manager / planning officer time • SAT appeals • Advertising 	Applicants <ul style="list-style-type: none"> • Access to decision makers • Delays • Additional application fees • Meeting schedules and location • Increased steps of administration • Other costs • Ability to overcome a poor relationship with LG • Specialist member consideration
Local Government <ul style="list-style-type: none"> • Administration • Advertising • Planning department resources • Meeting attendance • Travel • Hosting Meetings • Preparation of Responsible Authority Reports • Liaison with applicants 	Rate Payers <ul style="list-style-type: none"> • Access to decision makers • Loss of amenity • Loss of community representation • Loss of respect for planning system • Beneficiaries of a development • Neighbours of a development

Conclusions

The 2014 data analysis and survey supplements the findings of the survey conducted in 2012 and clearly articulates that the DAP system is failing to achieve its objective to streamline the determination process. Additionally, the system has caused delays, severed proponent and decision making authority engagement, created a sense of local community disengagement, added very little value to the decision making process, and has proved costly for both administrators, proponents and tax payers.

Since the implementation of the DAP system a number of steps have been taken by the WA state to solve many of the perceived problems that the DAP system may have been established for. For example, single dwellings may soon be exempt from obtaining planning approval when compliant with acceptable development outcomes in the R-codes.

The Association's best practice delegation guidelines are nearly complete and will be made available to all Local Governments in 2015, this will clearly and consistently guide Local Government in the way that planning applications are dealt with under delegated authority and triggered to the Local Government Council. The planning improvement portal has nearly 100 members, representing a third of Local Government planners in Western Australia, the portal is a place where best practice planning guidelines are developed in collaboration with WALGAs members and distributed throughout the sector. Online development application systems have already been rolled out at numerous Local Governments providing significant improvements to the quality of the applications being submitted and the transparency of the planning decision making process in WA.

Recommendation

The Parliamentary Committee has requested specific recommendations for improvement to the DAP system. Having considered all data and information gathered during the past three years, the Association strongly recommends that prior to any changes to the DAP's regulations being considered, a full and comprehensive cost benefit analysis of the DAP system should be completed by an independent organisation. The true cost of the DAP system to the State and Local Government and the development industry is paramount to determining whether it provides an improved process and hence whether it is actually beneficial to the planning system in WA.

The Association presents a number of key recommendations for improvement to the DAPs legislation:

1. That a full and comprehensive cost-benefit analysis be conducted by an independent organisation.
2. That the minimum monetary threshold be increased to at least \$30 million for when an application may be referred to a DAP.
3. That the DAP system be amended to be an opt-in only process, so that when an application meets the minimum monetary threshold, the proponent has to elect to have the application determined by a DAP (this would ensure that minor proposals are not submitted). This will identify individual Local Governments that are unable to adequately satisfy applicant expectations and allow the industry to determine the relevance of DAPs.
4. That a procedure similar to that in NSW be introduced to 'call in' a development application where it has state or regional significance and should be determined by a DAP, even if it is below the monetary threshold.
5. That DAPs be permitted to process development applications that are below the new minimum monetary threshold, providing the application has been 'called in' as having either state or regional significance or referred by a Local Government.

6. 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.
7. That the parliamentary committee investigate specific examples of DAP decisions provided by Local Government members, in order to consider the transparency of the meeting process.

That the Department of Planning's proposed changes to the regulations as a result of their internal review of DAPs in 2013 be put on hold until a cost-benefit analysis of DAPs has been undertaken and the outcomes of this parliamentary review are finalised.

