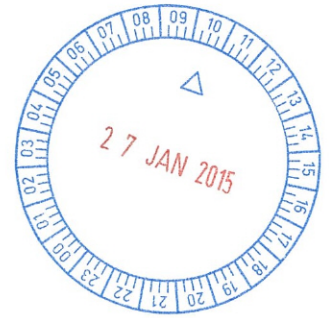


Mr and Mrs Jeff Hansen



27th January 2015

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

Dear Ms Doust

Submission - Parliamentary Inquiry: Planning and Development (Development Assessment Panels) Regulations 2011

We are writing to in relation to the inquiry into the *Planning and Development (Development Assessment Panels) Regulations 2011*.

We are residents of Myaree who, for nearly two years, have been opposing a development at 94 Kitchener Road, Alfred Cove which was assessed by the Metro Central Joint Development Assessment Panel over 2013/2014. Marina has been a committee member of the *Striker Balance!* Community Action Group formed to oppose the development proposal and was a Principal Petitioner for Petition No. 35 tabled by Sue Ellery MLC in the Legislative Council in April 2014.

The decision by the JDAP on 10 March 2014, which approved a high-density apartment block (three-storeys, 84-dwellings, 6 housing blocks long, unbroken at any point) at 94 Kitchener Road, an R40-coded site in a gazetted low-density, R20-zoned suburb was made by a DAP system which we have come to understand has serious flaws that your Committee should be made aware of.

Our community has been torn apart by this JDAP decision – the stress of the assessment process and its outrageous decision has forced many of our neighbours to put their houses on the market and move suburbs. Just drive around the streets surrounding this site and you will be amazed by the number of For Sale signs. Even before the sod has turned on the development, the landscape of our locality has been changed forever and not for the better.

We believe the JDAP's poor decision-making therefore questions the relevancy and validity of all State planning requirements and their stated objective of "proper and orderly planning". In particular under the DAP system and its Regulations, the Residential Design Codes (R-Codes) and local planning schemes (including policies and zoning) mean absolutely nothing as the panel members are afforded, without any accountability, the ability to ignore recommendations in the local government's Responsible Authority Report, limitations in the R-Codes and approve gross variations to any development meeting their self-appointed cost threshold – and in our case against the wishes of the local community, the City of Melville's planning experts, an Independent Planning Panel, local Councillors and our two Members of Parliament (Dean Nalder MLA and Matt Taylor MLA).

The inclusion of two local government members (i.e. Councillors) as part of the five member assessment panel apparently serves no valid planning or community purpose. Surprisingly, we found this out at the first JDAP meeting to assess the development in September 2013 when the JDAP Presiding Member Charles Johnson advised

attendees that the DAP Regulations exclude them from making their decision based on their local knowledge as a Councillor. The Councillors are in no way qualified to make decisions about development applications worth potentially tens of millions of dollars – therefore what purpose do they serve?

At DAP Meetings, the public (if granted) are only afforded a measly five (5) minutes to put their case against (or for) the development to the panel's unelected members. This can hardly be called genuine community input. We are also unable to raise questions or seek clarifications during the meeting and the DAP members have ignored their own Standing Orders 5.5 to put alternate motions in writing. The public are then ambushed with amendments and alternative motions at the meetings, with no ability to question, yet challenge them. This in fact occurred at the 10 March 2014 JDAP meeting.

During the Appeals process the public is not considered 'an interested party' (who can this be when they are neighbours to a grossly non-compliant development?) and therefore changes to development applications are made behind closed doors at the State Administrative Tribunal (SAT) mediations. The public only finds out at the DAP meetings – where they have no opportunity to question, ask for further information or an explanation of their decision. This can hardly be called transparent and accountable.

An area that has frustrated ourselves and our community – not to mention was questioned by the Environment and Public Affairs Committee at the Petition No. 35 hearing on 22 October 2014 - is that of blame for use of discretionary powers – the DAPs blames local government planning schemes – the Councils blame the DAPs for their outrageous use of discretionary power to approve gross variations. The DAPs unfettered use of the discretionary clauses in a Local Planning Scheme are currently without any public scrutiny or justification of their decision.

In light of the above, we would like the Committee to consider the adoption of the following recommendations:

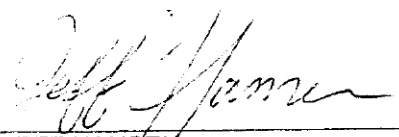
1. That a clause be inserted in the DAP Regulations, indicating that multi-unit developments will be restricted to sites which meet all the following criteria (in addition to those already in place):
 - a. The site in question is on a high-density transit corridor, as indicated on the relevant Local Planning Strategy and Local Planning Scheme;
 - b. The site is coded R40 or above; and
 - c. No variation to the "Deemed-to-Comply" Requirements applicable to the site's R-Code will be allowable where the majority of neighbouring (i.e. bordering or opposite) built sites are zoned at a lower R-Code than the site in question.
2. In addition to Point 1 above, that a clause be inserted in the DAP regulations (and in the R-Codes) regarding the exercising of discretionary powers. This should state that the exercising of discretionary powers by JDAPs to vary the designated R-Code "Deemed-to-Comply" requirements be limited to variations of no greater than one R-Code above that of the site in question. For example, an R40 zoned site would allow the JDAP the discretionary powers to approve a non-compliant development only if its non-compliance fell somewhere between the R40 "Deemed-to-Comply" requirements and those applicable to an R50 zoning. This discretionary power to vary would, of course, be ruled out under the provision of Point 1 (c) above.
3. Where any use of discretionary power is exercised to approve a variation to the "Deemed-to-Comply" Requirements (as set out in Points 1 and 2 above), the decision-maker is to provide a full, written justification of the decision to the owners of the neighbouring sites, and that this justification also be stated publicly before the relevant Council's next public Council meeting.
4. The composition of DAP panels to include a majority of elected Councillors from the relevant Council, and that the Presiding Member of each JDAP be one of these elected Councillors.
5. That the DAP Regulations be revised to ensure that Councillors on DAP's be required to actively represent and reflect the views of their communities and Councils in the decision-making process. This would also require the revocation of Clause 5.13.7 from the current Standing Orders.

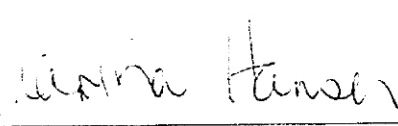
6. That projected costs for developments set by developers be subjected to assessment by the relevant local government Planning Office before the application can proceed to deliberation by a DAP.
7. That, if the developer's current right of appeal against a DAP decision is to be retained, that a parallel right of appeal for local residents against a DAP decision that affects their community be similarly established.

We hope you will make serious consideration for the points we have made above. Whilst we recognise that infill developments are on the increase, these have to be done with a happy medium between communities and developers and using the State's planning guidelines as a rule of thumb. The DAP's current ability to approve whatever they want, without accountability, is coming at a great cost to communities and in the short and long term will be recognised as bad planning.

We look to the Committee to see through the loopholes in the DAP Regulations and to do your utmost to change the DAP system for the better of all stakeholders.

Yours sincerely


JEFF HANSEN


MARINA HANSEN