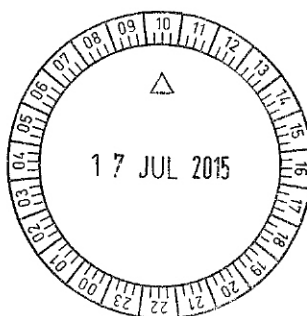


Enquiries: Hon. Kate Doust MLC
Our Ref: DB/302
Doc ID: D-15-46285



City of
SouthPerth

Hon. Kate Doust MLC
399 Albany Highway
VICTORIA PARK WA 6100

E-MAILED
10/07/15

10 July 2015

**Submission to the Parliamentary Committee – Planning and Development
(Development Assessment Panels) Regulations 2011**

Dear *Kate* Kate

The City of South Perth welcomes the opportunity to make a submission on the operation and efficiency of Development Assessment Panels.

City's submission is detailed in the attachment.

In the event you wish to discuss this matter further, please feel welcome to contact me via return email or telephone.

Regards

Cliff Frewing
Chief Executive Officer
City of South Perth



**Submission to the Parliamentary Committee -
Planning and Development (Development Assessment Panels) Regulations 2011**

An Executive Summary

The purpose of this submission is to highlight areas where Development Assessment Panels ("DAPs") are observed to be failing to perform to the expectations of the community and the Council.

DAPs were formed with the intention of enhancing planning expertise in decision making, and improving the balance between technical advice and local knowledge (and increasing the speed with which planning approvals might be issued).

In line with this vision, the genuine expectation of all key stakeholders was that the approved developments achieve harmony and balance with the relevant streetscape character and take into account the needs of not only the future users of these development, but also the current residents in the neighbourhood.

In other words, it is important that the community is able to embrace the quality of these built outcomes as they will be the most affected in the longer term.

DAPs have been empowered with the responsibility to make this happen.

The comments have been broadly classified under the following subheadings:

1. The DAP process;
2. Representation on the DAP;
3. SAT review of development applications determined by DAP;
4. Monetary threshold for development applications to DAP;
5. Amenity considerations and right of review by neighbours;
6. Written justification for DAP decisions; and

On a positive note, the City of South Perth believes that adequately addressing the concerns identified in this document will significantly address current issues with DAPs' performance and building better communities.

While we can thank the past for all the lessons we have learnt, we should now make conscious efforts to facilitate a better future for all involved.

Comments forming the submission:

1.	The DAP process
	<p>a. DAP minutes require more detailed information. Meetings are generally held during the day and with limited notice. Members of the community are less able to attend and present at daytime meetings. The record of DAPs meetings would be improved by noting comments especially objections and points made by local government and "specialist" members. The community is entitled to know what is argued and proposed on their behalf.</p> <p>Audio-recording of meetings should occur as a matter of course.</p>
	<p>b. All panel members have a substantial number of documents to read in a few days in preparation for DAP meetings. For example, 15 traffic management reports, surveys and studies were submitted by various stakeholders in relation to the Dan Murphy's Bottle Shop Addition to Como Hotel. This poses the question – "Did all members actually have time to examine all of this material, read the RAR report assessment and consider additional papers?"</p>
	<p>c. The 90 days' time frame for determining DAP application requires RARs to be completed within 80 days. Sometimes this can be a rushed process. Providing a thorough analysis of the development proposal can be difficult as the City is bound to submit reports even though all matters raised with the applicant at times have not been fully addressed.</p> <p>As an improvement measure, extension and flexibility in the determination time frames will allow the inclusion of a stakeholder consultation process (referral agencies and City departments) before advertising of a Development Application should be considered. The proponent could then go back and address the issues, and submit modified drawings and documents with all the necessary information before the application is advertised. A number of questions that are asked during the advertising process would have been already addressed. It will also eliminate the inclusion of conditions that should really be resolved before the development approval is issued.</p>
	<p>d. Any development application that is to be considered by the JDAP should have the associated drawings made available to the public without any restrictions. While it is noted that the drawings are made available along with the Responsible Authority Report prior to the DAP meeting, the plans should be displayed on the WAPC website, when the application is formally submitted with the DAP. Should the owner / applicant wish to keep the internal layout of their development confidential, they may conceal the internal layout by masking it.</p>
	<p>e. Third party representation and intervention should be expressly provided for in the SAT process during the mediation and hearing stages. Third party review right for affected members of the local community should also be provided for.</p>
2.	Representation on the DAP
	<p>a. Councillor representation should be increased to three, so balancing the present unequal ratio. The presiding member, being a government appointee, would still retain a casting vote thereby still providing the State the final say should there be a tied vote. However, any casting vote would require a greater level of consideration and justification.</p>

	<p>b. As a consequence of the current lack of adequate or democratic local government/community representation on the DAP - two Councillors to three appointees of the Minister; the local knowledge and genuine concerns expressed by the community are not adequately represented in the DAP determinations. As a result, these essential elements that should form the basis for any planning decision are not reflected in the DAP decisions.</p>
3.	SAT review of development applications to DAP
	<p>a. If an applicant has chosen to adopt a Council approval process and the development application is refused, there should be a prohibition on the applicant then submitting the same or similar application to the DAP seeking approval using the DAP process and vice versa. Recent example being a Child Day Care Centre in the City of South Perth that was refused 9-0 by Council. Now, the applicant has (re)submitted the same application for determination by the DAP – with the hope that the DAP will approve a development determined to be unacceptable by the entire Council.</p>
	<p>b. Where an application, refused by the DAP, is referred to the SAT for a review of the DAP decision; such an application should only be referred back to the DAP for reconsideration if there have been significant and fundamental changes made to the proposal through the mediation process. Otherwise, applicants can make nominal changes hoping that they may receive a different outcome a second or third time around by a planning authority that only rarely rejects a development application.</p> <p>An example is Dan Murphy's Bottle Shop Addition to Como Hotel, where the application was referred back to the DAP, under SAT legislation, twice following rejections of the application by the DAP with the effectively same development application approved on its third time before the DAP.</p> <p>Should a development application qualify to be reconsidered by the DAP, a full public consultation process and assessment should again be required.</p>
4.	Monetary threshold for development applications to DAP
	<p>a. The monetary threshold for any development application to qualify for consideration through the DAP process should be raised rather than lowered, as the Minister for Planning has announced recently.</p> <p>The DAP process should be reserved for significant development applications in the order of \$20 million plus with the Planning and Development Act framework clearly providing that (1) the onus is upon the applicant to prove at the time of lodgment of the application that the cost of building the development will exceed the threshold by way at least of a certified Quantity Surveyor's report and (2) the validity of the approval being strictly conditional upon the actual cost exceeding the threshold.</p> <p>This would prevent DAP applications, that are incorrect. Disingenuous DAP applications can occur where applicants claim to have met the threshold simply to take their application to the DAP where approval is an almost automatic (if not certain) outcome, unlike where the application was to be considered by a democratically elected Council who are cognizant of local amenity, traffic and parking and streetscape considerations.</p> <p>It is entirely inappropriate for thresholds to be maintained at the current low levels or be moved further downward. Such continued low thresholds will encourage mediocrity and dual standards</p>

	<p>(the DAP "anything goes" versus the local government local amenity standards) applying within communities.</p> <p>Low jurisdictional thresholds are entirely inconsistent with the stated intent of the DAP's aim of focussing on important strategic developments.</p> <p>Additionally, the public are left with the obvious conclusion that DAPs have been implemented to circumvent the normal checks and balances of local government planning controls in the interests of the community and their amenity rights.</p> <p>With the present lowered threshold of just \$2 Million, almost any medium density development would qualify to be assessed at the DAP. This is putting a greater work load on DAP members, especially the local government representatives who often have full time jobs and have to attend day meetings on an ever increasing basis – as applicants increasingly try to avoid the normal scrutiny of the local council and seek the almost certain approval following DAP consideration.</p> <p>Should there be no change to the present DAP process, fees will need to reflect this time allocation as planning responsibility shifts away from the local communities to the DAPs. The fees payable to the responsible authority should reflect the time and effort involved in preparing the report and carrying out associated consultation and referrals.</p>
5.	Amenity considerations and right of review by neighbours
	<p>a. The system does not currently offer the right of review to neighbour(s) whose interests may be severely adversely impacted by a development approved by a DAP.</p> <p>Community interest is currently poorly represented, other than by community deputations, through panel local government members who can only do their best to represent the community and its interests.</p> <p>Frequently, the Minister's chosen DAP specialist members outvote the concerns of elected local government members 3 to 2 – even where only two specialist members attend.</p> <p>When a person with a special interest is aggrieved they currently have no rights to request a SAT review of DAP decision.</p> <p>On the other hand, the developer has a statutory right of review – even though the system is perceived to be already well and truly "stacked" in their favour by the almost automatic approvals process of DAPs.</p> <p>This is neither fair nor equitable, with no fair consideration of community interests in the current system. There should be a right of third party review of DAP approvals where standing can be shown (i.e. a resident adversely impacted by the proposed development).</p>
	<p>b. The decision by DAP members has to date given insufficient weight to the local "amenity" issues. Amenity factors clearly form a part of the City's Town Planning Scheme and key basis for planning assessments. An assessment of the amenity impacts requires comprehensive understanding of the local area and expectations of the local community. It is frequently observed that the lack of local knowledge by the majority non-local representatives on the Development Assessment Panel results</p>

	in decisions that do not take into account these factors in their entirety.
	<p>c. DAPs have no knowledge of historical use of discretion (variations) in the local area. Local governments are better placed to understand how variations have been dealt with over the period since an area was settled and development occurred in an orderly fashion. DAP members have no understanding of what is not considered acceptable by the community nor would appear to have demonstrated any interest in so learning.</p> <p>For example, proposed multiple dwellings at Nos. 10 & 12 First Avenue, in Kensington where there is a wide discrepancy in zoning, the local government and community understand how this discretion links to amenity. The amenity impact links to the City's Town Planning Scheme which provides a rationale to support the use of discretion in this instance, and similar other instances.</p>
6.	Written justification for DAP decisions
	<p>a. All DAP members when making alternative recommendations should be required to provide a comprehensive report justifying the reasons why they made the alternative recommendations contrary to carefully developed recommendations following technically competent analysis of applications and how it meets or does not meet the local planning scheme</p> <p>Wordsmithing on the run by DAP members to approve a development application is not good governance and shows little respect to the community.</p> <p>Officers are required to justify their recommendations in their RAR reports, and it follows that panel members do likewise.</p> <p>Accountability and transparency in decision making is important.</p>
	<p>b. In the event a RAR recommend refusal for an application, a comprehensive report should be provided by the DAP to justify in detail the reasons for its approval, its findings contrary to any findings in the RAR report and the material the DAP (majority) relied upon.</p>