

## PUBLIC SUBMISSION

### Inquiry into the operation and effectiveness of the Planning and Development (Development Assessment Panels) Regulations 2011

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**Date:** Monday 11th May 2015

**To:** Standing Committee on Uniform Legislation and Statutes Review,  
C/- Ms Samantha Parsons, Committee Clerk,  
Legislative Council, Parliament House, GPO Box A11 Perth WA 683  
Email: unileg@parliament.wa.gov.au  
Copy: kate.doust@mp.wa.gov.au

**From:** Greg Benjamin,

**Re:** Criticisms of Metro Central Joint Development Assessment Panel (JDAP)  
DAP Application Number DAP/14/00542  
Proposed Demolition & Redevelopment of Bottle Shop (BWS replaced by Dan Murphy)  
& Additions/Alterations to "Como Hotel"  
Lot 253 (No 243) Canning Highway & Lot 6 (No 148) South Terrace, South Perth

1st JDAP hearing 15th August 2014                      3/2 decision rejects application

2nd JDAP hearing 17th February 2015                      3/2 decision rejects application

3rd JDAP hearing 17th April 2015                      3/2 decision approves application  
Agenda 100 Item Number 10.1

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Thank you for the opportunity to make a submission to your Committee.

My submission is based on the recent Metro Central Joint Development Assessment Panel (JDAP) decision which at a 3rd hearing on 17th April 2015, reversed the previous two decisions, and in a 3/2 vote, approved DAP/14/00542, being a development at the Como Hotel which includes knocking down the existing BWS Bottle Shop and replacing it with an almost four times larger Dan Murphy destination discount liquor outlet.

Many have been appalled and disillusioned with the outcome of this decision, explained as follows:-

#### #1. "Full House" of submissions rejecting DAP/14/00542

A "Full House" of submissions supporting rejection of the proposed development were made to the 3rd JDAP hearing on 17th April including:-

1. Responsible Authority Report by City of South Perth, which per clauses in our Town Planning Scheme and other advice, opposed the development on the grounds of added traffic congestion, difficulties with vehicular access, insufficient parking, and social impact on amenity.
2. Main Roads WA (Mr David Van Den Dries and Mr Ashis Parajuli) whose presentation clearly stated that the proposed development would exacerbate existing traffic congestion.
3. Expert traffic consultants Uloth & Associates (Mr Darren Levey) who said there would be at least a 3 fold increase in customer numbers compared to the existing BWS, and disputed the applicant's unrealistic reports that there will be minimal traffic impact.
4. Solicitor Mr Haydn Robinson, contended that the revised application continues to disregard the legitimate interests of Norton Street residents Phillip and Tina Watson, who he was acting for.
5. Local Resident Dr Peter Howat addressed well researched social impact on local amenity.
6. Local Resident Mr Barry France spoke to points including that traffic devices will not prevent traffic congestion and loss of residential amenity.
7. Local Resident Mr Graham Kew gave compelling experience of expected traffic congestion based on evidence at the Hyde Park Hotel Dan Murphy in North Perth.
8. Local Resident Mr Greg Benjamin explained why all fundamental reasons for rejection of the proposed development have not changed.
9. Local State MP John McGrath spoke to reasons for community rejection of Dan Murphy.
10. Federal MP Steve Irons presented reasons for community rejection of Dan Murphy.
11. Mayor Sue Doherty spoke to reasons for community rejection of Dan Murphy.
12. Unanimous Motion passed at the City of South Perth Council Meeting on 24 March 2015 which clearly said that "[The] Council does not support the development of large format liquor outlets at the Como Hotel site".

Local Resident presentations were consistent with the large majority outcome of a well-advertised Special Electors Meeting on 14th July 2014.

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#### 2. Community reaction to decision approving application

On the 18th April 2015, being the day following the JDAP decision, I wrote a letter to the Southern Gazette (Page 6) which was shared via email to City of South Perth Council, State MP John McGrath, Federal MP Steve Irons, and other concerned residents.

Here are the written responses to me from four City of South Perth Councillors:-

- I feel that this kind of establishment is ill suited to the area (Cr Veronica Lawrance Page 7)
- I am deeply disappointed that this “terrible proposal” has been approved (Cr Glenn Cridland Page 8)
- Good planning principles designed to provide residents with safe and liveable neighbourhoods are being cast aside... How intelligent people can make such dumb decisions is beyond my understanding (Cr Colin Cala Page 8)
- I am truly speechless, perturbed and confused as to how on earth we ended up with such an outcome so purely in contempt of our South Perth residents wishes (Cr Sharron Hawkins-Zeeb Page 10)

Our Mayor Sue Doherty in her public statement on 23rd April has said:-

- I am extremely disappointed JDAP decided to approve this barn like liquor store at a high risk and very busy location (cnr South Tce and Canning Hwy); According to the AAMI Crash Index 2015, Canning Highway, Como is within the top five crash hotspots in Perth

Also these comments from four local residents:-

- I concur that this Panel is definitely NOT working in the best interests of the community... A review of the JDAP is long overdue (Betty Skinner Page 7)
- This is appalling! That three unelected people, none of whom lives in South Perth, can overrule, by only one vote, community opposition to an unnecessary commercial project being pushed by a rapacious organisation, is totally undemocratic (Murray Jennings Page 7)
- Who are these people from JDAP and how can they overrule the City of South Perth Council? I fear for this area (Rosanne Swick Page 10)
- Democracy died last night (Andrew Cox Page 10)

Further to this reaction, I ask:-

**Why have a community consultation process if overwhelming local community objections are going to be blatantly ignored?**

If there is room for discretion, given the history on this matter, surely you would expect a decision to lean and support a “Full House” of presentations!

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#### 3. Criticisms of JDAP

It is clear to many that the JDAP system is unfairly stacked in favour of developers, and against the local community, whether it be unanimous Council resolutions, or the overwhelming voice of local residents.

##### (a) Voting Majority of Pro Developers

It is clear that the Panel members, as appointed by the Minister for Planning, are stacked with a voting majority of 3 out of 5 who look for any excuse to approve a development. This is clear from the comments of Councillor Cridland who said below “the public record shows that the JDAP has approved each and every application lodged for a development in South Perth – often against the votes of Colin Cala and myself as the local community’s representatives and often against the City planner’s report and recommendations” (Page 8).

##### (b) Secret Mediations

The system is weighted in favour of developers when it allows secret mediations which exclude local community interest groups. This occurred several times during the Dan Murphy process, including the unexpected secret mediation which took place within a week of the 2nd hearing which rejected the application. I believe the principles of accountability should demand transparent open hearings.

##### (c) Lack of Notice

Local community interests are given inadequate notice of JDAP hearings. As an example, the last hearing was on Friday 17 April. On Tuesday 14 April I received in the post a City of South Perth notification letter dated 10 April, stating that if I wanted to make a presentation, it needed to be lodged 72 hours before the meeting. Strictly I had 2 hours to digest 197 pages of documents to prepare and lodge my presentation. Thankfully the Department of Planning gave an extension to me, as it did to other numerous local residents in the same situation. I have already written to the Department requesting more adequate notice be given, say 2 weeks.

##### (d) Lack of Explanation for Change of Decision

In my opinion the JDAP Minutes inadequately explain why there has been a change from the 2nd JDAP hearing (when the application was rejected) to the 3rd JDAP hearing (when the application was approved). Essentially the fundamental reasons for rejection have stayed the same viz. added traffic congestion, difficulties with vehicular access, insufficient parking, and social impact on amenity.

##### (e) Pro Development Bias in conflict with “Orderly and Proper Planning”

The 3 Panel members who voted to approve the application, seemed intent on making their decision, irrespective of the overwhelming well-reasoned loud voice of local community opposition which was clearly better aligned with “Orderly and Proper Planning”. It was very disturbing to hear the 3 Panel members have a very blinkered short term pro development bias which rejected probable developments on the Canning Highway, as presented by Main Roads WA, and was only too willing to accept the reports of the applicant with their big business vested interests.

##### (f) Repeated Appeals to SAT only by Applicant

It is clearly an unfair system where repeated appeals to the State Administration Tribunal can be made only by the applicant, and not by the community who had a “Full House” of presentations against the development. The only alternative to the community is a very costly appeal to the Supreme Court.

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#### 4. Final Comments

It is evident from my own experience, and that of others in Perth (including Article by Geoff Pearson Page 12), that the JDAP system is unfairly stacked and biased in favour of developers, and against the local community.

The 3/2 decision at the 3rd JDAP hearing 17th April 2015 was an appalling outcome as it did not respond to the overwhelming well-reasoned loud voice of local community opposition which was clearly better aligned with "Orderly and Proper Planning".

The situation for local communities is more alarming given the JDAP threshold has recently been reduced to \$2 million.

There are well founded widespread fears of community concerns being cast aside, in favour of big business property developments, especially with more expected mega towers in South Perth.

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#### References

Metro Central JDAP Minutes 17th April 2015 - Agenda 100 Item Number 10.1

<http://daps.planning.wa.gov.au/5907.asp>

From 1 May 2015 JDAP threshold reduced to \$2 million

<http://www.mediastatements.wa.gov.au/pages/StatementDetails.aspx?listName=StatementsBarnett&StatId=9348>

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Letters Editor, Southern Gazette

Via Email Saturday 18th April 2015: [jlogan@communitynews.com.au](mailto:jlogan@communitynews.com.au)

Cc: City of South Perth Council, State MP John McGrath, Federal MP Steve Irons, and other concerned residents

Dear Editor,

I have lost my faith in the Joint Development Assessment Panel who at a 3rd hearing on Friday 17 April, in a 3/2 decision approved the development application for a Dan Murphy at the Como Hotel.

The decision was contrary to the recommendations of the City of South Perth's Responsible Authority Report which, in accordance with clauses in our Town Planning Scheme and other advice, opposed the development on the grounds of added traffic congestion, difficulties with vehicular access, insufficient parking, and social impact on amenity.

The decision was contrary to a well advertised special electors meeting and detailed community focused presentations, arguing against the development, from Main Roads WA, expert traffic consultants, a lawyer acting for local residents, presentations from local residents, and representations from our Mayor Sue Doherty, State MP John McGrath, and Federal MP Steve Irons.

The decision ignored the unanimous Motion passed at the City of South Perth Council Meeting on 24 March which said that the Council does not support the development of large format liquor outlets at the Como Hotel site.

The decision also ignored a unanimously passed Council Interim Policy limiting the location of large format liquor outlets, which was said could not be classified as a seriously entertained proposal.

I thank and applaud the 2 Panel members and our local councillors Cr Colin Cala and Cr Glenn Cridland who argued at length that the basic reasons for the application being rejected, had not changed since the 2nd hearing on 17 February when the application was last rejected.

The 3 Panel members who voted to approve the application, seemed intent on making their decision, irrespective of the overwhelming well reasoned loud voice of local community opposition. It was very disturbing to hear they have a very blinkered short term pro development approach. They approved the development, rather than let it go to a hearing at the State Administration Tribunal who rejected a similar development at Orrong Road, Carlisle in 2013.

This decision does not bode well for other community vs developer applications, especially the mega towers sprouting around the South Perth Civic Triangle.

There is a State Government push for more big business developments. Local residents concerns are expected to be cast aside. Money talks.

Greg Benjamin.  
Resident South Perth.

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**From:**

**Sent:** Saturday, April 18, 2015 10:57 AM

**Subject:** Re: Decision at 3rd JDAP Hearing to approve Dan Murphy

Dear Greg -

I support your comments in your letter and as a former Member of the JDAP I concur that this Panel is definitely NOT working in the best interests of the community. A review of the JDAP is long overdue -

Betty Skinner

**From:**

**Sent:** Saturday, April 18, 2015 12:10 PM

**Subject:** Re: Decision at 3rd JDAP Hearing to approve Dan Murphy

Dear Greg

I support your letter and feel as you do. I advocated strongly against the Dan Murphy proposal and still feel that this kind of establishment is ill suited to the area.

I am sorry I could not do more to stop this from happening.

Kind regards

Veronica

**From:**

**Sent:** Saturday, April 18, 2015 12:19 PM

**Subject:** Re: Decision at 3rd JDAP Hearing to approve Dan Murphy

Dear Greg

This is appalling!

That three *unelected* people, none of whom lives in South Perth, can overrule, by only one vote, community opposition to an unnecessary commercial project being pushed by a rapacious organisation, is totally undemocratic.

To put it crudely, who is pissing in whose pockets?

Murray

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**From:**

**Sent:** Saturday, April 18, 2015 12:44 PM

**Subject:** RE: Decision at 3rd JDAP Hearing to approve Dan Murphy

Dear Murray et al,

I make no allegation of or about anyone.

I can only say how incredibly frustrated and deeply disappointed I am that this “terrible proposal” has been approved. And those were the words I used at the end of the meeting last night at 830pm when I had to actually ask to be able to speak against the alternative resolution (to approve the Dan Murphy’s proposal) was put up for a vote (so obviously foregone was the result). At that time, only the Woolworths subsidiary’s reps and 1 resident were left in the chamber.

I simply feel awful today. I did my best. It was not good enough. I feel deflated that I could not achieve a good result for the community.

Now that the Dan Murphy’s proposal has been approved, the public record shows that the JDAP has approved each and every application lodged for a development in South Perth – often against the votes of Colin Cala and myself as the local community’s representatives and often against the City planner’s report and recommendations. Not one application to our JDAP has ever been refused.

People can make their own judgement as to how carefully resident amenity and local concerns are taken into account in this State Government imposed process.

Regards,

*Glenn Cridland*  
*Councillor for Como*

**From:**

**Sent:** Saturday, April 18, 2015 2:33 PM

**Subject:** RE: Decision at 3rd JDAP Hearing to approve Dan Murphy

Thanks Greg for taking the trouble to make the outcome of the JDAP meeting more widely known. The community is having a slow but determined erosion of their rights through the JDAP process and good planning principles designed to provide residents with safe and liveable neighbourhoods, are being cast aside.

After spending five and a half hours at the DAP meeting to finally lose the fight is completely shattering. How intelligent people can make such dumb decisions is beyond my understanding.

Regards

Colin



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**From:**

**Sent:** Saturday, April 18, 2015 1:49 PM

**Subject:** Re: Decision at 3rd JDAP Hearing to approve Dan Murphy

Dear Glenn,

I'm sure I speak for all the SCAG members when I say that we share your despair today and that we know how hard you and Colin fought in the interests of the community.

Neither of you should shoulder any blame for the JDAP decision.

All the speakers against the Dan Murphy proposal combined to present, logically and ethically, what should have been a watertight case.

To call this decision by the JDAP a miscarriage of justice is to put it mildly.

Hence, my suspicions about the reasons for the 3 / 2 vote.

I trust **some** of those reasons will be available to us in the near future.

Regards,

Murray

**From:**

**Sent:** Saturday, April 18, 2015 2:20 PM

**Subject:** Re: Decision at 3rd JDAP Hearing to approve Dan Murphy

Hi Betty and Greg

I wholeheartedly agree with both Betty and Greg. What a huge disappointment for all the people who have worked so hard to hear that even though the same principles applied as the last two hearings that suddenly a member saw things differently.

I thought it was quite unfair that the Save Como Action Group got 5 minutes each as did the Dan Murphy representatives but at question time there was more than an hour devoted to the DM representatives.

We can be proud of the two DJAP members who voted against and I thank Cnr Glenn Cridland and Cnr Colin Cala.

Kind regards

Cecilia

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**From:** [REDACTED]  
**Sent:** Saturday, April 18, 2015 3:06 PM  
**Subject:** SP Council

Hi Greg

I am flabbergasted to hear that the Dan Murphy's building is to proceed. I thought the whole community had voted against it and on that result I doubt if we will be successful with the project that is being erected on the peninsula – or if they even take notice of our objections.

Who are these people from JDAP and how can they overrule the SP Council? I fear for this area.

Rosanne

**From:** [REDACTED]  
**Sent:** Saturday, April 18, 2015 7:57 PM  
**Subject:** RE: Decision at 3rd JDAP Hearing to approve Dan Murphy

Hi Greg another well written letter - but It's horrible to read this terrible news. I still can't believe my eyes. I really felt we had a compelling case.

Democracy died last night – god knows what else the JDAP will approve.

All the best

Andrew

**From:** [REDACTED]  
**Sent:** Tuesday, April 21, 2015 9:09 PM  
**Subject:** Re: Decision at 3rd JDAP Hearing to approve Dan Murphy

Dear all

I have not made a comment to date as I am truly speechless, perturbed and confused as to how on earth we ended up with such an outcome so purely in contempt of our South Perth residents wishes. Bad planning outcomes are becoming a recurring theme such as ley street Telstra site development, 4Downey drive state housing monstrosity and potentially mill point road and dan murphy application. This shows a disregard to social impact on amenity and concerns me immensely. We must stand up and fight for our city.

Sincerely,

Sharron

Inquiry into the operation and effectiveness of the Planning and Development (Development Assessment Panels) Regulations 2011

Letter printed Southern Gazette, Tuesday 5 May 2015 page 9

**DECISION DISMAYS**

I HAVE lost my faith in the Joint Development Assessment Panel who, at a third hearing on Friday, April 17 in a 3-2 decision, approved the development application for a Dan Murphy's at the Como Hotel.

The decision was contrary to the recommendations of the City of South Perth's Responsible Authority Report which, in accordance with clauses in our Town Planning Scheme and other advice, opposed the development on the grounds of added traffic congestion, difficulties with vehicular access, insufficient parking, and social impact on amenity.

The decision was contrary to a well-advertised special electors' meeting and detailed community-focused presentations, arguing against the development, from Main Roads WA, expert traffic con-

sultants, a lawyer acting for local residents, presentations from local residents, and representations from our Mayor Sue Doherty, State MP John McGrath, and Federal MP Steve Irons.

The decision ignored the unanimous motion passed at the council meeting on March 24 that stated the council did does not support the development.

The decision also ignored a unanimously passed Council Interim Policy limiting the location of large format liquor outlets, which was said could not be classified as a seriously entertained proposal.

I thank and applaud the two panel members and our local councillors Colin Cala and Glenn Cridland who argued at length that the basic reasons for the application being rejected had not changed since the second hearing on February 17 when the application was last rejected.

The three panel members who voted

to approve the Dan Murphy's application seemed intent on making their decision, irrespective of the overwhelming, well-reasoned, loud voice of local community opposition.

It was very disturbing to hear they have a very blinkered, short-term, pro-development approach.

They approved the development, rather than let it go to a hearing at the State Administration Tribunal that rejected a similar development at Orrong Road in Carlisle in 2013.

This decision does not bode well for other community versus developer applications, especially the mega towers sprouting around the South Perth Civic Triangle.

Many have been appalled and completely disillusioned by this Como outcome.

**GREG BENJAMIN, South Perth.**

## Inquiry into the operation and effectiveness of the Planning and Development (Development Assessment Panels) Regulations 2011

Article by Geoff Pearson re JDAP overruling Perth Councils

# Planning reform played into developers' hands

■ Geoff Pearson

While some may view the advent of Development Assessment Panels as an improvement to local planning and decision-making, a growing number of local communities are far from happy with them, and with good reason. The recent announcement by Planning Minister John Day to expand this flawed system will do nothing to allay their fears.

The stated objective of planning reform is to "enhance planning expertise in decision-making by improving the balance between technical advice and local knowledge". A laudable objective. But how can anyone reconcile this with a process that routinely ignores input from local residents, local communities and local councils?

The Barnett Government established DAPs in 2011, giving developers the right to bypass local councils when seeking approval for larger developments. DAP members are appointed by the Planning Minister and though they include council representatives, these are outnumbered by "specialist members" who are not accountable to local communities.

Take these recent DAP decisions, all of which overruled council rejections.

■ Alfred Cove — March 2014. Despite the "local knowledge" of its councillors and protests by local residents, the DAP approved a massive block of flats at 94 Kitchener Road, a back street in a gazetted low-density suburb, breaking height, bulk and scale rules, somehow considering it "consistent with the existing built environment of the locality".

■ Mandurah — April 2014. A 24/7 service station, a McDonald's and a liquor store approved adjacent to two schools. Community protests and unanimous council opposition to the

development, because of its predictable impact on the health and safety of local children, were disregarded.

■ Swanbourne — October 2013. No. 2 Milyarm Rise was zoned for multiple units, with height, bulk and scale rules permitting 52 units maximum. An application for four times that number led to 50 public submissions, 41 of which opposed it. The council refused, but the DAP overruled and approved more than 100 units.

■ Subiaco — April 2014. Gazetted as "mixed use", No. 1 Seddon Street required, by law, a residential component, yet the DAP exercised discretionary powers to approve an eight-storey office block. For Subiaco, this was the fourth such office block approved by a DAP, without a single dwelling among them.

The pattern is clear. The DAPs' stated goal is simply not occurring, their decisions are favouring developers, while dismissing local concerns. And, unlike developers, communities have no right of appeal.

It has hardly surprising to learn that, in an internal review of the DAP system last September, almost 100 per cent of industry respondents gave the system the thumbs-up, while less than 10 per cent of councils did. Developers know a good thing when they see it.

Look at a development proposed for Kennedy Street, Maylands. A multi-dwelling development to be wedged between character homes in a protected heritage precinct, requiring one character home to be demolished. After considerable community opposition, the proposal was refused by the council.

However, the \$3 million price tag for the proposal also places it in DAP territory, where the developer, unperturbed by the opposition, then headed. And, thanks to the unaccountable "specialists", it was approved 3-2.

Why would developers ever choose the "accountable-to-the-people" route

through the local council if they can get their own way through the DAP, wielding its unaccountable discretionary powers in their favour?

I don't blame the developers. They are only doing their job. The blame sits with the DAP system, which demonstrably is not.

Its widespread use of discretionary powers to overrule recommendations and grossly vary planning regulations is breeding an environment of uncertainty, both in planning and the community. Having discretionary powers makes sense but, used on a regular basis, they cease to be "discretionary". They become the norm. That should ring alarm bells for those concerned about due process, and orderly and proper planning.

That the DAP then refuses to explain its use of these powers is a sign the system lacks rigour and integrity.

As the Independent Commission Against Corruption commented on similar planning reforms in NSW last year, the use of discretionary powers based on vague definitions mixed with the motivation of developers to maximise profits "makes the ... system an easy target for those prepared to use corrupt means to achieve a favourable result".

This system is not pro-development, but pro-developer, which is perhaps why the industry so vehemently lobbies for it.

The serious imbalance and lack of transparency in this system is slowly bedding itself down. Far from extending its reach, the Government should be seeking to effect a more balanced approach that demonstrably protects the rights of residents and local communities.

Instead, it seems more intent on snuffing them out. The question is: Why?

Geoff Pearson is a spokesman for the Striker Balance, the community action group which opposed the Kitchener Road development in Alfred Cove