



22 Parkland Road
Herdsman Business Park
Osborne Park WA 6017
PO Box 1494
Osborne Park DC
Osborne Park WA 6916
t (08) 9492 9200
f (08) 9443 3424
hia.com.au

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Samantha Parsons
Committee Clerk
Standing Committee on Uniform Legislation and Statutes Review
Legislative Council
Parliament House
PERTH WA 6000
unileg@parliament.wa.gov.au

Inquiry into Planning and Development (Development Assessment Panels) Regulation 2011

On behalf of the Housing Industry Association (HIA) I would like to provide the Committee with the following comments in relation to the operation of *Planning and Development (Development Assessment Panels) Regulation 2011*.

It is understood that the review is being undertaken as required two years after the commencement of the Regulation. Whilst no specific terms of reference have been established, for the purposes of this submission it is presumed that the Committee is seeking to determine whether the Regulation has delivered an improved outcome in the decision making processes under the Planning and Development Act 2005 for relevant development applications.

HIA believes that the planning system should deliver three key outcomes:

- Predictability
- Affordability, and
- Flexibility

The use of planning professionals to give advice and make determinations on development applications is an important method of ensuring predictability in the planning system and the assessment process. Effectively removing the 'politics' from the decision making process where appropriate.

This approach is supported by Development Assessment Forum, a national forum for planning, which in 2005 published the *Leading Practice Model for Development Assessment*. The Model includes the use of expert panels as one of the mechanisms to include in an effective planning assessment process.

HIA has supported the introduction of Development Assessment Panels (DAPs) into the West Australian planning system as a potential way to increase consistency and transparency in decision making, to improve confidence in the planning process and most importantly, to remove the political conflict and inconsistency that at times affect planning decisions.

HIA members experience with the operation of DAPs is varied, and to some extent limited, due to the exclusions that applies for single dwellings and small multiple dwelling projects. The DAPs do have a role in the decision making process for larger residential developments such as subdivision and large multi-unit projects as these generally exceed the inclusion thresholds.

It is noted that the Department of Planning published a Discussion Paper and recommendations as part of the Planning makes it happen: Phase Two consultation in relation to development assessment panels. HIA provide comments as part of that review and notes the recommendations arising from that Review which includes changes to the value thresholds and other matters. HIA is generally supportive of those recommendations.

The attached comments set out a small number of matters that HIA believes merit consideration by the Committee as part of this Inquiry.

I would be pleased to respond to any other issue the Committee may wish to raise and can be contacted on 9492 9200 or j.gelavis@hia.com.au.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED

A handwritten signature in black ink, appearing to read 'John Gelavis', with a stylized flourish at the end.

John Gelavis
Executive Director

HIA comments on the operation of the Planning & Development (Development Assessment Panels) Regulation 2011

Objectives of DAPs

The primary objective of DAPs in the planning approval process should be to 'remove the politics' of decision making for development applications. Complex developments that require merit assessment should be assessed and preferably determined by planning experts. The concepts underpinning DAPs seek to focus on ensuring that technical expertise is partnered with political input through the composition of the DAPs to ensure an appropriate balance of political and technical decision making.

DAPs should ensure that applications are determined based on sound planning principles and in accordance with the legislation and they should apply a level of consistency to the interpretation of planning codes and standards. This does not always occur when the decision maker is wholly political.

The use of DAPs as an alternative to the existing approval bodies (local government and the Department of Planning) should offer certainty, consistency and transparency.

The introduction of DAPs must not be seen as 'shifting the deck chairs' but must add value to the approval process. This value can be measured as time saved, improved design outcomes and better managed community expectations.

The Act and the Regulations do not currently include objectives for the operation of DAPs. Whilst it is possible to presume what these objectives may be, without them being expressly stated in the legislation, it makes it difficult to specifically determine whether the regulations have been effective as intended.

On this basis, HIA would support the regulations being amended to clearly state the objectives and purpose of DAPs in the planning process.

Comparative analysis

The information made available in the *Review of the Development Assessment Panels Discussion Paper* (September 2013) released by the Department of Planning, showed an increasing number of applications being submitted and determined in the second year of operation. However the paper did not present a comparison of the decisions made, fees received and subsequent appeals to the State Administrative Tribunal, nor the time taken for the determinations to be made on the same applications under the previous arrangements with both local government and the Department.

To accurately determine the effectiveness of the introduction of DAPs in respect to timeliness it is essential that comparative information be made available.

Consideration of the consistency and transparency of decision is more difficult to gauge and it is hoped that the Committee can provide useful evidence of any changes in this regard.

Value Thresholds & Opt-out

The current values thresholds have been considered as part of the Planning makes it happen reforms and a recommendation has been made to adjust both the mandatory and optional thresholds. HIA supports this recommendation.

However regardless of the cost, application where there is little or no merit assessment required, should not be required to be considered through a DAP. Value is not always a proxy for complexity. Similarly the value of a project is not necessarily a sign that there are potential political complexities that are better managed by an independent approval body.

In some states, such as NSW, assessment panels are intended to operate in place of the elected officials to consider the same types of applications that would be considered if the usual process of delegations applied. That is if an application has public submissions, or does not comply with development standards, or is complex and relies primarily on merit assessment, then it would be referred to the council and not be approved using a delegated authority.

Assessment panels are also now in use for developments which qualify as 'regional or state' significance. The objective being that where there is a broader public benefit and public impact from a project than a single local government area, then the decision should be made using a more holistic approach.

The current process provides a threshold for an applicant to voluntarily opt-in to the DAP in place of either the local government or Department as the responsible authority. This is supported. However as stated above not all projects over the mandatory value threshold may be considered complex. It is also possible that the applicant may prefer to have the local government authority undertake the necessary assessment. Therefore if the criteria remains as currently exists, then the ability for an applicant to 'opt-out' of the DAP and revert to the normal responsible authority for a determination should be provided in the Regulations.

If changes are made to the manner in which projects are captured by the regulations (e.g. remove the value threshold and nominate specific types of development) then this may not be a preferred approach.