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PERTH SYDNEY

The Hon Kate Doust MLC
Chair, Standing Committee on Uniform Legislation and Statutes Review
Legislative Council
Parliament of Western Australia
Parliament House
Perth, Western Australia, 6000



ABN 48 650 484 872

30 January 2015

Dear Ms Doust

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

Thank you for the opportunity to make a submission on this important issue.

My credentials and experience relating to the implication of Development Assessment Panels (DAPs) in Western Australia are stated below:

- Practicing architect and urban planner with more than 35 years' experience nationally and internationally
- Currently specialising in urban planning in Perth and regional Western Australia
- Bachelor and Doctoral degrees in Architecture, The University of Western Australia
- Masters' level studies in Urban Social Geography, The University of Western Australia
- Unit Coordinator, Urban Design for Planners, School of Earth and Environment, The University of Western Australia
- Adjunct Research Fellow, School of Earth and Environment, The University of Western Australia
- Past Fellow, Australian Institute of Architects
- Past Chair, Australian Institute of Urban Studies
- 14 years membership of the Town of Victoria Park, Design Review Committee
- 3 years membership of the City of Fremantle, Design Advisory Committee

Introduction

DAPs are a national initiative implemented in Western Australia through the Department of Planning (DOP). They are primarily based on the notion that development projects must not be held up by local government approvals processes.

My experience with DAPs has been through my involvement as a member of several local government committees established to ensure high standards of property development. I have observed a significant change in the attitude of many development proponents since the introduction of DAPs as well as the desire by DAPs to approve complex developments which the committees I work with have previously recommended for refusal.

The following key DOP statements relating to DAPs give the impression that the current development approval process, as implemented by local governments, is not working well and major improvements are required:

- 1. A key component of planning reform in Western Australia, Development Assessment Panels are intended to enhance planning expertise in decision making by improving the balance between technical advice and local knowledge.*
- 2. The introduction of DAPs in Western Australia will have significant benefits for local governments, the development industry, landowners, the general community and other stakeholders.*
- 3. The determination of complex applications will be improved by the involvement of experts with technical knowledge.*
- 4. They aim to help to improve the planning system by providing more transparency, consistency and reliability in decision making on complex development applications.*

These DOP comments clearly infer that:

1. Local Government planning approvals processes lack a balance between technical advice and local knowledge
2. Developers are somehow disadvantaged due to current local government processes
3. Local government processes lack appropriate expertise
4. Local government processes are not transparent, consistent nor reliable.

In my experience delivering many small, medium and large-scale projects, none of these inferences are universally accurate. There may be some smaller local authorities who lack the resources to deal with large complex projects however every local authority I have worked with has had the expertise and processes available to ensure complex projects can be adequately dealt with. These comments by DOP are simply justifications for introducing an alternative approvals process designed to override local authorities.

By their very nature, centralised planning initiatives such as DAPs are invariably reduced to a 'one size fits all' approach. In this case, it is assumed that the development assessment process

practiced by all local governments, particularly for complex projects, achieves better outcomes by involving the state government. The real issue however is not about achieving a better outcome. The real issue is that the development industry is required to gain approvals for their projects through local government processes which they often find frustrating. Local governments are the approving authorities and they are required by the state government to establish a planning and regulatory framework to ensure all future developments, particularly large and complex ones, fit appropriately into an existing environment and their approvals processes are devised to ensure the objectives of that framework are satisfied.

I suggest that it is no coincidence that the implementation of DAPs started concurrently with the DOP's push for urban infill as a means for increasing population densities. In order to achieve increased population densities the DOP has released many planning constraints normally used by local authorities to ensure proper and orderly planning outcomes. Now, a development proponent can submit a development proposal for a building which is significantly non-compliant, in terms of the approving authority's planning framework, knowing that there is a very good chance that state government DAP members will approve it.

Contrary to DOP statements, my experience over many years shows it to be the small-scale projects where local government planning processes are most uncertain. Most local governments marshal considerable internal resources when working with proponents of large scale developments and I have usually found them to be extremely competent and willing to assist.

The following outlines why I believe that, in most instances, DAPs have no beneficial role in the development process. In fact I will demonstrate that they may often result in poorer quality development outcomes. I will use my experience as a member of the Town of Victoria Park (TOVP) Design Review Committee (DRC) to support my views.

My experience with the DAP process

The TOVP has two DRCs and I am a long-serving member of one of these committees. Each committee comprises council planning officers, plus a consultant architect, urban planner, landscape architect and environmental services engineer, all from the private sector. The private sector DRC consultants are recognised as experts in their field who have been selected from interested applicants. The council officers involved on the committee include the Planning Director and the Planning Manager, both seasoned professionals from the private sector. The role of the DRC is to assist proponents to gain development approvals of the best possible quality as well as helping elected members understand the many issues involved in large complex projects.

When a development proponent approaches the TOVP enquiring about making a development application for projects in excess of \$3mill, they are immediately assigned to a DRC which works

with them over a period of time to ensure that they will gain planning approval for a development which meets their needs and contributes positively to The Town.

As the proponent and the DRC work through the development application the degree of certainty of approval increases. In 14 years we have had an almost 100% success rate in achieving development approvals for proponents (only on two occasions in this time have the elected members rejected the recommendation of the DRC).

The TOVP process is fully transparent at all times and the proponent is provided with progressive minutes of meetings as the process unfolds. When the proponent finally reaches the point where they feel ready to formally submit their documents for development approval, the project is so well understood and resolved that the time taken to assess and approve the project falls well within statutory time limits. Development approvals will usually be granted with certain conditions aimed at ensuring the proponent meets their commitments. The proponent knows of these conditions.

The overarching aim of the TOVP, through its DRC, is to ensure that medium and large-scale projects are not simply compliant. We aim to achieve the best possible outcome and often push the Town Planning provisions, through the variation provisions available in the Town's Planning Scheme, to achieve a superior outcome. A floor or two may be added, set-backs varied, plot ratios increased and so forth in an effort to improve the outcome. The reasons are fully justified in a report to the elected members who must vote for the project's approval.

A significant difference between the TOVP approval process and the DAP process is that the DAP process is less concerned about development quality and more focused on simply facilitating compliant developments. Since their introduction I have witnessed two ways in which the DAP process results in poorer quality developments. The first way involves removing conditions placed on development approvals which were placed there to ensure superior outcomes. One typical example involved a DAP member suggesting removal of a condition relating to the need for the proponent to do a full wind study for a multi-storey apartment building prior to construction. The DAP member, a planner, clearly was not aware of the importance of testing for wind impact of multi-storey buildings at street level and felt to do a study was an unrealistic impost, even though it is common practice to ask for such studies. The DAP endorsed his suggestion and the condition was removed. The development quality was weakened as a result because the proponent was released from doing what is usual practice with respect to environmental impacts.

The second way involves DAPs using the discretionary provisions within a Scheme Text to approve developments which have been rejected by the TOVP because they are either non-compliant or fail to achieve a reasonable design standard, and sometimes both. Several years ago the state government instructed local governments to include discretionary clauses in their planning scheme texts in order to enable the local authority to approve developments which may not

strictly satisfy sections of their planning scheme. The aim is to allow minor areas of non-compliance in return for a better planning or design outcome. These discretionary clauses have few limitations and DAPs use these to overturn development applications which have been refused by the local authority. The examples I have seen at TOVP are usually multi-residential developments where the proponent submits a development application without full endorsement from the DRC. The DAP, which can only operate within the legislative and planning framework of the local authority, has proven its willingness on many occasions to overturn a TOVP refusal by invoking variation clauses. As with the process of removing certain design-related conditions, the result is a development of lesser quality. If the DRC does not endorse a project it is for good reasons and the decision has usually come after much deliberation.

Since the introduction of DAPs I have noticed a change in attitude by many development proponents. Some have become recalcitrant and show very little desire to work with the DRC to achieve better design outcomes. Some proponents now present fully prepared plans for the DRC to review while simultaneously making a submission to the DAP. It becomes clear at the DRC meeting that the proponent has little intention of altering their plans because they have been advised by planning consultants that the DAP will most likely approve their project, irrespective of design or planning quality, and meeting with the DRC is merely part of the approvals process.

The DAPs have no stated objectives relating to the quality of projects they assess. Local governments, through their planning schemes and associated policies and guidelines, establish a wide range of objectives which developments within their jurisdiction must achieve. These objectives are established to ensure the provision and preservation of amenity for all. Members of DAPs should refer to these overarching planning objectives when they decide to ignore a local authority's recommendation for refusal. A major weakness of the DAP process is that the time allowed to review an application simply does not allow for a detailed interrogation of all the planning policies and documents embedded within a local government's planning framework, which is the very reason why the local authority is first required to assess the project before going to the DAP panel.

Precedent is a serious consideration when considering approval of any development and DAPs appear to show little understanding of the concept. When a precedent is set to vary planning provisions other developers will want the same outcomes for their project. They will use previously approved developments to support arguments in favour of their own development. The TOVP is ever mindful of setting unwelcome precedent however the DAPs seem to ignore the concept.

Summary

My experience with DAPs has been as a DRC member at TOVP. It is hard to believe there is no other local authority in Western Australia operating as efficiently or with a similar level of

expertise as TOVP. I suspect there are many local authorities who today operate at a very high level when assessing complex large-scale projects and I fail to see any beneficial role to be played by DAPs in these local government areas. In well-operating local governments, DAPs are little more than a state government intervention vehicle aimed at ensuring that projects supported by state government are approved. This particularly applies to multi-residential developments.

In my experience the following key points can be made about the DAP process as practiced in Western Australia:

1. The DAP process does not short-cut the usual application process therefore is not more efficient, contrary to the development industry suggestions
2. The process is no more transparent or certain than the current process
3. DAP membership is not as diverse or expert as those currently processing development applications in most local governments
4. The process can lead to inferior development outcomes
5. The processes can set unwelcome precedents when approving non-compliant projects.

Finally, if DAPs wish to approve development applications which local governments have recommended for refusal then they should present a thorough summary demonstrating that DAP members understand the totality of the regulatory environment in which the approving authority's decision was made. This must include a summary of the overarching planning objectives which the authority has devised with accompanying statements attesting to how the DAP decision still satisfies these objectives. If DAPs do not do this rigorously then they will be seen as little more than a means for facilitating development approval with little regard for good planning outcomes.

Yours sincerely

A handwritten signature in black ink, reading 'Linley Lutton'. The signature is fluid and cursive, with the first name 'Linley' and the last name 'Lutton' clearly distinguishable.

Dr Linley Lutton
Director, Urbanix