

## Presentation to Standing Committee on Uniform Legislation and Statutes Review

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



To assist in the Committee's inquiry, the following notes have been prepared by the WA Local Government Association, which are based on the experience of our members in the operation of Development Assessment Panels (DAP's) and highlights a range of issues arising from their operation.

### Rationale for the introduction of DAP's

On the 18 November 2009, the Minister for Planning advised Parliament that *"The purpose of this bill is to amend the Planning and Development Act 2005 in order to streamline and improve the planning approvals process"*. The Minister further stated that the *"introduction of development assessment panels in Western Australia will have significant benefits for local governments, the development industry, landowners, the general community and other stakeholders. They aim to help to improve the planning system by providing more transparency, consistency and reliability in decision making on complex development applications."*

The objectives of the proposed DAP model, as outlined by the State Government in the discussion paper *Implementing Development Assessment Panels in Western Australia* (10 September 2009) were to:

- streamline the determination process for particular types of development applications, by eliminating the requirement for dual approval under both the local and region schemes;
  - involve independent technical experts in the determination process;
  - encourage an appropriate balance between independent professional advice and local representation in decision-making for significant projects; and
  - reduce the number of complex development applications being determined by local governments, to allow local governments to focus their resources on strategic planning.
- Increased transparency reliability and consistency

As further outlined within the 'Implementing Development Assessment Panels in Western Australia (April 2010)' manual, it states that *"Development assessment panels are being introduced for the benefit of the community, and as a direct response to the National Development Assessment Forum's leading practice model. They will be independent decision-making bodies made up of a mix of elected local government members and independent professionals. This will ensure that decisions on development applications will benefit from the best of two very important pools of knowledge - the local member with their knowledge of the local community and detailed history of the local areas, as well as the independent technical expert with their technical knowledge and professional experience."*

Under section 171F of the Planning and Development Act 2005, the Committee has been tasked to carry out a *'review of the operation and effectiveness of all regulations made under this Part...'*; therefore these notes provided by WALGA will primarily focus on the operation of DAP's and the effectiveness of the system within the planning framework.



## Operation of DAP's

Since the introduction of the DAP approval system, the number of DAP applications has increased from 95 in the first year to 219 in the third year, with a total of 519 Development Applications (DAs) processed over the full three year period. These applications were considered during 383 meetings, which equates to 1.36 DAs per meeting.

### 1. Administration

The Department of Planning has established a separate administrative section to manage the DAP process, however, the annual reports from the WAPC don't specifically allocate the number of officers assigned to this team, so it is unclear the true cost of having this function. It is estimated that 6 officers are involved with the processing of the applications, as well as attendance/assessment by Department of Planning's Officers and State Solicitor officers (SSO) at SAT hearings. Any review of the operation of DAP's should consider the administrative system developed, the support provided by the Department of Planning/SSO officers and the employment costs to the State in providing DAP's.

Our members have found that the overly convoluted administration process supporting the DAPs applications is not an efficient use of their time, with the additional DAP meetings, detailed RAR reports, minute taking and processing of fees to be an additional layer on the current system. Several local governments have set up different assessment streams for DAP applications, to ensure that all information is collated and written into the RAR before the DAP regulation timelines. Considering a significant number of applications would have been assessed under delegated authority, the additional report writing and administration for the meetings has not streamlined the planning system.

Form 2 submission process (amended plan) is also overly administrative, requiring a whole new DAP meeting to be organised in order to consider any amendment to a previous approval. Through a local government an amended plan is generally dealt with by Senior Planning Officers rather than returning back to a full Council meeting, so can be dealt with more expediently. The Department of Planning has acknowledged that this process is cumbersome and is proposing to allow the DAP members to determine amended plans via the Presiding member and out of session. Providing the governance arrangements around this process is sound, then this could provide some time saving to the Form 2 process.

### 2. Timelines for assessment and meetings

DAP's are still required to comply with the Planning and Development Act timelines (mentioned further in the 'effectiveness' section), and the process for applying to a DAP requires lodgement at the Local government, referral to the Department of Planning, the RAR report to be prepared and submitted to the DAP secretariat as follows :

- a. *if the application requires advertising, the responsible authority report, which contains recommendations for the development assessment panel, is to be provided within 80 days of the application being received;*
- b. *if the application does not require advertising, the responsible authority report is to be provided within 50 days of the application being received;*

The regulations specify the timelines that must be met in order to receive the applications, receive the fees, submit the report to the Secretariat, then the DAP meeting is arranged for discussion of the item. At least 5 days before a DAP meeting

the Department puts the agenda for the meeting on the DAP website, along with details of the time, date and location of the meeting (r.39(1)). Anecdotally, some DAP members have advised that they have actually had less than the 5 days to review the meeting material before attending the DAP meeting, which does not allow for due consideration of an item. And in several cases the application files have been so large that the members have been unable to download or view the documents.

Anyone wishing to present to a DAP must provide a written request at least 72 hours before the start of the meeting, which has resulted in numerous complaints from the community about the equity and transparency of this process. This is compared to the Council meeting process, where any member of the public can raise a query through 'question time' before the matter is discussed. Further, more meetings are being centralised in Perth which is inequitable for regional members and difficult for members of the public to gain access via teleconferencing or physical attendance. The significant difference in the community engagement in the meeting process and access for the general public to DAP's, is not an improvement to the current planning process.

Additionally, if approval is granted, the approval letter and the approved plans, will be issued to the applicant by the DAP Secretariat, within 10 days of the DAP meeting at which the application was considered and determined.

Any review of the DAP's process should assess and review the meeting processes, consider an issues in arranging and scheduling meetings, including accessibility to the meeting minutes by DAP member and accessibility of the process to the general public.

### 3. Dual meetings

Although one of the main reasons states for the establishment of DAP's, there have been very limited examples where dual approvals have occurred, that is the approvals that required WAPC and local government approval.

Only 21 applications were considered by the DAP's in the full 3 year period which equates to only 4% of the applications submitted.

## Effectiveness of DAP's

### 1. Dealing with significant applications

Over half of all DAP applications are valued at less than \$15 million and only 16% are valued at more than \$50 million.

The DAP eligibility criteria has failed to ensure that development proposals of regional or state significance progressed efficiently through the approval process. The data analysed indicated that the most common development category to be called before DAPs during the first three years was residential, accounting for 120 DAP applications. The Association's review highlights that only a handful of applications were of a significant scale to be considered 'significant' to the State or Region. In one instance though, an infrastructure development project which crossed multiple Local Government boundaries resulted in three different RAR reports being submitted at two different DAP meetings, which was the exact situation DAP's was trying to avert.



The Department of Planning's Review states that "overall 93 per cent of applications were considered to be significant development applications, being of a considerable development scale, complexity and value and therefore appropriate for determination by a DAP." On this basis the Review contends that the development value thresholds are appropriate. However, the Review does not include details of what thresholds have used concerning development scale, complexity and value to determine 'significant applications'.

It is considered that the review should focus on the type and scale of developments assessed by DAP's, to determine whether 'complex' applications are actually being considered beyond the ability of a local governments planning scheme to determine.

## 2. Streamlining the system

There is little evidence to suggest the DAP system actually added value to the approvals process as 95% of all DAP applications have been determined in accordance with the recommendation outlined in Responsible Authority Reports (RARs). The assessment criteria of DAP's has resulted in a large number of applications which, under the previous planning approval system, would have been dealt with by an officer under delegated authority.

Many DAP applications have been relatively clear-cut and straightforward applications that are consistent with the provisions of the Local Planning Scheme. As such, under the provisions of the previous planning approval system, these applications would have been determined by Local Governments planning officers (under delegated powers) in much more efficient manner. This is reinforced by the fact that of the applications sampled, under the previous approval system, almost half would have been dealt with under delegated authority. Even though these applications may have complexity, they are easily assessed by competent local government planning officers in alignment with their local planning scheme.

The efficiency of the DAP process is also questioned by the fact that only 5% of DAP determinations have been contrary to recommendations set out in RAR reports. This indicates that of the 519 DAP applications processed over the first three years, 493 would have possibly had the same outcome had the DAP system never been introduced.

Therefore, in line with DAP's original intention of the streamlining the planning approval system, it would be interesting to discuss with the development industry the option for 'opting out' of DAP's, as well as being able to 'opt in'. Evidently, providing applicants with the opportunity to opt in or out of the DAP assessment process would be the most effective method of measuring customer satisfaction in DAP and Local Government planning assessment processes.

## 3. Timeliness in decision making

Under the Planning and Development Act 2005, applications are required to be processed within 60 days, or 90 days where advertising is required.

The average processing times of DAP applications have increased from 93 days in the first year of operation to 105 days in the third year. Each additional day of processing time generates a further cost to the development industry, hence why the 'Opt Out' option could be beneficial.

Even within the Department's own review, the results of the feedback received from panel members, which whilst generally neutral, showed that many believe that



although the quality of decision making has improved, the timeliness of decisions had not.

The review process should also discuss with the development industry the reality of the new DAP system, rather than the perception that the system is better than an assessment undertaken by a local government.

#### 4. Technical expertise

Over half of all applications had their recommended conditions amended at least slightly, but in some cases all conditions were amended. Overall, approximately 95% of all DAP applications were approved while 5% were refused with reasons. Importantly, DAP decisions aligned with the recommendation outlined in the RAR approximately 95% of the time. In regional areas this figure grew to 98% and in metro areas the figure was lower at 91%.

While the DAP system may have achieved its aim and introduced 'independent technical experts in the determination process', whether the system has achieved an appropriate balance between this advice and local representation in the decision making process is highly debatable. The majority of our members consider that the DAP system is failing to appropriately balance professional advice and Local Government representation, believe that this failure was caused by the imbalanced DAP membership bias of three technical experts vs two Local Government representatives. Even those who think that the DAP system does appropriately balance professional advice and Local Government representation, many recognise that there is a more widely held perception that local views are not well represented or heard.

Over the three years members have raised concerns that there is a loss of Local Government representation in the DAP approval process, resulting in the loss of valuable local and historical knowledge of approvals relevant to a development proposal. This knowledge is often important to ensuring quality and consistent decisions are made. Most Elected Members, particularly those with multiple years' experience, have a good understanding of the Local Planning Scheme provisions, a lot of technical members' questions have related to the provisions within a Scheme. For development proposals in regional areas, because local representation is outweighed by Perth based technical experts, there are concerns, particularly amongst the locally Elected Members, that decisions are not always appropriately balanced and there is a strongly held perception that the DAP systems has simply overridden planning at the local level.

Accountability in the decision making process is also a matter of concern, particularly when a DAP overturns the RAR recommendation. There is nothing in the standing orders that requires the DAP to clearly minute the rationale for amending an RAR decision, ie when recommending approval where the RAR has a refusal recommendation and vice versa. In comparison, at a local government council meeting, there is legislated requirement for the minutes to clearly reflect the discussion, voting and rationale for the decision to be made, which is particularly important when an officer's recommendation is changed.

#### 5. Cost to developers/industry and the on-cost to the public

It is disappointing that a cost/benefit analysis of Development Assessment Panels was not yet been undertaken, as an analysis of the additional fees, administrative costs to applicants and meeting fees to consider the applications received, would

provide an interesting discussion point for the effectiveness of this addition to the planning system.

The cost in development application fees since the introduction of DAPs has increased by 19% to \$15.3 million as a result of new value based DAP assessment fees collecting during the DA process.

The latest annual report from the WAPC outlines in 2013/14 a total of \$406,500 in sitting fees for DAP members.

A cost benefit analysis would outline the full cost to the State in establishing this system.

#### 6. State Administrative tribunal

Over the first three years, a total of 60 DAP decisions were appealed to the State Administrative Tribunal (SAT), which equates to 11.5% of all DAP applications. In comparison over the last three years only 16 full Council determinations were appealed to the SAT.

This significant proportion of DAP decisions being appealed at SAT could be because DAP systems lack the ability to engage with developers during the submission of planning applications. The DAP system introduced a higher degree of uncertainty into the planning approval process than previously existed. The previous approval system gave proponents the opportunity to create a dialogue with the Local Government who also represented the decision making authority. This allowed proponents to ask questions and gain more certainty of the likely outcome of a particular development proposal. However, the introduction of the DAP system and the inaccessibility of the decision making authority has removed this opportunity thereby adding a high degree of uncertainty for proponents.

### Conclusion

The Association welcomes the independent review of DAP's by the Standing Committee on Uniform Legislation and Statutes review. Our members are keen to engage with the Committee in this process and WALGA can facilitate further engagement with the local government sector for the Committee.

WALGA has reviewed every DAP application that has been processed in the last three years, to provide clear data on the processing times, types of applications, appeals lodged etc. This raw data and broad analysis is available for the Standing Committee on Uniform Legislation and Statutes to use, to assist in the review process.

It is respectfully requested that the review clearly investigates whether the introduction of DAP's to WA has in fact met the purported objectives; which was to streamline and improve the planning approvals process.