STANDING COMMITTEE ON
UNIFORM LEGISLATION AND STATUTES REVIEW

PLANNING AND DEVELOPMENT
(DEVELOPMENT ASSESSMENT PANELS) REGULATIONS 2011

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 29 JUNE 2015

SESSION ONE

Members

Hon Kate Doust (Chair)
Hon Brian Ellis (Deputy Chair)
Hon Mark Lewis
Hon Amber-Jade Sanderson

Hearing commenced at 1.18 pm

Mr GEOFFREY PEARSON
Joint Spokesperson, Striker Balance Community Action Group, sworn and examined:

Mrs MARINA HANSEN
Committee Member, Striker Balance Community Action Group, sworn and examined:

The CHAIR: First of all, I would like to welcome both of you to our hearings today. As you know, our committee had the review of the DAPS regulations referred to it last June, so we have been going through a process of talking and listening to a whole range of people about their views on the regulations as they currently apply. Your group has been asked to come in to provide some information to our committee. Before we actually commence, I will introduce you to the committee as it stands today. We are missing one member, Hon Mark Lewis, but I have Hon Amber-Jade Sanderson, Hon Brian Ellis, my name is Hon Kate Doust, and this is Mr Alex Hickman. Before we actually start our discussion today there are a few formalities that we have to go through. The first thing I will do is, because we have got a large group in the audience today, if people could just make sure that their mobile phones are turned off as well, otherwise that is a bit of a distractor. Firstly, on behalf of the committee I would like to welcome both of you to the meeting. Before we begin, I will ask if either of you would like to take the oath or affirmation.

[Witnesses took the affirmation.]

The CHAIR: You will have signed a document entitled "Information for Witnesses". Have you read and understood the document?

The Witnesses: Yes.

The CHAIR: These proceedings are being recorded by Hansard and a transcript of your evidence will be provided to you. To assist both the committee and Hansard we ask if you could please quote the full title of any document that you refer to during the course of this hearing for the record, and please be aware of the microphones and try to talk into them and ensure that you do not cover them with papers or make noise near them. I remind you that your transcript will become a matter for public record, and if for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public or media in attendance will be excluded from the hearing. Please note that until such time as the transcript of our public evidence is finalised it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. That is the formalities out of the way.

You have provided the committee with a substantial submission. Before we actually start to go through the questions that we have before us today, and I understand we have provided those questions to you prior to coming here today, I was wondering if perhaps you might want to start off by making a statement and then we will start with the questions.

Mr Pearson: Actually there were two things that I was going to ask if you had not invited us to speak at the outset. First of all, just so you know, Striker Balance was actually formed in March 2013, so just over two years ago now, in response to an initial development proposal and some only eight letters that were sent out by a local council to some of the neighbours neighbouring the site in question. The fear that the application, as it stood at that time, would actually be approved

galvanised an instant photocopying of the letter and dropping it around our neighbourhood so that everybody knew, and calling to a public meeting in the park. About 60 to 70 people turned up at that meeting and, by one way or another, I think because I put my hand up and said that we should get an emailing list going, I ended up finding myself more or less in control of the communications of the group, so I find myself here today basically for that reason. We have held two public meetings of ourselves. We have protested loudly to our own council. We have held a special electors meeting at the council to give a presentation to them and we also last year called a public meeting at the local primary school for our local MLA and MLC—Hon Sue Ellery and Matt Taylor, sorry, out of order—plus a lawyer and one of our local councillors, who addressed 180 people who turned up to that meeting. We therefore feel that we actually represent not a small group by any means and we do not consider ourselves to be a vocal minority at all in this particular case. We also ran a survey last August via SurveyMonkey and also we have a fantastic team of leaflet droppers who leaflet dropped the whole area of our two suburbs inviting people to actually respond to whether they opposed or supported the decision, which by then had been made, and what their reasons were for that. We had 418 responses to that survey—16 were in favour, three were undecided and 399 opposed. So although we do not have an actual members list and cannot give you an exact number, judging on the extent of our emailing list and that response, we guess we represent between 250 and 400 people.

The second thing that I would like to do to preface this is to say, and we have lost a member obviously in front of us, but I was going to say the last time we faced a five-member panel was the JDAP panel, but there is a significant difference in our opinion between these two panel types. Basically, you are a panel of people who have been elected by the people to represent the people in our state Parliament. As such, you are in the role you are in because people decided that you were, through our system, the people to do that, and you represent the interests of the people of Western Australia to the best of your ability and your own constituents, of course. In that process, you also recognise that by doing anything extremely out of kilter with what a community might like or put up with that there is an accountability factor there that actually allows the people to say, "Well those were not the people who did the right thing by us." I am not suggesting for a moment that that is what you would do but the presence of that tension actually keeps things on an even keel more or less until something is decided that is seriously out of whack and the people will respond. The last panel of five people that we faced faced no such accountability test, and that is one of our major gripes with this whole system. Three of them are not even elected. They are totally unaccountable in our experience. They are not representative of the people. The other two members of the panel, in our view, are also so-called government representatives because the rules and regulations, and the standing orders that we will mention in more detail a little bit later in our presentation, actually request that they ignore the views of any organisation they represent, and that is the council, and the council is there because of what the people decided. As a result, we do not think that those two people represent necessarily the views; they may choose to but they are actually encouraged not to. We consider therefore the panel that we actually sat before, or rather Marina did as I was unfortunately away on work at the time and Marina presented on our part, were not in any way representing the views of the people, and they demonstrated that amply. That is a preface to everything that we have said because we have in actual fact made recommendations in our presentation and our submission to you. Those recommendations are actually submitted as if we are stuck with the system and we cannot have it completely ruled out and start again, then that is what we would suggest. The preface is this: the fundamental core of the basis of this system, as far as we are concerned, is undemocratic and therefore unacceptable and should not be allowed to continue.

The CHAIR: Thank you for that. Just so it is on the record, could you provide us with just a brief summary of what the actual issue is around this proposed development in Kitchener Road?

Mr Pearson: The initial proposal was for 90 apartments and a four-storey building at the site over here. That was rejected by the council planning office first up. They sent them away and said that

that was not going to go through and they were not going to allow that, basically because the site was zoned as R40. There had been an earlier application by the developer to make it an R60/80, but as it is surrounded on all sides by R20, the council explicitly ruled that out—well, the planning office ruled that one out. They came back with an application for R40/60, and the council explicitly ruled out anything higher than R40. That was done in light of the recognition of the suburb—it is a low-density suburb and all the streets for five or six streets in each direction around this site are zoned R20. We estimate that about eight per cent are two-storey and all the rest are one-storey and this was at that time a four-storey. They rejected it outright. A second proposal was put forward which the planning department then put out to consultation, as I mentioned, with those few letters, which is what we responded to. They had reduced the number from 90 to 87, is my recollection, but the building height and size of it and the unbroken nature of it—that is, there are no breaks in that building at all; essentially, it is a battleship in our midst. That was put to the community. The community responded and protested loudly: 111 letters of protest, two petitions totalling more than 1 000 signatures between the two of them, the special electors meeting I mentioned, et cetera. That was then voted by the council and they voted—the RAR or the responsible authority report recommended refusing based on eight or nine issues that had been identified. The JDAP met and actually also rejected it on 9 September, I think it was, 2013 on the same grounds. That was a five–zero rejection by them.

[1.30 pm]

The developer then appealed. It went to SAT. I am sure that you are aware by now that the residents are considered not interested parties. I was personally told that by a SAT representative, that we are not an interested party. We were therefore not privy to what was going on behind closed doors. In the January of last year, so 2014, late January, we were told there was going to be another DAP meeting in March. We got together again as a team and actually looked at what the plans were. The change had been that three more apartments had been shaved off the 87, so it was now 84. I should point out that the site under the normal rules only allows 24 or 25 dwellings on it. So more than three times the number of dwellings and the height of the building was still—although they had then decided to sink the car park which had originally been the ground-floor level—23 per cent higher than the maximum allowable. The JDAP voted four-one in favour, even though the RAR again recommended refusal and the council again voted unanimously—the councillor on the DAP did not attend that council meeting, so there were 10 of the 12 councillors actually present—to support the refusal. Marina presented again to the DAP, they ignored that and passed it. We still consider that it is an astonishing decision.

Is that enough to form a picture?

The CHAIR: I think that has brought us right up to speed; thank you, very much. What we will start to do is, there are a series of questions based around your submission. We just need to get information on the public record, even though you have probably provided the material in writing, it is just good to have that discussion. I will just start out with the first question on the list. We understand that the City of Melville has released “Draft Local Planning Scheme No. 6” for comment. Has your organisation made any representations to the City of Melville and any other local governments covered by the Metro West JDAP regarding the existence of wide discretionary powers and relevant planning schemes?

Mr Pearson: Yes. Actually, the timing of the draft coming out was very difficult; it was just before Christmas and the new year, and the deadline was 15 January, which made it very difficult for us to get together and put something together as a group. And, as I said, we are a large group. As much as we are a large group and we represent a large number of people, we know that, we are not an entity as such. At the time we took the decision that numbers were going to count better than a single application from how many people would know, so we pieced together a submission, which is document A that I have provided you with, and then we circulated that. Several other people in the

community in our group put together theirs as well and also circulated those to the whole group, so that people had an opportunity to see what we were saying and that we had done the thinking and that if they wished to use our wording they could or if they wanted to use that as a guide or if they disagreed they could not send in or object. We do not know how many actually went in, but we are aware of at least eight submissions that went in from our own committee group and members.

The CHAIR: So even though that would have closed in January, you have had no feedback to date on that submission?

Mr Pearson: Not so far. No, nothing.

The CHAIR: The second area is: Are you aware of local governments before and after the introduction of the DAP system having made planning decisions contrary to the wishes of the community? If so, how is opposition to these decisions expressed and taken into account?

Mr Pearson: I am sorry, I do not know if I am allowed to, there is something else I just want to say in answer to that first question. Is that okay?

The CHAIR: Sure.

Mr Pearson: When that clause was used by the DAP, we had the presiding member of the JDAP actually approach Marina after the meeting and say, "If were not for that clause, we could not have made that decision." We did some research, and that clause in actual fact exists verbatim, existed at the time verbatim, in 12 of the 30 current local planning schemes at that time and there were five others that had clauses very, very similar to that. So we actually felt that the removal of that clause from one local planning scheme would not, in actual fact—it was not Melville council's fault, this was a standard clause that applied across lots of councils. I just wanted to make that statement as well.

We do not have specific cases to cite because we are not in the business of doing this—we have families, we work in other areas—so it is only when these things actually visit you and visit you in such a way, that you start to take a closer look at them. So, no, we do not. But we are aware of other cases that have been decided since, where lots of decisions have been made contrary to the community's wishes. Document D lists nine or 10 of those that we have managed to be able to bring together with sufficient detail to table today, but we are aware of others.

The CHAIR: Research has been conducted by WALGA which suggests that DAPs have made decisions in accordance with the recommendation in the responsible authority report for 95 per cent of all applications. Despite the decisions you have referred to in your submission, does that not suggest that the DAP system is overall functioning in a consistent and effective manner and does not suffer from systemic issues?

Mr Pearson: I think there is a consistency there, but I would not necessarily agree that it was a good consistency. Ninety-five per cent of the decisions are in line with what councils have done. According to the WALGA statistics, 94 per cent or 95 per cent of those cases were in actual fact in line with approving and only six per cent were in line with refusal. You have probably heard the expression, "a DAP being viewed as a rubber stamp", and I think that is where it comes from—that they have a very strong consistency to approve. If the originals from the RAR is a recommendation to approve, the DAP goes ahead and does that. However, if you look at document D, the list of questionable DAP decisions, you will see in actual fact that the rules and regulations that have been overlooked or ignored by the local council and those local councils have in actual fact approved, have not apparently been picked up by the DAP. If the DAP is a panel of experts and they are that much better than the local planning councillors, surely those cases should have been picked up and questioned. We do not see anything in those stats to suggest that.

Of the other five per cent, for most of those other five per cent cases there are no stats available about those as far as we can tell. I think that the consistency is in them saying yes and in approving; however, it also has to be said, I think, that if they are actually agreeing 95 per cent of the time with

councils, that seems to be a rather extreme way of duplicating decision-making. There does not seem to be a balance being brought into these decisions by DAPs to a great extent. So that would be our response to that.

The CHAIR: Just looking at question 4, on page 3 of your submission, the second-last line of the second dot point para states —

> Although the DAPs report to the Minister for Planning, there is apparently no accountability for their decision-making.

Firstly, could you clarify what you mean when you say that the DAPs report to the minister? Are you also able to expand on your view that there is no accountability by using examples?

[1.40 pm]

Mr Pearson: Marina and I sorted the questions between us beforehand, so I will pass to Marina.

Mrs Hansen: I will address your first question. I guess we formed that view as a community group for a number of reasons. I guess, initially, in the very early days when we formed, we were out there trying to find as much information as we could about the DAPs—all the different rules and regulations about planning at the state and also local level. I think it was probably within those early days, maybe quarter 2 in 2013, that we looked at the DAP website and, from memory, the reading of it did give us the impression that the DAPs reported to the minister. If you go to the website today, it has been updated and it is completely changed. That one-line reference that I, in particular, can recall reading is not there anymore. I guess we also formed the view from the Minister for Planning's response to our letter of June 2014, when we requested him to look at the circumstances of the decision in our case and the minister responded by outlining in some detail what had occurred. So, we once again gained the impression that the minister had access to records, perhaps that the public does not and that, as the minister, what goes on in the process either comes to him or that he can access that information if required. I guess, probably in hindsight, perhaps this wording suggests something more than that. Maybe they do have briefings or meetings, but I guess we are none the wiser—it could be, but it might not be the case. I guess our meaning was that, therefore, based on the fact that we approached the minister, whom we deemed responsible for the DAPs, and who would therefore logically have the power to request them to inform him of what had occurred, that was one of our beliefs. Also, just referencing from *Hansard* when Matt Taylor had a grievance motion—he did that on our behalf on 10 April; and the Minister for Planning's response also stated, and I quote, "We established the legislation and the processes and we oversee that." But there is a perception perhaps, certainly by ourselves and other stakeholder groups, that the minister has some oversight and some responsibility for decisions that the DAP have made.

I guess to the second question about accountability, we have asked in writing to the presiding member of our particular JDAP asking him to explain how they actually came to their decision. We have written to him in May 2014. We did not receive an acknowledgement and we sent it again in June—so that is over 12 months ago—and also in August, and we have never even received an acknowledgement. Again, we are asking for accountability and we cannot seem to get it.

The CHAIR: So, just to be clear, when that decision was made by the JDAP, there was no information provided as to their reasons for the decision. We will probably deal with this in a later question anyway, but were any minutes provided as a result of that JDAP meeting?

Mrs Hansen: The minutes are up on their website, so you can certainly see that. As to why they use the discretionary powers to such an extent, that has been one of the bones of contention for us. We have just been out there searching and trying to get a response, and we have simply never received it. We got together 3 600 signatures for a petition in the upper house, and that went to the public affairs and economics committee.

The CHAIR: The Standing Committee on Environment and Public Affairs.

Mrs Hansen: Sorry—environment and public affairs committee, and Mr Johnson appeared at that publicly, and even at that hearing we still could not get a response as to why that panel had made that decision. It was four–one.

Mr Pearson: Can I just add to that? In actual fact, the minutes do state there was a set of conditions that were presented by Melville City Council that the developer needed to address. That was how they were taken, but in actual fact, Melville City Council actually based its initial reasoning on rejecting or refusing based on all those particular conditions plus two other things. The key noncompliance is of height and plot ratio, which are outrageous in the extreme in this particular case. Those other "conditions" were actually addressed, apparently, and those were all listed, but there is no statement explaining why plot ratio of more than double and height of 23 per cent past the maximum height has actually allowed them to use the discretionary power. There is no explanation as to why that should be allowable.

The CHAIR: So, the conditions that dealt with Melville council, were they listed?

Mr Pearson: They were not conditions, in fact.

The CHAIR: No; I just want to know whether those conditions were listed in the minutes.

Mr Pearson: Yes, they were.

The CHAIR: They were itemised?

Mr Pearson: They were listed in the RAR as well.

Hon BRIAN ELLIS: You did not get a response from DAPs for an explanation, but did the council? Was it only the minutes that the council received or were any explanations given to your local council?

Mr Pearson: We are unaware of the council receiving anything. They certainly have not contacted us, if they have. We have looked at the website. We know what the agenda was. We know what the RAR said, and we know what the minutes actually say. We did receive a letter from the director general of the WAPC, Gail McGowan, which I have actually tabled here. It is document I in your collection—the last sheet—basically stating that due process had been followed. I wrote back and said, with respect, because I had contacted DAPs ahead or WAPC asking them could I have an email address for Mr Charles Johnson, the presiding member, so that we could send our letter to him and get a response, and I was told to send it to the main DAPs email address. Five weeks passed and I had not heard a thing, so I actually contacted again. And a couple of days later I received the letter from Gail McGowan, as you see there, which gives absolutely no explanation and just says exactly what the minister had said anyway. So, there was no further explanation provided. I actually wrote back to Ms McGowan and said, "Thank you for your response, but with due respect the letter was addressed to Mr Johnson and we would like him to actually explain his use of discretionary powers." We did not question that those discretionary powers existed. We understood that he could do it; we just wanted an explanation as to why. That is where we have had zero response, and at the hearings last November, same thing—no explanation whatsoever as to why these serious noncompliances were allowed.

Hon BRIAN ELLIS: Have you had any communication with your councillors?

Mr Pearson: No.

Mrs Hansen: We did ask the DAP-elected councillor who voted in favour of the development. She responded with, kind of, the blandest of responses to us and said something to the effect that she thought it would add value to the area, but she did not actually specify what that meant. I guess, for residents, we obviously cannot see that there is value. Many people in the area received a letter drop from a local real estate agent shortly after the approval went through—he was obviously canvassing some business—and he stated that we were looking like we would probably lose up to 50 per cent in the value of our homes if we tried to sell our home during the construction period.

If you live locally and you walk your dog or take your kids to school, you cannot help but notice how many for sale signs have gone up, you know, around that site. As you can see, that development is going to change the physical landscape of our suburb, but the social landscape of our suburb has already changed and we have lost a lot of, like, long-time neighbours who have lived in the area, simply because of this approval; it really has affected us.

The CHAIR: I am probably going to start to go through things a little bit faster because we have a really long list of questions and I want to try to get as much on the record as I can from your group. On the bottom of your submission, on page 3 and also going over to the top of page 4, you make comment regarding seeking variations through design principles pathways with respect to the application of the JDAP. Can you expand upon those comments you have made on the bottom of page 3 and on to the top of page 4?

[1.50 pm]

Mr Pearson: The residential design codes allow for two methods, or two sets of criteria, if you like, of applying. I hope I am not just saying what you already know here. There is a deemed-to-comply channel, which basically sets out the minima and maxima allowable for developments based on the R-zoning of the site, so R40 in our particular case. I have supplied these documents to you. The deemed-to-comply table 4 is document C. Document F is the City of Melville height policy. I have also provided you with document G, which gives the statement of intent for that site. It is a specific statement of intent only for that site. That site was excised from what is known as Melville living area 1 and was called Melville living area 2—just that one site. It has a special statement of intent of what will happen for that. It clearly states what should happen, and that has been ignored. The deemed-to-comply requirements for that site are where we get the 24, 25 dwellings from. The height can be no more than nine metres under the eight metres allowed by the R-codes plus one metre for the flat roof building under the City of Melville's policy. The height is 23 per cent above, as we have already said, and the plot ratio is more than double what it should be for an R40. Therefore, the application is not recognised under the deemed-to-comply side of things and looked at under the design principles. The design principles, as far as we can see, are very woolly, very vague and very open to interpretation that allow for non-compliances. We do not disagree with the need for discretionary powers to be able to vary because it makes sense that maybe a site is sloping particularly steeply and therefore the rules will make more sense to break them than to keep them, or perhaps the site is R40 but everything around it was R100 so to change the R40 rules in that case might well make sense as well; there will not be a great loss of amenity. I should say that those two sides of the R-codes, the decision-making process, deemed to comply, we rubberstamp it and if it keeps within the rules or design principles, we accept some variation. They both have to comply with the overall objectives that are set above them in the document. If I can ask you to look at document H, you will see under "6.1 Context" at the top, one of the objectives is —

> To ensure that **development** of **multiple dwellings** occurs with due regard to the existing development context and/or the desired future built form for the locality as set out in the **local planning framework**.

CPS-5, as was in force at that time—it still is, in fact—zoned the site as R40 and everything else is R20 pretty much in every direction except for St Ives Eldercare, which is also an R40 site. Everything, as we already said, is single storey, except for about eight, nine per cent of the homes in the whole of Alfred Cove and Myaree that are two storeys. Ninety per cent plus are one storey. There are no three-storey or four-storey buildings until you hit Canning Highway, and they are on the highway. I want to point out to you that under the design principles, which is the left-hand column, "6.1.1 Building size", they are supposed to make sure that —

> **Development** of the **building** is at a bulk and scale indicated in the **local planning framework** —

Now remember there is a rule specific to this site for that —

> and is consistent with the existing or future desired built form of the locality.

I look at that model. If anybody says, "Does that building there in the middle look pretty much the same as all the other buildings around it?" and, if you like, it is street upon street upon street, they would all look pretty much like that, I think you are really stretching it to say that that is consistent. That is where we have been demanding an explanation from Mr Johnson, and he has steadfastly ignored that. The minister has not responded either, neither did the director general. We have been to a public hearing with the council. We have approached the Ombudsman. What do we have to do, if this system is so fantastic, to actually get a straightforward answer? How do you see that as being consistent? It is not.

What has happened here, if I may continue, is that the deemed-to-comply says R40 should be nine metres and a plot ratio of 0.6. What has been allowed is 11.1 metres high and plot ratio of 1.28. In respect to height, that is an R80 plus and in respect of plot ratio, that is an R100 plus. That variation is not between R40 gone up to R50; it has gone past 40, 50, 60 and 80; and in plot ratio, it has even gone past R100. There is only one left—R160. As we wrote in our submission, that is not a variation; that is an obliteration of the rules. To use the design principles to argue that is effectively to say the two sides of the system are incompatible with each other. You set up the rules but this side you can completely ignore them. We just do not understand that and we have been stonewalled everywhere we look.

The CHAIR: Our committee cannot provide you with the answer either but I think we have got the gist that you are pretty frustrated.

Mr Pearson: Thank you.

The CHAIR: I want to pick up on some other areas in your submission. You have talked on page 4 of your submission around councillors participating on the JDAPs about being appropriately skilled up. We have asked a lot of people this type of question. What type of training do you think councillors need to have to participate?

Mrs Hansen: First up, we think that the issue of training is intimately related to the issue of what the role of the council members on the DAP actually is. We strongly contend that in the majority of cases, and most certainly in the case of our two who have been elected to the JDAP, they are not qualified to make planning decisions about multimillion-dollar developments. Those three planning experts are appointed to the DAP. If that is what they are there for, those two local councillors—to make those types of decisions—mandatory training is not really going to address that. That is not really the intent of our recommendation. I think Geoff is probably going to elaborate on that in question 12. We do not really agree with training if it is designed to make councillors ready to make those decisions. We believe that if training is to occur, it is really about giving them the knowledge about the DAP decision-making process and giving them the training to effectively introduce local knowledge into their decision-making because at the moment local knowledge does not seem to have a priority in the decision-making whatsoever. It is completely dismissed and disregarded. We would question what the role is of those two members. That would drive the kind of training that they would have.

The CHAIR: Do you think that, as well as applying local knowledge, it has been put to us that JDAP members receive some training and some council members do have some prior experience. Some have town planning experience or are architects or other professionals in that area. As well as local knowledge, do you think other training should be provided or be accessible for people? It is not just about local knowledge, is it? They do need to understand the types of documents that are put in front of them as well.

Mrs Hansen: We only know the training that they have prior to their appointment on the DAP. From our perspective, having gone through this for the last two and a half years, the planning

system is very complex. In WA, it changes. It has changed a number of times. The R-codes have been updated. They are not simple documents for people who do not have tertiary and industry experience. If they are going to have some kind of training, it will have to be quite significant. Whether that is what we want those elected members to have when they are supposed to be wearing, or there is a perception that they are wearing, their hats as local councillors, that is one of the questions that need to be asked.

Hon BRIAN ELLIS: Surely training could be helpful for their decision-making on council as well because sometimes not everything needs to go to DAPs. They must have some understanding of planning regulations. The more they understand, the better they can make an informed decision on the council as well, let alone DAPs.

Mr Pearson: I would agree with what you are saying. However, the three expert panellists have been chosen because they are experts. They have double degrees, triple degrees some of them. They have 30, 40 years' experience and expertise in the field. They know how the whole industry operates et cetera. To have two "substandard" panellists there who are supposed to be looking at the same documents and making a decision about whether this is a good planning document, I know my instinct would be to defer to the person who has all the experience and the knowledge. If that is the case, all they are is kind of representing a democracy in a process in which it is not really happening.

[2.00 pm]

Hon BRIAN ELLIS: So would you prefer, then, that that consist of only professionals?

Mr Pearson: No, absolutely not—absolutely not. We have not got to that question, but the whole balance on a DAP is wrong as far as we are concerned.

The CHAIR: Let us strike that point now. What do you think it should be? If you are just thinking about the regulations, it currently states there are five members. What should the make-up of those five members be in your community group's view?

Mr Pearson: In my view, what has happened is the decision-making about developments that actually affect communities has been taken away from the representatives of those communities and put in the hands of an unaccountable specialist panel. I think that that is, at core, wrong, because even if the two councillors do go against what they are told to do and actually do vote with the residents and council in mind, they are still outnumbered three to two. So that balance automatically means that you are behind the eight ball to start with. When you look at the decision in our case, it just says if there had been three councillors on that council and only two are specialists or, if there had been three and three and a chair with a casting vote, that would have made the whole thing much more debated, I would imagine, and there would have been some sort of comeback from the community on those particular councillors if they actually agreed to this and actually chose not to explain. But they were actually gagged as well. I do not know if you aware but the rules of it say that only the presiding members are actually allowed to comment on any decisions, which is why we wrote to Charles Johnson. In actual fact, when we did contact Councillor Foxton who actually voted in favour of this at the meeting, she gave us, as Marina said, a very bland statement but then actually I realised afterwards by looking closely at the regulations that she is not allowed to say anything more. There is effectively a gag on explaining, so it is actually not about losing the expertise. I would like to see a system where the decisions are still made by the representatives; the experts are used to actually add their expert knowledge into that decision-making process, not the experts to take over the decision-making and the council is left to one side.

[Disturbance from the gallery.]

The CHAIR: Thanks; Hansard will not record that. We have got that point. We might come back to that a little bit later on with a couple of our other questions. We just want to pick up on this issue

around some applicants inflating the cost of the project so that they do get it sent off to DAPs. Have you got any examples that you know of where that has happened?

Mrs Hansen: I guess in our submission when we made that reference to some perhaps inflating their projected costs, it was really meant to bring to the committee's attention the possibility that this aspect of the opt-in, opt-out system could see exploitation in this area. Whilst we have not conducted any freedom of information searches following your question, we are aware of a development in Maylands which supports our view, and that is at 58 Kennedy Street.

The CHAIR: We are aware of that.

Mrs Hansen: That would be the example that we would give.

The CHAIR: Just looking at your recommendation 6 on page 5 of your submission that projected costs for developments be subjected to assessment by the relevant local government planning office before the application can proceed to a deliberation by a JDAP, our committee has received evidence that some local governments check the value of applications as a matter of course when they arrive at their desk. What changes to the regulations or other documents does Striker Balance! recommend in this regard?

Mrs Hansen: If we see that councils are doing that, then that is very, very positive. But we do not believe that all councils are doing that, so therefore I guess we would like to see that such checking of costings be conducted as an automatic part of any DAP-bound application and that this be a requirement of the council's planning office. I think a more uniform approach to this issue would be without each local planning scheme having to change it and gazette it that this has to be done at the regulation level. Further to this, we would just like to say that, currently, when a development application is refused by council—like in the case of Kennedy Street—and then the developer adds extras that take the build cost into the threshold of the DAP, the application is determined by the DAP. If it becomes under, where it should be under council jurisdiction, it is still determined by the DAP, and we see that that is quite a big loophole in this area.

The CHAIR: Just moving on to question 9, which talks about right of appeal, does your group believe that a general right of appeal should be confined to the decisions of DAPs and not more broadly to planning decisions by all decision-making authorities; and, if so, why?

Mrs Hansen: We can only speak, I guess, to the matters relating to the DAP. But to put it politely, we have been extremely frustrated at the lack of appeal for residents on our decision and I think that is probably why, 15 months on from the decision, we are still here and we are still fighting to try and get answers. Even during the appeal to the SAT by the developer, when we requested the SAT to become a party to the mediation session as a third party, at the eleventh hour they refused our application, they told us that we are not an interested party and they acrimoniously told us to just monitor the site—that we are no longer considered part of the community that they see. I am sure you can appreciate that, as a general opinion from our community, we keep seeing that we are stonewalled and that we do not have any avenue to get any answers and there is no avenue to appeal, and this continues to perpetuate the feeling by the community that this system is seriously flawed.

The CHAIR: When the JDAP meetings were held, was your group given an opportunity to provide information, to speak up on behalf of the community?

Mrs Hansen: When you present to the DAP, it is called a delegation and they give you five minutes, which is not very long. We have to say that we had quite a comprehensive presentation and Mr Johnson did give us longer than that, but five minutes is not very long. DAP applications are supposed to be complex developments and it is very difficult to try and capture that when you have got a five-minute clock over your head.

The CHAIR: Just moving on to the next question, which is question 10, it is really about the SAT mediation and post-meetings with DAP discussing the processes. People have talked to us about

concerns that there is a degree of secrecy and not having any transparency or not being able to get information through those processes. Do you have a view on that?

Mrs Hansen: Absolutely we have a view on that. We can see that any increase in transparency in which planning decisions are made would be absolutely welcomed by certainly Striker Balance! and other community groups that have been impacted. At the moment, it seems that, without very much transparency, it really does give the impression to the community and to the public that the system is just favouring the developers with each and every application that gets approved, despite the massive community opposition and the noncompliances that just continually perpetuate that. Any increase in that would be very welcomed by the public.

The CHAIR: The next question is something that we are very interested in. Has your organisation made any complaint in relation to part 7 of the DAP procedures manual to the director general of the Department of Planning regarding the operation of DAPs and the conduct of any DAP members? If you have done that, are you able to provide us with any detailed information?

Mr Pearson: No. In actual fact, it was this question in your list of questions that you sent to us that actually drew to our attention that there was such a complaints mechanism available. We are very disappointed in actual fact to have found this out so late in the piece, especially as we wrote letters to the Premier, to the minister, to the director general of the WA Planning Commission and to the Ombudsman. No-one has foregrounded this possibility or this channel: if we wish to make a complaint, please go here or whatever. The fact that it actually appears in the DAP procedures manual does not really flag it as something that the public would be reading, I would have thought, and that, in actual fact, why would we ever actually have read it and why would we ever have discovered it? So if there is to be this system continued, I imagine that that should be foregrounded at every point and anybody who makes contact with a group who was obviously unhappy with the decision should actually be given the information about how to go about that directly.

[2.10 pm]

The CHAIR: There are a couple of sections of the questions we have provided for you that I will not go through in detail because I think we have already covered some of those areas. I am not going to talk about the role of councillors because I think you have made your case quite plain there. Also, the lack of reasons for providing information, I think you have also articulated your views there. There is an area under question 15. It has been put to us that there are concerns about DAP members representing developers and that perhaps in those cases those members should not be able to participate, that there should be some sort of ban placed upon them participating in that particular area. We would be interested in knowing your view on that proposal.

Mrs Hansen: I guess we feel that there is clearly a perception of a conflict of interest, in response to your question. If it is not an actual conflict of interest, then all it does is serve to bolster the public's view—cynical view—that perhaps that is what the system is doing. In our case, at the DAP meetings we saw several members of the DAP warmly greeting the applicant in a side room just prior to the meeting starting. There is a perception that the industry and decision-making folks have quite a nice relationship —

The CHAIR: Does that come down to Perth being a small town and everyone knowing everyone? Is that part of that? I do not say that flippantly.

Mr Pearson: It could well do. I would imagine that those experts may get some training in not flaunting that in front of the public. It certainly does not make people feel like they are actually on an even playing field at all.

The CHAIR: The next issue is about delays in the process. Given that DAPs are now in place, has your group given any thought to the view that has been put to us that DAPs have provided more delays in the process that perhaps did not exist in the past, or not?

Mr Pearson: We do not engage in this as part of our work, as I have already said, so it is difficult to say. Speeding up is not always necessarily better. Our key playing field for our argument here is that this whole process should be about proper and orderly planning. We see lots of improper and disorderly planning coming out of the decisions that are being made here, so speeding up might be great for money considerations but in actual fact if we are a community that is looking to develop the housing of the future for the population, that needs to be done in a way that does not massively disrupt communities that are already in place. We know that there are reports out there from the Property Council already that indicated there is enough spare land within the city of Perth to amply cover the requirements of the future. That report seems to have fallen by the wayside. We do feel that situations like this are using the overall impetus to build things to say anywhere is good. That is disorderly, as far as we are concerned.

The CHAIR: Moving on to the next part which deals with the DAP thresholds. I think you might have already mentioned your concerns about opt in and opt out. I do not know if you have anything else to add, and also about mandatory thresholds; I do not think you have commented on that.

Mr Pearson: No, we have not.

Mrs Hansen: We have really just formed an opinion on the opt in. We are extremely disappointed that the minister has already made some amendments prior to the recommendations of this particular committee coming out, and that includes lowering the thresholds to $2 million. You live in Perth—it is quite easy to spend $2 million. With the DAP system having a perception that that is quite a good route to get your application rubberstamped by reducing that, you are potentially increasing the likelihood that developers will exploit that.

The CHAIR: We are probably at that point where we are talking about the new regulations that came into effect on 1 May. There are currently other matters dealing with those regulations in the Parliament—a disallowance motion has been moved—but a couple of those changes, you have already made your comment on the opt-in threshold for $2 million. There is also a new mandatory threshold from 15 to 20 for the City of Perth DAP and from 7 to 10 for all others. I do not know if you have a view on that type of change.

Mrs Hansen: Obviously, you have to put a figure on a threshold at some point. DAP applications need to be looked at not just from how much we think this is going to cost. The reason why the DAPs were established was to have an overarching strategic look at some developments that have significance of some form, and another avenue that the DAP application should be looked at. In our case, we are kind of stuck with this thing now. Whilst it looks complex, because it is so big and bulky and it is completely different from what is existing in the area, there are other developments that will pop up. We would say have a look at them, what kind of social and economic impacts or environmental impacts they are going to have, is the location of the site going to be in an area that is stated in a policy document or in a strategic area within an activity corridor—all the things that in our case that site does not really have.

The CHAIR: Rather than just looking at a monetary threshold, taking into account a range of other factors that could impact on that area?

Mrs Hansen: Yes. When the application lands on the desk —

Mr Pearson: I would just add to that also. I just think that changing any of the rules at the moment on a system that is, in our view, demonstrably not working properly and changing thresholds is tinkering around the edges with what is wrong with the system itself. If I may come to that other question, if you were going to come to that, under three people making a quorum —

The CHAIR: Yes, I am about to come to that. I will deal with that one first. What is your view on the changes to the quorum?

Mr Pearson: A great deal of cynicism I think is basically what our community actually thinks about this. It basically means that the two local “representatives”—we did not canvass that

particular term, which I think is important—are not representing us anyway. Now, this new one means they do not even have to turn up and the decision is going to be made by the three expert panellists. It has to be the presiding member but any two of the other members, is what I understand—is that not correct?

The CHAIR: It could be.

Mr Pearson: If that is the —

The CHAIR: There are occasions when people may not be able to attend through ill health or other reasons. It could be either/or. You could have a case where you have two councillors and the chair—you could have one of each—and you could have had two specialists and no councillors. I think it is about making sure that you have a presence there for the meeting. They have tried to make it a little more flexible, I suppose, in that regard.

Mr Pearson: I think that actually needs tightening up because it does allow for just the three experts to meet and make a decision on their own. If you do not mind, if I can come back to that word "representative" which is in one of your earlier questions that we have had to skip over: that word is only mentioned once in the regulations in reference to the members. At all other stages in all the regulations, the standing orders, everything, those two members are just referred to as the "local government members". Under standing order 5.13.7 they are explicitly told not to represent any organisation they belong to. It seems to us an inanity that the reason for those two councillors being there is because they were elected and then they come on this panel and you strip away the very reason that they were elected. You could take two people walking past outside who have perhaps done a little bit of training, and that is serious. That needs to be addressed so that the balance issue of community representation is never lost regardless of what the quorum rules might be.

[2.20 pm]

The CHAIR: I will ask one last question, because we are running out of time now. They have also introduced a new stop-the-clock mechanism whereby the time period for a submission of the RAR to the DAP does not include the time between the applicant being given a notice to provide specified information or documents. Do you have a view on the stop-the-clock mechanism?

Mr Pearson: If we can trust the reasons for it being done, and I think there is a serious question mark over that, I think it makes sense to have a stop-the-clock mechanism. It is the question of trust that has underlined everything that we have said about this system. In our particular case—we do not know why; the normal rule is that you have to substantially start the building within two years—our developer was given four, with no explanation as to why. When those sorts of lack of clarity, lack of what we sense is an orderly, fair, transparent and accountable process is not forthcoming, stop the clock simply says "helping the developer again" to the community. That is just not good enough as far as we are concerned. In theory, yes; in practice, we do not have the faith that it would actually benefit the communities that are affected.

The CHAIR: I am going to thank you very much. You have put a massive effort into presenting to our committee today. We appreciate the information you have provided and your frankness with the committee about the position that your group has found itself in. We will certainly take into view your comments today. Thank you very much for your time.

Hearing concluded at 2.21 pm