STANDING COMMITTEE ON
UNIFORM LEGISLATION AND STATUTES REVIEW

PLANNING AND DEVELOPMENT
(DEVELOPMENT ASSESSMENT PANELS) REGULATIONS 2011

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 4 MAY 2015

SESSION FIVE

Members

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

Hearing commenced at 3.43 pm

Mr IAN MacRAE
President, Local Government Planners Association, sworn and examined:

Mr WARWICK CARTER
Member, Local Government Planners Association, sworn and examined:

The CHAIR: Welcome to our committee hearing. We certainly appreciate the fact that you have been able to give us time today. This is our first day of hearings into this review of the regulations for DAPs. This matter was referred to our committee in October of last year and we are due to report to the Parliament in early September. We have a range of hearings over the next two months to hopefully give us a better idea of where these need to go. The members of the committee are Hon Amber-Jade Sanderson, Hon Brian Ellis, I am Hon Kate Doust and Hon Mark Lewis, and Mr Alex Hickman is our advisory officer. First of all, I just need you to state your full name, contact address and the capacity in which you appear before the committee, and then if you would elect to take either the oath or the affirmation, please.

[Witnesses took the affirmation.]

The CHAIR: You would have signed a document entitled "Information for Witnesses". Have you read and understood that 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 the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record, and also just be aware of the microphones and try and 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 the public record. 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 and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your 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.

Those are the formalities out of the way. Again, thank you very much for coming along. We would have provided you with the questions that we wanted to work our way through this afternoon. We will see how we go for time because I know that there are a substantial number of questions, so it may be that at the end of the afternoon, if there are still a couple left over, we might need to get some responses in writing at a later stage, if that is okay.

Mr MacRae: Chair, I would add that I sat through the WALGA presentation and their answers and I know that a lot of the questions that were put to them are the same as the ones—not all, but some of them are, and our response would probably be much the same, so, in some respects we might be able to short-circuit those.

The CHAIR: Sure. Okay; we will work through those. We are asking similar questions to most people. There are some variations so we will see how we go, but I appreciate that.

First up, I suppose, if you are able to provide a general summary of the association's position on the DAP system with regard to the operation and effectiveness of the DAP regulations.

Mr MacRae: Well, I think it is rather peculiar that local government is, in reality, probably less detrimentally affected by the DAP system than the state government and the private sector. We have been doing sort of detailed research on the performance of DAPs since they were introduced, and I have kept detailed records of all decisions that have been made and tried to get a handle on the costing of who is it costing and what the achievements are in terms of the time lines. From the beginning there has been an obsessive attitude of the government towards time lines, which has somewhat queered the pitch for good decision-making, I think. Just with that qualification, really one would hope that those who are detrimentally affected by the additional costs of development and the additional diversion of state government resources to deal with that should be looking more critically at DAPs than they have in the past. I think that is my main opening concern, that there are a lot of detailed things, but really the big picture is that what has been introduced has not improved the system and is costing the system considerably in time and money.

The CHAIR: I note that in your submission you have provided a summary of the DAP performance and you have provided sort of responses to some of the regulations. That more detailed research that you have done in relation to costs, could that be made available to our committee to have a look at?

[3.50 pm]

Mr MacRae: Yes, certainly, but that was in our original submission.

The CHAIR: Okay, I will go back and have another look at that.

Mr MacRae: In terms of the government's financial issues, I suppose, the figures are not great but the costs have always been budgeted for what has been half of what they have actually cost when you include the cost of the Department of Planning's DAP unit that they have, with five or six people full-time and the amount of senior planning officer time in the department, let alone all the administration that goes with that as well.

The CHAIR: I am going to take some advice from you on which questions, perhaps, we do not need to canvass because your position will be similar or the same to that of WALGA. I think question 2 is more specific to your own submission.

Mr MacRae: Yes.

The CHAIR: I am wondering if perhaps we can deal with that one. At the bottom of page 3 of the association's submission, at the last bullet point, reference is made to where there is a high recourse to State Administrative Tribunal decisions. It is stated —

> … 13.1% of DAP decisions have been appealed … This is far in excess of the Efficiency Indicator set for the Department of Planning in the State Budget of 99% of determinations being processed without a successful appeal …

The committee notes that it states on page 3 of the review of DAPs conducted by the Department of Planning in September 2013 that —

> … no application has yet gone through to a full hearing that has resulted in SAT setting aside … a DAP's decision on an application.

Is it not the case that this efficiency indicator is, in fact, being met as it refers to a successful appeal to SAT, not decisions having been appealed without there necessarily having been a successful outcome?

Mr MacRae: I am not so much concerned about whether it is an outcome orientation. Really, it would appear that more time is diverted into appealing through the DAP process than would have been the case if there had not been a DAP established. From the information I have looked at, all

the appeals that have gone to SAT between 2005–06 and 2010–11, I have only been able to identify 11 appeals against local government decisions that would be classified as the DAP over $7 million, sort of thing. Out of that—there were like 400 applications—most are minor ones or things that would not be in the DAP category. So, really, local government did not receive a lot in that category in that period, but since DAP every year there has been a higher proportion of appeals. It is difficult to know, without looking at the detail, whether it is a bad decision. Whilst a lot of them are on conditions, but the thing is, we suspect that because of the way it has been established, it is much harder to negotiate through the process under the DAP system than with the local government system.

The CHAIR: If they are appealing to SAT after going through the DAP process, how much time would that add to their application being resolved on average?

Mr Carter: It is hard to say.

The CHAIR: Are we talking weeks or months?

Mr Carter: We are talking months, generally. It will normally take about four weeks to get a hearing and then depending on the complexity of the matter and who can hear it, it will often go to a mediation session first and then proceed to a full hearing if there was no mediated outcome. Those mediations, depending on the level of detail—I am personally involved with one through a DAP matter which has taken over 12 months so far. So it comes down to the level of detail required; many times they can be mediated within a single session.

Hon MARK LEWIS: I am trying to still get my head around in your submission you say 13.1 and then the question is when there has actually been 100 per cent, what is the difference? Is there some way you are calculating the efficiency indicator differently? Where does the 13.1 come from?

Mr MacRae: The 13.1 was in the last year. I think we have analysed 520 DAP applications, and of those there has been around about 13 per cent that have gone through to an appeal to SAT. Now, some of them have been mediated out.

Hon MARK LEWIS: But that is not the efficiency indicator.

Mr MacRae: That is not efficiency—I am not commenting on that—which is applied more successfully, I would say, to the subdivision process.

The CHAIR: What percentage of development applications went on to appeal to SAT before the introduction of the DAP system? Do you have any figures on that?

Mr MacRae: I have only indicated from the research that I did. Now, I do not know how many applications of those 11 that I found, did not go, so I do not know whether there were 500 or 100. The only detailed research done under that that I have been able to find out was the Productivity Commission, who, in a report that I quoted in a paper I wrote a few years ago—I do not know which report from the Productivity Commission it came from—found that on average, 2.7 per cent of applications in Western Australia ended up in appeal. That is across the board from the minor house extension to fairly significant proposals.

The CHAIR: With respect to the association's view set out on page 4 of the submission that the threshold should be in excess of $20 million, are there any other non-monetary criteria the association can suggest to determine whether an application should be dealt with via a DAP?

Mr MacRae: I heard the response from WALGA on this, which I have sympathy with. The difficulty with any alternative is that you would have to set up a system whereby local government would let the state know of all applications it receives and then the state would advise which ones they wanted to see more closely and then apply to a DAP. That could work. There might be some criteria that you could definitely dismiss some at the bottom rank, but I think the attraction of the current system is that there are no ifs or buts. If the developer says that he has got a $7 million application, then it goes to a DAP. So, from day one, the local government knows it

has to deal with it differently through the assessment process and, basically, they have less discretion to delay or ask for different reports because they have got a clock ticking. Now, if the state government said, "These are the criteria, local government. Can you refer us those?", I think somebody would have to make a decision. Probably the Department of Planning would have to see them on a weekly basis and say, "That one is significant, that one is not, so can you refer those?" and they become DAP applications. On the assumption that there would be far less of them, that would work, but you have got to accept that maybe that is going to add a couple of weeks to the process.

The CHAIR: Do you think the developers actually prefer to go down the pathway of using a DAP rather than a local government body?

Mr MacRae: There are some groups that do and some groups that do not. We have information from, particularly, planning consultants to major developers who strongly believe that they want to find a way of avoiding going to a DAP, so they have started a process to get around it by dividing an application into three stages. I was speaking to one the other day that definitely did that, but it rather depends on the relationship they have with the council. For most councils in the growth areas, developers and planning consultants have a good understanding with their local council and they get a better result by being able to work through all the issues. That is not to say that there are not concerns that local governments want to ensure are incorporated in a development, but it is just that there is an understanding and a way of compromising. So, I mean, it does not work with every council. I acknowledge that, but there are some, I suppose, where they have to be more responsive to community concerns in those sorts of controversial areas that maybe the council is more difficult for the developer to deal with.

[4.00 pm]

The CHAIR: Thanks for that. At the top of page 5 of your submission, it states —

> Unlike other State capital cities, Perth's Metropolitan Region Scheme controls development which has regional or State significance. It is unfortunate that the drafters of the legislation were not fully aware of this fact and accordingly foisted legislative provisions on Western Australia more suited to Eastern States.

Can you perhaps enlarge upon this and clarify the point that was made in your submission?

Mr MacRae: Yes, thank you, Chair. What I suppose I was saying there is that there are powers available under the legislation here that are not available in the other states. I think it is often forgotten because we have lived with it for so long that the metropolitan region scheme and the Western Australian Planning Commission as the custodian of that scheme and the legislation that goes along with it means that all development in the metropolitan region and in region schemes requires the state's approval. It does not get it because it is delegated down to local government so they can make the decision on behalf of the state, but that does not stop the state from being able to withdraw that delegation. That is something that they have not got in the eastern states. They have not got all those powers to reserve land and compensate and achieve the fantastic regional open space system, but also on the day-to-day development applications, they do not have the same level of potential control that we have here. So that would be an avenue that could have been used just to establish a gazette which says that certain categories of development and certain local governments have to send all their applications through to a DAP or a process rather than trawling in everybody, irrespective of whether things were working well or not.

Hon BRIAN ELLIS: If we used those powers that we have already got, then the suggestion of looking at New South Wales as a better system is not warranted.

Mr MacRae: The New South Wales proposal was the way of categorising things that are significant or not. I think you would probably have to have a bit of both perhaps. If there is a concern that decisions are being made on applications with a strategic importance, the state might

not know about those till they are submitted, so you might have to have some flexibility to set down criteria and then pull in those applications. But I think the powers are all there within our metropolitan region scheme.

The CHAIR: With respect to what was stated in the second paragraph on page 6 of the association's submission, have there been any decisions by DAPs that have been in conflict with the WA Planning Commission?

Mr MacRae: I am only aware of one actually, which I think I make in our submission, which is in Subiaco. The state or, through the Western Australian Planning Commission, the Department of Planning was happy to see an application go through for a development on a land reserved for health purposes, which the health department decided was surplus to their requirements. So the DAP said, "No, it should be rezoned first", but the outcome was the same and the department was prepared to encourage the development at an earlier stage. It is an unusual situation where the DAP was seen as holding up development, whereas it is normally seen as actually rather pro-development.

The CHAIR: Could you clarify the recommendation on page 7 of the submission that regulation 16 be clarified to ensure that a DAP, in making its determination, take account of any properly prepared local planning policy under this scheme, given that this was already an obligation that existed on the relevant local government deciding a planning application and regulation 16 already provides that the planning instrument under which a DAP application is made applies to the making of a DAP determination?

Mr MacRae: Yes, Chair; that is correct that the understanding, and it seems to be clearly in regulations, is that the DAP has to make a decision based upon the situation in the scheme and a properly prepared local planning policy. But what is happening increasingly is that the DAP is taking a policy, which is a broad strategic policy such as "Directions 2031", and saying that this deals with everything to do with residential development, so people can basically find some words in that policy—you can find anything in that policy—to override a properly constituted local planning policy for, perhaps, a height restriction on Beaufort Street, which is clearly either in the City of Stirling's town planning scheme or in a properly constituted policy relating to that, but it is overridden because the DAP has said that we have got to have higher density because a state policy has indicated that. For some, it is semantics, but for a local government, that is quite a clear difference. It is not legitimate to use a broad strategic policy which even as you read it says that this only has effect by being interpreted and applied through amendments to town planning schemes and policies. But some of the DAPs are going further than that.

Hon MARK LEWIS: But they also have to stand in the shoes, figuratively, of the town planning scheme as well, not only the more strategic environment, but also they have to be cognisant of the TPS.

Mr MacRae: Absolutely, yes.

Hon MARK LEWIS: So one would think that if they do that, the decision should be consistent with the TPS, as well as the overarching strategic environment.

Mr MacRae: It should be, but the examples I have been given are basically approvals that should be refused because they have used a strategic policy to apply to a locally constituted policy on height restrictions, for instance. There are also some in the coastal areas where it says clearly that there shall be no more than four storeys near the coast or something like that. They have again used a strategic policy of desiring higher density near public transport routes to overwrite that policy. One is a specific policy related to our town planning scheme and the other one is a general statewide strategic policy.

The CHAIR: Are you able to detail what specific amendments the association recommends to regulation 17 to facilitate expeditious decision-making?

Mr MacRae: Regulation 17 deals with reconsiderations and revised plans. In some cases, taken too far, a revised plan could, I suppose, double the size of the development or something like that. In that situation where it is significant, then I do not think one would want to simplify the process. In a lot of cases, the revised plan and the reconsideration is of a minor condition; perhaps as a developer does more work on the ground, he finds that the floor levels are written wrong or something so, "Can we relook at that?" That could be actually taken back to the local government and the local government could be given delegated authority to deal with it. In a situation that I was involved in, we had a reconsideration that would have taken us two to three weeks. It took the DAP six weeks. They are bound by an over-regulatory response to that sort of potentially minor issue.

The CHAIR: On top of page 7 of this submission, there is a reference to pre-lodgement meetings with the decision-maker. How would the association suggest this issue be addressed in respect to DAPs?

[4.10 pm]

Mr MacRae: I think it will lead on to your question about our approach to the amended regulations. Local governments do have pre-lodgement meetings and usually they are very useful so the developer gets to know what the real bugbears are. The trouble with the DAP process is that once the developer has made its decision to come forward with a formal application, then the clock is ticking and there is a reluctance of everybody to actually stop the clock. The new regs will allow the stopping for a short period at the beginning but people do not realise at that stage sometimes what the issues are. You have got to start investigating it, doing studies and referring it to all the specialists in an agency to know that there is something missing or some reconsideration that needs to be given to it. I think that is the difficulty with DAPs providing the opportunity for pre-lodgement, but there is nothing to stop it happening. Any developer can go to a local government and have a pre-lodgement meeting, but the difficulty that local government planners might find is that they cannot speak for a DAP in the way that they can speak for their council. They cannot be sure that the advice they are giving is going to be right.

The CHAIR: On page 8 of your submission with respect to regulation 26, it stated that there has been a failure to continue the standard and duration of training over the past year. Can you expand upon this and provide details? This might very well go back to some of the materials that WALGA canvassed with us about training as well.

Mr MacRae: The original publication that was given to support the training was as good as any publication that has come out of the Department of Planning. That was excellent. It started off very thorough and quite expensive for the department. I am sure they are thinking twice about it, because it really is quite a burden. But I question whether it is appropriate to expend so much on educating and training councillors for a misunderstanding of what their task is. Their task is a government task. It is not to make them better town planners.

The CHAIR: That is not their job, is it?

Mr MacRae: Which is what this training does. It tries in half a day; and that is diminishing. In a council, what you need to do is to try to get the council to understand what the limits of their considerations and what their controls are so that they do not, on the wing, try to rewrite a planning policy; they understand what a planning policy is and they understand what a statutory provision is and they see the report and apply it. If you have them second-guessing the planners' reports, then you are just leading them down the wrong path and giving them the wrong signals actually. You should not need to train them on planning other than in the general sense that WALGA does training courses for them, in that sense that they mentioned. You cannot do anything in half a day; they do ones for four days or something—that helps. That is, I suppose, the main thing; this whole training thing is based on a misunderstanding of the nature of the council and the councillors' role.

Hon MARK LEWIS: In part, that is why the DAPs were established, I assume. You do not have land planning experts generally in council, and hence why you have specialists on a DAP process. You cannot have a chicken and the egg as well. I am trying to get over the inconsistency in here, or the incongruence, if you like, of having trained land use planners and specialists, and councillors who you cannot expect to have that sort of skill. What is the solution, in other words? Is DAP failing in that process in terms of its training?

Mr MacRae: I would say that the DAP process was developed based upon a misunderstanding of where the effort should lie. The assessment report—whatever system you go on—is what you should rely on for the decision. I think there were a few examples where councils overstepped themselves and proved themselves to be difficult, so the whole legislation was changed to deal with that issue. That is not a prevailing issue. Most councils work very well; 140 councils work very well. There might be half a dozen that developers have consistent problems with. I do not think you need to change that decision-making process at the last point rather than—see what I mean —

Hon MARK LEWIS: I was picking up on your point where you say that councillors are not trained in land use planning yet they are making land use planning decisions. What is the government to do about that? Your evidence is that that is not appropriate, because you have just said so.

Mr MacRae: They are making land use planning decisions based on the report —

Hon MARK LEWIS: But they are not trained to do that.

Mr MacRae: — that is given to them. They should not be rewriting the report.

Hon MARK LEWIS: That is the difference, thanks.

Mr Carter: The role of the reporting officer is to assess the development, whereas the council is making the decision but they are not asked to do a second assessment. They are asked to weigh up all the facts and come to a conclusion.

The CHAIR: You make reference in your submission about a review of the training. We are just wondering about the type of review that you would recommend and who should undertake it.

Mr MacRae: Review?

The CHAIR: In relation to regulation 26.

Mr MacRae: I suppose that response was really a response to the whole issue we are dealing with. In the old days, the Department of Planning would have been asked to do this and you would have got a very unbiased approach. But recently, if the department is asked to do something, the outcome will be corrupted by political interference, or the director general, possibly, is trying to double-guess what the minister wants. I would have had absolute faith in the department to be able to make an impartial assessment of the facts. Indeed, the original proposal for DAPs was, I understand, quite a reasonable one, that was published as such as only to deal with situations where councils had a development they could not deal with, it was so beyond their means, or those of strategic importance for the state. The department officers promoted that, and then suddenly they were overridden by others. It was not them being unable to do it. I know WALGA has an alternative way of doing the review. I would like to see a return to a less conflicted or less influenced, impartial group of officers in the Department of Planning.

The CHAIR: So noted.

There is another question in relation to the alignment of local government members, ensuring their nomination of local government members align with local government elections. I know that we have canvassed this matter in a number of hearings today. Do you have a view on that?

Mr MacRae: I think the regulations are now set to deal with it, so that is fine.

The CHAIR: Most of the other areas that we will go through you would have heard in the earlier session and they are fairly general. The first area is in relation to cost recovery. I know that your

association supports fees for DAP applications to reflect full cost recovery. Have you raised these matters with both department —

[4.20 pm]

Mr MacRae: Yes. Over the last few years we have written to the director general and the minister. I think there has been a lack of understanding in the department—certainly a lack of motivation—to regularly increase fees in line with inflation. The department has certainly increased theirs, but they are not so motivated to present regulations to Parliament that affect a third party—a local government. When they eventually did a few years ago, it was mentioned by WALGA there was a two-year CPI catch-up of 6.25 per cent that the minister granted. In fact, the way it was written in the regulations meant that we were only getting three per cent. How the regulations work is that if you have a development application valued at $2 million, you charge the applicant, say, $2 000 for its half a million value and then for every dollar above that, you are supposed to charge 0.23 per cent per dollar, or something like that. The regulations were changed to apply an inflation factor on the thresholds but not on the incremental amount. If your application was between the thresholds, you did not get the inflation factored in. As the years go by, that will get worse and worse. This was not understood obviously by the department because I got a letter back saying that the differences in calculations were due to rounding. I pursued it and in the end, they made a mistake. Then I wrote to the minister pointing that out and he obviously did not want to redo the regulations. Unfortunately, we are now three years since that and inflation is still going up two per cent or so. We are falling behind.

On the question of whether we would seek full cost recovery, I do not think there is any dispute amongst local government that that is a proper way to go. The general ratepayer should not cross-subsidise a developer for the cost of the assessment that is prompted by his proposal.

The CHAIR: The next matter you would have already heard us talk about is third party appeals. What is your association's position on third party appeals?

Mr MacRae: I support WALGA's view. Certainly in terms of DAPs, I do not think we ought to introduce third party appeals without realising that it will have implications throughout government in Western Australia.

The CHAIR: The next area again canvassed a fairly extensive debate about WALGA on the role of elected councillors.

Mr MacRae: I think we have dealt with it.

The CHAIR: I think so. DAP decisions in secret—concerns are being expressed about SAT processes being undertaken on a confidential basis and decision-making being undertaken by DAPs in closed meetings. Do you have a view on that?

Mr MacRae: This is a problem. When it comes to a council decision, the council, through their officers, deal with SAT and then because of mediation, they come back and it is re-put to the council and council has an open discussion about it. This does not happen for some reason. I cannot see the merit of the public, I suppose, being shut out of seeing what the changed arrangements will be regarding the finalisation of an application. I think it is causing some concern.

The CHAIR: We raised with each group that has come in today potential conflicts of interest with DAP members representing developers when they have been taken off that particular DAP for that reason. Do you think there should be a blanket ban on DAP members being able to represent developers?

Mr MacRae: I think once you go down this path of having specialist members making decisions and you are going to draw from a whole suite of professionals, you are either going to have retirees, so you have the possible odium of being regarded as a *Dad's Army* of superannuated, out-of-touch people, or you have people who have a business to run who cannot really say they cannot run their

business in the very area where they have expertise. I think it is inevitable that you have to allow this to happen. You are obviously not allowed to get involved in the decision affecting their application, but I would not stand on that as being a big issue.

The CHAIR: The next matter that was canvassed was about some applications seeking to increase the DAP threshold or the value of their application so they do reach the DAP threshold. Are you aware of those situations arising and does your association have a position on that?

Mr MacRae: We are certainly aware of it. We had a particular issue in my council where a few years ago we had an application for $2.6 million. They did not act on it and they came in with the same application under a DAP regime and valued it at $3.1 million as an optional DAP. We called them in and said, "It is the same application with the same plans and everything." They just said, "We just did a different estimate. We just got someone else to do a different costing." There is nothing you can do; you have to accept it. That is fine. What will happen with the application if it was approved, they would come back in with a building approval and the building plan will say $2.6 million and they will say again, "Oh, well, we have had it re-evaluated." Once you have these thresholds, you are going to have people trying to abuse it. That is inevitable.

The CHAIR: How do you resolve it? What do you do to stop it?

Mr MacRae: Get rid of DAPs.

The CHAIR: The next matter was about lack of reasons for failing to follow RAR recommendations or deemed-to-comply provisions. Do you have a view on that? I will not go through the same question because I know that you heard the responses to these ones.

Mr MacRae: It is always taken as read that if you go against it and refuse, you have to give the reasons but if you go against it and approve, there is something missing there now. If a council is dealing with it, whichever way you disagree with an officer's recommendation, it is written in the minutes as a preamble to the recommendation so the public know. I cannot see why you would not apply the same standard for DAPs.

The CHAIR: One issue that was canvassed in an earlier hearing today was about the lack of detail in minutes of DAPs, without providing dot points or additional information that might perhaps better educate people if the matter proceeded down the track. Do you think there needs to be better adherence to providing detail in the minutes of DAP meetings?

Mr Carter: Certainly more information would be useful, especially given the concerns the public has about the accessibility of the meetings. They are not as accessible as going to your local council. Generally, they are held in the city and during office hours as well. There is certainly a lack of accessibility for the general public. The more that is in minutes, which would give an understanding both to the affected councillors, who may not be able to attend, as well as the general public, you can only help the process.

The CHAIR: As to the exercise of discretionary powers, comments have been made in some of the submissions that describe DAPs as being unfettered and without justification or scrutiny of their powers. One of the suggestions that has been made is that any exercise of discretion be limited to variations of no greater than one R-code above that of the site in question and that the DAP give reasons for its decision. Do you have a view on that?

Mr MacRae: Yes. The DAP is supposed to stand in the shoes of the council. It should not have any greater power to vary if it is going one above in an R-code. The scheme says R-code and DAP can go to R40. The council cannot but DAP can. It is nonsense. From the beginning, the DAP was not supposed to ride roughshod over policies and schemes; it was supposed to provide a more efficient way of making decisions based upon that framework. Once you start suggesting this sort of additional rise be given to DAPs, I think it is unacceptable.

[4.30 pm]

The CHAIR: The next area was in relation to delays in the process, but I think we have sort of had a discussion about that in the first stage of your hearing today, so I am not too sure that we need to really go through that again. The last question is really bringing us up to where we are now. As you know, the government has released some amendments to the regulations for DAPs that came into effect as of last Friday, 1 May. As you would be aware, some of those changes go to the lowering of the opt-in threshold to $2 million for all DAPs, a quorum being any three DAP members including the presiding member, and the regulations prevailing over any planning instrument to the extent of any inconsistency. There are a number of other amendments as well, but we were just interested in your views on the amendments that have been made.

Mr Carter: There are a few points there. In regard to the thresholds, one point that always is of interest is that we have a threshold for 140 local governments in Western Australia, then a second threshold for the City of Perth. Just trying to understand what it is about the City of Perth's decision-making that they are making better decisions than the other 140, is it a case of education? In which case, let us educate the other 140 councils to be at the same level of decision-making; or is it a recognition that there is a number of applications coming in at these higher values and that the system is in fact inefficient, in which case let us look at the system and why we are running it. But there is certainly that disproportion there. We looked at those numbers being lowered down to $2 million: I do not believe you are going to be seeing too many strategically regionally important decisions being made on $2 million developments, so I would question the reasoning for it coming down so low. Certainly, moving it upwards is moving towards where the association has been recommending. So, certainly moving that threshold further up would be recommended. It was a bit disappointing, I suppose, to see those regulations coming out before the findings of this inquiry, but I will leave that for others to speak on.

The matter of the quorum being three DAP members, including the presiding member, is interesting. I can understand it from a functionality point of view; however, you then have the opportunity to run a DAP without any local government representation whatsoever. So, if it was to include a smaller quorum, then perhaps it should also include a reference to a local government representative as well, because many decisions being made under a town planning scheme refer to the impact it has on a community, and really it is only the local government member who can fully appreciate that because they live in the community. It is possible, I suppose, that some of these members live in the communities where they are making a decision, but it is not a prerequisite. So, to be able to have a quorum without anybody there to represent the community's interest is of concern.

The regulation regarding the regulations prevailing is probably reasonable as it seems to be only procedural in nature, but I would again go back to the point that I believe they are a bit premature, and will we see further changes to the regulations being made in six months' time I suppose is something we will be waiting to see.

The CHAIR: So are we. Have you got any sort of concluding comments you would like to make to the committee about this process or your views on DAPs that you have not already articulated?

Mr MacRae: No, I think probably we have articulated on a number of occasions. Thank you very much for giving us the opportunity.

The CHAIR: We really appreciate you giving us this time today and certainly being very frank with us about your views, and perhaps better educating us as well about some of the aspects related to DAPs. We will take that on board. Given this inquiry will be ongoing through to September, there might be an occasion when we need to seek further information from you at some point. We will either write to you or you will be contacted by one of our staff. Thank you very much for coming in this afternoon.

Hearing concluded at 4.34 pm