



**SUBMISSION TO THE MINISTER FOR PLANNING**

**IMPLEMENTING DEVELOPMENT ASSESSMENT PANELS IN WESTERN  
AUSTRALIA**

**WALGA's RESPONSE TO THE STATE GOVERNMENT'S  
DISCUSSION PAPER**

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## INTRODUCTION

The Western Australian Local Government Association (WALGA) is the united voice of Local Government in Western Australia. The Association is an independent, membership-based group representing and supporting the work and interests of all 139 Local Governments in Western Australia.

The Association provides an essential voice for almost 1,300 elected members and over 14,000 Local Government employees as well as over 2 million constituents of Local Governments in Western Australia. The Association also provides professional advice and offers services that provide financial benefits to the Local Governments and the communities they serve.

In order to respond to the Department of Planning's (DoP) Discussion Paper; *Implementing Development Assessment Panels in Western Australia*, WALGA's State Council resolved that a representative Local Government submission be developed using the following process:

- Consultation with member Councils through questionnaires and discussions with Elected Members and senior Executives; Zone meetings; and obtaining copies of Council submissions;
- Establishment of a Local Government Advisory Group comprised of Elected Members including non-metropolitan members, CEOs and Directors of Planning, to consider feedback received from members and identify the governance, planning, financial and social implications and impacts of DAPs for the sector; and
- If required, seeking legal advice on the legality/governance issues associated with the proposed structure and operations of Panels.

The outcome of this has been a clear message of overwhelming opposition to the introduction of Development Assessment Panels in the form proposed in the Discussion Paper. The model is un-informed and at odds with the benefits purported to be delivered.

Notwithstanding, Local Government recognises that there are opportunities to improve performance in some areas and contribute to the Minister's planning reform objectives for WA, in line with the COAG agenda..

As such, WALGA's submission is composed of 3 Parts: a review of land use planning and the COAG agenda; an evaluation of the proposed DAP model; and recommendations to the Minister on a suite of initiatives that could achieve the State's objectives, including where a revised DAPs model could be effective.

## **PART 1 – Land Use Planning and Reform**

Prior to an assessment of the DoP Discussion Paper, WALGA gave consideration to the purpose of land use planning and the broader objectives and principles that are associated with orderly and proper planning.

Land use planning is essentially public policy that aims to encompass and coordinate various disciplines which seek to order and regulate the use of land in an efficient and ethical way.

It encompasses the scientific, aesthetic, and orderly disposition of land, resources, facilities and services with a view to securing the physical, economic and social efficiency, health and well-being of urban and rural communities.

Responsible planning has always been vital to the sustainability of safe, healthy, and secure urban environments. Australia's population is growing and, with more people the planning profession must increasingly deal with complex issues, such as:

- conversion of land from natural habitats to urban built areas,
- maintenance and use of natural resources and habitats,
- development of transportation related infrastructure,
- ensuring environmental protection.

Not only does planning deal with land use, but also:

- planning social and community services,
- managing cultural and heritage resources,
- creating economic capacity in local communities, and
- addressing transportation and infrastructure.

In Australia land use planning is an important part of public policy, ensuring that land is used efficiently for the benefit of the wider economy and population as well as to protect the environment.

Land use planning can be complex and can encompass the following disciplines and more:

- Architecture
- Environmental planning
- Landscape architecture
- Regional Planning
- Spatial Planning
- Sustainable Development
- Transportation Planning
- Urban design and place-making

- Urban planning
- Urban renewal and regeneration
- Social and community planning

In recent years, Governments internationally have sought to modernize planning systems to meet the evolving needs of the twenty-first century: the development of global economies, rapid population growth and climate change to name a few.

During the years since the current WA planning system as we know it was introduced, the system has been incrementally modified and adapted to meet this ever changing environment. This has resulted in complexity, duplication and delays. At the same time it has resulted in a reduction of opportunities for community input and determination.

Within Australia, the need for improvements in planning and development assessment systems was recognized as essential as far back as 1996, when the Bell report *Time for Business* identified a number of important areas where red tape needed to be cut.

Recommendation 29 of the report suggested:

*That the three spheres of government develop a reform strategy for referral and concurrence procedures in the building and development industry by 1 July 1997. The strategy should include a system for resolving problems between government agencies and ensuring the delegation of decision making to the lowest level practicable taking into account the scale of development*

Over time, this has led to the Commonwealth and State and Territory Governments agreeing to broad reform of planning systems and regulations to ensure Australian planning systems are efficient, responsive and appropriate.

In April 2007, the Council of Australian Governments (COAG) specifically highlighted the continuing significance of development assessment reform and restated its commitment to streamlining and harmonising development assessment processes within jurisdictions. It noted that a more streamlined development assessment process can reduce the costs facing business and deliver positive economic, social, and environmental outcomes for the entire community.

In 2008, the Local Government Planning Ministers' Council (LGPMC) reported to COAG on progress with development assessment reform within their jurisdictions indicating that:

- States and Territories have reviewed, or are reviewing their Local Government development assessment legislation, policies and objectives to ensure that they remain relevant, effective, efficiently administered, and consistent across their jurisdiction;

- States and Territories have put in place, or are putting in place, strategies to ensure that referrals are limited to agencies with a statutory role relevant to the application, and that referral agencies specify their requirements in advance and comply with clear response times;
- all jurisdictions agree to review the outcomes of the current system and software trials of electronic development assessment processing and, if appropriate, facilitate further trials, with the aim of maximising the uptake of electronic development assessment processing by the end of 2009; and
- all jurisdictions agree that all new tender specifications for electronic development assessment software purchased by Commonwealth, State, Territory and Local Government will incorporate a National Communication Protocol for transferring development application information electronically from 1 July 2007.

COAG subsequently requested that the Local Government and Planning Ministers' Council continue to work towards implementing key elements of the Development Assessment Forum's Leading Practice Model which include:

<b>1 Effective policy development</b>	Elected representatives should be responsible for the development of planning policies. This should be achieved through effective consultation with the community, professional officers and relevant experts.
<b>2 Objective rules and tests</b>	Development assessment requirements and criteria should be written as objective rules and tests that are clearly linked to stated policy intentions. Where such rules and tests are not possible, specific policy objectives and decision guidelines should be provided.
<b>3 Built-in improvement mechanisms</b>	Each jurisdiction should systematically and actively review its policies and objective rules and tests to ensure that they remain relevant, effective, efficiently administered, and consistent across the jurisdiction.
<b>4 Track-based assessment</b>	<p>Development applications should be streamed into an assessment 'track' that corresponds with the level of assessment required to make an appropriately informed decision. The criteria and content for each track is standard.</p> <p>Adoption of any track is optional in any jurisdiction, but it should remain consistent with the model if used.</p>

<b>5 A single point of assessment</b>	<p>Only one body should assess an application, using consistent policy and objective rules and tests.</p> <p>Referrals should be limited only to those agencies with a statutory role relevant to the application. Referral should be for advice only. A referral authority should only be able to give direction where this avoids the need for a separate approval process.</p> <p>Referral agencies should specify their requirements in advance and comply with clear response times.</p>
<b>6 Notification</b>	<p>Where assessment involves evaluating a proposal against competing policy objectives, opportunities for third-party involvement may be provided.</p>
<b>7 Private sector involvement</b>	<p>Private sector experts should have a role in development assessment, particularly in:</p> <ul style="list-style-type: none"> <li>• Undertaking pre-lodgement certification of applications to improve the quality of applications.</li> <li>• Providing expert advice to applicants and decision makers.</li> <li>• Certifying compliance where the objective rules and tests are clear and essentially technical.</li> <li>• Making decisions under delegation.</li> </ul>
<b>8 Professional determination for most applications</b>	<p>Most development applications should be assessed and determined by professional staff or private sector experts. For those that are not, either:</p> <p>Option A – Local Government may delegate DA determination power while retaining the ability to call-in any application for determination by council.</p> <p>Option B – An expert panel determines the application.</p> <p>Ministers may have call-in powers for applications of state or territory significance provided criteria are documented and known in advance.</p>
<b>9 Applicant appeals</b>	<p>An applicant should be able to seek a review of a discretionary decision.</p> <p>A review of a decision should only be against the same policies and objective rules and tests as the first assessment.</p>

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**10 Third-party appeals**

Opportunities for third-party appeals should not be provided where applications are wholly assessed against objective rules and tests.

Opportunities for third-party appeals may be provided in limited other cases.

Where provided a review of a decision should only be against the same policies and objective rules and tests as the first assessment.

A number of projects to achieve the desired outcomes are underway in all spheres of government. Most recently at a State Government level, the Department of Planning released the consultation paper *Building a Better Planning System*. In the paper, the Director General states:

*The Government has made improvements to the planning system a matter of high priority. One of the first decisions made by the Government was to focus on reducing the complexity and time taken to obtain development approvals for major resource projects. This initiative has expanded into a broader reform of other approvals processes, especially those that apply to urban land.....*

*While streamlining the approvals processes for major projects has been the first priority of the Government, without a broader and more strategic approach to planning reform, measures taken to improve the planning approvals processes may end up being piecemeal and short-lived. In particular, there is a need to look at the effectiveness of planning systems in their totality to achieve a more effective balance between economic, social and environmental outcomes.*

The WA Local Government Association and its members recognize the need to modernize planning systems to ensure contemporary issues can be effectively addressed.

WALGA's State Council has committed to improving Local Governments involvement in planning through development and implementation of a Local Government planning and development approvals reform program. The goal is to ensure Local Government effort, guidance, processes and regulations are applied where they are effective. Policy and procedure should be proportionate to the issues and facilitate good planning outcomes whilst increasing business efficiency, customer service and community satisfaction.

To progress the national planning reform agenda, the LGPMC sought independent advice on the development of a set of national planning principles. The work resulted in the report *Local Government and Planning Ministers Council: National Planning Systems Principles*, a set of principles that underpin efficient and responsive planning systems.

The principles are identified under the key headings of:

“Purposive principles – which identify *why* we do planning  
Procedural principles – which describe *how* we should do planning  
Substantive principles – which identify *what* problem-based or topic-based issues could be addressed through planning.”

In general, the planning reform objectives of the Council of Australian Governments (COAG) and the Local Government and Planning Minister’s Council (LGPMC) are supported by the Association.

However, upon review of the model for Development Assessment Panels set out in Discussion Paper, it would appear that the DoP has completely disregarded these higher planning principles, COAGs objectives and the key elements of the Leading Practice Model that were endorsed by LGPMC for implementation through the national reform agenda.

DoP’s Discussion Paper: *Implementing Development Assessment Panels in Western Australia* purports to follow Leading Practice Eight (which recommends the use of an expert panel as one of the options to determine development applications) and Leading Practice Five (which promotes a single point of assessment) of the DAF Leading Practice Model. Firstly, the elements of the Leading Practice Model are intended to be a package that provides a “roadmap” for reform and should be implemented in the order recommended (later practices are dependent upon earlier practices having been undertaken) and secondly, the intent of the practices cited has been misinterpreted.

Whilst Local Government is supportive of reform to the planning system, such reform should not be determined without first undertaking proper investigation and research to obtain evidence of problems, it should not be based on narrow or single agendas and it should not be to the detriment of the broader public interest.

WALGA is supportive of the comments in Dennis McLeods paper *Development Assessment Panels in WA: Developing Land – To Whose Advantage? - A Shift From Community Responsibility* which assert that the intent of planning legislation in WA was based on the protection of the public and community interests. McLeods maintain that by consistent lobbying of governments and strategic support for political parties, the development industry bodies are progressively bringing the planning system in WA into a form which better suits their interests. The role of Local Government with its focus on community interest is considered to represent an obstacle to the development process.

It has been clear to Local Government for some time that community interest and the primacy of local Town Planning Schemes are gradually being diminished under the pressure of those with a short term commercial interest.

The State and Local Government have a responsibility to represent the interests of all stakeholders, in balancing development of the built environment with: the natural environment, community needs, cultural values and economic sustainability. Only then can we improve our quality of life and create vibrant, sustainable communities.



## **PART 2 - DEVELOPMENT ASSESSMENT PANELS IN WA: DoP DISCUSSION PAPER**

In this section WALGA provides comment on the specific proposals outlined in the DoP Discussion Paper.

### **3. Current development approval process – issues**

#### **3.1 Requirement for dual approval**

The Discussion Paper asserts that the current dual approval requirement duplicates the planning process, and uses many resources at both a State and a local level, resulting in a time consuming and expensive experience for applicants. The Paper specifies DAF Leading Practice Five, which promotes a single point of assessment (using consistent policy and objective rules and tests) to ensure decisions within a timely manner.

The Discussion Paper argues that because approval may be required under a regional planning scheme and a local planning scheme, an applicant is required to submit duplicate applications. It is considered that dual approvals can be problematic resulting in conflicting results and review by the State Administrative Tribunal (SAT). The Discussion Paper states that the dual approval system is resource hungry, time consuming and expensive to applicants.

#### **Comment**

For clarity, the applicant only ever submits one application (not duplicate applications as stated in the Paper) to the Local Government and where required, the Local Government refers the application to the WAPC for assessment under the applicable region scheme.

Notwithstanding that there is no additional effort required of the applicant, the need to remove the obligation for approval under two separate statutory planning schemes is supported.

However, whilst it is desirable that a single assessment point is established, the introduction of DAPs will not achieve this outcome as separate legislation will remain in place requiring environmental approvals, water permits, and other licenses to be secured.

Local Government considers that the significance of applications requiring dual approval (that is, by a Local Government under its local planning scheme and by the WAPC under a region planning scheme) is significantly overstated in the Discussion Paper. The Association obtained statistics on the number of applications requiring dual approval from a random sample of Councils as part of its research.

The sample data obtained from several metropolitan Local Governments (including the City of Perth, which would have the highest number) about dual approvals between 2004 and 2009, revealed that of the 15,126 development applications, 104 or 0.006% required dual approval and 25 or 0.002% were over \$2m and would have been referred to a DAP.

Clearly a minute number of DAs are affected by the need for dual approvals. In the metropolitan region, the WAPC has already delegated the determination function under the Metropolitan Region Scheme (MRS) to the relevant Local Government in most cases, so that a single decision by the Local Government simultaneously determines the application under the MRS and under the local planning scheme and this could be extended. It is only where such delegations are not in place (for instance in accordance with a Clause 32 resolution under the provisions of the MRS or where the Minister exercises their call-in powers for projects of regional significance) or where the Local Government and a State authority do not agree, that the matter must be referred to the WAPC for decision under the MRS.

In terms of the performance of the approval authorities, evidence from the City of Perth shows that where dual approvals were needed, overwhelmingly it was the WAPC approval timeframe that blew out. A sample of these is attached at **Appendix A**.

The Discussion Paper also fails to demonstrate how the establishment of regional DAPs can deliver improved processing times or indeed are even applicable in areas that operate without a regional planning scheme, nor does it address the problems faced by developers negotiating the other approvals or licenses that a project must secure before it can commence.

### **Conclusion**

Dual approvals are not of a significant enough issue to justify the complete reform of the approvals system and where delays do occur, it is clear that Local Government is not the obstacle.

And while a single point of assessment is supported by Local Government, the proposed model can not achieve this outcome as broader legislation will continue to mean that additional approvals are needed.

### **3.2 Local Government resources**

The Discussion Paper states that Local Governments are required to expend a large amount of resources on assessing applications for various types of planning approval. It also states that minor developments are generally subject to similar decision making processes to those that apply to substantial development proposals, despite the different complexity involved in the assessment of each application and the amount of time and effort that is therefore required for each assessment. This statement is mistaken.

The Discussion Paper also contends that applications for significant projects are treated in the same way as ordinary development applications, without recognition of the value or significance to the State and the potentially controversial nature of such developments. The Discussion Paper also states that regional impacts of the project may be difficult for a single Local Government to identify and in many cases, the Local Government responsible for determining the application may not have the appropriate technical capacity or resources to assess the implications of the proposal, and are required to hire independent experts to conduct the assessment, causing significant time delays and

associated costs to the applicant. Stating a more streamlined process for proposals of State significance is necessary.

### **Comment**

Every part of Local Government's assessment process takes cognisance of the significance and complexity of the development proposal. Complex development proposals are generally dealt with by more senior officers in consultation with multidisciplinary professionals, requiring negotiation with applicants and detailed reporting. Minor development proposals are often processed by less experienced officers and the assessment of minor proposals is usually streamlined and approved under Delegated Authority.

It is recognized that projects of regional significance would benefit from appropriate technical resources in the assessment process and that additional advice on regional impacts would be beneficial.

The Discussion Paper, however, does not recognize that technical resources associated with the development assessment process are still required prior to a DAP determining the application. In fact, the advice and reports that must be prepared by a Local Government officer will probably need to be more detailed to ensure that local policy requirements are explicit for those not familiar with the adopted plans and policy of the Council. This will require more effort from limited resources.

Also, it is implied that controversy can be quashed by the introduction of DAPs and that community pressure and political pressure detracts from desirable planning outcomes. Local views and opposition to a development proposal is seen as a negative influence on the planning system. This is completely inconsistent with the democratic system of governance that we have in Australia and the principles of natural justice and public interest. Such views can be an important consideration when a discretionary matter comes before a Council.

It is naïve to suggest that simply taking away the decision making function of elected Councils will have a positive impact on the assessment process or the planning and administrative resources required by Local Governments to process and assess applications.

The proposed administrative arrangements for DAPs will present some significant adverse resource implications for Local Government. The sitting fees to be paid to non-elected members of DAPs are expected to be funded from the application fee, which would reduce the portion of the fee remaining to cover the Local Government's existing assessment and administrative costs associated with processing of an application up to the point of presenting a recommendation to the DAP.

The Discussion Paper makes no reference to any intention by the Government to amend the *Planning and Development Regulations 2009* to enable higher fees to be charged to cover the additional cost of paying sitting fees to Panel members.

The requirement for Local Governments to provide secretarial support to DAPs, and for officers responsible for reports to attend panel meetings to present applications, will create an additional workload that will require additional resources as there will be a completely new burden arising from organising agendas, minutes, travel and accommodation, meeting venues, reporting requirements, training members and so on.

In the case of Joint Development Assessment Panels that consider a number of Local Government areas, the Local Government that is providing the secretariat support would need to liaise with all of the other Local Governments referring DAs to the same meeting, and consequently the complexity of preparing the agenda and arranging the meeting will be significantly greater than the work involved in servicing a single Local Government's Council.

Further, the workload of the two elected member representatives representing a Council on a DAP will increase, as the DAP meetings will be additional to, rather than a replacement for Council meetings, which will continue to deal with other applications.

The requirement for the Local Government to be the respondent in any SAT proceedings arising out of a decision of a DAP will also have resource implications in cases where the DAP's decision is contrary to the officer recommendation. In such circumstances, it will generally be inappropriate for an officer of the Local Government to represent the respondent, and therefore the Local Government would probably be required to employ external consultants and/or lawyers to represent the respondent and appear as expert witnesses. The cost of employing such external representation is proposed to be met by the Local Government.

Given that currently the application fees paid to Local Government do not cover administration costs, further expectation for Local Government to cover costs of defending the DAPs decision is completely unacceptable.

The following is an example of the shortfall currently experienced by a Local Government in terms of the revenue generated by fees vs the actual costs accrued:

**Building license Assessment**

Total Cost of Service Provision	\$893,894
<u>Total revenue (from licenses)</u>	<u>\$551,689</u>
Net Cost to Council	-\$346,880

**Statutory Planning Applications**

Total Cost of Service Provision	\$726,596 (includes deduction for Senior Strategic Planner, Strategic Planner and Strategic Projects)
<u>Total revenue (from planning applications)</u>	<u>\$331,689</u>
Net Cost to Council	-\$394,907

**Conclusion**

The proposed DAPs will have a major adverse impact on Local Government financial and human resources.

### **3.3 Lack of regional planning in some remote areas**

The Discussion Paper recognizes the lack of regional planning instruments in remote areas, and that there is a need for a mechanism to be introduced into regions (particularly in areas not serviced by a regional planning committee) to enable decision making to occur at a regional level and in relation to development of State or regional significance.

The constraints of implementing DAPs in regional areas are not addressed in the Discussion Paper. The issues of distance, site visits, staff resources, traveling time, and local knowledge are some of the issues associated with planning in remote regions. These matters are required to be clearly addressed and discussed with those experienced in regional areas.

Regional Councils consider that the same agencies are primarily involved in massive delays of any approvals of significance such as; subdivisions, structure plans, strata developments town planning scheme amendments and approvals and environmental approvals. The Discussion Paper does address the interface of State agencies with the Local Government approval process.

### **Conclusion**

The implementation of DAPs in regional areas has not been addressed, with respect to existing lack of planning instruments, resources, unique issues associated with remote regions and so on. It is unclear how DAPs will contribute to planning in regional and remote areas.

#### **4.1.2 What applications will local development assessment panels determine?**

The Discussion Paper refers to the intent of DAPs dealing only with complex applications that will have significant impacts on the local or regional area. However, the proposed criteria for the metropolitan area mean that virtually any type of development with a value of over \$2 million, except for single houses and grouped/multiple dwelling developments with 10 or less dwelling units, would be determined by DAPs.

### **Comment**

Local Governments consider that the proposed criteria for the types of applications required to be determined by DAPs instead of the Local Government or WAPC are too widely-drawn, and the extremely low thresholds would encompass the types of development that should be determined by the relevant Local Government or its staff.

It is considered that in the case of development proposals that are genuinely of regional or State-wide significance with implications beyond a single Local Government area, referral to a DAP could be used to ensure that the strategic implications of a proposal as well as its local implications are given due consideration.

The Discussion Paper does not sufficiently address land use impacts and is misguided in the implied belief that a dollar value equates to complexity or the significance of the development. The proposed criteria will result in thousands of DA's that can currently be determined by officers under delegated authority having to be referred to a DAP for determination and necessarily taking longer.

Fundamental to the assessment of applications is the balance between local representation and professional advice. The Discussion Paper acknowledges the value added to decision-making by elected members' local knowledge but then goes on to diminish the role of elected members by proposing that they will be in a minority in the composition of Panels.

The paper does not acknowledge that the role of Local Government elected members is more than bringing knowledge of the local area and relevant policies to the decision making process – they have an important role in reflecting the aspirations of local communities.

There will always be some development proposals where the planning merits of an application are finely balanced, or the application of planning scheme or policy provisions are ambiguous or allow for significant discretion to be exercised. In these situations it is appropriate that community views and expectations, represented through elected members carry weight in the decision-making process.

### **Conclusion**

The proposed DAP criteria are too all-encompassing, the thresholds are too low and will result in minor matters being referred to DAPs and does not give regard to land use and associated impacts on the community. The nomination of a monetary figure is not an accurate measure of significance or complexity of a development approval or its impact on the surrounding locality.

The proposed criteria will result in a negative outcome ie thousands of DAs currently determined under delegated authority will take longer and cost more to process due to them now having to be determined by a DAP.

#### **4.2.2 What applications will joint development assessment panels determine?**

The criteria for referral of applications to DAPs are too broad and would result in a significant number of referrals. There also seems to be an inherent misconception that the so called 'complex' applications are where most delays are caused. In fact, the opposite is often true. Delays are mostly experience with those applications requiring external referral or public consultation and will often include the simple and less expensive developments but may be highly contentious.

Also, it needs to be acknowledged that within many Local Governments (particularly metropolitan), a majority of the applications that would currently fall under the criteria for referral are presently dealt with under officer delegation, unless objections are

received during advertising. In these cases and as already stated above, the DAP process will simply add further work, time and costs.

It is considered that the proposed dollar value proposed for referral to DAPs captures routine developments that are generally dealt with by Local Government officers.

### **Conclusion**

See conclusion at 4.1.2.

#### **4.2.3 How many members will sit on the joint development assessment panels?**

The make up the panels is clearly unacceptable to Local Governments. The decision to make Local Government a minority member shows a clear and deliberate attempt to remove local decision making and Local Government out of development assessment. The implied assertion that only good decisions can be made by so called experts is simply nonsensical, and ignores the reality that good planning outcomes have been consistently and continually achieved across the State when entirely in the hands of Local Government, and based on sound and expert planning advice from Local Government officers.

In a DAP model five members is probably the most appropriate, with seven likely to be too many and three too few. Obviously an uneven number is required to avoid deadlocks. However, the number of members on a panel is not the issue, but the ratio. Any model, no matter how many members, that has Local Government as a minority participant will not be supported by the sector.

### **Conclusion**

Proposed composition is not supported. Three members appointed by the Minister and two elected members create an imbalance and diminishes Local Government decision making.

#### **4.3.1 Panel Membership**

The discussion paper leaves open the possibility that specialist or expert members can come from any number of professions, but that the desired level of expertise in planning or development severely restricts the pool of potential candidates.

Panel membership should by right have the majority of members from Local Government. In this model, three of the five members should be elected members from the relevant Local Government. This rightly keeps the responsibility for local decisions in the hands of the Local Government and ensures that the decision is made with expert and specialist advice from the remaining two panellists.

While the discussion paper leaves open the possibility that Local Government and State Government employees could be appointed to panels, the stated requirement that panellists must be 'independent' seems to preclude these appointments. With regard to Local Government employees, particularly Planners, and Approvals Managers etc – the sector would support the use and appointment of Local Government employees, and it is

considered that they will be best equipped with knowledge of the operation and intent of Local Government planning schemes.

In the event that the majority of members are not to be represented, it is also considered that Local Government experience is a vital qualification criteria for a position of a panel, and that all DAPs should at least have one person with the experience on a panel as a prerequisite before determinations on development assessment can be made. Local Government is itself a specialist area, and understanding the needs of local communities, is vital to delivering good planning and development outcomes. Such criteria would give the Local Government sector confidence that they were not being written out of the planning process.

The membership of panels is a major concern for Local Governments and of particular concern is that panels will be heavy with current and former development professional and consultants that may have a predetermined position when making assessment of development applications.

So the question becomes can persons with specialist or expert skills in planning and or development, who have worked in the development industry or as a consultants for developers, really be considered 'independent', when they have made a living working for and serving the development industry. This is not to say there is not a place for development professionals on panels, just that the balance of appointments should not be for this part of the sector.

Beyond this, if a substantial number of appointments are made for the industry side of the sector it will create a perception that DAPs are pro development and not interested in community concerns, then this will taint the entire planning system.

That Local Governments will be entitled to select their own representatives is the only way such a process can be managed. Local Governments should also be free to decide in what manner this will be determined.

## **Conclusion**

Panel membership is complex and provision should be made for Local Government input in the appointment of panel members.

### **4.3.2 Panel Accountability**

The assertion that a panel will be an accountable, or that is will be more accountable and transparent than Local Government is completely untrue. In fact the opposite is the case.

Local Government elected members already have clearly defined accountability and transparency requirements. Any development assessments considered by Council are done so in meetings open to the public, where any person can attend and be heard on the issue. Council meetings are also held in the area in which the decisions are being made, which mean that interested or affected residents don't have to travel long distances to attend these meetings. This won't be the case with DAPs. Because Joint DAPs can cover



up to 14 Local Government areas, meetings will be held and decisions made far removed from the local area in most cases, making it difficult, if not impossible in regional areas, for individuals to attend meetings and be heard.

At any rate, under the proposed model panel meetings will only hear presentations from persons who have made a submission. This does not take into account that not all applications require advertising. It is understood that that this is encouraged in order to facilitate faster decision making, but it has the danger that certain applications will not provide any opportunity for concerned members of the public to either support or oppose the application, before a decision is made.

Decisions of Local Governments are already reported, even the details of applications approved under delegated authority. Council consideration and decisions are taken in a public forum.

The proposal offers far less transparency than is already in place in Local Governments.

DAPs are certainly less accountable to the local community, than Local Governments as DAPs will not even receive direct feedback from the local community. Concerned members of the public will have to make submissions to the Local Government during consultation, and their concerns will generally be considered by the DAP in a Local Government report, provided by the Council.

There is nothing accountable about a body that is not in any real way connected to the community for which they are making decisions. DAPs are completely removed from local issues, and simply including two token Local Government representatives in a minority position does not make up for this isolation from community needs and expectations.

Furthermore, community members also have a reasonable expectation that the when they are consulted by Local Government, that their views will be taken into account. The problem is Local Government will no longer be in control of the decision – just held responsible for it.

## **Conclusion**

This matter is not supported by the Paper or the current regulatory environment. It is considered that expert panellists will not have the same levels of accountability, either to the community or under legislation, as Local Government officers, and especially elected Councillors do at present. Elected Councillors are bound by the Local Government Act, the Planning and Development Act, adopted town planning schemes, Codes of Conduct and more. This proposal is a serious step backwards for accountability and transparency.

### **4.3.3 Panel Technical Planning Support**

#### **Comment**

From a Local Government perspective, this will be no different to what currently happens when an application goes before Council. The Local Government officers assess the

application and prepare a report. If the Local Government does not have the resources they are already able to employ a consultant to provide technical advice.

The implied contention that this somehow adds support or resources to Local Government is simply an uneducated assertion. The same work, if not more, will still be required to be done by the Local Government. In thousands of cases where the application would have been dealt with under delegated authority, additional work will be required to prepare a detailed report for the DAP.

### **Conclusion**

The assertion that the proposal will add support for Councils is completely incorrect and not supported. DAPs will in no way contribute to the technical assessment process of development proposals, as this assessment and a technical report will have necessarily been done by the Local Government before the meeting. Local Governments may in fact experience a need for additional resources to produce the additional reports. Panel members will be making decisions on the technical advice provided to them in the Local Government's report.

#### **4.3.4 Panel Secretariat Support**

##### **Comment**

That Local Government will be expected to provide panel secretariat support is yet another impost on Local Government staff, and in contrary to the desired concept of freeing up resources to produce more timely and efficient planning results. Instead, the panel adds an extra layer of bureaucracy that must now be administratively supported, over and above Council.

The burden on staff will include the organizing meetings, agendas, taking minutes, distributing materials to panellists, keeping statistics, reporting and all other administrative matters. This is time consuming work, and will not be helped by spreading it across a number of Local Governments over 6 month intervals.

### **Conclusion**

The secretariat support to DAPs by Local Government is opposed. This will be a new administrative and financial burden on Local Government. The support required will be very costly and time consuming, and these matters seem to have been completely glossed over in the Discussion Paper.

#### **4.3.5 Panel Administration Costs**

It is proposed that the Local Governments covered by a DAP will contribute to the payment of costs and expenses incurred by the Panel.

##### **Comment**

The proposal to have the operational costs of a State Government body paid for by a Local Government is simply preposterous. By virtue of the fact that the costs would have to be paid out of the Local Governments general revenue, the State Government is passing the costs of its own Panels on to local ratepayers, who have in fact been

marginalized by the establishment of the DAP. From a community perspective there is no demonstration of the principles of need and nexus, user pays or equity in this proposal.

Beyond that, the proposal which asserts that the costs can be covered through existing application fees is simply ignorant, and shows a real lack of understanding of planning fees and the actual costs of provision of planning services by Local Government.

Most Local Governments already report a substantial shortfall in revenues for their existing planning services, which are supposed to be covered by the current fees and charges set in State regulation. These additional costs put further pressure on the sustainability of Local Governments. It seems particularly unfair that the sustainability of Local Government is currently being scrutinized by the State, when at the same time the State Government itself continues to push additional costs onto Local Governments.

In this instance the costs involved in supporting Joint DAPs will be considerable and inequitable. Local Governments will have to pay for sitting fees for panellists, and all expenses incurred by the DAPs. This will involve travel, which in regional and remote areas will be very large; in many cases travel will involve booking flights and even charter planes, and then overnight accommodation for the panellists. Each Local Government will have to send two elected members to each meeting that they have a single matter before, as well as officers required for secretariat support, and officers required to present reports. This will prove to be extremely expensive and very inefficient.

On top of which, there is no methodology for how to apportion costs between Local Governments.

Beyond this there are the immeasurable costs to elected members who will be required to sit around and wait for their Local Government matters to be considered. This is not a good use of Councillor's time, and shows a lack of value for an important voluntary community role.

## **Conclusion**

The proposal that the administrative costs for a State Government body be paid for by Local Government is strongly opposed. Should DAPs be implemented in some form, the only outcome acceptable to Local Government is that the Panel administration costs and resources are entirely borne by the State Government as is the case in other jurisdictions.

### **4.3.6 Panel Sitting Fees**

It is reasonable to expect panel members be paid for their work on Panels. However, there is once again an undervaluing of the role of Local Government councillors, who would not be paid sitting fees for their involvement, as it is considered in keeping with their position. In other instances, this may be appropriate, but where in the case of Joint DAPs – where large amounts of travel will be necessary, and large amounts of time required (sometimes days) to be devoted, particularly in regional WA, just to attend meetings, it is not reasonable to expect this is done for free. This impost on panellists

does not appear to have been considered, and neither do the many practicalities of making DAPs work.

The sitting fees are envisaged to be \$400 for an expert panel member and \$500 for the Chair. These fees are a considerable impost on Local Government at these levels, and as previously stated can't be afforded out of existing application fees. That aside it may be that these sitting fees are too low to attract the type of persons, with the right type of qualifications and experience that is required.

The reality is that these sitting fees are low when compared with similar State Government Board positions, and the panellists will be expected to make decisions on complex matters, that involve considerable amounts of money. If DAPs are to deliver good planning outcomes, based on expert advice as asserted in the discussion paper, this will only occur if these expert panellists can be obtained.

Given that an expert role on a panel is likely to create conflicts with many people's professional work, the monetary enticement may need to be larger to attract expert panellists. It is also the case that where expert panellists are required to undertake large amounts of travel, which is time consuming, a simple meeting fee will not be considered satisfactory.

Again however, this will impact on the rising costs of panels, which is already unaffordable within existing application fees. State Government should absorb these costs not pass them on to Local Government.

## **Conclusion**

All panel members should be considered of equal value and as such, the payment of panel fees should apply equally to elected members. Elected member participation on a panel is in addition to their other Council activities, including Council meetings addressing other matters.

### **4.3.7 Panel Code of Conduct**

#### **Comment**

The fact the Paper recognizes the need for such a code of conduct is evidence that the proposal is not as transparent or accountable as claimed.

Panels have a greater likelihood of producing incidents of conflict of interest at best and corruption at worst, precisely because of the removed nature of the process, and the lack of transparency and accountability of panel members. The permanent and known members will also make panels and panellists a target for people wishing to illegally influence the approvals process.

The reality is that an expert panellist will be in a very powerful position to shape decisions, and as expert panellists are to be sought from the very industry / profession that they will be making decisions in the risk is heightened, as it will inevitably throw up new situations of conflict that have not been encountered in planning before. Certainly,

the perception of conflicted interests will persist, in a State where only a small industry exists, and is very interconnected and interrelated. In reality even retired panellists will be open to the claim of conflict of interest, where a former client or former employer is involved.

As the expert membership, conceivably could include planners from State Government Departments, or Local Government, further issues of conflict will also arise.

Ultimately, it is important to remember that in a planning and development industry sense, Western Australia is a small place and it is difficult to avoid these types of conflicts. So managing conflicts becomes singularly important. It will not be enough to rely on the integrity of panellists, there will need to be some degree of oversight. This discussion paper makes no such mention of any oversight of panels, which will be essential to ensure proper probity.

### **Conclusion**

Given that WA has a relatively small development industry and that transparency and accountability is questioned, it is considered that at a minimum, strong regulatory Codes will be required. Even with such regulation, panellists will not be as accountable as elected Councillors.

#### **4.3.8 Panel Quorum and meeting frequency**

The suggested meeting dates appear to be reasonable when considered in isolation from the costs and administrative burden placed on Local Government. The reality is that in order for DAPs to make decisions in the timeliest manner possible they will have to meet regularly; otherwise there will be substantial delays while matters await determination at panel meetings.

However, meetings often particularly in regional areas can be extremely burdensome on panellists, elected members and Local Government staff, and metropolitan DAPs will not be immune from the administrative burden that fortnightly meetings will create. Regular meetings will draw down heavily on Local Government resources, and consume time and money.

### **Conclusion**

Councils ordinarily meet monthly, and some Councils now meet fortnightly in order to deal quickly with planning applications. DAPs may be able to match the timeliness of councils that meet monthly but they will not be able to reduce these timeframes for decision, and they certainly will not be able to reduce timeframes for DAs determined under delegated authority, which already bypass this layer of bureaucracy.

#### **4.3.9 Panel Members Training**

It is appropriate and important that panel members, including Local Government members, undertake some training to ensure that they are prepared and understand the planning framework in which they will be making decisions. In many cases, with Local

Government Councillors this will be redundant; however it is viewed as important that all panellists receive the same induction into the process.

Of real importance, is that adequate attention is given to teaching specialist panellists, about Local Planning Schemes, and how they are intended to operate. Local Government representatives will be able to advise the panel during meetings on these matters, but specialist panel members must be cognisant of the planning framework with which decisions must be made. If this is not the case, there is the real danger that DAPs will be making decisions inconsistent with needs and desires of local communities, reflected in local planning schemes that have had extensive consultation of the local community in their preparation.

### **Conclusion**

Training for all panel members is supported.

#### **4.3.10 Panel reporting on performance**

The Discussion Paper proposes a new provision in the *Planning and Development Act 2005* requiring each DAP to report on its decisions to the relevant Local Government, the WAPC, and the Minister for Planning.

The Department of Planning proposes to prepare annual reports to be tabled in Parliament, which summarize trends and review the performance of each panel.

The Discussion Paper is unclear as to whether reporting on performance is done by the DAP itself or whether it is another substantial administrative cost for Local Government to bear under the proposed DAP model.

In considering the role of a DAP in relation to planning reform, the use of benchmarking and performance reporting by Local Government and DoP could be a trigger for the establishment of a DAP rather than the proposed monetary criteria. For example, where a Local Government has consistently failed to meet minimum performance benchmarks; or where a Local Government determines that it does not have the resources to adequately assess an application.

### **Conclusion**

There is a role for performance reporting and benchmarking, to inform areas of best practice, areas requiring improvement and indeed to be able to review the case for the establishment of DAPs and their purported benefits.

#### **4.4 Will these panels be bound by the existing planning framework?**

The Discussion Paper proposes that the DAP will determine the application in accordance with the requirements in the relevant region or local planning scheme, as the responsible authority.

It is also proposed that; “In the course of determining development applications under a local planning scheme, the development assessment panel may become aware of issues with provisions of that scheme, such as zoning restrictions or development control requirements. If the development assessment panel believes that the provisions of a local planning scheme should be amended, the panel will be able to provide the Minister and the relevant Local Government with written advice regarding a recommended scheme amendment.”

#### **Comment**

DAP involvement in the provisions of local town planning schemes and scheme amendments is of concern and opposed, as it will erode the strategic planning role of the Local Government, the input of the local community and is completely inconsistent with Leading Practice One of the DAF Leading Practice Model which states that elected representatives should be responsible for the development of planning policies.

Often it is during their consideration of a DA that a Local Government evaluates the suitability or clarity of their planning instruments, therefore by-passing the decision making component will negatively impact on the strategic planning role of elected members.

#### **Conclusion**

The DAP having the power to initiate a scheme amendment and the Minister being able to order a local scheme amendment in accordance with a DAP recommendation is strongly opposed and is considered to undermine both the Council’s strategic planning role and its statutory planning role. This is not supported by Local Government and is inconsistent with the DAF Leading Practice Model.

#### **4.4.1 Appeals**

The Discussion Paper states that DAPs will determine an application as the relevant decision-maker and applicants will have the same right of review to SAT as they have now.. In the event of an appeal, the relevant Local Government will be the respondent for any application of review lodged for the decision made by the DAP. Also, the WAPC will be the respondent for any application for review lodged for the decision made under a region planning scheme.

#### **Comment**

It is of serious concern that the decisions, costs associated with appeals and the administration of conditions of approvals emanating from DAPs are proposed to be the responsibility of the Local Government.

Often Local Governments will engage external planning consultants or legal advisors to defend decisions of the Council in appeals, particularly where the decision differed from the officer’s recommendations. In any case, Local Government resources are required for planning appeals.

The criteria for referral of a DA under the current DAP model is likely to mean there will be a significantly greater number of DA's determined by DAPs than would otherwise have gone to a Council for determination. As such, the potential exists for appeals to increase and consequently the need to apply Local Government resources or engage external professionals will increase.

The proposed DAP model does not address how Local Governments will recoup their expenses nor why a Local Government should defend a determination made by a State appointed body.

### **Conclusion**

This proposal is unworkable and not supported. DAPs are proposed as the expert decision makers, yet are not required to defend their decisions on appeal nor administer the conditions of approval, yet Local Governments will be required to defend DAP decisions and carry all associated costs. In terms of equity and accountability this is unacceptable, and is incongruent with the arguments put forward for appointment of 'expert' panels.

### **4.5 Applications of State and Regional Significance**

There is a reasonable argument that State Government and the Minister for Planning should have greater control over developments that genuinely are of State or regional significance. Certainly, developments on this scale require an approach that considers the strategic planning context. This does not mean that Local Governments should not be involved, in fact it is vital that they are, and that local community needs and concerns are considered in the process.

The Discussion Paper does not define what constitutes a development of state or regional significance. An open discretion for the Minister is not advisable, and not supported by Local Government. If a Ministerial call-in-power is to be implemented, over development assessment, or in any other areas, then a clear criteria must be set down that ensures that only matters of genuine State or regional significance are able to be called in.

The process for assessment and reporting of developments of regional and State significance as proposed in the Discussion Paper appears inefficient and unclear.

### **Conclusion**

There is merit in the establishment of a panel for the assessment of proposals of regional or State significance. The criteria for identifying these proposals (and what triggers the Minister's call-in powers) and the process for assessment are required to be developed in consultation with Local Government and be clear and unambiguous.

### **5. Benefits of development assessment panels**

The Discussion Paper asserts a number of benefits will be derived from the establishment of DAPs. These are examined below:



**Timeliness:** The Discussion Paper states that as a development assessment panel will be the only decision-making body responsible for determining development applications for significant projects where dual assessment would ordinarily be required, the overall time taken to determine the application shall be reduced.

The Discussion Paper does not provide data on the actual extent of dual approvals in WA. Local Governments however report that a small proportion of applications require dual approval. It is noted however, that the Discussion Paper does not address other State agencies such as the Swan River Trust or the EPA in the approval process. Given that the Discussion Paper relies on dual approval as a justification for the introduction of DAPs it is questioned as to why a statutory amendment is not considered to address this issue.

Furthermore, the Discussion Paper makes no reference to the role of proposals being assessed under delegated authority. In general a large proportion of development proposals are evaluated in terms of complexity and degree of controversy or impact on the community, and then assessed accordingly as a streamlining measure. These delegated proposals are not determined by Council and under the DAPs proposal many will now be required to be further assessed by a DAP. This additional level of assessment will not contribute to timeliness and its rationale is questioned. A survey of metropolitan Local Governments reveals that between 2004 and 2009, 32,681 development applications received, 30,632 were determined under delegated authority (93.7%), and 1,405 (6.3%) were determined by Council.

The Discussion Paper also states that for panels established voluntarily, the participation of independent and technical experts will save the costs and time delays usually incurred by the hiring of such experts to brief the decision-making authority.

The use of the word 'voluntary' is questioned, as the tone of the Discussion Paper implies mandatory involvement in the DAP process.

The Paper asserts that experts on the panel would not require a briefing and that briefings are a cause of delay and increased cost. Thus, a DAP will reduce costs and delays. This is questioned, given, that the existing assessment process will still be in place, and that it is unrealistic to think that all panel members would be cognizant of all the issues effecting every proposal. It is anticipated that briefings would still continue.

**Efficiency:** The Discussion Paper states that by only requiring one decision-making body to determine applications for significant projects, applicants will incur fewer costs and fewer government resources will need to be dedicated to the matter.

As mentioned previously, dual approvals are few, but there will be the same need to consult all agencies in the assessment process.

It is not considered efficient to require applications that are currently assessed under delegated authority (which has reduced time and cost benefits) to be processed and determined by an additional DAP process (with its associated costs and timeframe).

**Simplicity:** It is asserted that eliminating the need for dual approval will simplify the application process for significant projects, as well as for development applications made to Local Governments that have delegated their powers to a panel.

There is no evidence that the DAPs as proposed will simplify the development assessment process.

**Transparency:** The claim that DAPs will bring increased transparency is completely untrue. Local Government has long been operating with transparency, while the WAPC decisions are still not transparent. Local Governments are required by legislation (Local Government Act 1995) to hold meetings that are open to the public, and required to have a Delegations Register which must be reviewed every year. All Local Government publish their minutes and agendas on their website for public information, where the details of delegations can read. DAPs will not be as transparent as Local Government decision making.

**Sustainability:** That this DAP system is somehow more sustainable than the current system is an unsupported and meaningless claim. If anything, a new system, adding an expensive and inefficient layer of bureaucracy is much less sustainable. Certainly Local Governments can ill afford further unnecessary financial burdens, and arguably this proposal makes the entire Local Government sector less sustainable overall.

**Accountability:** Unelected panellists are simply not as accountable as Councilors who are held to account by their communities for decisions made while in public office. Local Governments already operates under legislation that requires and delivers accountable decision making. Local Governments operate in a public arena, and are held responsible by their communities for the decision they make. DAPs are not accountable in any real sense.

**Fairness:** Applicants are already able to seek a review at SAT with regard to Local Government decisions. So that this avenue of review is also available under the proposal is no improvement on fairness in the system.

**Consistency:** The Discussion Paper states that the application and determination process for significant projects will be clear, as the criteria for such applications will be identified in the regulations made to support the DAPs. Also, that DAPs will make decisions in accordance with the existing planning framework.

Applications normally determined under delegated authority or by Council would generally remain consistent as they are guided by the same planning policies and strategies that a DAP is required to be guided by.

**Suitability:** The statement that DAPs will determine matters of State and regional significance, is hardly the full scope of the proposal. Where this may have been how the DAPs proposal began its infancy, but it is hardly the full impact of the current proposal. It

appears that the Department of Planning now considers DAPs to be the most suitable decision making body for almost all development applications. This is not accepted.

### **Overall Conclusion**

DAPs in the form proposed are fundamentally flawed and will not achieve the stated benefits. However, the feedback from some Local Governments has indicated that there could be some merit in the establishment of independent panels as proposed in the initial DoP Discussion Paper *Building a Better Planning System*. It is disappointing that the intent expressed in *Building a Better Planning System* is markedly different to the proposed DAP model in the Discussion Paper. It is unclear how or why the model morphed from the initial proposal and on what authority.

The *Building a Better Planning System* discussion paper introduced the notion of DAPs for WA as follows:

*“In cases of major projects that are likely to face significant approval delays and may be highly contentious, and in cases where major projects are proposed but there is limited Local Government technical capacity to undertake an appropriate level of assessment, Development Assessment Panels are being considered, as have been established in other States. Development Assessment Panels would include elected representatives as well as independent experts.”*

There has been a significant shift of intent from what was proposed in *Building a Better Planning System* and the current proposal. In particular, the criteria for referral and determination of DAs by panels extends far beyond Local Governments that have limited technical capacity to undertake assessment of major projects and the use of panels is not limited to major projects.

The initial proposal outlined in *Building a Better Planning System* was generally supported in principle, particularly for instances where Councils do not have experienced planners with the technical skills to adequately assess major development proposals.

Comments were submitted to the DoP indicating this and advising that further details were required with respect to how these panels would work, and the broader implications that would result. It was anticipated that whilst the notion of panels had been raised in *Building a Better Planning System*, further open and broad discussion with Local Government would occur.

As general support for the principle of DAPs for major projects was given, it was very disappointing to have a further Discussion Paper released by DoP, with an extremely inflexible and short timeline for public consultation, which took a completely different approach. The Discussion Paper and the recently introduced Bill, imply DAPs are a fait accompli, and that the State Government is paying lip service to true community consultation on this matter.

The proposed shift from discretionary decision making being made by elected members responsible to the local community, to a system emphasizing decisions by a State appointed panel with a majority of ‘independent experts’, that are not responsible to the local community, is a substantial change to the planning system in WA.

This shift in decision making raises issues associated with the fundamental and interrelated principles of *why* and *how* we should do planning and *what* problem based or topic based issues can and should be addressed through planning.

It is considered that the overall purpose of planning is to facilitate and manage change in land use and the built environment in a way that contributes positively to the well-being of individuals and communities (the public interest), and the natural and built environments on which they rely. Included in the principles of purposive planning are also community, prosperity, equity, amenity, security, amelioration, avoidance, sustainability and knowledge.

With respect to community, the aim is to reflect our distinctive national character and nurture vibrant communities by making and offering spaces for the expression of a diverse range of individual and cultural identities and values.

Other planning purposes aim to foster efficient and effective settlement patterns to promote prosperity and equitable distributions of resources and opportunities, and to balance social, economic and environmental outcomes.

The procedural principles identified by the LGPMC include integration, coordination, certainty, responsiveness, equity, efficiency, transparency and accessibility, accountability, effectiveness and engagement.

These planning principles and procedures necessarily include the systems of governance and legislation in the jurisdiction within which the planning system works. This includes the way planning instruments are prepared, consulted upon and administered. This also includes the scope and content of planning and its relationships with other allied activities.

With respect to integration, that involves the combination of structures, policies or processes, and their rationalization according to a clear set of rules to produce a single, coherent, integrated outcome. It is interpreted from the Discussion Paper that this is an objective of the proposed DAP model. However, the Discussion Paper does not demonstrate sufficiently the principle of integration.

In the evaluation of the DAP model proposed the following principles are considered not to be sufficiently addressed:

Equity - this describes principles reflecting fairness in planning systems, addressing matters such as protection of personal rights and expectations, equitable access to review and appeal mechanisms and procedures that do not discriminate against individuals or

groups. There appears a bias against community involvement in the decision making process. There also is substantial inequity in the resourcing and associated costs of the implementation and functioning of panels with respect to the Local Government sector.

Efficiency - this includes systems that are not bound by unnecessary processes, and governance structures that promote the free flow of resources and information. The proposal to refer applications that ordinarily would be dealt with under delegated authority to an additional decision maker with its associated resources and information issues is inefficient.

Transparency and accessibility - transparency covers a range of aspects of planning systems that establish how open and legible they are to the widest possible range of stakeholders. Accessibility describes how easily a user of the system can access and interact with the system. The DAP proposal is considered not to deliver on both these principles.

Accountability - Planning systems require clear and appropriate lines of accountability for key planning decisions. It appears in this model clarity is required with respect to the accountability for outcomes of decisions made by DAPs, for example, conditions of approval and appeals.

Effectiveness - measures the impact of planning instruments and their implementation. The Discussion Paper refers to performance reporting however it is questioned if this reporting will capture potentially disenfranchised stakeholders such as the local community.

Engagement - Most planning systems provide for consultation at key points in the planning and development assessment processes. The objective being to promote community engagement, suggesting not only participation, but understanding and support for planning processes. The proposed change to the planning processes in WA has involved limited opportunity for community engagement.

The WA planning system currently has strong community representation with the involvement of Local Government elected members in the planning and development assessment process and this should not be diminished without careful consideration and an assurance that the alternative will deliver a better outcome.

**In summary, the DoP Discussion Paper is misguided and inaccurate. The proposal has little to commend it and will result in less timely and more expensive decision making. If the State Government enacts legislation to implement panels as proposed it cannot claim that it has not been strongly advised by Local Government that the promises made to improve the system will not be borne out.**

**In short, the proposal displays little understanding of the current development approval process (as evidenced by the inaccuracies in the discussion paper and the oversight of such basic realities as delegation arrangements and the small role**

**played by dual approvals) and as a consequence, the improvements touted will not simply fail to occur but rather the proposed DAPs will result in negative outcomes including greater delays and additional costs that will be borne by applicants. State Government resources would be better directed towards addressing the key priorities of the development industry such as integrated land and infrastructure planning, improved coordination of approvals across government, improved environmental approval processes and development of regional water and drainage management plans.**

### **PART 3 - MINISTERIAL OBJECTIVES: OPTIONS FOR CONSIDERATION**

Local Governments have evaluated the Discussion Paper and hold serious concerns about the model proposed in *Implementing Development Assessment Panels in Western Australia*.

However, in the broader context of planning reform Local Government has indicated a willingness to partner with the State Government to ensure that the planning system is fair, efficient and provides for orderly and proper planning for all.

WALGA understands that the Minister is seeking to achieve reforms in line with COAGs agenda of streamlining and harmonising development assessment processes within State jurisdictions, to reduce the costs facing business and deliver positive economic, social, and environmental outcomes for the entire community. The Leading Practice Model is to provide guidance to jurisdictions undertaking reform.

Based on the Leading Practice Model the following options have been identified by Local Government as consistent with the Minister's objectives and are recommended for further consideration and discussion with Local Government.

#### **An Appropriate Model for Independent Panels**

Leading Practice Eight of the DAF model includes the following options:

Option A – Local Government may delegate DA determination power while retaining the ability to call-in any application for determination by council. (This is currently undertaken in WA and could be expanded).

Option B – An expert panel determines the application. Ministers may have call-in powers for applications of state or territory significance provided criteria are documented and known in advance.

It is considered that Option B is valid for applications of State significance and is generally supported, subject to the establishment of agreed criteria. In addition DAPs could be used in the following circumstances:

1. Where a Local Government has consistently failed to meet minimum performance benchmarks;
2. Where a Local Government determines it doesn't have the internal resources to adequately assess applications; or
3. where a Local Government determines a matter has too much risk of a lack of objectivity to be properly determined.

The panels would also take over the determination of certain WAPC applications.

It is recommended that consideration be given to the establishment of 2 independent panels – one regional and one metropolitan. Panel composition would comprise an equal

number of elected Councillors and independent technical experts, including the independent Chair.

It is considered costs associated with the operation of the panels should generally be met by the State, but applicants would be required to pay an additional fee which would contribute towards the costs.

Independent expert panel members would be appointed under similar procedures to those used for appointment of State Administrative Tribunal members.

### **Objective Rules and Tests**

*Leading Practice 2 – Objective Rules and Tests* asserts that development assessment requirements and criteria should be written as objective rules and tests that are clearly linked to stated policy intentions. Where such rules and tests are not possible, specific policy objectives and decision guidelines should be provided.

It is recommended that the State Government review State Planning Policies such as the Residential Planning Codes to ensure clarity and certainty. At present much interpretation is required by both the development industry and Local Governments.

Further, other matters such as neighbour consultation could be more prescriptive to achieve greater consistency across Local Governments.

It is also recommended that the State Government support the development of best practice models and tools by Local Government to assist in review and development of clearer planning policies.

### **Introduction of Assessment Tracks**

The Leading Practice Model *Stage 2 - Assessment* proposes development applications should be streamed into an assessment ‘track’ that corresponds with the level of assessment required to make an appropriately informed decision. The criteria and content for each track would be standard. This is considered appropriate for risk-based assessment and supports expansion of delegated authority decisions.

It is recommended that the State Government supports the development of a Track Based Assessment System by Local Government to streamline the assessment of low-risk / low impact development applications.

### **Single Point of Assessment**

*Stage 2 – Assessment* also proposes that only one body should assess an application, using the consistent policy and objective rules and tests.



It is recommended that referrals should be limited to those agencies with a statutory role relevant to the application. Referral should be for advice only. A referral authority should only be able to give direction where this avoids the need for a separate approval process. Referral agencies should also have appropriate policy and objective rules that specify their requirements in advance and ensure they can meet response times.

### **Appropriate Delegation to Professional Staff**

*Stage 3- Determination* proposes that professional determination be made for most applications. That is, most development applications should be assessed and determined by professional staff or private sector experts. Determination by professional staff is generally supported in Local Government and the majority of WA Local Governments have a very high level of delegation in place. In fact, statistics from a random sample of Local Governments clearly show that the vast majority of development applications are currently determined under delegated authority.

In the last five years, of the 32,681 total DAs lodged with 7 metropolitan Local Governments, 30,630 or 93.7% were determined under delegated authority.

It is recommended that model provisions, guidelines or benchmarks for delegation to professional staff be investigated with Local Government.

### **Performance Reporting**

The State Government is proposing the introduction of performance reporting on planning by Local Government. This is generally supported.

WALGA has identified potential datasets to be collected and this could be expanded to include measures dealing specifically with determinations to show the percentage and type of DAs determined under delegated authority and by the Council.

Indicative benchmarks could be identified to provide guidance for Local Governments.

It is recommended that data on development assessment processes in WA be implemented to ensure transparency about what is occurring within the State and where improvements are required.

## **RECOMMENDATIONS**

- 1. That the Minister for Planning and the Department of Planning be advised that WA Local Government is extremely concerned about the lack of knowledge of the Local Government development assessment process displayed in the DoP Discussion Paper: *Implementing Development Assessment Panels in Western Australia*.**

- 2. That the Minister for Planning and the Department of Planning be advised that Local Government is strongly opposed to the introduction of Development Assessment Panels in WA in the form proposed in the Discussion Paper as they will not deliver any of the purported benefits and will be detrimental to approval timeframes, increase costs for applicants and further marginalize community interests.**
- 3. That the State Government work with WALGA and Local Governments to further investigate and develop opportunities to align with the DAF Leading Practice Model, particularly in terms of:**
  - An Appropriate Model for Independent Panels**
  - Objective Rules and Tests**
  - Introduction of Assessment Tracks**
  - A single Point of Assessment**
  - Appropriate Delegation to Professional Staff; and**
  - Performance Reporting**