STANDING COMMITTEE ON
UNIFORM LEGISLATION AND STATUTES REVIEW

PLANNING AND DEVELOPMENT
(DEVELOPMENT ASSESSMENT PANELS) REGULATIONS 2011

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
THURSDAY, 2 JULY 2015

Members

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

Hearing commenced at 10.19 am

Mr EUGENE KOLTASZ
Presiding Member, Metro East and Pilbara Joint Development Assessment Panels, sworn and examined:

Mr CHARLES JOHNSON
Presiding Member, Metro Central Joint Development Assessment Panel, sworn and examined:

Mr DAVID GRAY
Presiding Member, sworn and examined:

The CHAIR: Good morning to Mr Koltasz and Mr Gray. We also have Mr Charles Johnson on the phone in front of us; it will be an interesting way to run our hearing this morning.

Before we commence, I welcome the people sitting in the gallery and say to them that because today's hearing will be conducted in an unusual manner with people in the room and on the phone, for the purposes of assisting Hansard, I will ask that there be absolutely no noise from the gallery so we can get through this without any disruption and so that Hansard can clearly pick up everything that is said.

Welcome to our hearing today. As you are aware, our committee had the referral made to it late last year to inquire into the regulations that underpin DAPs. We have received a number of submissions and today's hearing is our final hearing for this process. We look forward to responses from all of you. Before we deal with any formalities, I will introduce our committee. We have Hon Amber-Jade Sanderson and Hon Brian Ellis. My name is Kate Doust. Mr Alex Hickman is our research officer, and there is also Hon Mark Lewis. We have a few standard formalities that we have to go through for each of you. I need for each of you to take either the oath or the affirmation.

[Witnesses took the oath or affirmation.]

The CHAIR: I ask each of you to state your full name and the capacity in which you appear before the committee.

Mr Gray: David Gray. I am attending as presiding member of a number of development assessment panels.

Mr Koltasz: Eugene Koltasz. I am attending as presiding member for the Pilbara and Metro East Joint Development Assessment Panels.

Mr Johnson: Charles Johnson, presiding member of the Metro Central Joint Development Assessment Panel and presiding member of the Goldfields Esperance Joint Development Assessment Panel.

The CHAIR: Thank you very much. You will have signed a document entitled for "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 the hearing for the record. Please be aware of the microphones. Try to talk into them and ensure that you do not cover them with papers or make

noise near them. I remind you that your transcript will become a matter for 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. As a committee we were very keen to hear from people such as yourselves who have been participating in the DAP process in your capacity as chairs or members of the committees. We want to talk to you about your personal experiences and your views about their functions and how the regulations are operating. We have a list of questions that I understand have been provided to you. We thought that we would work through those. Do any of you want to make an opening statement?

The Witnesses: No.

The CHAIR: Can you give your views from your perspective as a presiding member of JDAPs on the operation and effectiveness of the Planning and Development (Development Assessment Panels) Regulations 2011?

Mr Johnson: I believe that they are effective in terms of the component that has introduced expert opinions and views in the decision-making process. Yes, many of the applications that the DAPs have seen—the Central Metropolitan DAP particularly—have supported the recommendations made in the responsible authorities report. Yes, there have been some situations, perhaps 10, in which the recommendations of the council in the RAR report have been overturned. Yes, I believe that we are effective in applying the rules of quasi-judicial decision making to planning matters.

Mr Gray: I endorse Mr Johnson's comments. I have found in the regional DAPs where I am a presiding member—the Kimberley, the Great Southern and the Wheatbelt, and as deputy on the Gascoyne—that there is considerable variation in the quality of responsible authorities reports. I will elaborate on that later. We have provided a sound professional base that is consistent and that provides for consistent planning decisions and consistent conditions. We have experienced situations in which some responsible authorities reports are inadequate in terms of the extent of the conditions that they seek to apply and in other cases there is duplication of conditions. I think that there is a level of professional scrutiny that applies and a discipline, which is to achieve a greater level of consistency with planning decisions.

Mr Koltasz: Once again I endorse a number of the comments. The experience I have had with Metro East and Pilbara, I endorse the comments that the standard of report writing in the responsible authority reports can vary. It can vary in the metropolitan area as well as the regional areas. But in terms of the regulations, I think what the development assessment panels were set up for was to try and achieve consistency of dealing with and decision-making. I think they have been reasonably effective. I think the resourcing at the Department of Planning level has been good. The secretariat that runs them has been efficient. I think that by and large a number of the councils, those that generally do not get publicised in their comments, are appreciative of the manner in which they deal with presiding members and professional members on the panels. Like everything else, you tend to hear about the dissatisfaction more than the satisfaction, but I found a number of councillors have expressed satisfaction at the manner in which they have been dealt with. Clearly, a lot of the councils would prefer not to have them because it is seen as taking some power away from them, but I think that a number of councillors have said that they appreciate the feedback that we as professional members give to their staff and in helping them out in writing their reports and dealing with the conditions that they impose.

[10.30 am]

The CHAIR: Thank you for that. We now move on to the next batch of questions, which are about the role of local councillors. Do you believe the role of elected councillors on DAPs have been clearly articulated, given they are required to make their own independent decision on the planning merits of an application as well as be representatives of a local government? Mr Johnson, do you have a view on that?

Mr Johnson: Yes. I think to some extent this issue is covered in practice note 6 for the DAPs in respect to how an elected member should behave in a situation where the council has given prior consideration to a matter that is before a DAP and the issue is one where there is perhaps a need to declare an impartiality interest and then further declare under the code of conduct that that they have participated in that prior meeting and that they will not be bound by the previous decisions or resolution of the local government but undertake to exercise independent judgement. In my practice, I always make sure that the elected members have the opportunity to make that declaration. In a number of cases they do, where council has previously considered a matter, which is separate, of course, to a responsible authority report from the administration. I think that does need to be reinforced and elected members need—we will probably talk about training later—to understand the quasi-judicial role of the Planning Act versus the role of the Local Government Act, which is representation and advocacy. So, understanding that, I think we can always do more, and I think part of the training of DAP elected members needs to reinforce that.

The CHAIR: Mr Gray, do you have a view on that as well?

Mr Gray: I have not experienced any situation where local government members have been in conflict with the position of the local government they represent. They have always been very conscious, I believe, of their role in sitting on the panel. I share Mr Johnson's comments about training, because very few of them do declare an impartiality interest in situations where a matter has been considered previously by the elected council. Nevertheless, I think they do provide an independent voice, and I have not had any occasion where I have needed to remind a local government member of their responsibilities to act impartially.

Mr Koltasz: Yes, I have generally experienced similar things. I have had a couple of councillors declare impartiality interests when it has been very clear that the council has considered the application. Generally, the responsible authority report actually says that, and there may be a recommendation from council and a recommendation from the officers—sometimes that varies—but by and large I think councillors are very aware of the need to declare their interests on all matters as local government members on councils, so they are also aware on their development assessment panels. If they are talking council line, they say that they agree with that line anyway as individuals.

The CHAIR: Thank you for that. In the second part of the question we wanted to know if there had been any instances where a local government member of a JDAP has not participated in a JDAP decision due to their role as a local government councillor? Mr Koltasz, have you any examples of that?

Mr Koltasz: No, I have not.

The CHAIR: Mr Gray?

Mr Gray: No.

The CHAIR: Mr Johnson?

Mr Johnson: Yes; the situation in the City of Melville where a councillor declared an interest prior to the meeting and did not participate in it but then gave a deputation at the JDAP meeting against the recommendation of the administration to approve a development. I think it was in the Riseley Centre and it was Councillor Nick Pazolli.

The CHAIR: If they had refused to participate in the JDAP —

Mr Johnson: They had declared an interest and said that because they had prior involvement and advocacy in terms of opposing a development, they felt that they should not participate in the panel decision but felt they could then give a deputation and express their views on the matter. I have absolutely no problem with that. That was recorded.

The CHAIR: On that occasion could they have had perhaps a proxy step in and replace them?

Mr Johnson: Yes, they did. The alternate member sat on the DAP.

The CHAIR: The next area that we have questions on is around DAP decisions in secret. Concerns have been expressed about State Administrative Tribunal processes being undertaken on a confidential basis and decision-making, including reconsiderations of applications pursuant to section 31 of the State Administrative Tribunal Act 2004, being undertaken by DAPs in closed meetings with agendas and minutes of such meetings not being publicly available. The committee's attention was drawn to a number of such meetings in 2012, including the meeting of 30 August 2012 of the Metro Central JDAP regarding lot 12 McCoy Street, Melville. The committee has heard from the department that DAP practice notice 7 dated 22 May 2013 governs the status of DAP meetings in these circumstances and when they must be open and when they can be closed. Could you please describe the basis upon which any meetings which you have presided have been closed? That is the first question.

Mr Koltasz: I cannot recall any, to be honest. There was a SAT meeting where I had to go back with members of the JDAP to discuss likely conditions on an application, but we did not get around to it because the developer was supposedly going to provide us with information, and that did not happen. That would have been a closed meeting, but I do not think to my knowledge that was a contentious application in any event—not from a public sense anyway.

Mr Gray: I have not presided over any meeting which has been closed. On occasion we do adjourn to seek legal advice and, in those situations, the panel withdraws, but we have not conducted any meetings behind closed doors. The mediation sessions in SAT are confidential under SAT rules, not JDAP rules; and if there is a situation where it is necessary to consult with members of the panel to be able to respond to an issue which has arisen during mediation, then it would be necessary for those meetings to be closed. That has not happened in my experience with the panels I have been involved with.

Mr Johnson: Yes, certainly. We should reference that meeting which was a section 31 reconsideration on 13 August 2012 of the Metro Central JDAP. The advice from the department—I understand it was with discussion—up until that time, in fact, until 2013 was that section 31 reconsiderations should be behind closed doors as they considered them part of the SAT process. I questioned that at the time and I was very pleased to see that advice note 7, when it came out in 2013, clarified that reconsiderations under section 31 should be open to the public. I was very pleased to see that. I see no reason why a section 31 reconsideration should be closed. We took, at the time of that meeting on 30 August, the advice of the department.

The CHAIR: Thank you very much. I think you have probably answered part of the second question: have there been any recent changes in processes in such JDAP meetings being open to the public? For example, arising from DAP practice note 7, and asking for details. Mr Gray, have you got any examples of the impact of any changes?

Mr Gray: No; the situation had not arisen prior to practice note 7 and it has not arisen since, so no I have no experience of that.

The CHAIR: Mr Koltasz?

[10.40 am]

Mr Koltasz: No, I have not had any experience since.

The CHAIR: Have you got any other examples, Mr Johnson?

Mr Johnson: All of the section 31 reconsiderations, certainly from 2013, have been open. They have been on the advice or the consideration of a responsible authority report from the appropriate local government. Since that time, all our meetings have been open. As was stated, on some occasions we have gone behind closed doors to consider legal advice but that is during those meetings, and the meetings are always open again after that legal advice.

Hon MARK LEWIS: SAT requires only mediations to be behind closed doors. Are there any other sections of the act that require a closed meeting?

Mr Gray: In terms of our dealings with SAT, the mediation is confidential.

Hon MARK LEWIS: Only mediations?

Mr Gray: Only mediation.

Hon MARK LEWIS: So reconsiderations can be —

Mr Gray: Section 31 reconsiderations are reported in the normal way. We had a recent one which went to the metropolitan south west panel. That was dealt with in open session. The agenda was on the website in the normal way.

The CHAIR: The final part of that question is: do you believe DAP meetings which discuss the outcomes of SAT mediation should be open to the public?

Mr Gray: No.

Mr Koltasz: No.

Mr Johnson: If we are talking about the actual SAT mediation—what happened in the mediation—then no, they should not be open because SAT mediation is confidential under the SAT process. If we are talking about a responsible authority report following, for example, the lodgement of revised plans following a mediation process, that is open, but what is not discussed and is not available publicly is the contents of negotiations and mediation. That is not part of the process.

Mr Koltasz: I might add that if mediation does not work and it goes to a full SAT hearing, what happens in mediation is not allowed to be tendered at the full tribunal hearing in any event. That is probably the reason that it should not be discussed at a DAP hearing either.

Mr Gray: I was just going to make the point that local government operates in exactly the same way—any mediation session which is reported to council to obtain direction for the people who are attending on behalf of the council is behind closed doors. The procedures are well established in local government and they have simply been extended onto the JDAPs.

The CHAIR: Moving on to the next part around question 5, about DAP members representing developers: the committee has received evidence from some submitters that DAP members have represented developers in applications before DAPs on which they sit, having been excused on that occasion from sitting on the DAP due to having a conflict of interest. It has been argued this creates a negative community perception and that there should be a blanket ban on them doing so in the area of the DAP that they are appointed to. We would be interested in your view on this generally as well as the recommendation, and if you are able to outline any instances of this on the JDAPs that you preside over and how they have been dealt with. I will ask Mr Johnson first.

Mr Johnson: From my personal experience, on two occasions I personally had to declare an interest on a JDAP consideration where a developer I had been doing consultancy work for in another local government area outside the JDAP area, I declared a financial interest and took no part in that meeting and left the room. My personal view is that if a DAP member has declared an interest in an item, my own code of conduct is that I will not then take any part and would not represent that developer at a DAP meeting of which I would have been a member otherwise if I had not made a declaration of interest.

The CHAIR: What do you think of that proposal for a blanket ban?

Mr Johnson: I will probably make some comments later on changes to DAPs, but making a blanket ban is—many members of JDAPs also have small businesses. They are sometimes consultants who work in the industry. If you had that sort of ban, that may in fact affect their practice. I think that they should be able to declare an interest in a JDAP matter but take no part in that meeting and not be present at all, rather than be able to represent the developer if they have declared an interest. To me, they should not be on the JDAP at all.

Mr Gray: I think from time to time we have all declared an indirect pecuniary interest and withdrawn from discussion of any item. I was not aware that a situation had arisen with members of the panel acting as an advocate before that panel. I think that practice is not acceptable. I think it raises too many other issues and certainly the public perception that there is a conflict. I agree that that practice is unacceptable. I think that if you are a member of a development assessment panel that you should not act as an advocate for an applicant before that panel.

Mr Koltasz: I slightly differ. Because the geographic area of a development assessment panel is quite large, if somebody's on the panel for, say, the City of Swan and they have a client who has a development application or some interest in the City of Swan, they should excuse themselves from that panel. I do not see any difficulty with, say, a consultant or somebody dealing with an application in the Shire of Serpentine–Jarrahdale being able to represent people there. Basically, I think that as long as you do not participate in the decision-making process and excuse yourself from the panel, you should be able to represent people that have developments in that area.

The CHAIR: Our next question goes to the valuing of applications to achieve a DAP threshold. Some submitters have alleged that there may have been instances of applicants providing an estimate of the value of their application in order to achieve a DAP threshold and suggesting that all estimates should be subject to assessment by the relevant local government planning office before the application can be decided upon by a DAP. Other submitters have stated that the value estimates are already assessed by the relevant local government when applications are lodged to determine the application fee payable. We would be interested in your views on this and if there have been any instances where submissions have been made during any JDAP meetings you have presided over questioning the accuracy of the value of applications; and, if so, how have they been dealt with? Mr Gray, if you would like to start us off on that one.

Mr Gray: I will start with the last point. I have not experienced any situation where the value has been questioned at a meeting. I think that this is an issue which has been open to discussion ever since the applications first required a value estimate. There has always been discussion about whether the estimates are too low or too high. You have referred to some applicants inflating values to get over the opt-in threshold. Talking to local government planners anecdotally, there are suggestions that some applicants also deflate their values in order to have their application determined by local government. I think it cuts both ways, but there is no clear evidence. We essentially have never questioned the values that come before us. On one occasion somebody looked at the value and thought that it was a bit high, but I do not think that the issue is so widespread or so significant that it would warrant a more close assessment of the values that the applicant notes. I suggest also that many of the applications we get are well in excess of the mandatory value. We are talking only of those in the opt-in threshold, which is now between $2 million and $10 million.

[10.50 am]

Mr Koltasz: I have not seen any evidence in any of the JDAPs I have been with where we have queried the value. As a local government planner I always used to look at some of the applications that would come in and I think a lot of developers used to fiddle, perhaps, the value just to reduce the amount of fees they paid, more than anything else, but that was pre-JDAP days. They would marginally save a few dollars, but it all helps. Usually the most wealthy developers feel it more than others, I think. That is how they made their money, I suppose. As to the first part of the question,

yes, I have not heard of any submitters changing values or anything, but as with David, I suppose there may be some who do massage it at the margins, either to get on to a DAP or to stay off a DAP.

Mr Johnson: My expectation is that in a lot of applications there is some check about the value. My experience for my local government years was that that occasionally occurred, where developers would try to reduce the application fees, and in some circumstances there was a call to review the actual value of the applications. I had one experience where this issue of the $3 million threshold was raised and that occurred at a City of Bayswater JDAP on December 14 regarding 58 Kennedy Street where there was a regulation 17—a reconsideration of modification of conditions and plans. The opponents to the development tried to lodge an argument with the JDAP that because the modifications possibly could have taken that application below $3 million it should have been considered by the council and not the JDAP. The JDAP took the view that because this was a regulation 17 consideration, it was all part of the original application, therefore it was a modification rather than a new application.

The CHAIR: Our next question, question 7, looks at lack of reasons for failing to follow an RAR recommendation or deemed-to-comply provisions. Again, some submitters have expressed concern about DAPs not giving reasons for decisions, approving applications when these go against the recommendation of the RAR, and especially the application does not comply with the deemed-to-comply provisions, and the exercise of discretion results in a significant variation to the R-code for the area. They pointed this as an example of a lack of transparency in the DAP process. We would be interested in knowing what your views are. Do you support a reasonable level of detail being given in reasons for decisions of the type outlined? Are you able to give any details of any instances when this has occurred in JDAP meetings you have presided over?

Mr Johnson: There is an interesting question of what is a reasonable level of detail. I certainly support the provision as it is on the Local Government Act, which requires a council, and indeed a JDAP, to make perpetuation to provide the reasons for not going with the RAR recommendation. What is a reasonable amount? The ones that we sort of used are really summaries of the reasons that occurred during the debate and the issue when we had gone against the recommendations. I would say from my own experience in local government that they are not any less or more detailed than the reasons given by local governments when overturning some sort of administration recommendation. When there have been situations where discretion has been used to approve an application where the recommendation has been refused, often it is stated in terms of meeting all the proper planning protection and amenity and the conditions that are then required from that development to make it acceptable. You can have that discussion about what is a reasonable amount of information.

Mr Gray: I endorse Mr Johnson's view that there should be reasonable reasons given for a variation to the RAR recommendations. We do not report in Hansard fashion all of the discussions of a meeting and there can be considerable discussion that is then summarised in one or two sentences. Essentially, I agree with the principle that there need to be reasons given for any variations to recommendations in the RAR.

Mr Koltasz: I would just agree with those comments and say that I cannot recall any instances where we have overturned the decision recommendation on the DAPs I have sat on. If we have, we have given good enough reasons for it.

Hon MARK LEWIS: Just following up on "one or two sentences". Is that standard practice, because it seems that some of these more complex matters might require a bit more detail than one or two sentences? I note that you have said that that level of detail is also provided generally at local government level. I am just thinking that because this is such a controversial issue, is there a need for a template or more discussion or a practice note on what minutes might be taken?

Mr Koltasz: I think we sense that generally if an application is fairly contentious, I would suggest maybe a practice note could come out and say if you are going to be overturning it, you should give a bit more level of detail than maybe one or two sentences. My experience has been that even when we impose conditions or change conditions, I have tried to impress upon the fact that we have to give some level of detail, but sitting around a panel table I do not think we can do that. I know from experience as a local government planner where councils have said where we are going to approve this or refuse this, you come up with the reasons for refusal, so staff are instructed to put together a bit more detail. I think that would be a bit impractical for a development assessment panel, although given my experience on there, we should probably endeavour to do a bit more. If it is becoming an issue, I think it should be reflected in some practice notes.

Mr Johnson: In terms of that reasonable level though, I think it would be worthwhile, and we will probably talk about training development, that the sort of issue is reinforced, recognising that you are actually at the meeting. After the decision has been made you are then trying to summarise that actually as it occurs into consideration into the reasons, and I often ask the mover to help that and explain why they have made that decision or recommended that, perhaps with responsible officers recording. I would recommend we always try to get the DAP, or the majority, to agree on the reasons for the refusal before we move onto the next item.

The CHAIR: Can I just ask you a question that is not on the list? Are you able to perhaps provide some information to the committee about the types of practical resources that are available to you on the panel in terms of secretarial support or admin support when it comes to taking minutes or doing that sort of practical work whilst you are conducting the hearing?

[11.00 am]

Mr Gray: If I can answer that, the host for a meeting provides the minute taker. Some, but not all, meetings are audio recorded, so there is a backup. If the meeting is in a local government area and it might involve two or more other local governments, the host local government still provides the minute taker and we receive a copy of the draft minutes for scrutiny before they are on the website. If the meeting is held at the Department of Planning, the department provides the minute taker.

The CHAIR: And have you found that to be adequate to date?

Mr Gray: I think that the time taken to review draft minutes can vary from place to place, so there is not a consistent quality, if I can put it that way. Can I just go back to the question that Mr Lewis asked about the need for improvement or a practice note? I think that we are shadowing the local government approach to reasons for a change to a recommendation, and I think that if the panels are to consider that as an issue, it needs to be addressed at local government more widely.

The CHAIR: Do you have a view on that, Mr Koltasz? I am just interested in talking about the resources available, I suppose.

Mr Koltasz: I would agree with David, the resources are adequate. Sometimes they are very good; at other times they are not. But then I think it reflects the resources that a particular local authority or host local authority has got. I think that is really all I would say on that.

Hon AMBER-JADE SANDERSON: Just on that, we have heard a lot about the inconsistency of the minutes and their reporting, and I think a lot of that is attributed to the change in the minute takers.

Mr Koltasz: Yes.

Hon AMBER-JADE SANDERSON: Would it be either practical or desirable for the JDAP to have its own administrative support to ensure that consistency?

Mr Koltasz: If funds are available, it might be but I think it would be reasonably expensive to set up a travelling minute taker et cetera. It is working well at the moment. It could be better but then, you know, resources I think are quite important as far as that goes, and expenditure. We tend to help

the local authority minute taker out quite a lot. I think there is goodwill amongst the panel members including from councillors; I mean, they tend to get involved in that process as well as councillors on the panel. So, I will leave it at that.

The CHAIR: Mr Johnson, do you want to make comment on the issue of resources?

Mr Johnson: Yes, the issue of resources. They are generally pretty good. We work well with the minute takers. There is also the office staff or the professional staff at the local government, which we can ask, obviously, questions about and ask them to help with any technical interpretations that may help to supplement that. The best practices really are, I think, that the minutes are shown on screen and are put together as we go. I appreciate that. I think part of this is also in the experience and skills of the presiding member to make sure that the minutes are being put together properly during the meeting and that the movers and seconders are recorded and that that process occurs appropriately. So then, the role of the presiding member in that, ensuring good process, is important.

The CHAIR: We will now move on to the next area of questions, question 9 "Exercise of discretionary powers", which reads —

> Concerns have been expressed about the exercise of discretionary powers by DAPs, which have been described as unfettered and 'without justification or scrutiny'. A recommendation has been made 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. It has also been submitted that DAPs are, in such instances, merely exercising the same discretion that is available to the relevant local government under the discretionary provisions in its town planning scheme. It has been stated that, if there is a desire to limit discretion to approve certain developments, such as, say, multi-unit residential developments, it is up to the local government to make this clear in their scheme and have appropriate accompanying policies and guidelines.

We would like to know what your views on this issue are generally and these recommendations; and if you have any general feedback you can give based on the decisions made on JDAPs you have presided over; and as part of this feedback, if you are able to give any examples of any decisions approving applications, utilising the discretionary provisions in a local planning scheme; and if you are able to outline in a general way the basis upon which decisions were made, including where other documentation such as state planning policies have been cited and relied upon. Mr Johnson, do you want to start us off on that?

Mr Johnson: That is a good question. My general position is that the JDAP is sitting in the seat of the elected members and interpreting the planning provisions of the local government scheme as well as, obviously, the policy of the state government in terms of things like the residential codes or liveable neighbourhoods or the other provisions. Generally, if councils want to change those sort of settings, if you like, or calibrations to their schemes and provisions, they should do so. I do not subscribe to a situation where there is a provision where we would only be limited to a one-code consideration of discretion above what is the deemed compliance provisions. If you want to change that, change the R-codes, not the discretion; or local government should introduce amendments to their town planning scheme to deal with those. Probably the best example for discussion from the central generic application was a 29-storey high-rise in Mill Point Road in South Perth where the administration had recommended approval. The council itself felt that that approval was far beyond the discretion which they had intended when they brought in the provisions and amended their scheme in 2011, I think it was, to introduce discretion on height. They felt that that use of discretion was too large, notwithstanding that four previous applications had been approved for multiple high-rise. They now, I understand, are considering amending their town planning scheme to deal with that situation of discretion, and that is appropriate. But the discretion of council needs to be addressed through the planning scheme.

The CHAIR: Okay, thank you. Mr Gray?

Mr Gray: A panel stands in the shoes of the elected council, and the panel does not have unfettered discretion; it has the discretion which is available to the council. If the council is concerned that discretion exceeds their objectives for a particular area, it is open to the council to remove that discretion from its scheme. But we can only act within the parameters of the law as it exists at the present time.

Mr Koltasz: I tend to endorse the comments on discretion. We are bound by the same local government criteria and if councils want to limit that, then they should introduce policies or guidelines, design guidelines et cetera into their schemes that reflect the level of discretion that they want in terms of development that they want. I think that similar instances occurred when I was a city planner and councils delegated approval to officers to approve applications, but they set criteria and guidelines onto what they wanted the staff to approve and what they were going to approve. So, similarly, if they have concerns about developments exceeding their perceived requirements, they should introduce those into the schemes.

[11.10 am]

Hon BRIAN ELLIS: While we are talking about town planning schemes, we know that they should be updated, but we have heard evidence that some of the town planning schemes are quite outdated. I am just wondering if you have experienced that any town planning schemes have, because of their outdatedness, impacted on your decision-making? Have they made it harder to abide by that town planning scheme?

Mr Koltasz: From my point of view, I cannot recall any at the moment, but in my experience over the years, yes, I have seen instances where outdated town planning schemes have stifled development or constrained the ability of development to occur, as opposed to a neighbouring local authority. I think that it has been an ongoing contentious issue in local government and the development industry about the lack of consistency between councils and their development criteria. I think the introduction of the R-codes was one reason why that happened—to try to get some consistency. But, similarly, with the mechanisms in local government schemes, there is still that inconsistency amongst local authorities in terms of the older schemes and the newer schemes, but I think, as they now get updated, there are planning regulations that try to guide them into a more consistent approach.

The CHAIR: Mr Johnson or Mr Gray, do you want to respond to that as well?

Mr Gray: I think the problem with schemes is the long lead time to making a new scheme. Many local governments have old schemes gazetted years ago, and I think 22 years is not unusual. Most of those have been updated in terms of the key provisions as they come to the attention of the council. It is a long, drawn-out process to review a scheme and to introduce a new scheme at the present time. All the local governments in the metro south west JDAP area guide development in key locations through local structure plans, which give them a degree of flexibility in the way that they deal with applications, and that seems to be the practice for residential development and multiple dwelling development in those areas. I am not saying that their schemes are out of date, but it is a more flexible mechanism to approach the development pressures that arise in those key areas, such as, for example, Cockburn Central, and a lot of the Fremantle area is subject to local structure plans so that there is a more flexible instrument which guides the developments, which are most of those that we see in the areas.

The CHAIR: Mr Johnson, did you have anything to say about that?

Mr Johnson: Yes. To give one example that I dealt with earlier in the year, it had been refused twice and finally approved on the third time through section 31, which was a large format liquor store on the Como Hotel site on Canning Highway, which was frustrating, because the planning scheme provided that that sort of use was a permitted use, where the strategic direction of council

would have been to limit the size of large format stores in South Perth, whereas I think they should have, in hindsight, responded much more quickly or earlier before this sort of application occurred to advice from WALGA in regard to the ability to amend town planning schemes to control the location of large format liquor outlets in a way that the Town of Victoria Park has amended their scheme to do that. Town planning schemes can be very frustrating and they put the DAP into a situation where you have to apply the rules that apply with that existing scheme, whereas the council have moved on to oppose that sort of liquor store and tried to pass a policy to deal with something that should have been an amendment to the scheme, and certainly that failed because the scheme prevailed.

The CHAIR: Thank you for that. Just continuing on that theme, are you able to, in a general sense, detail the basis upon which a recommendation in an RAR to refuse approval of an application might not be followed by a DAP given that an RAR is prepared by local government staff according to proper planning principles and taking into account the relevant planning scheme and policies? You might have already touched on a bit of that with your last example, Mr Johnson.

Mr Johnson: If you want me to give another pertinent one, we dealt with the City of Bayswater in August 2014 at 58 Kennedy Street, which was an R40-coded area for 12 multiple dwellings. What you have got there is the R-code provision with the multiple residential code factors versus the planning policies that have been developed or introduced by the local government. So when you have to interpret between what is allowable under the R-codes versus other planning policies, you need to make judgement calls about the value of those policies, and I am referring here to particularly a policy that the City of Bayswater wanted to introduce or had introduced about character preservation areas, trying to protect the existing traditional house form areas or traditional simple housing areas, but in an R40-coded area, which sets up that sort of conflict. When you are making judgements in a JDAP, you are looking at the values and the appropriateness of different policies and how they relate to what the actual R-codes are and what the provisions of the scheme are, and you do need to make calls about those so-called proper planning principles, or the proper planning principles that are a combination of things, and that is what you need to make sure of that judgement where some things might be in conflict.

The CHAIR: Mr Gray, have you got any examples?

Mr Gray: I have not got any examples from the situations that I have dealt with personally, but I would draw on the example that Mr Johnson referred to in his previous answer regarding the Como Hotel. I am aware of details of that, living reasonably close by. The fact is that, in that situation, the RAR was recommending refusal, whereas the scheme allowed for the use to occur. There is conflict in those situations and it is up to the panel to deal with the issues that are before it. The scheme is the legal basis; the local planning policies are subservient to that, so adopting a policy under the scheme cannot vary the provisions of the scheme. There will be disagreement on those issues which are controversial locally but where the local government has not kept its scheme up to date. In saying that, local government schemes tend to be reactive, not proactive. It is when a situation arises that the local government suddenly realises that the door is open and it cannot close it because of the lead time to deal with a scheme amendment.

The CHAIR: Mr Koltasz?

Mr Koltasz: I have not had any experience where that has occurred, either by good luck or by good management.

The CHAIR: Another area that has been raised with the committee is in relation to delays in the process. It has been put to the committee that DAPs have added delays to the planning system, with one reason being the lack of information given by the applicant and a breakdown in communication between the applicant and the decision-maker, whereas the local government system provides both parties with an opportunity to engage prior to the application being made. Are you aware of any applications being made to the State Administrative Tribunal for a review by an applicant due to

there having been a deemed refusal by a DAP because it has not made a determination within the time lines required by the relevant planning scheme? How would you recommend any issue of delay be addressed, and do you have any feedback you can give based on decisions made on JDAPs you preside over?

[11.20 am]

Mr Koltasz: I have not heard of any delays or deemed refusals on the DAPs I have been on. I think developers by and large understand the processes. I think the only delay is that the time taken for a decision on a DAP is a little bit longer than a local authority application, and that is simply to allow for the process to occur. In terms of the delays, I do not think it is the DAP that does that; it would be the applicant or the council in their dealing with their documentation that they submit and the council in the way they deal with it. Look, most, if not all, of the applications that have come before my DAPs have had a good session fleshing them out with council officers. Where they have not, I think it has been because at the end of the process there may have been some changes required, either by council or the developer has decided to make some changes, and consequently we get late information to us. But, by and large most of the applications come to us with the required amount of information.

The CHAIR: Right. Thank you. Mr Gray?

Mr Gray: I start off with the preamble, and I do not understand the comment in parenthesis that be, "whereas the local government system provides both parties with an opportunity to engage prior to the application being made". My experience is that that occurs, no matter who makes the final decision. We often have reference in an RAR or comments that come up at a panel meeting to the discussions which have been held during the preparation of the application. Those discussions might have gone on for months prior to the formal lodgement of an application. We also are made aware, when situations where the applicant declines to engage in meeting for discussion, and by that I mean the applicant turns up with the set plans and says, "This is what I want to do, and we are not budging from it." So that there is no meaningful discussion, and we are certainly made aware of those situations as well.

The CHAIR: Would that happen very often?

Mr Gray: It probably only happened twice in metro south west in my experience. But really the responsible authority report, in my experience, is prepared in exactly the same way as the report to the elected body. It just might be in a different format, but it is prepared with the same attention to details in the application. I am not aware of any application which has been made to SAT for review of a deemed refusal. I do not even know if any have been made. It is fairly common for extensions of time to be granted, where the applicant and the responsible authority agree that there is a need to attend to additional details. I can recall in one application in the City of Fremantle, there were up to five extensions of time granted to address a particular heritage issue, which was subject to heritage council issues and the city's heritage officer as well. In time, that application came before the panel and it was considered in the normal way. I can recall only one occasion when the applicant and the local government did not agree on an extension of time, and in that case we dealt with the information that we had before us.

The CHAIR: Great, thank you. Mr Johnson, have you got anything to add to that?

Mr Johnson: Just briefly. There is an important role of the presiding member—that I think has been said—in approving situations where there is an extension of time where negotiations are occurring between administration of a council and the applicant to allow some, where there are situations where further information or revisions to plans are required. So, we generally hear that and I have always allowed that, provided both parties have agreed. There have been no situations where I have been involved in deemed to refusal situations to a SAT appeal. We have on occasions deferred consideration of matters which have come before us where we feel that there is incomplete

information. That is worth noting as well; that those DAPs can defer and require further information if they feel that the application is incomplete or that further information is required, and that is the common practice in local government as well.

The CHAIR: Thank you for that. There has also been some concern expressed by some submitters about incomplete applications being lodged by applicants, as well as late plans being submitted very close to the deadline, for submission of the RAR. There have also been reports of applicants submitting new information at DAP meetings, copies of which have not been previously provided to the relevant local government, and it has been stated that such practices place undue pressure on local government staff, and result in delays in the process, as well as impacting on the transparency of the process. Have you got any perspective on this feedback, and do you have any feedback you can give based on decisions made on JDAPs that you have presided over? Mr Koltasz.

Mr Koltasz: I have had experience where information has come to the DAP secretary very close to the meeting—in fact, after the agenda has been prepared. It is not unusual in the sense that that is probably the first time the applicants get to see the final report and conditions. They may have spent a lot of time negotiating and discussing the application with the responsible authority council staff, but once they have, kind of, had those discussions, council staff generally go off and write the reports and have a thought process, "Oh, I think we better put this condition on or we better do this" and so forth. Once the agenda comes out, the applicants do see that and say, "Look, I am happy to make a change; do you mind if I bring a plan along that reflects that change so that we can get the approval", rather than an approval with a condition that they do not like. If it is a non-contentious issue, and if it is in fact what the council wants as a result of submissions made by people, by the public, in regard to that application, then we are prepared to accept it at the meeting, or at least condition the approval with a requirement that they comply with a plan lodged at the JDAP. But I stress that that is only where there is full compliance with council requirements on that. I find that that is at least helpful for the process; otherwise, you will refuse something for the sake of adopting a plan, which is what everybody wants anyway. So we can do that.

The CHAIR: Mr Gray, have you got anything to add to that?

Mr Gray: There are degrees, I think, and if it is a case of clarifying a condition or challenging a condition and the city officers are in agreement with the change, which is verbally presented by the applicant at the meeting, then that is usually accepted. If there is written information which is of substance, and we have had situations where an applicant has sought to submit a traffic impact assessment at a JDAP meeting, the response has been to defer the meeting to allow for city staff to deal with those issues. We cannot deal with that on the run. It is a question of degree. If it is something that the city officers can accept and it is not controversial, then that can be accepted into the decision, but if it is of any substance, then the response has always been to defer the application until the responsible authority has had an opportunity to review the material.

Mr Koltasz: Can I just add: in that vein, we certainly make sure that the local authority members on the panel also agree with that process.

The CHAIR: Great, thank you. Mr Johnson, have you got anything to add?

Mr Johnson: I certainly concur; this is no different from the situations that occur in local government. When applicants see the draft reports and recommendations, they often try to modify them—either the conditions or argue against the reasons for refusal. Those things are considered at JDAP meetings as they would be in council. If there is not sufficient information or there is new information that requires further assessment, then the matters are often deferred.

The CHAIR: Great, thank you very much.

Now we are moving on to that area around training, which I know a couple of you have already made reference to. It has been observed that while regulation 30 of the DAP regulations mandates training for DAP members before they can commence their role, follow-up training is not

compulsory. Some submitters have pointed to some instances of noncompliance by DAP members with the DAP regulations and standing orders in support of mandatory follow-up training. The committee understands DAP members may receive such training if they request it, and that the Department of Planning will shortly be reviewing the adequacy of training.

[11.30 am]

What is your assessment of the quality and adequacy of the training you received as DAP presiding members? Had you presided over decision-making bodies prior to your appointment to the JDAPs? How did the training by the Department of Planning prepare you for the role on the JDAPs? Do you believe follow-up training should be mandated? Have there been any experiences you have had during DAP meetings for which you feel additional training is warranted? The last part of that question is: what has been your assessment of the conduct of DAP meetings attended by significant numbers of people, including members of the public? Have there been any interruptions or interjections; and, if so, how have they been dealt with? Maybe deal with that part last and we will talk about those training matters first. Mr Koltasz, you might want to start with that?

Mr Koltasz: The quality and adequacy of training as a DAP presiding member—we did have training at the beginning of the process when we were appointed. I thought that was appropriate and adequate, probably because I had had experience on decision-making bodies before at local government level, so I found that that was adequate. I think that there could have been better training or more training for some of the newer members that had not been on bodies before. I would suggest that there should be follow-up training on a regular basis. I think that that should probably be at the end of the two-year term, or, if a new member is appointed, there should be a follow-up discussion with them after a few meetings, just to ask how they are feeling about their role and how they are proceeding, with a view that if they do feel they need training, that they should get it early. That has not happened to date, but I think it probably would not do any harm to do that.

In terms of the mandating of training, I think there should be a process whereby at the end of a two-year term there should be a refresher—at least a meeting with the DAP secretariat to see if you need some more training or a refresher on new regulations and practice notes that may have come out, and to give them feedback. I do say that there are meetings of the presiding members regularly with the Department of Planning staff and the director general of planning, and also the other technical members—I am not sure about local government members.

In terms of conduct of DAP meetings attended by a significant number of people, I have had experience where that has happened—I think we all have—where there have been some vocal opponents and so forth. My role there is simply to adjourn the meeting until people settle down and cool down, and we reconvene the meeting. You still get the hecklers and if they are serial heckler then you try to ask them to leave. Other than that, they have been reasonably good meetings.

The CHAIR: Okay, thank you for that. Mr Gray?

Mr Gray: My training was in the first group four years ago. It was conducted by the author of the relevant manuals that had been prepared by the department. I felt that that was perfectly adequate for the role of the position. But I cannot speak about current training; I do not know how extensive or intensive that is. I had not had prior experience in presiding over meetings, but I also had worked for local government for eight years and I obviously had indirect experience in that situation. That was one area where, essentially, it was learning on the job. The first few meetings were attended by governance officers from the department and essentially they settled down after some time. There are governance officers and legal people from the department who are available to attend meetings if it is a controversial matter or if there is a legal question that the panel members anticipate will need to be addressed at the meeting. So that resource is also available.

I believe that there should be follow-up training. I am not sure about the end of the two-year session. We do have a turnover of local government members. The DAP panel members are appointed notionally at the end of April, although that has been extended to the end of July on the last couple of occasions. Local government members turn over in an election in October, so there is somehow a need to coordinate that because we do get changes at times. I think that if there is to be training of panel members, it also raises the question about training of local government members, not just the members who are on panel, because we are talking about decisions made by the DAPs, but many other decisions, of course, are made by local government elected members.

I have not had any experience in a DAP meeting where I felt it was necessary that there should be additional or focused training. I think that that is not a situation that has arisen. I do not know if you want to deal with the assessment of conduct at meetings now, or if you want to defer it?

The CHAIR: Sure; no, that is fine.

Mr Gray: My experience is that on the whole, people behave courteously. They might agree passionately with one argument or another, but I have not experienced constant heckling, except on one occasion in the Shire of Broome when James Price Point was a controversial issue. We had a meeting that was to deal with building the accommodation camp. In that meeting there was a persistent interjector who declined to quieten down. We adjourned the meeting. I spoke to her privately. She then left the meeting with her supporters. The meeting was resumed and was conducted without further interruption. I find most people are courteous; we do not find hecklers who attend who disrupt the proceedings.

The CHAIR: Thank you. Mr Johnson, would you like to talk to us about the questions about training and also about meetings?

Mr Johnson: Certainly. I found for myself, and I distinguish here between the training that is required for a presiding member and a specialist member of a DAP panel. I had certainly very much prior experience as the chair of the Armadale Redevelopment Authority for several years; as a CEO in local government for seven years and as a director of planning in several local governments. So I felt that the training that I got on the first day was adequate as I understood the principles in the first place. But I felt that some of those who attended training that perhaps were presiding members would have benefited from additional training and additional support. I do think it is important that there is follow-up training. I strongly support and I compliment the Western Australian Local Government Association for its efforts to develop training modules for elected members. I think those refreshers are always important, particularly for presiding members on the substance issues, but also the procedures that need to be applied at DAP meetings. I strongly support that into the future. I think it is important that the best are chosen in terms of presiding members and that we get quality presiding members and quality members of the panel in the first place, so selection is important to maintain the quality. In terms of that issue of disruptive meetings, probably the worst example I had was when an elected member of the City of Melville voted with the DAP over a decision; in other words, it was a four to one vote against the position of council. That person was verbally abused and I had to certainly caution and try to deal with that at the meeting. That abuse continued through emails because that person had used their independent judgement and not just gone along the council line. I felt that rather repugnant and there was correspondence with the city to try to address that matter. That is the worst example I have had.

[11.40 am]

The CHAIR: Thank you for that. During our hearings we have received evidence about the adequacy of fees for DAP members set out in schedule 2 of the DAP regulations. For instance, one view was that the $50 fee provided for under item 4 does not cover the cost for a meeting to determine a form 2 application under regulation 17 to amend of cancel a development approval. Do you believe that the fees set out in schedule 2 of the DAP regulations are adequate? Do you

support an increase in these fees; and, if so, why? Have you given any feedback about the fees to the department; if so, can you provide us with the details?

Mr Koltasz: We would all like to get more fees, but we are pretty realistic. That was the tenor of a meeting of DAP members—I am not sure whether it was presiding members or all specialist members—in the department last year some time, I think. It might have been the year before. In terms of setting fees, they are determined through cabinet or some process. We are realistic that they will not go up. If we attend a meeting for two or three hours the fees are adequate. Where I think that there could be a difference in the fees, I have had experience in attending a meeting in Onslow. I think I left home at 4.30 in the morning, flew to Karratha, back to Onslow, back to Karratha and back to Perth. I got back at nine and got a sitting fee for 15 hours or so. I thought it was inadequate but then again I did not say anything about it.

Hon MARK LEWIS: Welcome to my world!

Mr Koltasz: I understand that very much! If $50 does not cover costs of a meeting, I do not think this one did either. But we get parking and taxi allowances and local government do tend to feed us reasonably well with plastic chicken and cold sausage rolls!

The CHAIR: Luxury! Thank you for that feedback.

Mr Gray: I think the first point is that I do not know that there is any one member who does the work for the amount of money they receive. The second point is: what constitutes an adequate payment? I have also attended meetings in Broome and Albany. To go to Albany, it is a 6.30 take-off and you get back at about eight o'clock if you go through Busselton. It is the same meeting fee for those very long days. Also we need to have regard to the agenda we receive. On occasion we get up to 1 000 pages in an agenda and that is five days before the meeting date.

The CHAIR: It is a substantial preparation period.

Mr Gray: There is significant preparation involved in those applications. I will talk later about another matter that has arisen. By the same token, some meetings take 10 to 15 minutes; I think the record might be less than one minute, because there was no controversial issue. There are swings and roundabouts, but the standard payment does not distinguish between the location and duration of meetings. Perhaps there is some scope to review that. I would support in principle a review to better reflect the time commitments and I can say that having not renominated so I have no pecuniary interest in what happens with fees. The DAP application fees have been increased, but members' remuneration has not. I have not provided any feedback to the department on this matter because it has not been an issue that has engaged me in any great deal.

The CHAIR: Thank you. Mr Johnson, do you have any comments about this?

Mr Johnson: Certainly you would not say that you were on the panels to make money from the fees you receive. It is quite correct that you regularly get agendas of 700 or 800 pages. You might spend three or four hours at the actual meeting, but there is quite a number of hours in preparation for that. There have also been situations in which I have sat in SAT hearings all day for the standard fee of $500. Certainly if I was in my consultancy, my charge-out rates would be significantly higher than is represented in the fees we get. I believe that the fee should be reviewed. There should be a system after a certain level of triggers in which additional allowances are paid, but that is to be worked out. I would be happy to be involved in those discussions. In the review of the role and function of DAPs, perhaps there should be a situation that might talk about some of the changes. I note that there is a recommendation in the system to reduce the number of the DAPs. If we have fewer members and they were remediated better, they could devote more time, in other words, and would become more like a sessional member of SAT, for example, whereby rather than be part-time, it becomes more of a full-time situation.

The CHAIR: Thank you for that feedback. The next question goes to regional and metro councils. I think we might have touched on a bit of this in terms of the resourcing question. Do you have

anything specifically to add about the differences between a JDAP hearing in the metropolitan area versus the regions in terms of resourcing?

Mr Gray: There is a significant difference. I would not denigrate the planners who work in situations in which there is a lack of support and a lack of mentoring. Probably half of the applications we have dealt with on regional panels have included rewriting the conditions. We have had situations in which conditions have been recommended in an RAR that have absolutely nothing to do with the application at hand. I suspect that senior council officers thought that it was an opportunity to address an unrelated issue at the applicant's expense. We have also had a situation in which a qualified planner decided that one particular aspect of an application was a bit too complicated so he left it off the report. There are needs, I think, to mentor and support people who work in difficult environments and work alone. I think somehow we need to address that.

The CHAIR: Mr Johnson, do you have anything to add?

Mr Johnson: No, I think that has been covered.

The CHAIR: You all know that since this inquiry commenced the government introduced a raft of new regulations that come into being on 1 May. There is a motion before our chamber to disallow them, but we are interested in your views about a couple of the changes that have been put forward. One of them concerns the lowering of the opt-in threshold of $2 million for all DAPs and there is also increase in the mandatory threshold from $15 million to $20 million for the City of Perth DAP and between $7 million and $10 million for all other DAPs. We might deal with those two first. Do you have a view on either of those changes?

Mr Gray: I do not have a view on it.

Mr Koltasz: No.

The CHAIR: Mr Johnson?

Mr Johnson: I think that expanding the range of options is appropriate. Perhaps there should also be a discussion about opt-out of over the 10. I have dealt with major warehouses in Canning Vale that would not have gone to council and would have been dealt with by a delegated authority. Everyone has said that it is frustrating that it had to go to a DAP. I would rather have that applicant be able to opt out of the system because it is a non-controversial and very simple application and should not need to come back. I would go further and say I am happy to have an opt-out situation.

[11.50 am]

The CHAIR: Another reg that has been introduced disbands the shortlist working group. We want to know whether you think that should have stayed or does not need to be there anymore.

Mr Gray: I do not have a comment.

Mr Koltasz: I did not even know it was there.

The CHAIR: All right. Mr Johnson, have you got anything to say on that?

Mr Johnson: I was certainly aware of the shortlisting group and their role. I am strongly of the view of making sure that DAP members are of the highest quality and substantial experience and standing in the planning and development industry, and I think it is very important that that process of selecting them is a strong one, that they are not political and that there is a vetting by their group of peers about it. I am not sure of the wisdom of disbanding that shortlisting group.

The CHAIR: There is a new regulation which introduces a stop-the-clock mechanism whereby the time period for the submission of the RAR to the DAP does not include the time between the applicant being given a notice to provide specified information or documents. Do you have any views on that change?

Mr Gray: I support the stop-the-clock provisions. Not all applications are complete. Not all applicants submit their application consistent with the discussions that they have had with the local government up until that point. So, there is, I think, a need for local government or responsible authorities generally to be able to say that they do need additional information. I support in principle the stop-the-clock provisions.

Mr Koltasz: I agree. I think there has to be a time limit on that as well.

Hon MARK LEWIS: A stop-the-clock on the stop-the-clock?

Mr Koltasz: Yes, otherwise it can go on and on.

The CHAIR: Mr Johnson, do you have a view?

Mr Johnson: I certainly support the stop-the-clock principle and I agree with the views of the other presiding members that there needs to be some method of control. At some point the developer, the applicant, might say, "Look, I need this matter to be determined", and the matter then is for the DAP to decide whether the information is adequate or not.

The CHAIR: One of the other changes has been a change to the quorum, which will now be any three DAP members including the presiding member. Do you have a view on that, Mr Gray?

Mr Gray: I feel uncomfortable with not having a local government member. That situation has not arisen because the secretariat is at pains to check and to adjust meetings wherever possible to have at least one local government member in attendance. I think that is an important component and we do need to have at least one local government member attend panel meetings.

Mr Koltasz: I agree with that. I think it is important to have that.

Mr Johnson: Yes, I certainly agree with that. I would see that as a matter of last resort and I would be extremely reluctant to proceed with a meeting just presiding with three specialist members. The only situation I could imagine where that might occur is that the council representative, for whatever reason, decides to basically go on strike and not attend. At the moment the situation is you need that forum and if the elected members do not turn up then you cannot consider the matter. That has never occurred, but it is a potential, so I think that would be a very far fallback and only in situations where councils were deliberately not participating in the process.

The CHAIR: This will probably be the last question, and I am sure you have all got things you would like to say about this. Are there any suggestions you would like to make to the committee for changes to the DAP regulations, standing orders or other guidance documentation, arising out of your experiences as presiding members of JDAPs. Mr Johnson, do you want to start off on this one?

Mr Johnson: I support the proposition that we should have fewer numbers of DAPs. We should work harder to see that professional standards of those members are of the highest level, so training and support is there, that the process of selecting them is very sound and that there is a way of, sort of, auditing or reviewing their performance. I do think that you could have an opt-out provision in circumstances where the developer has the choice, so those would be my main changes.

The CHAIR: Thank you for that. Mr Gray?

Mr Gray: I would like to see more frequent debriefings and more sharing of information amongst the panels as to particular issues as they arise. I have a couple of examples. One is, in fact, an example of a situation where the panels—because this occurred over a number of panels—were expected to act as a rubber stamp, which is an accusation which is levied against the panels by people who may be frustrated by the decision. That was an application for development of schools in a public–private partnership arrangement. The panels were presented with a 730-page design specification prepared by the Department of Education and asked to approve applications without plans, which would in the normal sense show the site plan, the buildings, building elevations and detail the way in which the school would be developed on the site. The examples we were given

where this had been successful were the new children's hospital and the car park at QEII. The difference being that the panels are not an arm of government; we are independent and we require that there be a level of legal advice which would support the panels making a decision in a situation where the information we would expect to be provided was not provided. In the end, that legal advice was given. There were, from memory, three or four panels that were affected because all of these applications were lodged at the same time. I think in that situation there should have been some anticipation that the issue would arise and that the panels would have questions, and I think some broader guidance from the secretariat, even to the extent of obtaining legal advice, would have been appropriate before the applications were deferred independently by the separate panels. The applications were deferred and legal advice sought, and I think that that process could have been addressed differently. I think there is also an issue of residential amenity that the metropolitan area is now going to face, where we are being encouraged at all levels to promote multiple dwelling developments and infill redevelopments, but residential amenity is not considered in any of the state policies; it is not considered in the R-codes except in terms of changes at ground levels. Planners are focused on the exterior of buildings and have no regard for the interior. We are now facing the situation that arose in New South Wales with development of multiple dwellings with bedrooms that do not have access to natural light and ventilation. I think that planning, because it is reactive, has not yet addressed that as an issue. We had a situation in the City of Fremantle where the panel refused an application for such development. It went to SAT and, essentially, we ended up having to approve it under section 31 because there was no legal power for the local government or for the JDAP to refuse the application. I think that is another area where the local government and the panels need to address the future development.

Mr Koltasz: Just on the last part of Mr Gray's comment, I tend to agree. We had a similar proposal in Kalamunda, where it was a multi-unit development and it was a two-storey apartment block and down the middle of the apartment was one long corridor, which looked like a 1960s-style block of flats. It ticked all the boxes, but from an internal design criteria, you could see there would be problems with that development in due course, but we were faced with the same thing and we did not really have the ability to refuse that. I also was going to raise the issue with the public–private partnership, and we considered one yesterday, and all the good intentions of the Departments of Treasury and Finance and all the authorities that deal with it will ultimately come up with, I am sure, a good solution. But as a panel yesterday we had to approve a primary school in one instance, and a high school, on the basis of a site footprint rather than a plan that showed elevations, building heights, the type of landscaping, colours, textures and everything else. Councils were unhappy with it because the end result could be something quite horrendous, but we were told on legal advice you have to approve it to allow the government to go and negotiate with the lowest tenderer or a tenderer to build the proposal. We all felt rather odd about that because our training and experience over the years has always been to deal with applications with proper plans. Getting back to plans, I think one of the changes that DAPs should have is a change in their regulations or their ability to deal with minor amendments to developments that we approve. We approve developments of several millions of dollars or more and the developer might want to make a small change, they want to come back to a DAP, which is time consuming. State Solicitor's Office advice is that any amendment has to go through a re-approval process whereas in the past a local authority would approve an application. If somebody wanted a door to open one way or another or shift a bit of parking to accommodate some landscape or whatever, that was just done at the building licence stage. On a DAP approval it is fairly clear it has come back to a DAP. It creates extra work for local authority, but time and cost delays for developers, so I think there should be a view on looking at that.

[12 noon]

The CHAIR: Thank you for that feedback. We certainly appreciate your responses to all of our questions today. Given it has been an unusual situation with Mr Johnson not being here but being on the phone, I think it has worked reasonably well.

Mr Koltasz: By the way, I will just interrupt, that is how our Pilbara development assessment panels are run!

The CHAIR: Is that right? So, you are perfectly comfortable with this arrangement! Before we conclude, Mr Johnson, we certainly appreciate the fact that you have made yourself available by phone today. There is one other question that we have for you specifically. We are not going to ask it over the phone without having given you notice. I intend to write to you and lay the question out and we would appreciate your response to it if possible.

Mr Johnson: Okay. Do you have a time frame?

The CHAIR: A week—is that too short or are you away?

Mr Johnson: I am in actually in Broome and I am about embark on a planning conference on the Gibb River Road, so it probably does not have too much IT contact.

The CHAIR: How do you feel about providing us a response?

Mr Johnson: Obviously, I can try to respond; it depends on the complexity of the question.

The CHAIR: How do you feel about providing a response by 31 July?

Mr Johnson: Yes. When would it get to me? [inaudible]

The CHAIR: It will get to you either later today via email —

Mr Johnson: That is fine. I can probably get a response before I leave. If you email it to me today, then I can try to respond to that.

The CHAIR: We will email it to you today. If you find you have difficulties, we are perfectly happy to wait until 31 July to get your response.

Mr Johnson: Okay.

The CHAIR: In conclusion, I thank each of you for participating today. We will certainly take on board your comments. I think some of them are very useful for what we are currently doing, and we certainly appreciate your feedback based upon your experiences as presiding officers and members of JDAPs throughout the state. It is very helpful to us today. Thank you very much. This hearing is now closed.

Hearing concluded at 12.04 pm

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