

**STANDING COMMITTEE ON
UNIFORM LEGISLATION AND STATUTES REVIEW**

**PLANNING AND DEVELOPMENT
(DEVELOPMENT ASSESSMENT PANELS) REGULATIONS 2011**

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 4 MAY 2015**

SESSION TWO

Members

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

Hearing commenced at 12.29 pm**Mr ANDRIES SCHONFELDT****Director of Development Services, Shire of Broome, sworn and examined:****The CHAIR:** Good afternoon; I am the Chair of the uniform legislation committee.**Mr Schonfeldt:** Good afternoon, Kate, how are you?**The CHAIR:** Good; who am I speaking to?**Mr Schonfeldt:** It is Andries Schonfeldt, director of development services at the Shire of Broome.**The CHAIR:** Great, Andries. Before we start, I know the difficulty is that we are doing this all on the phone but I will introduce you to the other members of the committee so you do not think I am sitting here in a room by myself: Hon Amber-Jade Sanderson, Hon Brian Ellis, Hon Mark Lewis and Alex Hickman, our research officer.

There are a few formalities we have to go through, Andries, before we kick off our discussion today, if that is okay.

Mr Schonfeldt: That is okay. We have the statutory planning coordinator, Kirsten Wood.**The CHAIR:** Andries, we have Hansard here in the room. Because they are probably a little bit further away from the phone than we would probably like, you are going to have to speak quite loudly for them to be able to hear you.**Mr Schonfeldt:** Is that loud enough?**The CHAIR:** Yes; we are turning up the volume as well. That is fine, thanks.

As you are aware, our committee is conducting an inquiry into the operation and effectiveness of the Planning and Development (Development Assessment Panels) Regulations 2011. You have provided a submission to the committee for our inquiry and for the purpose of today's hearing, so that the committee can ask you some questions on your submission as well as on a number of other issues that have been raised during the inquiry to date. Before we go to the questions, we have to read the standard introduction we do for public hearings. I know this is difficult, given the tyranny of distance, but please bear with me. First of all, we would like to welcome you and thank you for your time and Kirsten's time. I am not too sure how we do this over the phone but we would normally ask both of you to either take an oath or an affirmation. We have a copy of the oath and the affirmation. Tell me which one you want and if I read it out and you repeat it after me, I think we can manage it that way.

Mr Schonfeldt: Sure; I will be the only one speaking. I am not sure Kirsten is required. I am happy to take the oath.

[Witness took the oath.]

The CHAIR: You will have, hopefully, signed a document entitled "Information for Witnesses". Have you read and understood that document?**Mr Schonfeldt:** I have read that document. I have not completed and signed it but I can do that and send it through to you.**The CHAIR:** Can you do that and please email that through to the committee office; that would be very much appreciated.

As I said earlier, proceedings today are being recorded by Hansard, so a transcript of your evidence will be provided to you. To assist both the committee and Hansard, could you please quote the full

title of any document you refer to during the course of this hearing for the record. I do not think I need to worry about talking about microphones because that is a different set-up. I remind you that your transcript will become a matter of 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. Sadly, Andries, we do not have either of those in the room, so you are okay. 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.

I think you have been sent the questions that we are going to go through with you today.

Mr Schonfeldt: Yes, I have received some questions. If they are all the questions, I have received them.

The CHAIR: There might be a few more that arise from your responses as we go through. If I read out the questions and you are able to provide us with a response, we will take it from there, I think.

Mr Schonfeldt: Okay.

The CHAIR: The first question is around general issues. Has the submission you presented to the committee been endorsed by the council of the Shire of Broome or is it being made in your capacity as its director of development services?

Mr Schonfeldt: No; it has not been endorsed by the shire council; it has been made in my capacity as director, development services.

The CHAIR: Has it been endorsed by the chief executive?

Mr Schonfeldt: Yes, he is aware of the submission and has agreed to me sending it on.

The CHAIR: Great, thank you. Can you give a general summary of the shire's position and the DAP system with regard to the operation and effectiveness of the DAP regulations?

Mr Schonfeldt: I have a few points here I would like to raise. The first one relates to the additional workload associated with performing the functions of the regulation. The second one relates to the implementation of the decisions, in particular how conditions actually compromise the implementation or amended conditions. The third one is very briefly touching on the system and process associated, in particular, with the time frames and information being received up-front. Finally, I would like to outline a little bit about our delegations and how that relates to the regulations.

The CHAIR: Sure. Do you want to go through and provide more detail on each one of those points?

Mr Schonfeldt: Sure; that is what I was intending, thanks. The way the regulations actually work is that it requires quite a bit of additional administration for the shire and for the local government. In some organisations that have a lot more resources than regional organisations, such as the Shire of Broome, administering these processes may not be a burden, but with us the officer trying to do the assessment actually also becomes responsible, to a degree, for the administration of that process. That makes it very hard when there are additional requests for information from the DAP members to try to deal with that process. I guess the first point we are trying to make is that when we are dealing with quite significant approvals or applications that come in front of the officer and the increased pressure on meeting the time frames, it actually does impact on the workload and on how officers deal with it. Unfortunately, the knock-on effect of that is that some of the other delegated applications may be delayed for a couple of days or possibly a week or two to make determinations. The net effect is that whilst just one application takes priority and is dealt with within the time frames required for the DAP process, it takes resources away from the other

applications and ends up meaning that the other applications then take longer than what is required. I do not think that was the intent of the DAP regulations or having the DAP panel there.

Hon MARK LEWIS: What is the difference in totality, though, because if it was not a DAP application you would normally have to do the administrative work, anyway, for the shire for the councillors, so what is the additional —

[12.40 pm]

Mr Schonfeldt: Thank you. On that question, the last part was actually when we were talking about delegation. At the Shire of Broome, I do not know if I am lucky or unlucky, but I have the ability to approve any application under delegation. So regardless of whether or not it meets the threshold, the council has basically given me, as the director, all the powers under the scheme. The only time that we need to present an application to council is if there is a significant variation to the provisions of the scheme or a variation proposed to the limit of discretion that council has placed in a local planning policy. The administrative processes only becomes a bit larger once you go through the council process and that is then simply your delegated report changes format to being a council report and is presented to council for making that decision. Remember that the council process is actually dealt with through a council secretariat. The DAP process is not necessarily dealt with through that process, and particularly the information requests and all the other administration—not so much just preparing the report; it is the other aspects of administration surrounding it that takes some time.

The CHAIR: Thank you for that, Andries. Do you want to move on to your next point?

Mr Schonfeldt: I guess the second point was how the regulations work is, once that approval is granted, the conditions placed on it actually become the conditions to a degree owned by the development assessment panel and not owned by the shire as such. While we are responsible for their enforcement and the implementation of that condition, if a request to vary that condition or a request to interpret that condition comes from the community or from the applicant, it often puts us in a position where we have to go back to DAP to get clarification on what the intention of that condition was. If the applicant is not happy with that and they want to vary it, they still have to go through the whole DAP process. Under normal delegated powers, that is something that could be considered just through the normal scheme process. I would very much recommend looking into how that actually works into the future because that is part of the aspects we have been finding it very difficult to interpret a condition and then having to try to enforce that particular condition.

The CHAIR: Your third point was?

Mr Schonfeldt: The third point was just with regards to the process. What we find is due to the scale of these projects and the time frame that is obviously involved with them, sometimes we get insufficient information right at the beginning. As a result, because we do not have that stop-the-clock provision—I know some of the questions coming up will deal with it—because there was not a stop-the-clock provision in there, we often then try to deal with it by putting conditions on the approval to fill the information gaps at a later stage. That does not necessarily result in good planning outcomes or even good development outcomes. It just reinforces the problem that we have with some of those conditions and wanting to amend those conditions further down the track. I guess it is more the administrative process that we have concerns with.

The CHAIR: And your final point?

Mr Schonfeldt: The final point was just basically about the delegations and the fact that given our delegation parameters, the DAP process sometimes seems to be an additional onerous process that you need to go through and it does not necessarily lead to any better decisions or better development outcomes for the applicant either.

The CHAIR: Thank you for articulating those concerns.

The next question we have is: how would the shire define the DAP thresholds to better capture only developments considered to be of regional or state significance?

Mr Schonfeldt: Again, in my professional opinion I do not actually believe that monetary values will truly reflect whether or not something is of regional or state significance. Broome being a tourist destination, we see redevelopment of tourist facilities or major refurbishments given of a tourist facility. That could very quickly get close to \$10 million and then require a DAP determination. I am not sure that that is necessarily of regional or state significance. I have briefly read WALGA's position in this regard. They are referring to the New South Wales position, outlining maybe a better way of considering whether or not it is really a regional or state-significant project.

The CHAIR: Thank you for that comment. We are going to move on to questions directly related to your submission to the committee. The first question relates to stop the clock, which you have already mentioned. Is the shire's recommendation that a stop-the-clock mechanism be introduced sufficiently dealt with by the amendment to the regulations in the Planning and Development (Development Assessment Panels) Amendment Regulations 2015 to provide for this at the request of the presiding officer and only with the applicant's written consent, which was foreshadowed on page 18 of the Department of Planning's "Review of the Development Assessment Panels" of August 2014?

Mr Schonfeldt: I have just read this morning the regulations that are now on the State Law Publisher website. Regulation 11A does go a long way in allowing officers to consider the application and information included, to request further information. There appears to be two separate stop-the-clock provisions now. One is further information requests—when we request further information. I really think that that has been addressed quite well in the amendments to the regulations. However, the practice notes of the department alludes to only being seven days allowed for seeking further information. I do not believe that that is adequate, especially when you are starting to talk about larger scale developments. I believe a time frame of 21 days would be more appropriate to give officers the opportunity to do at least a detailed preliminary assessment of the application and also the supporting information, and to understand how the proposal will function and the potential impacts of that. That is the first stop the clock. I am very glad to see that being incorporated into the regulations. I would just suggest that the practice notes allowed for 21 days rather than seven days.

The second stop the clock—I will be brief on this—seems to relate to, if we want to extend the time frame from 60 days to 90 days, whether or not that actually requires the applicant's approval. I actually think that discretion is to remain with the presiding member. Whether or not the applicant agrees to it is not, in my opinion, necessary because of how the deemed refusal provisions work. You could still make a determination after the deemed refusal date and that may result in a much better planning outcome for the applicant, a better development outcome, and may also negate having to go to SAT for the sake of a deemed refusal date.

The CHAIR: Do site inspections occur when the local government is the decision-making authority; and, if so, how do they operate? Are questions asked by councils of applicants during these visits; and, if so, how are they recorded?

Mr Schonfeldt: Site inspections do occur but generally that is only undertaken by officers. In my tenure at the Shire of Broome we have not actually organised any councillor site visits where the council was making the decision. We did organise a site visit prior to a DAP application for the councillors to endorse the responsible authority report. At that site meeting, while I was not present, I understand that the councillors were informed by the applicant of how the operations would work, and this was recorded as a file note on the file.

The CHAIR: With respect to the shire's recommendation that the DAP standing orders include a process that is inclusive of all present DAP members, whether during site visits or pre-DAP

meeting discussions, the DAP code of conduct provides that a member is to ensure that a written record of a site visit, private meeting, briefing, discussion or similar event is prepared and submitted to the DAP secretariat for discussion at the DAP meeting during which the relevant application is discussed. Would this not cover the scenarios mentioned in the shire's submission, and was the conduct the subject of the submission raised with the presiding member of the DAP; and, if so, what was the response?

[12.50 pm]

Mr Schonfeldt: I just wanted to point out at the beginning that we are not saying that there are any breaches of the code of conduct or that there are any real concerns with the standing orders or how the meetings are being conducted. There is no requirement for all DAP members to attend site visits, from my interpretation of the standing orders and the code of conduct. As a result, some DAP members may be in attendance and others might not be in attendance. The problem that we have up in Broome is, because of the tyranny of distance, the DAP members may fly up in the morning, then conduct a site visit and then that afternoon have to try to make a decision. The timing of creating the written record on any of the outcomes of what happened at the site visit is very difficult to actually achieve, especially if not all members are attending. Our submission is really trying to just make a recommendation and say, "Let us just get a standard practice whereby all DAP members who want to sit at the meeting should attend the site visit in order to familiarise themselves with what is there and what has occurred." We did actually write this off to the DAP secretariat some time ago and we have received some response saying it is not actually a breach of the code of conduct as such and it is not a requirement that these meetings or site visits be held; it is just a suggestion that the standing orders be updated to include that.

The CHAIR: Thank you for that.

With respect to the shire's recommendation on regulations 23, 24 and 29, does the Department of Planning's change introduced in the Planning and Development (Development Assessment Panels) Amendment Regulations 2015 to ensure nomination of local government members aligns with local government elections address this?

Mr Schonfeldt: Yes, it does. The only request would be if the expression or call for nominations from the local government occurred just after elections. It will allow us to align with all our other committees and make nominations at that time, then the two-year time frame built into regulation 29 will just cycle through on election years, which will make it a lot easier.

The CHAIR: It makes a lot of sense, does it not?

Mr Schonfeldt: Yes.

The CHAIR: With respect to the shire's remarks about training of new DAP members and that a procedure be established that sets out the process for delivery of this training, clause 3.3 of the DAP procedures manual sets out what the training will involve and that it consists of a half-day session, usually lasting up to four hours. What additional details does the shire recommend such a procedure contain?

Mr Schonfeldt: Again, it is not necessarily changing the regulations as such; it is probably more looking at the DAP procedures manual. Again, with the tyranny of distance, being up in Broome, the recommendation was that should a member not have had training prior to a DAP meeting, training could occur the morning before the DAP meeting and then allowing the member to sit that afternoon. We think that is a bit onerous, putting that level of information on a member to receive the training in the morning whilst still trying to deal with a responsible authority report and getting their head around the procedures and processes. A suggestion would be that as soon as the member is nominated for the first time or accepted by the minister to be on the panel, the training needs to occur shortly after that. There may be a refresher the day before the meeting, which would be a very

welcomed opportunity but certainly leaving it till the day that you have a DAP meeting is a bit much to expect.

The CHAIR: Fair enough. Regarding the shire's recommendation about the time period within which to submit the RAR, have any requests been made to the presiding member to extend the time to lodge the RAR when applications have been lodged prior to a holiday prepared pursuant to regulation 12(4); and, if so, were they granted?

Mr Schonfeldt: We had quite a particular case up here where the application was received in December and had to go to DAP in early February. The interim development order that was over the area at James Price Point at the time did not allow for—deemed refusal provisions did not allow for any extension or even for a determination to be made after the deemed refusal date. While we did request the presiding member to extend the time frame, he was not able to do so. We were not upset with that. We accepted that process. Hence, our submission is more on a generic scale than on a holistic approach, saying maybe something similar to the Building Act where you talk about working days rather than just calendar days could be a better approach. I am not suggesting we bring the planning time frames in line with the Building Act time frames; that would be a bit too quick, but certainly recognising the Christmas period is also not a good time for public consultation or receiving advice from government departments. We would want to see something built into the act in general to try to deal with those time constraints.

The CHAIR: Okay. That is good. Regarding the shire's contention that there should be no requirement to seek information or technical advice before the completion of an RAR, would a DAP member not reasonably seek this on the basis of background research of the application before receipt of the RAR?

Mr Schonfeldt: During the process of preparing the RAR, the officers are trying to consider all the relevant information that is at hand and making the best recommendation that they possibly can. As I mentioned, in a small organisation such as the Shire of Broome, you will often have that officer then having to try to deal with an information request from three or five different JDAP members seeking to clarify further information about a particular topic or their particular interest of that topic. I actually think it would be better for them to wait until the officers have completed their report and then seek further information. It may be possible that you either provide the RAR at an earlier time frame and then have more scrutiny of that and seek further information at that point in time. That might be something that we could look at.

As I mentioned under question 4, we talked about the seven-day time frame to request further information. At the Shire of Broome, we have established a policy where within 21 days we do a preliminary assessment and then seek further information. That also allows us to get internal departments to make requests for further information if they are concerned about how the traffic would work or the health requirements or other aspects and then it is a more coordinated approach. Once off, we write to the applicant and say, "We need the following further information to make a proper determination." I suggest if we are going to seek further information through the DAP members itself, it would be really useful if they could extend those requests before the 21-day time frame and then allow us to do a coordinated approach where we go to the applicant once and say, "Here is all the additional information that we believe we need to make a determination. Can you please provide us with that and then we can move on from there."

The CHAIR: Okay. We will take that on board. Does the shire intend to make any changes to its local planning scheme arising out of the decisions made by DAP; and, if so, are you able to provide any details on the rationale for each relevant change?

Mr Schonfeldt: No. The issues we have received with the DAP processes are more administrative. That has not resulted in significant variations of our local planning framework and therefore council has not given me any direction that they intend to make any changes to the local planning scheme.

The CHAIR: We are now moving on to third party appeals. Some submitters have stated that an appeal right should be extended to persons other than the applicant aggrieved by the determination of an application by DAP who have a special interest in the outcome. This is on the basis that unlike before the regulations were made, the representatives of the community no longer control the decision-making process, which provided some justification in restricting the right of review to an applicant aggrieved by the local government. Taking into account this point of view, what is the shire's position on interested parties having the right of appeal against decisions of DAPs, including local governments and members of the community?

[1.00 pm]

Mr Schonfeldt: Our council does not have a formulated position on third party appeal rights; however, the shire has generally accepted the local planning framework, including the strategic planning and the local planning policies, be taken into account when making this decision. The strategic planning framework has obviously been prepared in consultation with the community, and therefore if they can set it and not deviate from it too much by DAP, that would be a good outcome. I guess it is recognised that sometimes there may be subjective value judgements, and in those cases I would recommend, in my professional capacity, that DAP incorporates a precautionary principle so as to not deviate from the strategic planning framework without the support of the relevant local government. I would also like to point out at this point that in my professional opinion the broader question of third party appeal rights is something that needs addressing outside of the DAP regulations, and should consider all parts of the planning process, including scheme amendments and the development approval process, especially where it is likely to have clear significant implications on the local community and landowners.

The CHAIR: The next couple of questions are about the role of local councillors. Does the shire believe the role of elected councillors on DAPs has 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 the local government?

Mr Schonfeldt: Look, I appreciate the question; I am probably not the best person to answer this. This might be something that council will need to address, so if possible do you mind if I do not answer that question?

The CHAIR: Perhaps then we might refer these two questions directly to the council to seek a response, and treat that as a separate matter, if that is all right?

Mr Schonfeldt: The only reason why I am saying that is that when I read the regulations, my interpretation of it is clear, but the councillors may feel that it is still vague and they may want to have a different response to mine.

The CHAIR: That is all right. We will send those questions off separately to the council for a response.

The next question is about DAPs' decisions in secret. Concerns have been expressed about the State Administrative Tribunal processes being undertaken on a confidential basis, and decision-making being undertaken by DAPs in closed meetings. Would the same procedure apply to a local government consideration of a development application subsequent to a State Administrative Tribunal mediation? Would that council meeting also be closed to the public?

Mr Schonfeldt: Yes, it would, generally.

The CHAIR: Does the shire believe DAP meetings that discuss the outcomes of State Administrative Tribunal mediations should be open to the public?

Mr Schonfeldt: No, I do not believe it should; however, again, when mediation occurs it is generally done by considering the values of the community, the local government and how that influenced the local planning framework and the specified provisions included within that local

planning framework. So it is a bit unclear as to how those values that underpin the local planning framework and actually create the local planning framework will be considered by the experts that were not involved in establishing the local planning framework when they then try to mediate the outcomes. We have not been through that process where it has been appealed, and I am just still struggling to understand how it would go to mediation or the tribunal without actually having the local government involved directly.

The CHAIR: The next question is in relation to 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 they are appointed to. What is the shire's view on this generally, as well as the recommendation?

Mr Schonfeldt: We had a very similar instance that occurred in Broome. A presiding member sat on a panel that approved an application. The following year the member actually conducted work for us on a supporting development. The presiding member at the time resigned from the DAP, but it did bring into question the previous decision, I guess, and it also created a significantly negative community perception towards the shire, towards the DAP process, and also to the planning profession in general. My professional opinion is that DAPs should not really include members who are private-practising professionals, where they may have clients who are related or could gain from any of the development applications subject to the DAP assessment process.

The CHAIR: Thank you for that. The next question is on the valuing of applications to achieve 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. What is the shire's view on this?

Mr Schonfeldt: We actually check the values of the applications as a matter of course, so I would expect that that is just general practice to determine what that actual value is. Obviously, the fees are attached to it as well, so you would check it to make sure that your income is correct.

The CHAIR: Lack of reasons for failing to follow RAR recommendations deemed to comply provisions: some submitters have expressed concerns about DAPs not giving reasons for decisions approving applications when these go against the recommendations in the RAR, and especially if the application does not comply with the deemed comply provisions and the exercise of discretion results in a significant variation in the R code for the area. What is the shire's view on this?

Mr Schonfeldt: I guess I mentioned about the shire expecting that our strategic planning and local planning framework is considered in the decision-making process. But if that approval is made against the recommendation from the local government and against the RAR report, and it is also against the strategic planning framework or the local planning framework, the DAP should be required to give a reason, in my opinion. That would be similar to the requirements under the Local Government Act, where if councillors make a resolution against the officer's recommendation they are required to state the reasons for making that decision. This is a better way of holding a DAP accountable for the decisions they make.

The CHAIR: The committee notes that some local planning schemes state that where an application is refused, the decision-making authority is to give reasons for its refusal, but not if it has been approved. Is it the shire's understanding that this is common in local planning schemes; and would it be fair to say that the practice regarding reasons given by DAPs merely reflects established practice by local governments?

Mr Schonfeldt: Yes and no. The “yes” is, yes, it does reflect to a degree how local governments work, but local governments, as I mentioned before—if council makes a decision that is a significant variation from what the officer’s recommendation is, they actually have to report reasons as to why they do that. That may be councils omitting a condition that was recommended by the officers, and that may actually trigger it being significant enough to require a reason as to why council did that. For instance, if we make a recommendation for a cash-in-lieu contribution towards car parking, if the council end up deciding to take that cash-in-lieu contribution off, it may be considered that that is significant enough to require them to provide reasons as to why they are going along that line. I think DAPs should be held accountable in the same way, to at least articulate why they made that decision. The other aspect is when you actually grant an approval, the reasons why the approval is granted is generally recorded within the officer’s report. That would give you enough reason for why it was granted an approval. If someone then deviates at the decision-making time, from that you would ask the question: why did they deviate from what was recommended by the officer? For refusals you have to provide the reasons because if the person does appeal it, it is on those reasons that the tribunal actually consider what the way forward will be.

The CHAIR: We now look at exercise of discretionary powers. 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. What is the shire’s view on this issue generally, and these recommendations?

[1.10 pm]

Mr Schonfeldt: They do not have a particular response with regard to the R-code as such; I think it is more a generic response saying that I do think that needs to provide justification as to why they made a decision that goes over and above what was recommended on the RAR, whether or not they relaxed provisions of the R-codes or of the local planning policy or of the scheme in general more than what was recommended. I do think that should explain why they are making that recommendation.

The CHAIR: We now look at delays in the process. Concerns have been expressed that DAPs have added delays to the planning system, with one reason being given as the lack of information given by the applicant and the breakdown in communications between the applicant and decision-maker, whereas the local government system provides both parties with an opportunity to engage prior to the application being made. So, firstly, is the shire 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 had not made a determination within the time lines required by the relevant planning scheme?

Mr Schonfeldt: No; I am not aware of any.

The CHAIR: How would the shire recommend any issue of delay be addressed?

Mr Schonfeldt: I guess what we explained, again, up at question 4 is that if we do have 21 days to make a determination of whether or not the information is sufficient, it gives us enough time to scrutinise the application and the information up-front, and that may reduce the delays further down the track. It also will negate toing and froing with DAP members and the applicant on trying to get further information as the assessment progresses. But I think having sufficient information will make quite a difference in the processing time.

The CHAIR: A final question, Andries, goes to amendment of the DAPs’ regulations for 2015. As you have already mentioned, you have just had a look today at the new regulations which came into force as of 1 May. Some of the changes that have been made include a lowering of the opt-in threshold to \$2 million for all DAPs; a quorum being any three DAP members, including the

presiding member; and the regulations prevail over any planning instrument to the extent of any inconsistency. Obviously, you know that you can find those amendments at the *Government Gazette*. We are interested in what is the shire's view on these amendments? I appreciate that you have really only had a chance to have a look at them today.

Mr Schonfeldt: With regards to the lowering of the opt-in threshold to \$2 million, it really asks the question: how is a project of \$2 million considered to be regional or state significant? It really does only then become a different process for people to get determined, and I am not sure that that actually adds anything to making better planning decisions, or even streamlining the process for a developer to get their approval. I honestly believe that the way that it works at the moment with delegated approval or to council if you seek a significant variation and then appealing it, if you think it is onerous, through the tribunal could be a lot quicker, because ultimately you will get almost the exact same outcome. I am not sure what the \$2 million threshold adds to the development assessment panel process, really.

With regards to the quorum being any three DAP members, I think this would be another one that I would request council be given an opportunity to respond to that themselves. As I understand, that means that a local government member does not need to attend; it is simply the professionals. I am sure the councillors may want to make a statement in that regard.

The CHAIR: Or it could quite possibly be the other way around, where it is just council members and not a specialist.

Mr Schonfeldt: Yes; but I think the change was from—previously it did require that at least one local government member should be there, whereas now it is not the case. We could look at that if you give us that option.

The CHAIR: Sure; we will send that to council. What about the third point?

Mr Schonfeldt: I actually think that is a good provision. That means that regardless of whether or not your scheme has a different process in it or any other planning instrument has a different process in it, basically it follows in accordance with the regulations, and that makes it a lot clearer in my mind at least. It may be useful to then consider whether or not standardised deemed refusal—deemed-to-be-refused provisions—are incorporated into the regulation. I must admit that I have not checked if there are any provisions for that. That would make it significantly easier, and if you just add one general clause that overrules how the deemed refused provisions work in an RAR or in a scheme or something like that.

The CHAIR: Thank you for that. Are there any other questions from the committee? Brian Ellis has a question for you, Andries.

Hon BRIAN ELLIS: Andries, Brian Ellis here. Going back to question 3, I noted your comment that to decide whether it has regional or state significance does not necessarily have to be about the amount of money. Have you got any suggestions how else or what other means would define what is regional and state significance?

Mr Schonfeldt: The state does have a state planning strategy, and I think if there is a significant proposal that aligned very clearly with something that is included in the state planning strategy, that may be a project that you then start looking at: is there something that should be going to a development an assessment panel; and maybe also projects that could be government-driven projects, which generally would be considered to be public works, like a significant housing redevelopment in Broome? We have a precinct that has probably 90 per cent-plus state housing. If state housing is intending to redevelop that whole site, having an independent panel like a development assessment panel there to assist in reviewing those types of applications on a more strategic level, I think, will actually benefit the planning system, and not just simply be there to deal with an application that, because it triggered a \$10 million threshold, now has to go through a development assessment panel process.

Hon BRIAN ELLIS: Thank you.

The CHAIR: Mark Lewis as a final question for you.

Hon MARK LEWIS: That was going to be my question as well, but just to follow up to that: you would be recommending that a public works project like you have just described might be an excluded project?.

Mr Schonfeldt: Yes. At the moment public work projects are excluded from development approvals. Under the Planning and Development Act, any public work is exempt from obtaining planning approval and actually becomes—it simply is a referral by the relevant department or the relevant agency to the shire, and we just provide a response saying yes, it does or it does not fall within the provisions of the scheme, and how we suggest they maybe amend or change their approval to have a better outcome. My concern with that is you may actually have quite a significant project and you may actually need to have that project assessed in an independent manner, and that is where I actually think the development assessment panel does have a role to play in making sure that maybe some of the public works are better assessed.

The CHAIR: Andries, thank you very much for your time this afternoon, on behalf of the committee. You have provided us with some excellent responses and a very articulate response to all of our questions. We certainly appreciate everything you have had to say to us today. We will forward those three questions on to the council and seek their response, and we certainly appreciate all the information you have provided to us today. Thank you very much for your time.

Mr Schonfeldt: Thank you very much for giving us the opportunity to clarify our submission, and also for your consideration for not only our submission, but also today's hearing.

The CHAIR: If you could also remember to send in that document that you have signed to our committee staff, they would appreciate that as well.

Mr Schonfeldt: I will ensure that that happens shortly.

The CHAIR: Thank you very much.

Mr Schonfeldt: Thank you. Have a good afternoon.

The CHAIR: The same to you. Goodbye.

Hearing concluded at 1.21 pm
