

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

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

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
FRIDAY, 19 JUNE 2015**

SESSION TWO

Members

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

Hearing commenced at 11.55 am**Mr ERIC LUMSDEN****Chairperson, Western Australian Planning Commission, sworn and examined:****Mr STEPHEN FERGUSON****Senior Solicitor, Department of Planning, sworn and examined:**

The CHAIR: I welcome you to the hearing this morning, and I welcome Stephen back to his second go for the day. Again, we are just going to deal with these formalities that we have to do and indicate that it is a public hearing. Do I need to introduce everyone to Mr Lumsden? Hon Amber-Jade Sanderson, Hon Brian Ellis, Hon Mark Lewis and Mr Alex Hickman. First of all, welcome very much and we appreciate you giving your time to us to come and provide evidence to this review into the DAPs regulations. First of all I have to ask you if you would like to take the oath or the affirmation.

[Witnesses took the oath.]

The CHAIR: You would have signed the document entitled “Information for Witnesses”. Have you read and understood that document?

The Witnesses: Yes.

The CHAIR: These proceedings are being recorded by Hansard. The transcript of your evidence will be provided to you. To assist both the committee and Hansard, we ask that you please quote the full title of any document that you refer to during the course of this hearing for the record, and please be aware of the microphones and 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 the 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. We have sent you a list of questions, Mr Lumsden.

Mr Lumsden: Yes.

The CHAIR: And I know that you have just provided us with written material answering those questions. At the end of the hearing I will get you to table those and we will make them public. I know that a number of the questions go to matters that you have canvassed in your submission about issues around DAPs and about how they are operating as some fairly general views. I wonder whether perhaps you want to give us just a brief statement responding to some of those matters and then we will go into some more specific questions about perhaps the role of the councillors, third party appeals and some of the other matters that have been canvassed with us during the hearings.

Mr Lumsden: Okay. As a general statement, Madam Chair, in my view development assessment panels did become a necessity and have been a very useful tool not only in ensuring openness and transparency but also bringing expert advice and decision-making processes to the complexity of some matters. Equally, I think they have actually been useful to not only educate the council members on the DAP panels themselves but have helped councils in the wider context through those members and in some cases planning staff as to deficiencies in schemes et cetera.

The CHAIR: You have just made reference to councillors, so we might just start off and have a look at that in the first instance. I think under question 18 we talk about the role of the councillors, and perhaps the question goes to whether or not the role of elected councillors on DAPs has been clearly articulated. We have heard evidence given around concerns about the independence of councillors, about their decision-making capacity, about whether or not they have the necessary skills, knowledge or experience to participate on a DAP. So we would be interested in your view on those comments.

[12 noon]

Mr Lumsden: I think that overall the role of councillors on DAPs has been clearly articulated, and it was also necessary to do that because, in my view, being in the planning arena since 1972, I think there has been a misunderstanding, both within councils and, I might add, the wider community, about the councillor's role as a member of the local government planning authority. I will make a couple of points. Firstly, the councillor is obviously bound by the provisions of the Local Government Act and also the planning development acts and any other relevant acts which affect the role of the councillor. Having said that, notwithstanding councillors take either an oath or affirmation when they are sworn in as a councillor to observe and obey the laws of the state and of Australia, I do not think there has been an understanding that their role as representative in terms of a local government is different to their role as a representative sitting as a quasi-judicial planning authority under the Local Government Act, regardless of whether you have DAPs or whatever. I think the role of the councillor is certainly to represent the community's views, but the role on broader issues, whether it is under the Local Government Act—for instance, adopting the budget for a local government, which affects the whole municipality—or a planning decision, means they have to suddenly take into account the representations of members of the community, whether it is one or more. They need to evaluate and weigh up those representations to see their testability and then apply a decision in the best interests of the issue before them, having regard to the law. Apart from the Local Government Act and general law, it also includes planning law and administration law, such as the right for people to be heard. It has been my experience that until you explain those issues many local government councillors—not all, but many—have no understanding of their differentiation, and that was recently reaffirmed to me last night at a meeting I had with a number of councillors and their mayors and presidents. So I think that is a very clear issue. It is not merely a matter of the councillor coming to a meeting as saying, "I have 100 people against this proposal; therefore, I am obliged or committed to make a decision in line with those 100 people." That is not the role of a councillor and it is certainly not the role of any member, including commission members sitting in the Western Australian Planning Commission, to take that stance; it is to weigh up and evaluate all the facts according to law and testability and how they resolve the broader spectrum in the decision-making process.

Hon MARK LEWIS: This is a very important point that I had not really considered; that local governments are but an instrument of state government through the Local Government Act. They are not a third tier government in their own right other than what powers they have been given through the Local Government Act or a range of administration acts or planning. That is the disconnect that most councillors do not understand, in your view?

Mr Lumsden: Yes, and there was also an additional point I would make to that, which is that the role of the councillor sitting as a councillor under the Local Government Act is totally different to the role of a councillor sitting as the local government authority, who are obliged, whether they are sitting in council or sitting on a development assessment panel, to make their decision unbiased and based on the facts and provisions of the scheme. The scheme is a point of law and the actual scheme has been delegated and approved through the commission and the minister to the local government to act accordingly. And there is clearly, if not an assumption, an obligation even under the scheme provisions in terms of the administering of the scheme that it will be done in accordance with the law and the provisions of the scheme, not by simply an ad hoc process of decision-making.

The CHAIR: So do you think there is a real gap in that knowledge with a lot of local councillors who are participating in this area? Is there more training that is needed to be provided?

Mr Lumsden: The short answer is that I think there is a gap as a whole. It varies because even when councillors are educated, sometimes they leave the council. There has certainly been an attempt to do that through the training of development assessment panels. I have also argued—I think in the past this position has been supported by the Western Australian Local Government Association—that there should be mandatory, rather than voluntary, training of councillors on planning. Unfortunately, my experience over time is that you may have a councillor of good faith who has been on the council for 10 or 12 years and has expressed to me, “Well, we don’t need this training because we know it all.” I am sorry, but in those cases I have been relatively disappointed with that attitude.

Hon BRIAN ELLIS: Just on the same thing, because that area is important: what you are saying is that almost all of the council should be getting some training around this whole process, because when you look at regulations 11, 12 and 13 there is plenty of opportunity for to-ing and fro-ing between DAPs and the council for information, and it seems that in some cases perhaps the council stands back and gives the blame for an unpopular decision to DAPs. Is it part of your view that it needs an understanding of the whole regulation and how the process should work, which does not seem to be coming through in some of the submissions we are getting?

Mr Lumsden: The short answer is yes. I would also make the observation that even before the assessment panels and the advent of the SAT, in my experience when I was earlier in my planning career there was a tendency for councils to perhaps avoid a difficult planning decision on the basis there would be an appeal at that time only to the minister of the day. It had been expressed to me on a number of occasions that they know the minister would uphold the appeal. They just did not want to make the decision. That has still continued to some degree even with the advent, following that process, of the Town Planning Appeal Tribunal, which used to be chaired by the late Chief Justice David Malcolm earlier in his career when he was a member of the Bar and then followed also in the advent of the state appeals tribunal. So that same principle applies to the DAP process now. I think that is important because it also then comes back to understanding the council scheme and the obligations in the scheme.

I will make one further point, which has probably been heightened over the last three to five years, which is whilst the local government planning schemes give discretion to councillors—and just before I add to that, that councillors have generally argued for increased discretion under their scheme; in other words, not have permitted uses, which again has been misunderstood in a number of cases. But many councillors, even today, do not understand how to exercise discretion. By that I mean that it is not a matter of just simply a ticking-a-box mentality; I have even at times had to explain its procedures not only to planning staff in local government but also to councillors at the City of Swan and the City of Melville. But ironically, even in the Department of Planning, when I became director general —

The CHAIR: You probably have to explain it to a few members of Parliament from time to time as well.

Mr Lumsden: Yes. We won’t go there! But it is just not a matter of doing a yes or no; you have to evaluate what are the key issues here. Is it parking? Is it design? Is it a combination of the two? Is it about floor space and all those aspects? It is really coming through and analysing what is the weight and what are the indications. I think that is an area where, in my view, with the support of the commission, the department needs to do some more training of councillors.

The CHAIR: I think your concern is properly reflected in some of the evidence given to us where people have complained about lack of detail as to reasons for decisions—we have had that discussion earlier today—and lack of detail in minutes, which then leads to people being concerned about transparency, and lack of access to seeing decisions being made in some cases. It will be

interesting to see how many of the local councillors who are participating on various DAPs have actually had that training that you have referred to. I do not know whether the department has that information.

[12.10 pm]

Mr Lumsden: They all get training. What I am highlighting are the key issues to focus on. Can I just make one other point? First of all, it is not only the decision-making process; it is also how the scheme is reflected in identifying perhaps appropriate parameters on certain issues of design, which are whether they are reflected in the scheme. Often they are not. An example would be that, in my experience, many schemes, for instance, in terms of residential zone—we use that as the broad statement of land use—“it is an intent of this zone to promote and advance the residential amenity in this area”, but that is it. So in terms of other types of applications, there are no more guidelines or parameters set in the scheme. Apart from a process, the discretion is open-ended because the scheme is not very specific on what key aspects should be considered.

The CHAIR: So aside from putting in houses, you could put anything else in?

Mr Lumsden: No. What I meant was that if you had a residential zone, let us say, normally a single residential dwelling is a permitted use, but if you were talking about multi-unit housing for something like that, which may be a discretionary use, all that is in the scheme is an AA use, so the council has discretion, but how do you then exercise that discretion in order that key elements, other than adhering to the broad statement of residential amenity, should be considered in a specific application in that zone for which discretionary approval is required?

The CHAIR: Is all that information provided to the councillors on each occasion they have to sit on a DAP?

Mr Lumsden: They have been given the training, but also this comes back to local government officers, because they prepare a report based on the scheme. In defence of councillors, it is also incumbent upon the local government planning officers to articulate very clearly what are the key issues. But it is the silent planning officers, having got other than what perhaps is their own experience and practice for the direction where to move on certain points, such as car parking.

The CHAIR: How do you fix that? How do you ensure that the local government planning officers provide that level of detail to the councillors so that they are better informed before they can make a decision?

Mr Lumsden: As I said last night, perhaps the planning officers in conjunction with the councillors should review these schemes to ensure that those base criteria, as I call them, are not only articulated but are clear in terms of intent and meaning. Ironically, at this meeting I had last night, which had a number of very experienced players, one being a CEO, with local government, all were nodding their head. I suppose I had a passion for improving the planning system. This was a key area, because whether or not an application is before a council or a development assessment panel or eventually goes to the SAT, I think this is a fundamental issue which needs to be addressed. The schemes need to be up-to-date, they need to be clear and they need to have appropriate parameters so that you have an appropriate, more rigorous framework in which to make a guide for decision-making.

The CHAIR: You will have to excuse my ignorance. How often are the schemes updated? Is there a requirement for them to be updated on a regular basis? As one of my colleagues alluded to, they might not have been updated for 20 years in some cases.

Mr Lumsden: There is a requirement under the act for those to be at least reviewed and updated every five years, but often they are not.

The CHAIR: So perhaps that needs to be tightened and the language changed about how that is managed?

Mr Lumsden: Yes, I think there is a principle that it should be at least reviewed, and if not the whole scheme, certain parts of the scheme, where you look back over the past five years and see where there is need to review the scheme or amend the scheme, particularly with changes in government policy and those other issues, or even if there are issues within the community they wish to address, rather than try to address it through the use of discretion, go back and look at your fundamental planning instrument, which is the local government planning scheme, and if it is deficient, fix it.

The CHAIR: Just coming back to the issue of training, you talked about how it is voluntary now. Is that something that we need to visit and say to the government perhaps, “You need to tighten up on that and make sure it is mandatory.” So if you can address the matters that you have just canvassed and they are getting proper advice, if the councillors are appropriately trained as a matter of course, then that might actually assist some of the concerns that they raised with us.

Mr Lumsden: I am a very strong supporter of compulsory training for councils, not only to educate the councillors to ensure that they can perform their statutory duties better on behalf of the wider community.

The CHAIR: Who would normally provide that training for those councillors on these types of matters; would it be WALGA or the Department of Local Government?

Mr Lumsden: WALGA has been active in this area for some time, perhaps not to the degree that is perhaps necessary. The local government department has also supported training. Certainly I know a number of CEOs have supported, I will call it, voluntary training at their own initiative, and certainly I carried out training courses myself at the City of Swan and at the City of Melville.

The CHAIR: Thank you very much. I think that was actually quite a useful discussion. Another area that comes up frequently, although it is not covered in the current regulations, is that we have had a lot of expressions of frustration, if you like, and disconnection from members of the community that have given us evidence, and there has been a lot of talk about the need to have some sort of third party appeal or some opportunity for community members to have input into that process outside of the council. I think they just want to have their voice heard in some way. I know they do not get that opportunity via SAT. But I was just wondering what your view is on either third party input or third party appeal, if you like?

Mr Lumsden: If I can just go back, I think the SAT can entertain representations if it is satisfied there is a clear connection.

Mr Ferguson: I think they can —

Mr Lumsden: They are limited.

Mr Ferguson: They do not —

The CHAIR: Yes, I just did not think their legislation allowed for it.

Mr Lumsden: Having said that, it has been my experience over time that not only this jurisdiction but the majority of jurisdictions across Australia have not supported third party appeal, regardless of the political persuasion of the government, so that is basically a government policy issue. I think a lot of reasons for that have been that where they have had a third party appeal, it is the way it has been approached and it has bogged issues down in terms of the matter concerned. My approach from a practice point of view—now getting back to development assessment panels—would be that there is discretion for the presiding member. There is nothing stopping them asking if the community had certain points, to express that, obviously preferably initially in writing, but then add to those points or emphasise the key points at the hearing, if the presiding officer of the panel so desires. I will just go a bit further to that. Yes, there have been submissions for the panel by community members. Nothing stops the panel, as I understand, through the presiding member, to ask perhaps for more explanation as to a point raised in the submission. You can do that with the

applicant; you can do that with the council officers. So I do not see why that cannot occur. Third party appeals, in general, I feel are very problematic. I think there are still ways to let the community be heard other than the officers' reports and submissions, if the panel so desires. But that is a personal view, Madam Chair; it is not government policy.

The CHAIR: Given your experience, I was just interested in what your view on that was.

Hon MARK LEWIS: I think Tasmania has third party appeal rights.

Mr Lumsden: It might have had, but I do not know now.

[12.20 pm]

Hon MARK LEWIS: I recall a case of Dick Smith at Watermans Bay, or wherever it was, where somebody philosophically objected to the ecotourism resort and then made frivolous third party claims, and I think at the end of the day Dick Smith sued. So there is a sting in the tail for a third party. If you are seen to be frivolous, you can actually go to common law and be sued for all costs. I think that in this instance Dick Smith got to the point that it pulled out on that basis. I do not know whether you recall that case.

Mr Lumsden: I recall it in broad terms, not in detail, and that is why I said third party appeal perhaps looks good in theory but can be very problematic. Do you have anything to add to that?

Mr Ferguson: No.

Hon MARK LEWIS: The point of my question is that if that is the case, is it likely that a third party complainant could be sued for frivolous —

Mr Ferguson: SAT does not —

Hon MARK LEWIS: Through common law.

Mr Ferguson: Through common law, but there is a third party appeal through SAT, and SAT is a government process and it is normally a no-cost jurisdiction. I think they can order costs against someone, but it is so exceptionally rare that it would have to be quite a rare circumstance. I am no expert in the SAT process.

Hon BRIAN ELLIS: Referring to question 22, I just wanted your views on that one, where the evaluation of the application is to achieve a DAP threshold. Some submitters have alleged that there may have been instances of applications for 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 a relevant local government planning officer before the application can be decided upon by a DAP. The validity of a DAP application has also been questioned should it later be determined that the value was actually below the minimum opt-in threshold. I am just interested in your views on that.

Mr Lumsden: I think that would be very hard to effectively administer. The reason I say that is that in my experience, certainly not in terms of DAP applications but through my local government career, often certain people applying for a building licence understated the value of the application, so they had to pay less fees. Depending on the experience of the building surveyors or the people at the front counter in the local government, they could perhaps challenge the figure, but it is all very problematic and difficult to prove. Sometimes in the past people have broken down—this could occur in planning applications—the actual application so that it falls under a threshold, and have then come with a second application which adds to that building licence, so it is not included in one application and it operates under the threshold. So I think it is very hard to address.

Hon BRIAN ELLIS: Trying to prove it is an issue. I suppose it follows on from question 23 as well. Is there a criteria that defines the development application, because conversely you can have some applicants that have deliberately staged the development process to avoid going to a DAP.

Mr Lumsden: I think the same situation is either/or, either up or down, depending on what the nature of the application is.

Hon MARK LEWIS: Could there be an addition to the regulations or a remediation process in there in which the complainant, if you like, goes to a quantity surveyor and pays for that to be done, and it would then be beyond reasonable doubt?

Mr Lumsden: In theory, yes. I have had experience in the past where quantity surveyors' estimates can range quite dramatically, so it is not necessarily beyond reasonable doubt.

The CHAIR: It depends who you use, does it not?

Mr Lumsden: Yes. I vaguely remember a case in the City of Swan where there was a large application. Let me rephrase that: there was an application of quite a large development, and I could not see how it was quoted at perhaps, let us assume, \$1.1 million. I thought it was probably more like \$2 million but I could not prove it.

The CHAIR: Part of the issue that we already canvassed on the information given to us is about the threshold—even though they have been blocked—and that disparity between metropolitan areas and country areas in terms of the amounts for development. Do you have a view on whether there should be different figures for regional or metropolitan area development proposals?

Mr Lumsden: I do recall that initially before the current thresholds were adjusted we had issues with large warehouses or sheds up in the north west, and they were very straightforward, they were not complex, they were just a big building. That was, in my view, proper value. In some of those issues you need perhaps to look at differentiating that as something the department could consider.

The CHAIR: Particularly in the north west because the cost of any construction is so steep, is it not?

Mr Lumsden: Yes, whether it is a house or a shed.

The CHAIR: Absolutely. Since we have commenced our inquiry, there have been a raft of changes to the regulations that kicked in, I think, on 1 May. We are just interested in your view on a couple of those changes. We also know that as of yesterday the Delegated Legislation Committee has moved a motion to disallow those regulation amendments, and we will wait and see what happens with that. But I particularly wanted to know what your views on the stop-the-clock mechanism were and whether or not you thought it was appropriate that that mechanism be available to local government for a maximum of seven days from the receipt of the DAP application, including in circumstances where it may become apparent after seven days that further information is required from the applicant.

Mr Lumsden: My answer to that is that I certainly do not have a problem with that in principle. Local governments do use a stop-the-clock mechanism in terms of known, I suppose, practice and policy in dealing with building applications because they want more information. Certainly when I was CEO at Swan I stopped the clock very quickly at the front counter because we had appropriate staff—whether it could go through—and we had the appropriate forms, “is this information here—yes/no, yes/no”. And if it was not, then there was the instruction to the staff that they would not accept an application until it was re-lodged with the appropriate information. Now, that is perhaps more relatively simple in those instances in a planning application, depending on the complexity. But I do believe the options should be there because front-counter staff might not have that expertise to determine it. Often it can be quite difficult when the front counter may be under pressure because of people waiting to be served. But with an application that is deficient, I think a good principle is that it should not be said to have all the information they are, because the information may be critical in terms of how you look at one aspect compared to another aspect of the application.

The CHAIR: All right.

Mr Lumsden: So I do not have a problem with it.

The CHAIR: Another area has been changes around the issue of a quorum for a DAP, which we now understand to be three. We also understand that there is no requirement to have a councillor and a specialist; it could be either/or. There is a whole raft of combinations that you could have. Some people have said to us that they think it is important that there should be a councillor at least present for a DAP, so you would not have a DAP hearing with just the chair and perhaps specialists or the chair and just the councillors. Do you have a view on whether that matters or whether it makes a difference?

Mr Lumsden: From, I suppose, a representation and community-interest point of view, certainly I would support having a councillor there, but my understanding—I have been out of the DAP system for quite a while now, but certainly before that—is that the main issue we had was presiding members either away or ill or the councillors not being there. Bearing in mind there is the fact that you have potentially four members—two permanent and two deputies—I would expect there to be very rare instances, if not nil, where the issue would revolve around the councillor representation; it may be the independent representation.

[12.30 pm]

Hon BRIAN ELLIS: In light of what you said earlier, though, could that balance affect decision-making if it is just one specialist and two councillors? You initially said that those councillors need a lot more training and understanding of the planning.

Mr Lumsden: Yes, certainly it is possible, but if in a perfect world you had that training done.

The CHAIR: Just on that, do most of the councillors who participate in a DAP tend to be those who perhaps have more experience in council or is there a mix of newcomers and more long-term councillors? I am just interested in the make-up of who is there, given their experience.

Mr Lumsden: There is generally a mix. There is no doubt the councillors do the best of their ability. It obviously depends on the experience of the councillor but also experience and training vary. My view is that I think we do this—when I say “we”, the department does this, sorry—and we train all the councillors, whether deputies or otherwise. But I do think the training needs to be reinforced all the time because of a change of councillors but also there are other issues which may come out. To give you an example, if the SAT makes certain decisions, I would expect the department to look at those and ask, “Are the implications for local government or even for the commission?” That should be picked up in appropriate training.

The CHAIR: Given what we are working through with the regulations and given your knowledge of DAPs, and aside from the training issue, which I think you have given us some great feedback on, is there anything else that you see as perhaps being deficient that could be improved via changes to regulations?

Mr Lumsden: I think I have covered all those aspects of the regulations. I suppose the other thing I would do, which probably does not need to be regulated but follows the practice of the SAT—let me go back. First of all, under the Local Government Act and I think maybe the guidelines for local government departments, if a council refuses an application—this also applies to a DAP—reasons should be given. From a best-practice point of view, I also think that, taking it up a bit, even where you approve an application but may modify its conditions, you should give reasons.

The CHAIR: I thank you for saying that, because that has actually been raised on a number of occasions as a concern.

Mr Lumsden: That is from a best-practice point of view, because one principle should be the same for both sides of that equation. The other issue is that where the development assessment panel approves an application without change to a local government, because there is still potential and often can occur, local government will make a recommendation, notwithstanding other submissions against it. So it is not just in that. Bearing in mind that the majority of development assessment

decisions are made by councils that do not go to DAPs, and I have seen examples of where councils have made decisions that do not concur with the community view or an individual —

The CHAIR: Sometimes that can be a pre-change of councillors and post-power in a local government situation.

Mr Lumsden: A very excellent observation, Madam Chair. I think that while the report may say it is endorsed by the councillors, in this case the DAP, I think on occasions where there has perhaps been some debate on aspects in the report, even if there is no change, it would be good practice for the presiding member to actually articulate why they agree with those aspects, because the SAT does that. When the SAT refuses or approves or modifies, it publishes written reasons. I am not saying that we should go to that degree.

The CHAIR: But you are dealing with quite significant amounts of money and you are also dealing with a community that quite often is not necessarily happy with it, so you need to be quite clear about why the decision has been made.

Mr Lumsden: Exactly, and that is why I am talking from a personal point of view and experience which I think is best practice, whether it is done by the SAT or a council. I have had the privilege of serving a number of council. Certainly the late Mayor Gregorini at Swan, often particularly when he had members in the public gallery and made a decision, and people would obviously do deputations, he would ask myself as CEO or the director of planning and development to explain the issues. Often we did that not only for the information of the members of the gallery but, for some aspects, for councillors, which perhaps may not have come out from a debate around the council chamber—certain aspects of the officers' report. I just think it is good practice so that people have an understanding. They may not agree with the decision or the thinking behind it, but at least they know how that decision was made.

The CHAIR: That matter has been raised. There has been concern about—particularly when a decision has been referred back from SAT—as to why, on those occasions, there might be closed meetings of DAPs to the public and people will actually want to know what is going on. I know they all have the same difficulty. I know there are still some local governments that close meetings and remove people on some occasions.

Mr Lumsden: Can I make a comment on that? I feel in this instance, obviously in local government and the DAPs, but particularly local government—the City of Swan and the City of Melville, when I was there, had some very good legal advisers who were very experienced in local government planning law. We were advised —when I say “we”, the council was advised—that where the SAT referred something back for reconsideration, the council had to sit behind closed doors by direction of the SAT, otherwise we could technically be held in contempt of the SAT, bearing in mind the SAT is a division of the Supreme Court. So it is not a matter that the council or the DAPs wanted to go behind closed doors; they felt obligated to. Now, more recently there has been a bit more leniency come out from the SAT, but certainly up to that point, even when we went for mediation in the SAT—I am now talking of when I was in local government—that was still behind closed doors. So the practice was no different to what was expected through the SAT process.

The CHAIR: Then perhaps it just needs to be explained as to why it is happening. Maybe that is not happening enough.

Mr Lumsden: And I think some of the DAPs have been accused of secret meetings. I would rather say they were confidential meetings because the DAPs had to operate under the premise that they were expected to go through the SAT process.

Hon MARK LEWIS: I am not sure where we are up to, but in your report —

The CHAIR: We are just tapping into Mr Lumsden's experience and knowledge, I think.

Hon MARK LEWIS: Yes. You have got that table where there is the review of the development assessment panels. I am just wanting your comments. I assume you sort of interrogated for that table on page 8.

Mr Lumsden: Yes.

Hon MARK LEWIS: Before we do that, can I just confirm that in that survey that panel members are or could be local government panel members?

Mr Lumsden: Yes.

Hon MARK LEWIS: And that other councillors or other people in local government, like planning officers, are not on the panel?

Mr Lumsden: If this is the one that the department carried out, that is correct.

Hon MARK LEWIS: There seems to be a fairly big disparity between those on the panel, including the presiding member and industry, and those back in local government. It just runs right through this. I am just wondering why that is and what your comments might be on why that is. I note, as you point out, that this was done by the department and asked a range of people, whereas the WALGA survey asked only local governments and councillors. While we have got that, it is quite a different picture that that WALGA survey presents. Just make a comment.

Mr Lumsden: I think it is because of the scope of the survey because —

Hon MARK LEWIS: Because there are more members, yes. They asked industry and asked —

Mr Lumsden: You can break it down and do your own interpretation, but when you look at the final totals overall, you do have clearly a majority. But even when you say that there are 29 people in the total who are neutral and not for or against, it is not really something that is totally broken and cracked.

[12.40 pm]

Hon MARK LEWIS: But there just seems to be a disconnect between the local government part of the councillors and the DAP, particularly when the panel members are local government members as well. Those local government members who have been involved in the process seem to be quite happy, but those outside of that process but backing local government do not. There is quite an interesting disparity.

Mr Lumsden: I have to say that in my experience in my career, both as a local government officer and also as chair and past DG, it depends on who you talk to. I have had local government planners express to me that when a matter has had to go to the SAT, they are pleased about it because the council has ignored their recommendation. So it depends on the issue. May I just add to this, before we close, Madam Chair: DAPs in their own form were being considered at the City of Swan before I left, and I think you have asked questions on that. This is back in probably 2003, so I am casting my memory back a fair bit. There was a desire at that time within the council—it was in the staff—to try and get, on some complex issue, independent assessment advice. Obviously at that time there were issues relating to the development assessment forum, which was pushing more appropriate decision-making in development assessments. We went to a number of councils in the eastern states—I think they were in Victoria and New South Wales—because the council was starting to look at them and setting up its own independent advice, which meant basically with specific development issues, the council would refer to this panel and the panel would give advice and come back to the council. The council was still making the decisions. But there was a view of the councillors at the time that they were getting so many complex issues and often quite volatile issues that they needed some other process to support their decision-making. We actually had a council study tour, led by late Mayor Gregorini, which went to a number of councils. In the councils at the time we spoke to mayors and deputy mayors, and they were quite supportive of the process. I am not saying that would be duplicated now, but it was quite clear those councils that were dealing with

quite controversial issues were looking at some mechanisms for how to improve their decision-making process. But that did not go ahead in the City of Swan because I left.

The CHAIR: We were advised at the last hearing that there was some sort of similar type of arrangement, I think in Victoria Park.

Mr Lumsden: Vic Park?

The CHAIR: Victoria Park council has run some sort of panel where they have a range of expertise, I think.

Mr Lumsden: I think it is the design advisory panel. The City of Fremantle has got similar, and other councils like South Perth had them.

Hon MARK LEWIS: We have been sent away by the upper house to review the regulations. Do you think there is any regulation that we should add, admit, delete or edit that would assist the regulations to meet the objectives of the act? You can take that on notice, of course.

Mr Lumsden: I would recommend mandatory training. I have always been strong on that, even when I was the president of the Local Government Managers Association, and that position is not unknown to WALGA and other members of local government.

Hon MARK LEWIS: You are saying there is not much in the regulations that you would change other than that?

Mr Lumsden: Other than what has been going through the process without going back and reading every regulation.

Hon MARK LEWIS: Clause by clause, yes.

Mr Lumsden: And I have not been through the regulations point by point in the last few days, so you will have to excuse me on that. I am not trying to duck the question; I am just being honest.

The CHAIR: I think that is an eminently sensible suggestion that we will give consideration to.

Thank you very much your time today and I think it has been very useful to the committee. We certainly appreciate the information you have provided to us. I may just get you to table your responses to our questions and just name the document for Hansard.

Mr Lumsden: The document is entitled “Development Assessment Panel—Parliamentary Public Hearing—19 June 2015—Response for the Chairman”. You already have copies.

The CHAIR: Thank you. I hope you are feeling better.

Mr Lumsden: Thank you, Madam Chair, and thank you members.

The CHAIR: That ends our hearing for today.

Hearing concluded at 12.45 pm
