STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

PLANNING AND DEVELOPMENT (DEVELOPMENT ASSESSMENT PANELS) REGULATIONS 2011

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 22 JUNE 2015

SESSION ONE

Members

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

Hearing commenced at 1.05 pm

Mr JOHN GELAVIS
Executive Director, Housing Industry Association, sworn and examined:

Ms KRISTIN BROOKFIELD
Senior Executive Director, Building Development and Environment, Housing Industry Association, sworn and examined:

The CHAIR: First of all, I would like to thank both of you for coming to meet with the committee today, and say thank you particularly to Kristin, because I know you have travelled to see us today and we certainly appreciate that effort you have made for us. As you are aware, this committee has been sent a reference by the house to inquire into regulations for DAPs and we have been working through a steady process of hearings, listening to the various viewpoints of a range of individuals and groups about whether or not they think the DAPs regulations are effective or whether there are any issues with those. We certainly welcome your views today. Before we start, we have a few formalities to go through and then we will work through. I will introduce the committee to you—Hon Amber-Jade Sanderson, Hon Brian Ellis and Hon Mark Lewis—and Mr Alex Hickman. On behalf the committee, I would like to welcome you to the meeting and before we begin, I have to ask whether you would either take the oath or the affirmation.

[Witnesses took the oath.]

chai: You will have signed a document entitled "Information for Witnesses". Have you read and understood the document?

The Witnesses: Yes.

The CHAIR: These proceedings are being recorded by Hansard. A transcript of 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, and also please be aware of the microphones and try to talk into them and ensure you do not to cover them with paper 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.

That is the formalities out of the way. We have received a submission from you and I know we have sent you a list of questions and you probably have written responses. Do you have written responses to those questions?

Ms Brookfield: Not to table.

The CHAIR: That is fine. To start, if you want to make an opening statement and then we might work our way through those questions so that we get your response to them on the record, if that is okay.

Mr Gelavis: I will hand over to Kristin and she will run through the opening statement from HIA and run through some of the other responses to some of the questions as well that she will give.

Ms Brookfield: Good afternoon and thank you for inviting the Housing Industry Association to attend today's hearing. The Housing Industry Association represents a broad range of members involved in the residential building and development industry, including volume homebuilders, small and medium homebuilders, renovation builders, residential developers, trade contractors, building product manufacturers and suppliers, along with consultants to the industry. HIA members construct 85 per cent of the nation's new residential building stock. We have almost 3 000 members in Western Australia and 40 000 members nationally. HIA exists to service the businesses we represent, to lobby for the best possible business environment for residential developments and to encourage a responsible and quality-driven affordable residential building industry. Our mission is to promote policies and provide services that enhance our members' business practices, products and profitability, consistent with the highest standards of professional and commercial conduct.

[1.10 pm]

In providing HIA's response to the inquiry, we have focused on the committee's request to comment on the operation and effectiveness of development assessment panels since their introduction in 2011 and any potential suggestions for amendments. Given the regulations specifically exclude single dwellings and small multiple dwelling projects, you would understand that the majority of HIA members have not been exposed to the operation of DAPs. Therefore, our views today present a combination of feedback from our members along with drawing on experiences in other states where DAPs also operate, which provides a comparison to the Western Australian experience, and generally accepted planning principles about decision-making when merit assessment is required. HIA understands that the operation of DAPs in Western Australia is intended to provide an alternative decision-making process for significant or potentially controversial developments. We have been supportive of the introduction of DAPs in the current form and for their current purpose. HIA also supported the recent amendments to the regulations, which have increased the value thresholds.

HIA's submission made reference to the difficulty in assessing whether DAPs have achieved the intended objectives when the regulations do not expressly provide any clear objective. To assist in future considerations of the merits and performance of DAPs, it is suggested that objectives be developed and included either in the regulations or endorsed in some manner by the government.

Our submission also flagged the need to provide benchmarking of the performance of DAPs against the time frames for equivalent applications under the previous arrangements. The current statistics available compare year-on-year operation of the DAPs for the first two years. Given the limited time that DAPs have been in place, it is considered difficult to make significant assessments on their performance or benefits at this stage. Lastly, HIA has acknowledged that not all applications that meet the value thresholds require merit assessment, and in some cases the applicant may be comfortable to use the local government authority to undertake the assessment. Therefore, we have suggested the option of allowing to applicants to opt out of the DAPs process. This provision operates in other states and we believe it may have merit. Given there are a number of questions we understand the committee would like to raise, we will be happy to now move to those and answer any other questions you have. Thank you.

The CHAIR: Thank you very much for that. We might just move straight into that. The first area of questions is basically around the development of the DAPs, so we will work through those questions. We note that the HIA was a member of the DAPs fees working group and that, according to the department, this working group gave its support to the fees and the regulations. We just wanted to know how this working group operated and if you have any concerns that you relayed to the government during the consideration of the fees by this working group.

Ms Brookfield: Unfortunately, neither John nor I were involved in that working group, and the staff that were involved are not with HIA anymore, so we are not really in a position to provide any detailed response for you.

The CHAIR: Okay. So you probably will not be able to provide any responses on that area of questioning at all?

Ms Brookfield: Not the specifics of that working group.

The CHAIR: All right. We might then just move on to some questions about your submission, which is question 4 on that paper that we sent to you. When the HIA refers to political conflict and inconsistency on the covering letter of its submission, and removing the politics from the decision-making process where appropriate, on the covering page and on the top of page 3 of the submission, is the committee's assumption correct that it is referring to when a local government council makes a decision on a planning application after deciding to do so, rather than its planning officers; and are you able to give examples of what the HIA would regard as political conflict affecting decisions on planning applications from local governments, and how often HIA members encountered this?

Ms Brookfield: Sure. To answer the first bullet point, the view around political conflict and inconsistency does not go to the issue of a delegated authority from the council to its staff, but purely goes to those matters that are put before the council for a decision and the issue that the council is solely formed based on political groupings and that a decision may be made either consistent with the advice of the planning staff, or inconsistent, and that that decision can be based along party lines of whoever the groupings are in the room at the time, which means it may not be purely based on the technical merits of the application.

Hon AMBER-JADE SANDERSON: You are based in Canberra. We do not have an openly political local government; in fact, it is in the Local Government Act that they are required not to be openly organised in that way.

Ms Brookfield: Yes. Okay.

The CHAIR: Putting aside the eastern states experience, is there a view that that is actually happening in Western Australia?

Mr Gelavis: I guess you can probably tend to look at the make-up of the particular panel and the constituents of those panels. I think it is very important from a development perspective that the project is seen within its own merits, and certainly having a DAP process in place, from what we have seen and from what our members have reported, is probably a more impartial process in terms of being almost effectively a process they can go through to really make sure that the project is seen upon in its own merits, as opposed to having a council itself look at it.

The CHAIR: Is it a different issue, rather than just impartiality? It has been put to us that there are concerns about perhaps lack of knowledge or training for some of the participants on the DAPs. Is that an issue that you have encountered as well? Is that something that has been raised with you, that perhaps people who are participating do not necessarily understand as much as they could about the process or the requirements?

Mr Gelavis: I think that is the connotation that we get from our members, looking back, and it was not in the initial discussions in 2011. But that does seem to be the reason for the establishment of the DAPs process, effectively that it cannot be dealt with within local government; therefore, you need another group outside that that can make a decision. Certainly, from an industry perspective, we see that the delays in, I guess, the approval and the review and approval of a particular development can cause additional costs as part of that process. If that is done unnecessarily, then you might find then the impact will be on housing affordability as well. I think that is really where some of the connotation that we have had back coming from our members seems to have identified that as a particular concern. That may have been initially why the DAPs process was established in the first place.

The CHAIR: Given most of your members are predominantly in residential, on what occasions would they have to front a DAP in Western Australia? In residential, what sort of limit would most of your members be working in in housing—price-wise, I suppose?

Mr Gelavis: It really depends because, as Kristin pointed out, we have got a very large membership base and we have got builders that build single residential developments as well as building multi-units and in some cases large high-rise. It does vary. The majority of our members are probably engaging in the single residential development—a lot of trade contractors in those areas. But we do have some of our builders now, with density becoming more of a present strategy of the government, engaged in more of those types of developments. We are probably going to see more applications, I think, and some of our members transitioning into more density-type projects. I think initially a lot of our members are probably dealing more in probably the lower level—without having the specifics, because I do not have that. The nature of a lot of our builders is in those sort of four to 10 to 15-unit developments as opposed to the more high-rise commercial buildings.

Ms Brookfield: Certainly, if I can add to what John said, the $3 million, and that has now been reduced to $2 million, in the residential market—that is a fairly low threshold, so 10 or more dwellings would mean that all those applications have the potential to come across to a DAP.

Hon AMBER-JADE SANDERSON: The submission, and your covering letter, talks about taking the politics out of the decision process. In WA, where local government is not organised around political parties, it has been put to us by a number of submitters that the local government is taking the community out of the decision. Do you think the current make-up is a good balance or do you think it should be done purely by planning professionals?

[1.20 pm]

Ms Brookfield: One of the questions did go to this. I think what is important to remember is that the community and the council are and should still be involved in setting the strategic policy for its area. My understanding is that they are still obviously involved in running the local planning schemes, that they set the zonings; they set the density issue for residential areas. That underpins any decision that goes on to be made by a DAP. There is certainly no suggestion that that be removed. Also, my understanding is that the DAPs still receive submissions—or the responsible authority would go through the notification process. Again, we would hope that community views are being put through in those reports and then being considered.

Hon BRIAN ELLIS: Can I just follow up on that? You support DAPs, but could you explain in your covering letter that you believe the planning system should deliver three key outcomes: predictability, affordability and flexibility. That predictability, is that for the developers or for the community? Predictability which way?

Ms Brookfield: Absolutely both.

Mr Gelavis: Both.

Ms Brookfield: That goes to having clear planning systems that tell us what land is zoned, what you are allowed to build on that land, and therefore, if I am the neighbour of that land, what can I expect. I can segue to one of the questions around what are our more general concerns with the planning system. We very much have an expectation that if land is zoned for residential development, if a block has been permitted to be created for a single dwelling, that an application for a single dwelling should—99 per cent of the time—be approved, subject to it meeting the standards set for that development. That should not be the type of application that, at the third hurdle, requires significant public consultation because the public is aware that it is a residential block of land. That underpins the predictability that we do accede in the system.

Hon BRIAN ELLIS: There may be a question later about this, but while we are speaking about it, do you believe that the regulations that are in place now achieve that—the predictability, affordability and flexibility? Or do you think there should be a —

Ms Brookfield: For the DAP specifically?

Hon BRIAN ELLIS: Yes. The regulations that exist now.

Ms Brookfield: Look, it is possibly still a little early to tell clearly. I have mentioned the statistics that have been made available so far; they are statistics just around the first two years. They do not provide a comparison for us back into the old system and like-for-like around an apartment building, or a major industry, and so on, to see whether decisions are consistent with the reporting authority or inconsistent to see whether they are being appealed. That comparison would be useful, I think, in this exercise. Also, I think it is fair to give the DAPs some time to settle in procedurally. They might have not been running as smoothly in the first year as they hopefully are in the third, fourth and tenth year, if they continue to operate.

Hon BRIAN ELLIS: I got off the track a bit there—sorry.

The CHAIR: No, it is fine. I am interested that given that they have been in operation now since 2009, I think, what sort of time period do you think would be useful to see how they are tracking? It is a difficult one, is it not?

Ms Brookfield: It is, and as I say, I think the missed opportunity in that report that was published as part of the "Planning Makes It Better" documentation only gave a two-year window and did not have the comparison. I would have thought that report could have the comparison today. I do not think there need to be a delay, necessarily, in that piece of the puzzle. You would probably look in four or five years as giving you a good window of reality in terms of statistics.

The CHAIR: Coming back to some of the changes you have already talked about—the drop in the threshold, do you think there should be any other types of non-monetary criteria that could be used to determine whether a planning application should be referred to a DAP?

Ms Brookfield: We went to this in our submission, and I am happy to supplement that. Certainly, the experience in other jurisdictions has been that DAPs have been a combination threshold. What I mean there is that they have used a dollar value as a starting point and then specifically pulled out types of developments or classes of developments that they consider either are always controversial or have the potential to be controversial, and lifted them out into the system. In New South Wales, and you asked us to quote specifically, schedule 4A of the Environmental Planning and Assessment Act provides the requirements for the New South Wales system. That includes private developments that are $5 million or more and that are in accordance with a list of specific events. I do have it in front of me. The types of things they nominate are: developments with a capital investment value of more than $5 million for air transport facilities, port facilities and rail infrastructure—very big infrastructure types of things—but also affordable housing, childcare centres, community facilities, educational establishments, group homes, and so on. They have combined the two things. I think, perhaps, some of the questions that go to the cost recovery and the timeliness of the DAPs process may go to the fact that more applications than need to be drawn in have been drawn in. That approach might be a way to pull it back. The other element in that regulation, which I think is incredibly useful, and perhaps quite obvious, is applications which the council is the owner or the applicant for are referred to a DAP.

The CHAIR: Automatically?

Ms Brookfield: Yes. With the value threshold of over $5 million. That is another way to make them useful where the council should not be making a decision on its own.

The CHAIR: This has come up on a few occasions, particularly when you are talking about the difference between the metropolitan area and the rural and regional areas. I dare say this would be an issue perhaps in New South Wales and possibly Queensland as well where that threshold in the bush would kick in a lot faster, particularly in the northern part of our state, than it would in the city. Is that something that your members have made reference to if they are involved in construction in Headland or Karratha or any of those places up north?

Mr Gelavis: Not directly—not in terms of regional versus metro, no. Some of the feedback I have had directly—one in particular in front of me—it is a really "relasive" experience in metro rather

than regional. I think that is probably where a lot of the projects seem to be—a lot of the development in Perth over the last 12 months has happened in the Perth metropolitan region.

Ms Brookfield: Sorry, there is a third way which is to simply target the type of development and remove the dollar value. That may assist in a regional area so that—you perhaps would not use subdivision as an example, but an apartment building that is more than X stories high might be all you target, and that way the dollar is not an issue.

The CHAIR: Moving on to look at the issue around cost recovery. This committee has received evidence that raises concerns about the financial sustainability of the DAPs system and fact that full-cost recovery is not being applied. Do you believe the fee for applications is currently set at a reasonable level and full-cost recovery should be applied; and, if so, why; and, if not, why not?

Ms Brookfield: The fees for the DAPs do sit on top of the development application fees, so our position at this point in time is that they would be sufficient, but we did not make submissions on them being an issue here. I do concede, as I said earlier, that if the DAPs are doing more applications than may be practical, then perhaps the fees are not sufficient to cover that. I have done a little exercise of looking at the application fees in New South Wales again and in Western Australia. The base fee that you apply here is currently—I do not know whether you would say significantly higher, but it is higher than other jurisdictions. Would you like some examples just for interest?

The CHAIR: Yes, please.

Ms Brookfield: In New South Wales, a $2 million application would pay $4 055 to the council; in Western Australia that would be $5 555. For a $10 million application in New South Wales, it would be $15 575; in Western Australia that would be $18 783. A $20 million application is $27 775 in New South Wales and $31 083 in Western Australia. On top of that $31 000, you then apply the $6 557 for the DAP. There is no additional fee in the New South Wales system for referral to the panels in New South Wales.

[1.30 pm]

The CHAIR: Once they have sent it off to council, that is it?

Ms Brookfield: Yes. The other important thing is—this does not make it right or wrong—there is traditionally a view that development assessment fees have not been cost recovery for local governments. HIA acknowledges local governments do not have sufficient resourcing to do what they do. The fees have to cover the enforcement and all the broader community roles that councils undertake. We have never formed a clear position that they should or should not be one or the other but do acknowledge that they do not represent full cost recovery.

The CHAIR: Another matter that has come up and picks up on the point Hon Amber-Jade Sanderson referred to about community being removed: we have had evidence from a range of people that quite often DAPs will approve a project that goes against a council decision that goes against a community view. It has been put to us that perhaps there should be capacity for a third party appeal or an opportunity for a third party to be able to have their say during the DAPS process. Does HIA have a position on that?

Ms Brookfield: We do. We have had a position for some time that we do not support third party appeals regardless of the decision-maker. Only in the instance where there is an actual breach of the act should there be such an appeal right. We would like to think, and expect, that the system provides sufficient opportunities to comment during the process and that those comments are recognised and then a decision made on its merits.

The CHAIR: Another area that has come up has been around the exercise of discretionary powers of the DAPs. We have been given evidence by some submitters that they are concerned about the exercise of discretionary power, which has been described as unfettered and without justification or

scrutiny. One submitter has recommended that any exercise of discretion can be limited to variation of no greater than one R-code above that of the site in question. Does HIA have a view on this issue around discretionary power?

Ms Brookfield: I am happy to be corrected on this but my understanding of the regulations would be that the panel is bound by identical provisions, as the council would have been or the commission would have been in making an assessment. If discretion is being used on non-discretionary standards, I would question that being an appropriate outcome. We have not received any feedback from members that that sort of thing is occurring. Where there are discretionary matters to be considered, then, obviously, almost the sky is the limit, which makes it difficult but that is no different from the authority the council has, the DAP has or the commissioner has.

The CHAIR: Have your members raised any concerns about different approaches being taken by different DAPs in different council areas, not that having consistency perhaps across the board?

Mr Gelavis: No, not so much with DAPs, I think probably more our issue, as Kristin pointed out, in terms of the membership base has been fundamentally the different local planning schemes in a single residential sense as opposed to DAPs. I have not had any direct feedback from members about inconsistencies among DAPs but certainly inconsistencies among local government jurisdictions in local planning requirements.

The CHAIR: This issue probably comes back to your submission in terms of those three points Hon Brian Ellis has referred to. Have any matters been raised by your members about possible delays in the process, if they have to go through a DAP? Has there been discussion about any difficulties caused or is it a slower process than what they would have experienced prior to them being in place?

Ms Brookfield: The only submission we have received at this point went to the fact that in some cases the timing may be the same or even marginally more, yet the additional costs have been paid. That is the sort of feedback we have had to this point but not particularly as an issue.

The CHAIR: Looking at question 17 about valuing of applications to achieve the DAP threshold, some evidence has been provided where there has been a suggestion that, in some instances, applicants would provide an estimate of the value of their application so that they can achieve the DAP threshold and it has been suggested to the committee that all estimates should be subject to assessment by the relevant local government planning office before the application can be decided on by a DAP. Do you have a view on that?

Ms Brookfield: It certainly would not be our first preference to introduce a system that overly zealously checks the cost of applications. Local governments already have ways and means of looking at the cost of something and say, "That's in the realm of reasonableness", and those should be applied. The concern would be that if a system like that was introduced, it would infiltrate up and down the system and apply to all applications, so we would like to avoid that red tape. I think also this point goes to the issue we have raised about the opt-out scenario and the thresholds themselves. If a threshold is not purely dollar value, you remove some of the stimulus to potentially do that if you are doing that to get in, and also if you have the opt-out scenario you might be taking some applications out and remove the burden, and balance things that way.

The CHAIR: On the question of opt in and the mandatory thresholds, do you think the system should be more flexible?

Ms Brookfield: Yes.

The CHAIR: That knocks that other question out, does it not? On that basis, we have received evidence that support an increase in the threshold of $30 million and $50 million. You have already talked about the other ways that exist in other states. I think we have had that discussion.

Do you have a view on DAP members representing applicants. Again, it has been raised in evidence that there are some examples of DAP members having to excuse themselves from the process because they were representing an applicant. Again, it has been put to us that this type of activity creates a negative view in the community about how a DAP would operate. It has also been put to us that there should be a ban on people being able to participate in a DAP if they are representing an applicant. Does HIA have a view on that?

Ms Brookfield: I think it is a reasonable expectation to avoid that potential conflict of interest, if not real, and I think to limit a professional person's operation in one DAP area is not going to significantly affect the rest of the business operations if that is what they do on a day-to-day base. I do not think we would have an objection to that type of restriction.

The CHAIR: Another area of concern that has been put to us has been around record keeping, minute keeping, particularly when a decision has come back from the SAT and has been referred back to either the local council or to the DAP. A number of people who have given evidence to the committee have talked about the lack of information about why a decision is made or the lack of detail in minutes kept at a DAP meeting. Has that matter been raised by your members and do you have a position on that?

Ms Brookfield: It has not been raised but I again would think that this is information that should be publicly available at the conclusion of a decision, in the same manner local government reports are publicly available and decisions. I would see no issue with that. I was a little intrigued as to why some of these processes are closed processes, myself. I am not really sure of the benefit of that.

The CHAIR: Is it handled in a different way in, perhaps, New South Wales?

[1.40 pm]

Ms Brookfield: I am fairly confident that the New South Wales system is not a closed system. I was about to say I would have to check South Australia for you; that was on the tip of my tongue! We would be happy to table some information after today outlining that for you, if you would like.

The CHAIR: That would be very helpful.

Hon BRIAN ELLIS: Just to follow on from that, it was put to us that, rather than closed, it was a legal requirement in some cases that the meetings are confidential and in camera. Just getting back to the minutes—and I am interested, same as the Chair—you have the experience from the eastern states with panels over there, and you may not have the full understanding of this side, but it has been put a number of times about the quality or the depth of the minutes that have been presented for people to understand decisions. In your case, in your experience over east, how detailed are the minutes? How open are they to explain to the community why decisions are made?

Ms Brookfield: I will have to take that on notice, but my understanding is certainly that reports are available. I will have to double-check around minutes formally for you, and I am more than happy to do that.

Hon BRIAN ELLIS: Okay.

The CHAIR: The next, probably last, lot of questions are really around some of the changes. Since we have commenced this inquiry, the government has introduced new regulations, which is very helpful! Whilst we are looking at the regulations that were in place, we are also saying to people as they come to see us, "Do you have a view on some of the changes that have been made?" Some of those changes go to the lowering of the opt-in threshold to $2 million for all DAPs, which I imagine will have a greater impact on your members now.

Mr Gelavis: Yes, definitely. I have had some feedback from a particular member in response to the changes to say that they supported the recent announcement to reduce the project threshold to opt in to the DAP process. The designers had positive experiences with DAP and they both support lowering the thresholds so that medium-sized development projects can opt in for this pathway.

I think that is certainly an endorsement from some of our members, particularly, as we have said, some of the smaller members who are building these sorts of developments. As we transition to Directions 2031 and the recent announcement around planning and density reform, I think a lot of our members will be engaging at this level, if that is going to occur. It was certainly supported by some of the members in particular when it was announced.

The CHAIR: The next area that has been changed is an increase in the mandatory threshold from $15 million to $20 million for the City of Perth for that DAP, and then from $7 million to $10 million for all other DAPs. Any views on that?

Ms Brookfield: I think it is supported and it goes to our original comments around the thresholds. Amounts of $15 million to $20 million even in the City of Perth, for a major project, probably do not get you a lot. I do not mean to make that sound trite. You are capturing a significant number of projects and perhaps tempering that with another band would be useful.

The CHAIR: Another change was the disbanding of the shortlist working group, which was established to submit to the Minister for Planning shortlists of persons recommended for appointment as specialist members of DAPs. Do you have a view on that?

Ms Brookfield: I suspect that really goes perhaps to a red tape concept that spending a lot of time calling for vetting and putting people's names on a list who may never get called up may not be the best use of everyone's time, and perhaps to just call for the specialist members when and as they are needed for nominations, and do a round, and then go with that; it might be a more effective way to manage the process.

The CHAIR: Have any of the HIA members been invited to participate in that capacity?

Mr Gelavis: I cannot say, sorry. Not to my knowledge.

The CHAIR: That is okay. A change that has received quite a bit of attention is the change to the quorum requirements, which has now been dropped to any three DAP members, including the presiding members. There is no specific requirement now to have a councillor or a specialist; you could have the chair and two specialists, or you could have the chair and two councillors, or a mix of both, if you cannot have the full five members there. Do you have a position on that?

Ms Brookfield: Again, my starting point is that I was a little intrigued as to why five is difficult to form, and it may go to workload to bring everybody together. The New South Wales framework is five and I can see a lot of consistencies in how they must have drafted the regulations here and there. I would certainly think that the nub of the issue is the balance and perhaps there should be at least one from each category in the room; I do not necessarily have an objection to that.

Hon BRIAN ELLIS: I think one of the reasons, it has been put a number of times, is that even though we are growing, we have a fairly small pool of specialists to call on, and that goes back to what the Chair said about the conflict of interest. You were saying that it probably is best that they do not sit on it, but with regard to the size of the pool, do you believe that if they declare their interest then maybe they have to leave the room or else be allowed to participate, even though they have declared the interest?

Ms Brookfield: That is an alternative way, obviously, to approach it. I do not want to get into the legal rights and wrongs of declaring an interest and then being part of the decision-making process, but you can look at an LGO like the City of Perth, and that is quite a significant proportion of work, and if you are a consultant seeking work then you might have to make this choice whether you are either in DAPs or you are not. That might be a negative, whereas in a regional area it might be less of a negative to the pool of people available. It is a difficult one.

The CHAIR: One of the other changes is the stop-the-clock mechanism. I just want to know what your view on that is, because now they are going to be able to stop the clock for a maximum of

seven days. Does that come back down to the timeliness issue your members have talked about, or do they see that as being a plus?

Ms Brookfield: Stop the clock is a reasonably good mechanism when used properly. It applies in many jurisdictions. It does not include the time between the applicant being given notice to provide the information and documents. The main concern we usually have with stop the clock is that it is used numerous times. We have an expectation that an applicant would be asked once and asked holistically all the things they need to provide, and accept that the clock does not restart until that information —

The CHAIR: This is the experience of the eastern states?

Ms Brookfield: Yes, and with stop the clock generally. One of the most common member inquiries we receive to the team of staff that I manage across the country who are planning and building professionals giving advice to our members is around local governments asking for extra information and doing it in an ad hoc manner. I know we are talking about the DAPs here, but our advice back to our members is always to get the request in writing and to ask for everything in one request so that they are not doing this to and fro. Clearly, things may arise based on the information given, and that is appropriate, but to take a phone call to them, have an email to them, have such-and-such asking for information, is not appropriate and sometimes authorities can use that to game things. So a preference where the stop the clock is quite clear —

Hon MARK LEWIS: Sorry, did you say "game things"?

Ms Brookfield: Yes, to take that time frame longer, when you have the clock related to a deemed refusal outcome, which is basically all the clock is for; the clock only creates a power for an applicant to appeal on a deemed refusal. It really has very little bearing on anything else, and many applicants choose not to take a deemed refusal because it is not their preferred approach.

The CHAIR: Perhaps with that particular matter there needs to be some clarity in the regulations about frequency of stop the clock and perhaps the level of detail or the manner in which information is to be sought. Would that improve the arrangements?

Ms Brookfield: It would be helpful. If I go to one of the other questions you had, there was a question around last-minute information. Often our experience there is that applicants are not privy to the view of the decision-maker until late in the process, so the assessment report is prepared and says, "Here are a number of issues that need to be addressed", and at that point the applicant chooses, or chooses not, to make additional submissions that might fix these issues. So, it is at the eleventh hour because they have not had the opportunity earlier in the regular request for information, and there is whole range of reasons why a decision-maker might choose to handle it that way. It is not necessarily trying to abuse the system but work within the short time frame they have been given to say, "Here is a solution. Can you now please consider that solution because you have made me aware there is an issue?"

[1.50 pm]

The CHAIR: Other than the matters that we have covered today, are there any other changes that you think might improve the regulations for DAPs based on your members' experience?

Ms Brookfield: I think the primary one is to be very clear on the objectives of the DAP. It goes to your original questions and our original statement that you need to know the problem you are trying to solve to have the right regulation for it. The lack of that being provided in the regulation or the act provisions means that there are commonly accepted good planning practices as to why you would take a decision up to this level but what is the issue that Western Australia was trying to solve when it introduced them? That way, you can go back and say, "Have you or have you not addressed it?" Clearly, the New South Wales arrangements look to applications that sit across council borders—applications that are of a controversial nature so you can make that decision against those regulations. If that was to come out of this process, it could be quite useful.

Hon MARK LEWIS: You have a copy of the regs there, Brian, but there are no objects to regs generally. The objects are in the act. You are saying you cannot find in our act a clear objective for which the DAPs apply. It is a good point.

The CHAIR: We will note that. Thank you very much for your time. It has been very useful. We certainly appreciate the fact that you have trekked across the country to talk to us today. As we work our way through the process, we might write to you if there are any additional questions that we have or we might seek clarification on a couple of points, but we certainly appreciate the information that you have provided to us this afternoon.

Hearing adjourned at 1.52 pm