

**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 THREE

Members

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

Hearing commenced at 1.32 pm

Hon FRED RIEBELING

Councillor, City of Mandurah, sworn and examined:

Ms CAROLINE KNIGHT

Councillor, City of Mandurah, sworn and examined:

Mr TONY FREE

Director, Sustainable Development, City of Mandurah, sworn and examined:

Mrs FIONA MULLEN

Manager, Planning and Land Services, City of Mandurah, sworn and examined:

The CHAIR: Thank you very much for coming in this afternoon. Before we start our formalities, I will introduce the members of the committee: Hon Amber-Jade Sanderson; Hon Brian Ellis; my name is Kate Doust; Hon Mark Lewis; and Alex Hickman, our research officer. I really appreciate your coming up from Mandurah today to talk to us about the DAP regulations. We had this review referred to us in October of last year, and we will be seeking to provide a report to the Parliament in early September. We have a list of questions that we would like to go through with you, and then we will have a discussion about the new regulations, which were gazetted last Friday. So, if you will bear with me, we have a few formalities to go through before we kick off. I know that Fred will be very familiar with these!

Councillor Riebeling: Not from this spot, though!

The CHAIR: No, I think we do things a little bit differently to how you used to do it!

On behalf of the committee, I would like to welcome you all here. I have to ask each of you to indicate whether you would like to take the oath or the affirmation.

[Witnesses took the oath.]

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

The Witnesses: Yes.

The CHAIR: Great. As you can see, these proceedings are being recorded by Hansard, and a transcript of your evidence will be provided to you. To assist both the committee and Hansard, if you could please quote the full title of any document that you refer to during the course of this hearing for the record, and just be aware of the microphones and try and talk into them and ensure that you do not cover them with any papers or make noise near them. I remind you that your transcript will become a matter of the public record. If for some reason you should wish to make a confidential statement during today’s proceedings, you should request that the evidence is 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. You would have received a list of the questions that we sent out to you. So we will go through those questions, and then if there are any other questions in

addition to that by the committee, we will ask those, and perhaps we might even ask if there are any comments that you want to make on top of what we have already discussed, if that is okay. The first one is fairly straightforward. Are you able to provide a general summary of the city's position on the DAP system with regard to the operation and effectiveness of the DAP regulations?

Mr Free: We have a prepared statement, which I guess answers that question. We have got that written out, and I can give you a copy.

The CHAIR: I think what we have found is it is better if you go through the statement and perhaps at the end provide us with that copy.

Mr Free: Okay. So, I will not read it out? Is that what you said?

The CHAIR: No. Please read it out.

Mr Free: All right. Okay. Yes.

The City of Mandurah is supportive of an inquiry into the operation of the regulations, and thanks the committee for the opportunity to appear today to answer questions in relation to the city's submission. In 2009, the City of Mandurah made a submission in response to the Department of Planning's discussion paper "Implementing Development Assessment Panels in Western Australia". The city's submission can be summarised as follows. One, the city supported the need to streamline the development application process and acknowledged its role in the process via the timely consideration of scheme amendments, policies and structure plans; and, two, council considered that the development assessment panels would result in delays to the city's approval process.

The city has considered only 13 DAP applications since their inception, with five applications currently pending. However, a number of issues have arisen through the administration of the regulations. The most notable issue that the city raised related to the delegation to DAPs—regulation 19—by a local government. Council recently made a request in relation to a development application lodged over land which is owned by the city and which council had agreed to sell. The process followed at the time resulted in significant delays in the determination of the application. However, the city is pleased to note that the 2015 amendment regulations have streamlined this process to remove the requirement to obtain the director general's written consent and to have a notice issued in the *Government Gazette*. It is considered that this will overcome the issues the city experienced.

[1.40 pm]

The city's submission also covered mandatory DAP applications, with the suggestion that an ability to opt out of the DAP process be considered when applications do not require advertising under the local town planning scheme and would ordinarily have been considered under delegated authority. The city considered such an application for an \$18 million proposed aged persons' dwelling development, which would have been considered under delegated authority as the application did not require advertising. The requirement for the application to be considered by the DAP delayed the approval process.

Further comments contained within the city's submission related to site visits, and the keeping of detailed minutes. Whilst it is acknowledged that the decision as to whether a site visit is required rests with the presiding member, it is submitted that where there are a considerable number of submissions, it is appropriate that the concerns raised are acknowledged by way of a site visit. Similarly, if a deputation is made, irrespective of whether this is a member of the public or otherwise, minutes should reflect the content of the deputation rather than a statement within the minutes as to whether the deputation supported the proposal or otherwise.

The city has experienced late information being submitted—in relation to a noise assessment in one case—hours before the meeting, when panel members were travelling to the meeting. It is

therefore considered appropriate to restrict the submission of late information to a minimum of 72 hours prior to the meeting.

The city's submission also highlighted ambiguity surrounding regulation 12(2), which requires that the local government to which the development application has been made must provide a responsible authority report to the presiding member. However, the regulations do not clarify who is specifically responsible for submitting the responsible authority report—that is, whether the report is submitted by the council, or officers. Practice note 9 identified the absence of any delegation council, stating “may or shall endorse a RAR prepared by the planning officer.” The city has determined, following the receipt of advice, that officers provide elected members with the ability to call in an application for consideration by council, with council determining whether or not to endorse the responsible authority report. However, the city is aware of a number of varying practices amongst councils and considers the regulations should be modified so that responsible authority reports are the responsibility of officers. In conclusion, the city supports the review inquiry and looks forward to the findings of the standing committee.

The CHAIR: Thank you for that. You have pretty much given us a couple of examples on the next question, so I do not know if we need to go back over that, so I go to question 3: what considerations does the city believe would motivate an applicant to opt out of the DAP process if an amendment providing for this is inserted into the regulations?

Mr Free: In the example we had, they would have got a quicker decision had they chosen to go with the City of Mandurah rather than with the panel. Does anyone want to add anything further to that?

Mrs Mullen: No. I think that is a summary. If an application would be considered normally under delegated authority, then I think the applicant would generally elect to have that considered by the local authority rather than go through the DAP process, which does add to the time frame.

The CHAIR: You said that you had 13 DAP-approved projects since they commenced. Across local government, I imagine there would have been some discussion. Is that a low figure or fairly standard figure across a range of local governments?

Mr Free: Fiona might be able to answer this better than myself, but Mandurah has not had a lot of development occurring since the DAPs were introduced. We have 13 over however long it has been and we have five currently, so things have turned around a little bit. From the information we have, other councils would have received significantly more.

Mrs Mullen: Yes; a significantly increased number, as opposed to the city.

The CHAIR: I thought it sounded quite low.

Mrs Mullen: It is.

The CHAIR: I am pleased to hear things are on the up and up down in Mandurah. Could the committee have a copy of the survey referred to on page 2 of the city's submission regarding regulation 12?

Mrs Mullen: We did not actually undertake a survey in regard to regulation 12.

The CHAIR: We were referring to report 10, page 91 of your submission; it is about the sixth paragraph down and talks about a survey of a number of councils within WA.

Mrs Mullen: I am sorry. To clarify, putting the term “survey” was probably attaching more significance to the inquiry that I made that was actually undertaken. I canvassed response from a number of local governments. I am in touch with their planning managers, so it was more of an informal survey. I can certainly provide the findings of the responses I received.

The CHAIR: We would appreciate that, if that is possible. They may have been just been notes, but anything like that would be of assistance to us.

Mrs Mullen: Yes, absolutely.

The CHAIR: What considerations would the city take into account when deciding whether to call in an RAR for consideration?

Mr Free: Honourable Councillor Fred Riebeling or Councillor Caroline Knight might like to answer this.

Councillor Riebeling: Basically, this system is, I think, set up to reduce council's involvement in anything. Even though our good officers say that we are happy with the system because of the operation of it rather than the intent of the system, I think it is designed to remove council's voice in a number of issues, especially development issues. When I get to speak on other questions, I suppose that will come out more loudly. I just wanted to start with that.

The type of areas that I think we should consider are when there is a variation from what our plans and approvals normally would flow from. As I understand it, now when the RAR comes to us, if we call it in, we can comment on it rather than make a recommendation. So when considering what we say, the panel does not have to do anything. Basically, the RAR is done by our planning section. If we do not like it and we comment, that comment is passed on but it is not actually listened to, as I understand it.

Hon MARK LEWIS: What are those considerations? I think that is the question.

Councillor Knight: The considerations we would call on as councillors are ones in which obviously there are significant local interest or there has been a number of submissions from the community.

The CHAIR: In Mandurah, how are councillors allocated to be members of DAPs? Have all councillors participated or is it only a select few?

Councillor Riebeling: My understanding is that two have been elected by council and then they go through a training process. I am a deputy to one of them, but I have yet to be used because I have not been given the training involved in becoming qualified to sit. If someone misses, and I am the deputy, it will not happen. I think I was appointed two and a half months ago. I do not know what the time frame normally is, but it appears relatively slow.

The CHAIR: Are you a member of the DAP?

Councillor Knight: Yes. I have probably been on the DAP for two years.

[1.50 pm]

The CHAIR: We might come back and have a chat to you as we work our way through these then. With respect to the city's submission on site visits and its recommendation that this be mandated in the regulations—I know you touched upon this in your opening comments—does the city believe that this should be undertaken for each development application regardless of its complexity?

Councillor Knight: I think that site visits should occur when there have been submissions from the community. I think there needs to be that recognition, and a site visit would certainly provide that.

The CHAIR: Should those site visits be conducted by the councillors who are members of DAPs or should those site visits be done by the officers of council?

Councillor Knight: I think there are two things. I think the entire DAP panel should be having the site visit. I am not sure what the process is for the officers.

Councillor Riebeling: I would have thought also that if there is a benefit in going to the site to view the impact of a development, then surely those making that decision are the ones that should actually go. Presumably, the officers that drafted the RAR know the area already, you would think.

The CHAIR: I know it seemed like an obvious question, but I understand in other places it is not necessarily the councillors who actually do that.

Councillor Knight: But I think it is particularly important with the specialist members because, obviously, they are not from the local area, so they are not aware of the local issues. I think it is particularly important that those site visits are conducted, especially in ones that there has been a lot of public interest and are complex.

The CHAIR: Sorry; you said if there was community interest in it. So if there was not a strong issue of complaint or other line of interest in it, would there be any other criteria that the council would think should govern whether a site visit should be undertaken?

Councillor Knight: I personally think that if there have been submissions from the community, then there should be site visits. If it is something that has not had any submissions, I do not think that is probably as important.

Councillor Riebeling: And, Chair, if there is no other interest, presumably the people in that area have not got the concerns, so that may be half of the applications.

The CHAIR: What attributes of an application would make it highly complex?

Mrs Mullen: I think particularly an example that we have been discussing amongst ourselves was for a commercial development that had a service station, fast-food restaurant and liquor store, and, obviously, there were a large number of issues associated with the application, particularly because the site directly abutted residential. There were varying levels of complexity in that particular application. There were a number of technical reports that were supplied with the application. And I think really that is where you have different participants from councillors; we had noise experts and we had various different bodies looking at the application. I think that is where it would become a highly complex application.

Mr Free: Fred, do you want to add something to that?

Councillor Riebeling: I do not know whether highly “complex” is the word I would use; I think highly “contentious” is the better word. As was stated, I think it was in Greenfields, the development of a fast-food outlet and garage in an area that people thought was going to have houses. It was highly contentious and the location of that near—was it a kindergarten or —

Councillor Knight: Two schools—close proximity.

Councillor Riebeling: Two schools. That also created a huge amount of interest for that little area. So, that is the sort of thing.

The CHAIR: I agree with you; “contentious” is probably a much better term anyway when we are dealing with these sorts of issues. Are you able to provide us with any practical examples of the receipt of late information referred to in the submission on the acceptance of late items; and how late was the information submitted? I know that you said that your preference would be that it only has a 72-hour cut-off. Have you got any examples?

Councillor Knight: For this particular DAP that we were talking about, the technical information was a noise report came in only a number of hours before the panel sat. So some of the members had not even read that information because of the travel time; there just was not enough time to look at that.

The CHAIR: And 72 hours would be a reasonable window to do that, would it?

Councillor Knight: Yes.

The CHAIR: For which meetings does the city believe detailed minutes were not kept?

Councillor Knight: The Minilya Parkway. Again, this is a contentious finding. There were a number of submissions from the public, and they were quite detailed submissions, and they were merely minuted as saying, “Mr Smith spoke against.” There was no content.

The CHAIR: So there was no detail provided?

Councillor Knight: There was no detail. And I think in recognition and validating their input, there needs to be detail provided in the minutes.

Hon AMBER-JADE SANDERSON: Is there detail in other minuted submissions or is that a standard process for minuting?

Councillor Knight: For the DAP panel?

Hon AMBER-JADE SANDERSON: Yes.

Councillor Knight: Yes.

Mrs Mullen: I think in this particular example we had the minutes secretary from the City of Mandurah who provided not verbatim, but they were far more detailed minutes, and the minutes that were sent back to the city from the DAP panel themselves had removed them to single sentences. So, as a standard, the city does provide fairly detailed minutes, as a standard with our council committees.

Hon AMBER-JADE SANDERSON: As a member of the DAP panel, the minutes that are provided, are they generally, you know, abbreviated like that or, I guess as the city is saying, was it done for particular submitters?

Councillor Knight: They seem to be very abbreviated.

Hon AMBER-JADE SANDERSON: More than usual?

Mr Free: No, no. I think they are very abbreviated as a standard.

Councillor Knight: Yes; as a standard they are very abbreviated.

Hon BRIAN ELLIS: I was going to ask the same question. Just how detailed do you wish to have those minutes, maybe even recorded?

Mr Free: Fred might be able to answer.

Councillor Riebeling: I think there is a requirement to keep minutes of the meetings. My view, and probably the panel's view, having the excellent Hansard people giving accurate information and what you could then use that information for—it is my view that minutes should be able to be readable and to reflect actually what has been said and the intent of what was being said, and I just cannot work out a reason why you would have inaccurate minutes. What is the use of them?

The CHAIR: Particularly on matters like this.

Councillor Riebeling: Yes. There is just no rational reason for having a dot-point summary of what people say. Either that or do not do them at all, you know; that is the choice of the matter. Inaccurate records lead to inaccurate perceptions, and I think the planning system has enough people scratching their head anyhow without having minutes that do not mean anything.

The CHAIR: I imagine that your committee is not alone. I imagine that this would be a common issue across a range of local government bodies that are involved; and I suppose you are looking at how you go about changing it; how do you enforce it? Do you think there needs to be some sort of regulation put in place stipulating the type of detail that needs to be in minutes and how they could be recorded or should be recorded? Would you go that far?

Councillor Riebeling: I actually think it is already in there, the regs, without changing anything.

Councillor Knight: It does say detailed minutes will be kept, in the regs.

Councillor Riebeling: Yes; they are just not complying.

Mr Free: In that particular case, as I understand it, the original minutes that we received—and these are all deputations that are in quite a contentious matter—say, “Mr Robinson addressed the JDAP against the application at item 8.1.” So there is no detail of what he said. I think in the end the minutes we got back said along the lines of—I think this is actually what they have written on the

sheet that they have filled out—“The presentation will address concerns with traffic management and pedestrian safety and various reasons why the proposed development is seen as unnecessary.”

The CHAIR: Much better and relevant detail.

Mr Free: And still very, very brief, what is provided there.

The CHAIR: Does the city intend to make any changes to its local planning scheme arising out of decisions made by the DAPs; and, if so, are you able to provide any details and the rationale for each relevant change?

Mrs Mullen: No. At the present time the city does not intend to make any changes.

The CHAIR: 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 a 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. So, taking into account this point of view, what is the city's position on interested parties having a right of appeal against decisions of DAPs, including local governments and members of the community?

[2.00 pm]

Mr Free: The city has not formed a formal view on that question; however, the Honourable Councillor Fred Riebeling may have something to say.

Councillor Riebeling: Yes; I normally do! I am of the view, and I am pretty sure council will be, if the question is put to us —

The CHAIR: Should we put the question formally to council as well?

Councillor Riebeling: That would be a good idea, would it not? I think the council should have the capacity to appeal or go to the next step, especially if the RAR is not agreed to by that. I think a system that has a board with unfettered decision-making capacity needs to have some sort of way of appealing that, and that is another reason why maybe the minutes should be taken; that would allow a sensible appeal to be taken, and maybe, I do not know if there are other questions coming, but reasons for that decision should be given, not just merely the decision, to make the system fairer. I do not know that any other interested parties other than the council should be given the right of appeal, but definitely council, I think.

The CHAIR: The next two questions we have got are around the role of local councillors and DAPs. You might be able to give us some feedback today, but you might also ask that we send this off to council as well to get a broader view, if you like. I will go through the two questions and then if you are able to provide some sort of response today, that would be great. If you feel that there is more detail that can be provided, then we will also send these questions off to council. Does the city believe that 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?

Councillor Riebeling: I think there is a conflict in relation to the way that is actually stated in relation to the council's view then being reflected in the DAP process. I do not know that it is a problem; my view is that the councillor, presumably, is giving their view on the RAR, which is based on planning decisions. Presumably, that decision will be in accordance with planning laws, so even if it differs from the rest of the JDAP people, the question I think should be: how could the JDAP people not vote in favour of the RAR? Because that is a document based on planning principles, not bias that is not within the planning sphere. I think that that question should be addressed to those members that are not councillors for an answer, which would be more interesting, I think.

The CHAIR: I can assure you that when we have those people in soon, we will ask those questions.

Hon MARK LEWIS: There have been instances where, the council member having voted at the council meeting, then goes and holds an individual view, in conflict with that of the council.

Councillor Riebeling: In my view, the regulations probably allow that to happen.

Hon MARK LEWIS: Yes, it does.

Councillor Riebeling: But whether that should happen I think is wrong because, presumably, as I say, the decision made at council was based on planning principles. I just cannot see how there can a conflict of interest if it is based on the same principles.

Councillor Knight: Can I just add there—this is probably out of question 13—I think the terminology is a problem. Where it says that the local government DAP member being representatives of the local government and then it goes on to state and the code of conduct, you are providing independent judgement. I think that is a conflict. A representative of the relevant local government would indicate that you are representing your local government's views, wherein the code of conduct you are exercising independent judgement, so I think it is a terminology problem.

Councillor Riebeling: There is an argument, I would think, a strong argument, that if a person has voted in council on a particular issue that that person's mind is made up in relation to the next meeting they go to. Whether or not that is what that is designed to remove local government councillors who have participated in the decision-making on the council's position, I do not know, but that is the real conflict, I think, if there is one.

Hon BRIAN ELLIS: Could it not also be argued, though, that that councillor's mind may be made up but going to another meeting with more information, they have chosen the other view because they have been more informed?

Councillor Riebeling: I suppose that could be argued. Knowing the information that goes into the statement of the staff through the RAR, I think that is probably doubtful but it depends on whether you would take information that is not of a planning nature into account, I suppose.

Hon BRIAN ELLIS: I understand, though, that councillors are meant to go with an open mind.

Councillor Riebeling: Yes.

Hon BRIAN ELLIS: So, having formed a hard view, then they are not going with an open mind unless they are prepared to listen to further information.

Hon MARK LEWIS: And site visits.

Councillor Riebeling: Well, that is true. But my understanding of their role is to make a decision on planning grounds.

Hon BRIAN ELLIS: With an open mind.

Councillor Riebeling: With an open mind. If you are there to make a decision on planning grounds and you have assisted in the decision being made on a document, which is purely on planning grounds made up to make a recommendation, then I do not know that there is any great conflict in your decision-making on that particular issue. You know, the only things, I suppose, would be superfluous information. I do not know what it would be, but maybe a developer has a different view that is put there. Is that a planning issue?

The CHAIR: The next area is looking at DAP decisions in secret. Concerns have been expressed about 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 Free: The first thing I personally would say is our DAP meetings have not been closed meetings; they have always been open to the public. I might just get Fiona to explain how we deal with reconsiderations on appeal.

Mrs Mullen: Thank you. The city currently considers all reconsiderations from following the SAT process in public. We do not have any private meetings with council and the city would obviously support that, continuing with the DAP panel reconsiderations. What we would say, though, is that if the DAPs are discussing what actually took place within the mediation, that is where the city holds meetings in private with members and that was where we would anticipate the DAP panels, because obviously the mediation process is confidential. But again, we would anticipate that the actual reconsideration of an application following a SAT process would be in public. I think that is entirely appropriate.

Councillor Riebeling: Just in relation to that, if I may just add, having worked in courts for half my life, the old court adage that the law must not only be done, but seen to be done, I think is just as right in relation to planning issues. If things are done behind closed doors, even if nothing suspicious has happened —

The CHAIR: People get their backs up.

Councillor Riebeling: People make their own conclusions in relation to secrecy.

[2.10 pm]

The CHAIR: The next area is about DAP members representing developers. The committee has received evidence from some submitters that DAP members have represented developers in applications before DAPs on which they sit, having been excused on that occasion from sitting on the DAP due to having a conflict of interest. It has been argued this creates negative community perceptions and there should be a blanket ban on their doing so in the area of the DAP they are reporting to. What is the city's view on this generally, as well as the recommendation?

Mr Free: The city has not had that experience with our applications, but I suspect Councillor Hon Fred Riebeling might have a broader view on this.

Councillor Riebeling: Yes, I do a bit. It is my view that any conflict of interest of that nature should not occur. There is no magic in that. I think if there is conflict, you actually end up in the CCC and it does not take much of a connection to end up in the CCC, I have to say. The adage I looked at was in Queensland with the running of the greyhound industry by the people that owned the dogs. It did not actually create the best situation. Some developers do not have a very good name in relation to the public, so I think any conflict should be just not allowed at all.

Councillor Knight: I would like to add to that. I think that it is very easy for the community to have negative perceptions and I think it needs to be quite clear that there is no conflict of interest in that area.

The CHAIR: Thank you very much for that; we appreciate your response to that. It has been a matter that has arisen in a number of submissions as a concern, so we are canvassing people's views on the recommendation and I must say that it is an appropriate standard response.

The next area is the valuing of applications to achieve a DAP threshold. Some of the submissions the committee has received 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 applications can be decided on by DAP. What is the city's view on this?

Mr Free: I am not aware of the city having had an experience where the value of an application has been rounded up, as it were, to make it into a DAP. I will stand to be corrected by Fiona, but we understand that some applications have been rounded down so they can have the city deal with them rather than the JDAP.

The CHAIR: Does the city do an assessment of the value?

Mrs Mullen: We do an approximate assessment. If something looks completely out of scale with the development, then we will address that with the applicant. But I think, as Tony has addressed, it is more that we get them rounded down or potentially phasing developments so that the value actually comes down. We have not had any experience of the opposite in that instance.

Councillor Riebeling: That is because we are friendly people!

The CHAIR: I am sure. The lack of reasons for failing to follow RAR recommendation—deemed to comply provisions: some submitters have expressed concern about DAPs not giving reasons for decisions, approving applications when these go against the recommendation in the RAR and especially that the application does not comply with the deemed-to-comply provisions and the exercise of discretion results in a significant variation to the R-codes for the area. What is the city's view on this?

Mr Free: The city has not had a direct experience along these lines but, again, Councillor Hon Fred Riebeling might have a view.

Councillor Riebeling: I suppose it is based on the potential for us to wish to take a matter to some sort of an appeal. Without giving reasons for a decision, I do not know how people do proceed to an appeal. I do not know how the body making the decision can then fight an appeal either, mind you. It appears to me to be nonsensical that if you have made a decision you then cannot put the reasons for that on paper. It is no great ask, I would have thought, for some sort of decision process to be articulated in writing. It does not make sense to me that it does not happen now. Hopefully, the changes to the rules will allow, ultimately, to give reasons.

Councillor Knight: I think that open and transparent reasons for a decision help to increase community confidence in the process.

The CHAIR: Absolutely. 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 city's understanding that this is common in local planning schemes? Would it be fair to say that the practice regarding reasons given by DAPs merely reflects established practice by local governments?

Councillor Riebeling: I actually think not. At our meetings, we have a written down agenda giving reasons—at least the officer's reasons—for the recommendation. Presumably, if the recommendation is agreed to, they are the reasons. Whoever said that I think does not know our system anyhow. We give reasons for everything we do, do we not?

Mr Free: I might ask if Fiona Mullen can add to that.

Mrs Mullen: The summary in the question is akin to the city's scheme. Obviously, reasons are required for refusals but not for approvals contrary to a recommendation and, therefore, we would say that the DAP process is currently following, certainly, the city's scheme and I would consider that to be widespread across WA. I suppose the only difference being that when—the city has not had experience of an application being approved contrary to an officer's recommendation. However, I would suggest that if that were to happen—we have had instances where conditions have been amended or removed from a recommendation. Where that has happened, discussion has taken place, has been minuted as to the reasons, or the discussion as to why a particular condition is not required. I suggest that would come out in the body of the actual discussion of the DA panel itself, rather than a formal reason being added to the actual decision.

Hon MARK LEWIS: I am trying to clarify. You would have a normal agenda item like that, but if it was approved and the officer's recommendation was approved, the president would just note it. But if it was not, what is the practice then?

Mrs Mullen: If the application was recommended for approval and it was refused?

Hon MARK LEWIS: If the council rejected the recommendation, what then is the process?

Mrs Mullen: Reasons for refusal would then be formulated, which would then obviously give the reason why the application was not being supported. I think the issue is where an application is recommended for refusal and it is subsequently approved. I think that issue has not arisen in any of the City of Mandurah's DAP applications and meetings, but I think that is where the issue has —

Hon MARK LEWIS: How detailed is the reason for refusal?

Mrs Mullen: The reasons for refusal would have to be based on planning grounds, so they would have to be fairly detailed, as I say, based on material planning considerations, but also with sufficient detail to really explain why the application was not being supported.

Hon MARK LEWIS: You are saying that DAP does not do that—obviously, when they are approved —

Mrs Mullen: Yes.

Hon MARK LEWIS: Do you want the reason why they are approved as well as why they are not approved?

Mrs Mullen: That is my understanding of the question, yes; if they are approved contrary to a recommendation to refuse that there should then be reasons why that has happened.

The CHAIR: 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 may be limited to variations 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 city's view on this generally and these recommendations?

Mr Free: Again, the city has not had an application that has had that experience. But again, Fred, have you got something to add?

Councillor Riebeling: I always kind of get concerned when “unfettered” is a description for someone's capacity to do anything, especially in the areas of planning. It is a description, which, if true—and as we say, at the council we have not come across this before—if they have the capacity to basically make decisions that do not need any reasoning behind them, then that is of concern. I do not know how the regulations could be tightened up, but the more unfettered, or the wider the discretion, the sloppier our planning becomes. I think even the authors of this wanted some consistency in planning decisions and the more the unfettered or discretionary decisions are made, the further you get from the central point of planning. So it is more, I suppose, the effect on other applications that follow is my concern in relation to decisions that do not follow a planning decision-making process. That is if that is what that infers.

[2.20 pm]

The CHAIR: I know when you made your opening statement you talked about concerns about delays and that being a detractor from the DAPs process. Other submitters have also expressed concerns that DAPs have added delays to the planning system, with one reason being given as the lack of information given by the applicant and a breakdown in communication 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. Is the city aware of any application being made to the State Administrative Tribunal for a review by an applicant due to there having been a deemed refusal by a DAP because it has not made a determination within the time lines required by the relevant planning scheme?

Mrs Mullen: Thank you. We have had one instance where we had an applicant seek a review on the basis of a deemed refusal against a decision. That was in the application that we mentioned before where we received the late information with the fast-food restaurant and service station.

So although the application was deferred by the DAP, it was based on additional time being required to actually assess the technical information that was submitted late. So it was not a delay per se by the DAP; it was a delay, really, in my view, by the applicant's own making because they actually submitted late information. That is really the only instance that the city has experienced a delay. I think the new regulations with the instruction of the stop-the-clock ability at the start of the process will hopefully address the lack of information that sometimes accompanies applications. I think the city also has been fairly fortunate in that I would say nine out of 10 applications or applicants actually approach the city prior to lodging their application and we have a number of pre-lodgement meetings. So we have only experienced it in a very small number of cases, and actually this one example that we keep giving is one which actually did come in without any prior discussion. It was probably a fairly unique series of events that happened with that particular application. In general, the city has only experienced one SAT deemed refusal.

Hon BRIAN ELLIS: Just on that example, were any holidays included in that time frame?

Mrs Mullen: Not that I recall. I would have to go back and check the time frames.

Hon BRIAN ELLIS: I was just wondering because it has been brought up that it should be working days instead of all days.

Mrs Mullen: Yes. We would actually support that—working days and not just calendar days.

The CHAIR: That might be your response to the next question.

Mrs Mullen: Yes.

The CHAIR: Are there any other suggestions you would make about how matters of delay could be addressed?

Mrs Mullen: I think that would be one suggestion, actually, with the working days as opposed to calendar days. I think really, again, that late submission of information when you actually get to the decision stage, it is submitted so late that it does not actually allow the panel or officers to undertake a thorough assessment of the information. The city has had instances, as well, where the applicant has brought or challenged conditions at a late stage, but that is probably not a process that we would ever actually be able to overcome because, obviously, that ability would always be there to challenge conditions. That is probably the only thing that I would suggest.

The CHAIR: With your planning applications, are they able to be done online or do they still have to provide hard copy?

Mrs Mullen: We are really still on the hardcopy process. We are moving towards the online lodgement.

The CHAIR: The last area that we wanted to have a look at is, as you would be aware, as of last Friday, 1 May, new regulations were gazetted for DAPs and have taken effect and some of the changes have introduced a lowering of the opt-in threshold to \$2 million for all DAPs; a quorum being of only three DAP members, including a presiding officer; and the regulations prevailing over any planning instrument to the extent of any inconsistency; and, as previously mentioned, the introduction of a stop-the-clock mechanism whereby the time period for the submission of the RAR to the DAP does not include the time between the applicant being given a notice to provide specified information or documents. I know it has only been in place since last Friday, but has the council formed any view yet on any of these amendments?

Mr Free: I might ask Fiona to espouse her view on it, but certainly council has not had the opportunity to.

Mrs Mullen: Thank you. Really, the stop-the-clock provision has been very welcomed. That will certainly give the city and councillors the opportunity to gain that additional information which we have struggled with, I think, in the past. I think the increase in threshold for the mandatory—I do

not think that will particularly impact on the city. As I said, we have not had any issues with that before, and, in particular, it may be that the city only ever has the one application that we opted to have considered by the DAP, but it was a very bureaucratic process that we had to follow in order to do that. I think if that happens in the future, the process which has been significantly simplified is very welcome.

The CHAIR: Do you have any views on the change about the quorum matters?

Councillor Knight: I think I would feel happier, personally, with the quorum of five rather than three, but I have not really given it much thought.

The CHAIR: Is that because, as I understand it with this change, the three would be the presiding officer, and either councillors or specialists, or a mix of both, but there could be occasions where it might just be the presiding officer and specialists because the councillors may not have been available, or vice versa.

Councillor Knight: In that particular instance, I think, again, the community would feel disappointed with that kind of approach—that there was not a local member sitting on a panel making a decision that was obviously in their community.

Hon MARK LEWIS: Or conversely, that there were no specialists.

Councillor Knight: I think either way it is not enough people.

The CHAIR: There still needs to be a mix of both.

Councillor Knight: I think there needs to be a mix of both, yes.

Councillor Riebeling: Just in relation to that, I do not know that the community would be overly concerned if there was a lack of specialists on it. I still think in the planning system people expect council to be involved and if you take them out altogether, I think the community would be concerned and they would have every right to be concerned. It might be, if it happened, that the presiding officer does not want the council reps on it and just does not call them—I do not know.

Hon MARK LEWIS: How many of the DAP outcomes are different to the officer's recommendations?

Mrs Mullen: The only experience that the city has had is where conditions have been amended.

Hon MARK LEWIS: Right. That is the view I think we got from WALGA—99 per cent of them go through and odd ones are changed and amended. Would you agree with that?

[2.30 pm]

Mrs Mullen: Yes, I would.

Mr Free: I guess our comment on whether we are agreeing it is 99 per cent is that that is actually based on just the City of Mandurah experience.

Hon MARK LEWIS: I think they were giving us some global figures.

Mr Free: Yes. Our response is only based on City of Mandurah experience.

Hon MARK LEWIS: Would you also agree that the department has come up with almost 90 per cent of the respondents gave support or qualified support to the DAP system after they did a survey or their review? Would you agree or otherwise generally with that or make a comment?

Mr Free: There may be differing views amongst ourselves. Personally, I am fairly supportive of the DAP process. Are there contrary views?

Councillor Riebeling: Yes; I have got a contrary view. I think—not as a result of the end product, I have got to say—the similar statistics as the DAP success rate can be attributed to council before the DAP system came into being. I think the DAP system is designed to reduce the scrutiny in relation to the public's views on developments. I presume people are happy that that has actually

happened, but I am not happy that council is less involved. I think it is a backward step. Whether it is effective is a different issue. It works, but whether it works and the community are taken with that decision is less likely, in my view.

Hon AMBER-JADE SANDERSON: Just very quickly, do you think having a DAP system in place has made council more aware of the decisions that they are making and the grounds on which they are making them? It is a very subjective question.

Councillor Riebeling: Councillors?

Hon AMBER-JADE SANDERSON: Yes.

Councillor Riebeling: I do not think so. We have relatively active planning meetings.

The CHAIR: Did you have anything else you wanted to say, Caroline, on that?

Councillor Knight: No, probably just agreeing with what Fred said earlier. The effectiveness I am not questioning, but I think from the community's point of view—I think that goes back to some of the questions that we have covered in here—that is why it is so very important that the community is seen to be acknowledged in their submissions, because you are removing the ability of their local council away from them. It is so important that their submissions are heard and seen to be heard in the minutes.

The CHAIR: Have you got anything else you would like to add before we close?

Mr Free: No, but just thank you for the opportunity. I will leave a hard copy of what I read out at the beginning.

The CHAIR: Thank you very much for that. Thank you very much for coming along today. We certainly appreciate the input that you have been able to provide and the responses to those questions. Today is just our first day of hearings. We have got a long way to go before we wrap this one up. Thank you very much and a safe journey home. I must say we deliberately did not ask you to come in last, because we thought driving home in peak-hour traffic would be a nightmare.

Mr Free: Thank you.

Hearing concluded at 2.32 pm
