



**Minister for Planning; Culture & the Arts**  
**Government of Western Australia**

Our Ref: 33-29083  
Your Ref: PDR

Hon Kate Doust MLC  
Chair  
Standing Committee on Uniform Legislation and Statutes Review  
Legislative Council of Western Australia  
Parliament House  
PERTH WA 6160

Dear Ms ~~Doust~~ *Kate*

**REVIEW OF THE PLANNING AND DEVELOPMENT (DEVELOPMENT ASSESSMENT PANELS) REGULATIONS 2011**

As you are aware, the Standing Committee on Uniform Legislation and Statutes Review (the Committee) tabled its *Review of the Planning and Development (Development Assessment Panels) Regulations 2011* (the Regulations) in the Legislative Council on 8 September 2015.

In relation to the findings made by the Committee, I provide the following comment:

- 1. The Committee finds that the outdated nature of some local planning schemes; their inconsistency with state planning policies and strategic planning frameworks and the inconsistencies of local planning requirements across local governments have contributed to the types of determinations being made by development assessment panels.***

The State Government acknowledges and in principle agrees with the Committee's finding. The State Government appreciates in some instances the adverse public perception of Development Assessment Panels (DAPs) is, as the Committee identifies, due to the outdated nature of underlying local planning schemes, which DAPs must apply in their decision making. The State Government also acknowledges the Committee's concerns about inconsistent planning requirements across different local government areas, which have in large part been addressed through the introduction of standardised deemed provisions under the new *Planning and Development (Local Planning Schemes) Regulations 2015*, which took effect on 19 October 2015.

- 2. The Committee finds that there appears to be no provision in the draft Planning and Development (Local Planning Schemes) Regulations for there to be a penalty imposed on local governments if they fail to review their local planning scheme.***

The State Government acknowledges and in principle agrees with the Committee's finding. The new *Local Planning Scheme Regulations 2015*, which took effect on 19 October 2015, should in large part address this concern. However, whether future and additional legal penalties should be imposed on local governments who do not update their schemes, as the Committee observes, is a matter best left to a wider planning reform, given it is not DAP-specific but also impacts general local government decision-making.

- 3. The Committee finds that if there will be a requirement for development assessment panels to provide reasons for all determinations, at least one panel member will be required to draft reasons and that it would be appropriate for the Government to remunerate this accordingly. The quantum of this remuneration is a matter for the Government to determine.***

The State Government acknowledges and in principle agrees with the Committee's finding. The State Government acknowledges the need to review current remuneration arrangements paid to DAP members and recognises the significant amount of work done by DAP Presiding Members, often outside formal meeting times. The State Government also appreciates the Committee's suggestion and support in undertaking future amendments to the DAP fee schedule to enact changes to the quantum of remuneration.

As the Minister for Planning, please accept my appreciation for the significant work undertaken by the Committee in preparing the Report. In particular, I acknowledge the considerable investigation carried out by the Committee and its supporting staff, and note the significant volume of written and oral submissions.

The State Government supports a number of the Committee's findings and recommendations. Much of what the report suggests is well-founded and practical advice, promoting better administration and good governance in the operation of DAPs. The Report is also helpful in highlighting some of the common misconceptions regarding DAPs, what the State Government has already done in refining the DAP system, as well as areas for future change.

I have enclosed the State Government's response to the report recommendations, and I look forward to progressing these recommendations with a view to improving the operation and effectiveness of the DAPs system in Western Australia.

Yours sincerely



**JOHN DAY MLA  
MINISTER FOR PLANNING**

**11 NOV 2015**



**Standing Committee on Uniform Legislation and Statutes Review, Report No. 93**  
**Review of the *Planning and Development (Development Assessment Panels) Regulations 2011***

	Recommendation	State Government Response
1	<i>The Committee recommends that the Department of Planning develop a more accessible and transparent process for the making of complaints about Development Assessment Panels (DAPs) and raise greater awareness of its availability.</i>	<b>In principle support:</b> the Department of Planning has already taken steps to provide clearer instructions on its website concerning its complaints process. Moreover, aggrieved members of the public retain the right to make a complaint to the Ombudsman.
2	<i>The Committee recommends that regulations 24, 25 and 26 of the Planning and Development (Development Assessment Panels) Regulations 2011 (the DAPs Regulations) be amended to:</i> <ul style="list-style-type: none"> <li>• <i>remove references to local government members of DAPs being representatives of the local government or community; and</i></li> <li>• <i>refer to local government councillors as independent decision makers on DAPs.</i></li> </ul>	<b>Supported:</b> however, further consultation and expert advice, including from the Parliamentary Counsel's Office and State Solicitor's Office, may be required to implement this proposal.
3	<i>The Committee recommends that the Department of Planning introduce guidance, if not already available, to local governments to assist them in verifying the estimates of the cost of planning applications, including when it is appropriate to obtain independent expert advice on an estimate submitted by an applicant.</i>	<b>Not supported:</b> assessment of development cost is already part of a local government's role in all development applications, including those outside the DAP system. Local governments can already engage assessment experts and challenge the cost estimate provided by an applicant.
4	<i>The Committee recommends that the Department of Planning ensures that the Development Assessment Panel Code of Conduct 2011, (pursuant to regulation 45(3) of the DAPs Regulations), and the Development Assessment Panel Practice Notes: DAP Standing Orders prohibit members of DAPs representing applicants on applications before development assessment panels on which they sit.</i>	<b>In principle support:</b> in agreement with the Committee's recommendation, the prohibition should be limited to the DAP area on which the member sits. Government does not support a blanket prohibition, which would unduly impact the availability of suitable candidates for DAP positions. Government recognises there remains a relatively small pool of appropriate experts in Western Australia who can act as DAP specialist members.



5	<i>The Committee recommends that the Minister representing the Minister for Planning introduce an amendment to the Planning and Development Act 2005 to provide for DAPs to give reasons for all determinations.</i>	<b>In principle support:</b> the State Government recognises the inclusion of reasons as a matter of good administrative practice, particularly where a DAP makes a decision contrary to the reasons outlined in the responsible authority's report. The Department of Planning has already taken steps to ensure reasons are better reflected in minutes of decisions.
6	<i>The Committee recommends that the Minister representing the Minister for Planning introduce an amendment to the Planning and Development Act 2005 to prescribe what reasons for determinations by DAPs must include.</i>	<b>Not supported:</b> the State Government supports the inclusion of a broad regulation-making power in the Act. However, it does not support an approach that would be overly prescriptive, which would lead to greater costs, delays, inflexibility and be contrary to Government's objectives for red-tape reduction.
7	<i>The Committee recommends that the Government introduce regulations pursuant to section 263(2)(ea) of the Planning and Development Act 2005 to provide for the reporting by local governments in relation to applications for planning approval, including the time taken to determine applications to DAPs.</i>	<b>Not supported:</b> this outcome is largely supported within the existing regulatory framework, including data captured under the DAP Regulations and requires local government reporting under the new <i>Local Planning Scheme Regulations 2015</i> , which took effect on 19 October 2015.
8	<i>The Committee recommends that the Department of Planning arrange for an independent analysis to be undertaken of all data relating to DAPs once sufficient comparative data is available with respect to planning determinations by local governments.</i>	<b>Not supported:</b> the State Government does not support this recommendation at this time. However, Government may undertake a review of the DAP system in the future, including a comparative analysis, when a greater volume of data has been collected from local governments as part of the new reporting requirements pursuant to the <i>Local Planning Scheme Regulations 2015</i> .
9	<i>The Committee recommends that the Department of Planning reviews the adequacy of the training provided to members of DAPs.</i>	<b>Supported:</b> the Department of Planning has already taken steps to review training provided to DAPs members.
10	<i>The Committee recommends that the Department of Planning ensures members appointed to DAPs and their alternates receive training pursuant to regulation 30 of the DAPs Regulations as soon as possible after their appointment</i>	<b>Supported:</b> the Department of Planning believes this practice has largely been implemented, where most training sessions occur shortly after local government elections. However, the Department of Planning will consider other potential ways to improve existing scheduling challenges.



11	<i>The Committee recommends that regulation 30 of the DAPs Regulations be amended to require mandatory follow up training of DAPs members and their alternates at regular intervals.</i>	<b>Not supported:</b> DAP members are already permitted to participate in follow up training and the Department of Planning will take steps to make this invitation clearer. However, Government does not support mandating through regulations follow up training, as a more flexible and responsive system is preferable.
12	<i>The Committee recommends that the Government investigate the appropriateness of applicants being able to resubmit applications which have previously been refused in the planning system in Western Australia.</i>	<b>In principle support:</b> further consultation and expert advice, including from the Parliamentary Counsel's Office and State Solicitor's Office, may be required to implement this proposal. Any further review of this issue should form part of wider planning reform, given it is not DAP-specific but also impacts general local government decision-making.
13	<i>The Committee recommends that the Department of Planning issue a practice note containing guidance on the exercise of the presiding member's discretion pursuant to regulation 40(4) of the DAPs Regulations to hold a meeting of a DAP to determine a regulation 17 application in public.</i>	<b>Supported:</b> the Department of Planning will explore a new or amended practice note.
14	<i>The Committee recommends that the DAPs Regulations be amended to provide for the presiding member to have a discretion to extend the notice period for meetings of DAPs in appropriate circumstances.</i>	<b>Not supported:</b> the State Government views it appropriate that statutory timeframes remain concerning when meetings are to occur.
15	<p><i>The Committee recommends that regulation 41 of the DAPs Regulations be repealed and substituted with the following provision:</i></p> <p><b>41. Quorum</b></p> <p><i>(1) At a meeting of a Local Development Assessment Panel, 3 members of the LDAP including —</i></p> <p><i>(a) the presiding member; and</i></p> <p><i>(b) another specialist member; and</i></p> <p><i>(c) a local government member or their alternate, constitute a quorum.</i></p> <p><i>(2) At a meeting of a Joint Development Assessment Panel, 3 members of the JDAP including —</i></p> <p><i>(a) the presiding member; and</i></p>	<p><b>Not supported:</b> The State Government continues to acknowledge the important contribution of elected local councillors in planning decisions; however, technical planning merit, embodied in knowledge provided by specialist town planners, architects and other experts remains a critical factor in DAP decision-making.</p> <p>Having two nominated local government members and two alternate members for each local government is considered sufficient to ensure local government can be represented at each meeting should it wish to.</p>



	(b) another specialist member; and (c) one of the local government members referred to in regulation 25(1)(a) or their alternate, constitute a quorum.	
16	The Committee recommends that the DAPs Regulations be amended to give a local government not less than 14 days to give the administration officer of the DAP a notice given to the applicant under regulation 11A.	<b>Not supported:</b> the current timeframe of 7 days is appropriate and consistent with other comparative planning processes, including a request for further information in relation to applications for local development plans under the new <i>Local Planning Scheme Regulations 2015</i> .
17	The Committee recommends that the DAPs Regulations be amended to provide the presiding officer of the development assessment panel with the sole discretion to extend the period within which the responsible authority report must be given in certain circumstances, including where the applicant has submitted late information to the local government.	<b>Not supported:</b> the State Government does not support an outcome that may have the practical effect of suspending a landowner's right of review (deemed refusal) to the State Administrative Tribunal.
18	The Committee recommends that the Department of Planning give sufficient advance notice of its intention to introduce legislation to any committee of the Legislative Council which is inquiring into any matter to which such legislation is relevant.	<b>Supported.</b>
19	The Committee recommends that the Minister representing the Minister for Planning introduce an amendment to section 171F of the Planning and Development Act 2005 to provide for further periodic reviews of the operation and effectiveness of the DAPs Regulations by a standing committee of the Legislative Council.	<b>Not supported:</b> prescribing periodic reviews may fetter a future Government's ability to undertake necessary and expeditious planning reform measures.