



All communications should be directed to the Chief Executive Officer

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File: A/3283

2 September 2024

Cr Karen Chappel AM JP
President
WALGA
Level 1, 170 Railway Parade
WEST LEEDERVILLE WA 6007

Sent by email: president@walga.asn.au

Dear President Chappel

DAP functions – Local Government Amendment Bill 2024

I am writing to you in relation to clause 244 of the above Bill – which proposes to insert a new section 9.69B into the *Local Government Act 1995*. For your reference, I **enclose** a copy of clause 244 / new section 9.69B.

Specifically of concern, is paragraph (2)(a) of the new section. This would allow for the making of regulations to:

- 'provide that a DAP function of a local government –*
- (i) **must be performed** for and on behalf of the local government by the CEO or employees authorised by the CEO; and*
 - (ii) **cannot** be performed by the local government in any other manner (for example, by the council or a committee of the council).'*

In other words, it seems that by future regulation, the role of Councils in relation to Development Assessment Panel (DAP) applications may be entirely erased. This continues the State government's erosion of the role of Councils in planning and development approvals; taking these decisions out of Council hands and placing them into the hands of CEOs and their staff. To delegate (or not) ought to remain a matter for each local government, having regard to their individual circumstances and the communities whom they represent. It is disappointing that the State government would prefer a blunt, generic, legislative approach.

But what is especially unsatisfactory (if I have correctly understood the implications of new section 9.69B) is that this particular reform is being made under the guise of 'local government reform'. If anything, it ought to have been duly considered and publicised in the context of *planning* reform – similar to the planning reforms which have already unfortunately taken away the role of Councils in determining single dwelling applications (except where a property is heritage protected).



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On a brief review, it seems information published by the Department of Local Government, Sport and Cultural Industries; statements attributed to the Minister for Local Government; and even the second reading speech of the Bill (*Hansard [ASSEMBLY — Thursday, 15 August 2024] p3902b-3904a*) do not engage with – or so much as acknowledge – the significance of new section 9.69B. Nor is there any explanation about why this significant reform has been awkwardly (and quietly) placed amongst reforms to the Local Government Act, when it relates squarely to the Planning and Development Act.

I request advice as to WALGA's position on this matter. As it ought to be of interest to the whole local government sector, I am cc'ing my Mayoral counterparts in the Perth Inner City Group and the Western Alliance – both of which the City of Subiaco is a part.

I would be grateful for your earliest attention to this matter.

Yours faithfully

Mayor David McMullen

cc Mayors and Presidents - Perth Inner City Group, and Western Suburbs Alliance (formerly Western Suburbs Regional Organisation of Councils - WESROC)

Att Local Government Amendment Bill 2024

1 144. Section 9.69B inserted

2 At the end of Part 9 Division 7 insert:

3

4 9.69B. DAP functions

5 (1) In this section —

6 *DAP function* means a function under DAP regulations
7 that relates to prescribed development applications;

8 *DAP regulations* means regulations made under the
9 *Planning and Development Act 2005* Part 11A;

10 *prescribed development application* has the meaning
11 given in the *Planning and Development Act 2005*
12 section 171A(1).

13 (2) Regulations under section 9.59 may —

14 (a) provide that a DAP function of a local
15 government —

16 (i) must be performed for and on behalf of
17 the local government by the CEO or
18 employees authorised by the CEO; and

19 (ii) cannot be performed by the local
20 government in any other manner (for
21 example, by the council or a committee
22 of the council);

23 and

24 (b) otherwise deal with or regulate —

25 (i) the performance of a DAP function of a
26 local government as referred to in
27 paragraph (a); and

28 (ii) authorisations referred to in
29 paragraph (a)(i); and

30 (iii) supplementary or incidental matters.

s. 145

- 1 (3) Regulations made for the purposes of subsection (2)
2 have effect despite any other provision of this Act.
3
- 4 **145. Schedule 2.3 clauses 8 and 9 replaced**
- 5 Delete Schedule 2.3 clauses 8 and 9 and insert:
6
- 7 **8. How deputy mayor or deputy president is elected**
- 8 (1) The council is to elect a councillor (other than the mayor or
9 president) to fill the office.
- 10 (2) The election is to be conducted by the CEO in accordance
11 with the procedure prescribed.
- 12 (3) Nominations for the office are to be given to the CEO in
13 writing before the meeting or during the meeting before the
14 close of nominations.
- 15 (4) Nominations close at the meeting at a time announced by
16 the CEO, which is to be a sufficient time after the
17 announcement by the CEO that nominations are about to
18 close to allow for any nominations made to be dealt with.
- 19 (5) If a councillor is nominated by another council member the
20 CEO is not to accept the nomination unless the nominee has
21 advised the CEO, orally or in writing, that they are willing
22 to be nominated for the office.
- 23 (6) The council members are to vote on the matter by secret
24 ballot as if they were electors voting at an election.
- 25 (7) Subject to clause 9(1), the votes cast under subclause (6) are
26 to be counted, and the successful candidate determined, in
27 accordance with Schedule 4.1 (which deals with
28 determining the result of an election) as if those votes were
29 votes cast at an election.
- 30 (8) As soon as is practicable after the result of the election is
31 known, the CEO is to declare and give notice of the result in
32 accordance with regulations, if any.