

21 April 2022

Kathy Bonus
Chief Planning Advisor
Department of Planning, Lands and Heritage
Locked Bag 2506
Perth WA 6001

Via email: planningreform@dplh.wa.gov.au

Dear Kathy,

DEVELOPMENT ASSESSMENT PANEL (DAP) REFORM & AMENDMENTS TO THE REGULATIONS

Thank you for the opportunity to provide feedback in relation to the proposed reforms to Development Assessment Panels. The Urban Development Institute of Australia (UDIA) WA is the peak body representing the property development industry in Western Australia. UDIA WA is a membership organisation with members drawn from the residential, commercial and industrial property development sectors. UDIA WA members include both private and public sector organisations. Our industry represents approximately 9.3% of Western Australia's Gross State Product, contributing \$28.2 billion annually to the Western Australian economy and \$267.6 billion nationally. As well as helping to create sustainable and liveable communities, the industry employs a total of 205,100 Western Australians and 2.035 million Australians across the country.

General Comments

Development Assessment Panels (DAPs) have undoubtedly been one the greatest successes of planning reforms in recent years. DAPs have fulfilled their intent and *'improved the planning system by providing more transparency, consistency and reliability in decision making on complex development applications'*. The key to this success has been the inclusion of independent, professional planners and related industry professionals within the decision-making authority. This has created a merits-based development assessment pathway, enabling proposals to navigate through what can be, amongst some local governments, a political minefield. As a result, the DAP system has ensured the delivery of 'plan-led' outcomes with proposals against the provisions of local planning schemes and the broader planning framework. The system has improved the consistency of decision making, and importantly provided greater certainty which has helped to de-risk the development assessment process. In turn, the development industry has been better positioned to support the delivery of the Government's infill development aspirations.





Unintended Consequences of State Government Appointed Presiding Members

In response to the perceptions of DAPs amongst a very small section of the community, UDIA WA understands the WAPC's rationale for replacing independent specialist DAP presiding members with members employed full-time by the Department of Planning, Lands and Heritage (DPLH). However, these perceptions have been largely formed due to the lack of public engagement and/or education campaign to better inform the community of the robust nature of the DAP development assessment process.

UDIA WA are concerned that the proposed changes and the removal of all but one independent panel member will cause unintended consequences that negatively impact the DAP framework. As Presiding Members and Deputies will be appointed by DPLH, there are legitimate concerns that these appointees may be susceptible to political influence. Whether this influence is real or perceived, the proposed change unnecessarily risks re-introducing political influences into the development assessment process.

Similarly, one of the positive aspects of the current DAP decision making framework has been the contemporary experience that specialist members bring to the assessment process. These inputs will be largely lost as a result of the proposed changes. Although it is unclear if market testing of the proposed roles of Presiding and Deputy Presiding members has been undertaken, the public and potentially political nature of these positions, together with the 5-year term of appointment, likely means that these positions will only attract a very narrow group of planning professionals at the later end of their careers. This limited pool of applicants, and the shift in dynamic that this will bring, may also unintentionally jeopardise the positive outcomes that the DAP assessment framework has achieved.

Therefore, given the significance and detrimental impact of these changes, UDIA WA strongly opposes the proposed amendments to the appointment of DAP members and request that further, more detailed engagement is undertaken with all stakeholders, including the development industry prior to any amendments to the appointment of DAP members.

While we strongly oppose these changes, should the State Government remain committed to adopting these amendments, we recommend that ongoing performance monitoring is undertaken and following the first year of operation, a review of the amended regulations is carried out to resolve any unintended consequences that may occur. Furthermore, should the amendments be adopted, it is imperative that carefully considered procedures and practices are implemented to ensure that the DAP assessment process is recognised by all stakeholders as independent from DPLH, the WAPC, Minister and other relevant Government agencies



Recommendations:

- DPLH reconsiders the appointment of full-time, permanent members and undertakes detailed stakeholder consultation prior to any amendments to the appointment of DAP members.
- Ongoing performance monitoring is carried out and a review of the revised District DAP framework is undertaken following the first year of the proposed system amendments being operational.

Special Matters DAP

Failure to replicate the SDAU a missed opportunity

UDIA WA fully supports the intention of the establishment of a Special Matters DAP (SMDAP) to determine projects of state or regional importance. However, despite this intent, beyond administration differences, there appears to be very little difference between the SMDAP and the District DAPs, and certainty in the likely outcomes that these Panels will achieve. Noting the large-scale development threshold requirements for SMDAP applications and the likely importance of these development proposals to the state, UDIA queries why the discretionary powers that benefit the State Development Assessment Unit (SDAU) under Part 17 of the Planning and Development Act have not been extended to the SMDAP. Without the ability to apply such discretion, the purpose of the SMDAP is called into question. Furthermore, without any clear differences or benefits to this assessment pathway, it is likely that where possible, development proponents will seek to avoid SMDAP assessment due to both the excessive additional assessment fee of \$80,600 and longer assessment timeframes associated with the SMDAP.

The failure of the SMDAP to replicate the SDAU is especially disappointing given the successful outcomes that the SDAU has achieved. The SDAU has proven that there is need for the State to play a lead role in the determination of significant development applications. Arguably, the greatest outcome of the SDAU has been the improved coordination of referral agencies which has ensured decisions have better balanced all relevant planning considerations and delivered practical development outcomes to the benefit of our State. As a result, to date the SDAU has enabled the facilitation of development with a combined value of \$1.6bn, while there remains a further \$5 billion worth of direct investment currently under assessment. These proposals will potentially support 30,000 jobs, of which 3,500 are in regional Western Australia. The failure to replicate the SDAU through these reforms in the establishment of the SMDAP will be a missed opportunity.

Recommendation:

- The powers of discretion afforded to the SDAU are extended to the SMDAP.

SMDAP Members

Given the intent of the SMDAP to provide an assessment pathway for projects of regional and/or State level importance, we broadly support the proposed composition of SMDAP members. However, we are concerned that amongst the proposed panel members, only one member is required to have a

recognised planning qualification. We also query the inclusion of an appointee by the Director General of the Department of Transport, due to the very narrow focus of this agency and the broader economic and social impacts that this scale of development is likely to have. Similarly, as decision makers are bound by the provisions of the local planning scheme, we query the need and purpose for appointing a representative of the Environmental Protection Authority to the SMDAP.

Recommendation:

- State Government representative members of the SMDAP are limited to appointees by the WAPC.

SMDAP Application Criteria

UDIA WA fully supports the adoption of robust eligibility criteria for SMDAP assessment and we generally support the proposed application scale thresholds. However, the proposed eligibility thresholds could be improved by expanding them to better capture mixed use development and large-scale residential development. For example, a residential development of 80 dwellings with a larger proportion of larger homes and ground floor retail, may have a more significant impact and footprint than a development of 100 one-bedroom apartments. Therefore, we suggest that a better metric would be to include the square metre rate as an alternative to complement the 100 dwelling unit threshold.

Given the development assessment fees, we strongly recommend that opt-in and opt-out provisions are extended to the SMDAP, including for applications within the precinct areas.

Recommendation:

- The SMDAP eligibility criteria is expanded and includes the opportunity to opt-in and opt-out.

Excluded Development - Warehouses

UDIA WA does not support the proposed inclusion of the ‘construction of a warehouse’ as an ‘excluded development application’. The changing nature of our economy and lifestyle preferences mean that warehouses are becoming increasingly important to the efficient functioning of both our State and regional economies. Given this importance, it is essential that the DAP development assessment pathway remains an available option for such development proposals.

Recommendation:

- Warehouse developments remain eligible for DAP assessment.

Introduction of Opt-in DAP Agenda/Application Briefings

Given the substantial scale of DAP development proposals together with increasingly complex and often contradictory objectives of local planning schemes provisions, referral agency aspirations and design review inputs, UDIA WA recommends the establishment of an opt-in DAP agenda briefing session. This would improve transparency and consistency of development outcomes. Development

proponents are likely to have undertaken extensive engagement with local governments, design review panels and the local community as part of the statutory and non-statutory development process, yet despite this extensive engagement, DAP members are typically given one week to review detailed complex RAR and associated specialist reports, with proponents given five minutes to present their proposal at a DAP meeting and often no 'right of reply' to matters raised.

To improve this situation, introducing an "opt-in" briefing session for complex, large-scale developments several days before the DAP determination, would allow proponents to present on all pertinent aspects of their proposal and allow DAP members to fully query the proponent, their consultants, and other stakeholders. Any identified issues would then receive the consideration they require, assisting with the smooth functioning of the DAP determination proceedings, and reducing the risk of deferred decisions or SAT appeals.

Recommendation:

- That DPLH consider the establishment of opt-in DAP Agenda/Application Briefings.

Should DPLH require any assistance or further information regarding this matter, UDIA WA would be delighted to assist. For further information or assistance please contact Chris Green, Director Policy and Research at cgreen@udiawa.com.au or 9215 3400.

Yours sincerely,



Tanya Steinbeck
Chief Executive Officer