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Planning Reform



# Development Assessment Panel Reforms -

Consultation Outcomes Report

October 2023

**FINAL**



## Table of Contents

1. Introduction .....	1
2. Background .....	1
2.1 Current DAP System.....	1
2.2 DAP Reforms and the Action Plan .....	2
3. Consultation Purpose and Process.....	4
4. Stage 1 – Preliminary Engagement .....	5
5. Consultation on draft Proposals.....	8
5.1 Proposed Changes .....	8
5.2 Method of Consultation and Communication.....	8
6. Consultation Outcomes .....	10
6.1 Stakeholder Analysis .....	10
6.2 Key Findings .....	11
7. Final DAP Reforms.....	12

## Acronyms/Abbreviations

- Act – *Planning and Development Act 2005*
- Action Plan – Action Plan for Planning Reform
- AIA – Australian Institute of Architects
- AILA – Architectural Institute of Landscape Architects
- Amendment Act – *Planning and Development Amendment Act 2020*
- DAP – Development Assessment Panel
- DAP Regulations – *Planning and Development (Development Assessment Panels) Regulations 2011*
- Department – Department of Planning, Lands and Heritage
- Draft DAP Amendment Regulations – *Draft Planning and Development (Development Assessment Panels) Amendment Regulations 2022 (as advertised)*
- JDAP – Joint Development Assessment Panel
- JTSI – Department of Jobs, Tourism, Innovation and Science
- LDAP – Local Development Assessment Panel
- Minister – Minister of Planning
- PCA – Property Council of Australia
- PIA – Planning Institute of Australia
- Regulations – *Planning and Development (Local Planning Schemes) Regulations 2015*
- SAT – State Administrative Tribunal
- Shire – Shire of Waroona
- UDIA – Urban Development Institute of Australia
- WALGA – Western Australian Local Government Authority
- WAPC – Western Australian Planning Commission



## 1. Introduction

Improvements to the Development Assessment Panel (**DAP**) system have been identified through the State Governments ongoing planning reform agenda. DAPs were introduced in 2011 with the aim of improving the planning system by providing more transparency, consistency and reliability in decision making on complex development applications. Changes to the DAP system were initially identified in the Action Plan for Planning Reform (**Action Plan**) released in August 2019 and progressed and expanded through the additional planning reforms legislated in the *Planning and Development Amendment Act 2020* (**Amendment Act**). The overall intent of these changes is to improve transparency, consistency of decision making and reduce the potential for conflicts of interest.

Proposed changes were initially developed in collaboration with key stakeholders through preliminary consultation activities with two Stakeholder Reference Groups (Industry and Local Governments). These groups helped to shape and refine the proposed changes. A 5-week consultation exercise on the draft proposals was then undertaken to help refine them.

This report provides a summary of the consultation processes and outcomes.

## 2. Background

This section provides background information relevant to the proposed changes to the DAP system. This includes an overview of the current DAP system, and relevant background information from the Action Plan and Amendment Act, and the progress of reforms to date.

### 2.1 Current DAP System

A DAP is an independent decision-making body comprised of technical experts and elected local government members, who determine development applications made under local and regional planning schemes, in the place of the original decision maker. DAPs report directly to the Minister for Planning (**Minister**) and do not form part of the Department of Planning, Lands and Heritage (**Department**) or the Western Australian Planning Commission (**WAPC**).

DAPs were introduced in Western Australia through a series of legislative and regulatory changes between 2010 and 2011. The *Approvals and Related Reforms (No. 4) (Planning) Bill 2010* was passed by Parliament on 10 August 2010. The Bill introduced a range of new planning reforms into the *Planning and Development Act, 2005* to streamline the approval process including the enabling powers required to establish DAPs in Western Australia and the ability for Regulations to be prepared to support the administration and operation of DAPs. The *Planning and Development (Development Assessment Panels) Regulations (DAP Regulations)* make provisions for the operation, constitution, and administration of DAPs and were gazetted on 24 March 2011. The DAP system came into operation on 1 July 2011.

**Table 1** provides a summary of the current DAP system.



Table 1 – Summary of the Current DAP System

<p><b>Development Assessment Panels</b></p>	<p>There are currently 5 geographically located panels:</p> <ul style="list-style-type: none"> <li>• City of Perth Local Development Assessment Panel (<b>LDAP</b>)</li> <li>• Joint Development Assessment Panels (<b>JDAP</b>): <ul style="list-style-type: none"> <li>- Metro Inner-North JDAP</li> <li>- Metro Inner-South JDAP</li> <li>- Metro Outer JDAP</li> <li>- Regional JDAP</li> </ul> </li> </ul>
<p><b>Membership Arrangements</b></p>	<p>Each DAP is made up of 5 panel members including:</p> <ul style="list-style-type: none"> <li>• The Presiding Member (a specialist member with planning qualifications)</li> <li>• The Deputy Presiding Member (a specialist member with planning qualifications)</li> <li>• A third specialist member (with qualifications from another discipline)</li> <li>• 2 Local Government Representatives from the local government area subject of the development application.</li> </ul> <p>DAP members are appointed by the Minister, for a term up to 3 years. A group of specialist members are also appointed to a member pool, providing a substitute reserve if required.</p>
<p><b>Application Criteria</b></p>	<p>The following <u>may opt-in</u> to the DAP system:</p> <ul style="list-style-type: none"> <li>• Developments with an estimated value between \$2 million - \$10 million (\$2 million - \$20 million within the City of Perth)</li> </ul> <p>The following applications <u>must</u> go to a DAP:</p> <ul style="list-style-type: none"> <li>• Developments with an estimated value of \$10m or more (\$20m or more within the City of Perth)</li> </ul>
<p><b>Exclusions</b></p>	<p>The following types of applications are excluded from the DAP system:</p> <ul style="list-style-type: none"> <li>• Construction of a single house.</li> <li>• Construction of less than 10 grouped dwellings or multiple dwellings.</li> <li>• Construction of carports, shade sails, outbuildings or sheds.</li> <li>• Development in an improvement scheme area.</li> <li>• Development undertaken by a local government or the Western Australian Planning Commission.</li> </ul>

## 2.2 DAP Reforms and the Action Plan

Changes to the DAP system were initially identified in the Action Plan released in August 2019. The Action Plan includes various initiatives and actions to achieve the three overarching goals of creating great places for people, making planning easier to understand and navigate, and making the planning system more consistent and efficient.



**Table 2** provides a summary of the initiatives and actions of the Action Plan that are particularly relevant to DAP Reforms.

*Table 2 – Initiatives and Actions of the Action Plan Related to DAPs*

<b>Initiative C7</b>	Development assessment processes are streamlined and outcomes-focused.
<b>Initiative C8</b>	DAP processes are more consistent and transparent.
<b>Actions</b>	<ul style="list-style-type: none"> <li>• The number of DAPs will be reduced to no more than 3, and the DAP specialist members will be engaged on a full-time basis. (Note: there is no change proposed to the arrangement for local government members on DAPs).</li> <li>• A pool of non-voting subject matter experts will be formed to provide DAPs with independent, specialist advice when required.</li> <li>• DAP meetings will be held at regular times, with the option to hold meetings outside ordinary business hours where appropriate.</li> <li>• Meetings will be audio recorded, with recordings made available on the DAP section of the DPLH website.</li> <li>• Consistent governance support will be provided to attend meetings, clarify process and ensure consistent and correct meeting procedures.</li> <li>• All administrative support will be provided by the DAP Secretariat.</li> </ul>

*Source: Action Plan for Planning Reform (August 2019)*

In April 2020, several changes were introduced to the DAP system as part of the staged implementation of the above to improve transparency and consistency of decision making. A more streamlined five-panel model was introduced as a transitional measure with the intent to further reduce the number to no more than three panels. A reduced number of specialist members were also appointed as a further transitional measure towards full time, fixed term members. The following procedural improvements were also introduced in line with the Action Plan and the WA Recovery Plan as part of the COVID-19 response:

- Improvements to the report template to promote greater consistency, clear guidance and logical layout for assessing officers, and improved reasons for decisions.
- Publishing of further information requests.
- Convening virtual meetings.
- Introduced the publication of presentation submissions and supporting information on DAP website.
- Updated Regulations and DAP Regulations to specify a 4 year substantial commencement period for DAP applications.

### 2.3 The Amendment Act and DAP Reforms

The Amendment Act was given Royal assent in July 2020 and provided an important mechanism to help implement the DAP reforms as well as the additional and complementary planning reform initiatives intended to assist with the economic response and recovery to the



COVID-19 pandemic. The Amendment Act will change the DAP system by introducing the ability for:

- A District DAP to be established for one or more districts, and
- A Special Matters DAP to be created to determine matters of State and regional importance.

It also introduced a temporary COVID-19 recovery measure – an opt-in 18-month determination pathway for significant development applications (\$20 million or more in the metropolitan region or \$5 million or more in regional areas) with the WAPC as the decision maker (Part 17 of the Act). Whilst not directly related to the DAP system the introduction of this pathway is relevant to any discussion on DAP reforms as it has provided an alternate pathway for applications that would otherwise be eligible for consideration by a DAP. The Special Matters DAP was also intended to be a permanent pathway for significant development, refining certain elements of the temporary pathway to make it suitable as a permanent measure.

The temporary pathway initially expired in December 2021 but following the conclusion of consultation on the DAP reforms it was reopened through the *Planning and Development Amendment Bill 2022*, which received Royal assent in June 2022. The amendments resulted in the Part 17 pathway reopening from early July 2022 until December 2023 and allowed proponents of approved developments (under this pathway) the ability to apply for a one-off extension to the substantial commencement date. The amendments were introduced to respond to current challenges in the residential and commercial construction markets.

The Minister for Planning in announcing the Re-Opening of the Part 17 pathway stated that further consideration on the ultimate form of the Special Matters DAP was required.

### 3. Consultation Purpose and Process

The purpose of consultation was to:

- Raise awareness about the reforms to the DAP system.
- Help inform, shape and refine the changes the DAP system.
- Keep stakeholders informed of the progress of the reforms.

Consultation activities were undertaken in 3 stages, as outlined in **Table 3**.



Table 3 – Stages of Engagement/Consultation

Stage	Detail
1. Preliminary Consultation with Stakeholder Reference Groups	<ul style="list-style-type: none"> <li>• A series of 2 hour workshops with two Stakeholder Reference Groups (Local Governments and Industry) to test, and help shape and inform the proposed changes</li> <li>• Stakeholder Reference Groups included representatives from various local governments, various planning and industry professionals, and peak industry bodies.</li> </ul>
2. Consultation on proposed changes	<ul style="list-style-type: none"> <li>• Broader consultation on the proposed changes.</li> <li>• The proposed changes were made publicly available on the website and the general public was able to review and comment.</li> <li>• Targeted communications with key stakeholders including all local governments, peak industry associations, State Government Departments/servicing agencies, and key community groups.</li> </ul>
3. Post-Consultation Activities (on-going)	<ul style="list-style-type: none"> <li>• Ongoing discussions with key stakeholders, including via the Stakeholder Reference Groups to discuss the final changes and help inform further process improvements to support the changes.</li> </ul>

#### 4. Stage 1 – Preliminary Engagement

A series of workshops were held with the two Stakeholder Reference Groups and other key stakeholders, early in the process, to identify existing issues occurring in the DAP system and to test, workshop and discuss potential changes. The aim was to help inform and refine the proposed changes to be consulted on at a later stage. The following non negotiables were highlighted during these workshops to ensure that the changes were consistent with the direction set through the Action Plan and Amendment Act:

- The need to support the implementation of proposed changes to the DAP system and the DAP Regulations consistent with the goals, initiatives and actions of the Action Plan
- The reduction in the number of geographically located panels to no more than three District DAPs.
- Facilitate the employment of specialist members on a full-time, fixed term basis to reduce the potential for conflicts of interest and improve consistency in decision making.
- Establish a Special Matters DAP to deal with significant development applications.
- Identify regulatory changes to support the reforms, streamline processes and procedures and reduce red tape.

Various preliminary discussions were also undertaken by the Planning Reform team with key stakeholders affected or interested in the project. This includes local governments and planning teams within the Department, who currently undertake planning projects or assess applications within the precincts that were identified as significant precincts for the purposes of the Special Matters DAP. Feedback was requested on what geographical area and types



of development should be included in the precinct criteria, based on current local planning frameworks, development pressures, and other strategic planning objectives.

Discussions were also held with various local governments, upon request, to help understand issues specific to individual local governments. The information provided through these meetings was considered in refining the proposed changes. A summary of the outcomes of preliminary consultation and key themes is provided in **Table 4**.

*Table 4 – Summary of Outcomes and Key Themes*

<p><b>General</b></p>	<ul style="list-style-type: none"> <li>• There was general support for the clarification of the ability for Councils to delegate functions of the local government regarding the reporting and submission processes.</li> <li>• Pre-meeting briefings (similar to those undertaken by many local government Councils) were suggested by the groups to establish the facts of an application and understand the key issues.</li> <li>• The importance of a clear, coordinated and streamlined pre-lodgement and referral practices was highlighted as a critical component to the success of the system.</li> <li>• The groups agreed that it would be beneficial for the Department to undertake 'case management' approach to provide coordination and management of complex inter-agency referral requirements.</li> </ul>
<p><b>District DAPs</b></p>	<ul style="list-style-type: none"> <li>• Consensus the District DAP pathway should be opt-in only.</li> <li>• Mix of views about the threshold value, some groups feeling it should remain at \$2 million, while others felt it should be increased to \$3 million - \$5 million.</li> <li>• Mixed views about the configuration of three geographic areas. Key concern being that the large boundary areas may pose knowledge gaps on local issues.</li> <li>• Consensus among the groups that the Presiding and Deputy Presiding members should have planning expertise, decision making and governance experience. The need for training and education was highlighted.             <ul style="list-style-type: none"> <li>- A majority of industry group representatives considered that the current membership structure and appointment process, with current industry practitioners sitting on the DAP, should remain unchanged.</li> <li>- Current DAP members suggested increasing the number of proposed permanent members to ensure a focus on the additional duties required beyond meeting attendance (including ongoing training and education).</li> </ul> </li> <li>• Consensus that the third member drawn from a pool of experts would provide flexibility in the meeting arrangements and ensure the most appropriate skill set was part of the decision-making process. These</li> </ul>



	<p>experts should have a broad range of experience to enable them to consider multiple types of applications at a meeting.</p> <ul style="list-style-type: none"> <li>• Broad agreement with the retention of the existing local government membership configuration.</li> <li>• Centralised meetings with online functionality and governance support provided by the Department was broadly supported by all groups.</li> </ul>
<p><b>Special Matters DAPs</b></p>	<ul style="list-style-type: none"> <li>• All groups agreed that the Special Matters DAP should be opt-in only.</li> <li>• All groups agreed that the criteria should be more than a monetary figure. Specific considerations such as land use type, and the resulting economic, environmental and social implications were suggested, in addition to minimum thresholds.</li> <li>• Statutory timeframe of 120 days was supported. It was acknowledged by all groups that appropriate processes would need to be in place to ensure that this could be met and that these should be developed in consultation with the reference groups.</li> <li>• The industry group highlighted the need for improvements to ensure a streamlined and efficient end to end process.</li> <li>• There was clear consensus that advertising requirements should reflect those for 'complex applications' in the Deemed Provisions.</li> <li>• Clear preference among all groups for the membership to comprise members of the Statutory Planning Committee and the Presiding Member of the relevant DAP:             <ul style="list-style-type: none"> <li>- The local government group suggested that the membership also comprise of the two relevant local government members from the District DAP.</li> <li>- The industry group suggested that the membership also comprise of a registered architect nominated by the Australian Institute of Architects (<b>AIA</b>).</li> </ul> </li> <li>• The industry group and DAP members provided feedback that the assessment and decision-making powers should be broader than the local planning framework.</li> <li>• Mixed views about who would be best placed to undertake assessment and compliance of applications (Department or the local governments).</li> <li>• The industry group and DAP members suggested a 'call in power' and conflict resolution pathway for conflicting approvals similar to Part 17.</li> <li>• There was general agreement among the groups that the advisory function is necessary for the Minister for applications that are called in through appeals to the SAT. The function was not considered necessary at this stage for advice to local governments or the Commission, but the merits of this were noted.</li> </ul>



## 5. Consultation on draft Proposals

Following preliminary consultation, the proposed reforms were refined and consulted on for 5 weeks commencing on 18 March 2022 and concluding on 22 April 2022.

### 5.1 Proposed Changes

The key proposed changes that were subject to consultation included:

- Reducing the number of geographically grouped panels from the current five (5) to three (3). These will be known as 'District DAPs'.
- The Minister for Planning appointing fixed term Presiding Members and Deputy Presiding Members (3 to 5 years) for the District DAPs with a third specialist member either to be appointed or to be drawn from a pool. No changes are proposed to local government representation on a District DAP.
- General process and administrative reforms to improve transparency, consistency and efficiency including allowance for meeting times to be on regular dates/times, central coordination and convening by the Department, options to hold meetings outside of business hours in certain instances, all meetings to be made available for electronic attendance, and recordings of meetings to be published online.
- Clarification that the function of the local government, in the submission of a report and recommendation to the DAP, can be submitted by the Chief Executive Officer (CEO) of the relevant local government.
- Developments wholly on reserved land under a region scheme and development applications for 'public works' to be excluded 'development applications'.
- Establishment of a 'Special Matters DAP' to determine projects of State or regional importance, or certain types of applications in precincts of State or regional importance (refer to **Attachment A** for this criteria) and associated processes.

These changes were proposed to be implemented through amendments to the DAP Regulations to provide the administrative framework, and supported by a Ministerial Order/s that would specify:

- The geographical areas for the 3 District DAPs.
- The projects of State and regional importance to be determined by the Special Matters DAP.
- The precincts of State and regional importance and the type of applications that will be determined by the Special Matters DAP in these areas.

For further information on the changes that were consulted upon, refer to **Attachment A** of this report.

### 5.2 Method of Consultation and Communication

The consultation period was communicated via a range of methods, with a focus on targeting communications to the following stakeholder groups – all local governments, peak industry bodies and associations, key community groups and relevant state government agencies. Communications included mail and email correspondence, newspaper ads, social media ads, and the Departments website and Consultation Hub portal. The following took place:



- The publication of 2 newspaper ads placed in the West and Business News.
- The release of a [Media Statement](#) from Planning Minister Rita Saffioti (dated 18 March 2022).
- Various posts to the Department's social media channels.
- The distribution of over 800 emails and 40 letters to stakeholders.
- Advertisement in a quarterly newsletter prepared by the Chief Planning Advisor.
- Advertisement on the Departments website and Consultation Hub platform.

Various collateral was prepared to assist stakeholders to develop an understanding of the proposed changes, provide guidance on how to prepare a submission with the aim of facilitating useful, informed and effective feedback. This included:

- Summary documents providing an overview of the proposed changes.
- A flowchart outlining the available pathways for assessment depending on the circumstance.
- A track-changed version of the draft DAP Regulations.
- 2 Feedback Forms – a brief and detailed version (both available online and in hard copy versions).

Hyperlinks to these documents can be found in **Attachment A**.

These documents were made publicly available on the Department's website and Consultation Hub, and were distributed widely via letter and emails to the key stakeholders, including all local governments, State Departments/agencies and servicing authorities, Action Plan subscribers, Stakeholder Reference Group members, key community groups and peak industry bodies/professional associations.

The Department also hosted a series of online and in-person information sessions and workshops to discuss the changes proposed. A total of 3 online information sessions were held at the start of the consultation period (21 – 23 March 2022) to provide an opportunity for stakeholders to receive a presentation of the proposed changes from the Chief Planning Advisor and ask questions about the proposals to assist understanding. Over one hundred persons attended these sessions, with participants from a wide range of organisations including various consultancies, local governments across the State, members of the public, and industry associations. These information sessions were recorded and made available on the website, along with a copy of the PowerPoint presentation and a Question and Answer (Q&A) document prepared to respond to the questions asked during these sessions in writing (refer to **Attachment A** for a hyperlink to these documents).

The DPLH also undertook Joint Information Session(s) with industry associations, their members and relevant sub-committees. Sessions were held with the Western Australian Local Government Association (**WALGA**), the Australian Institute of Landscape Architects (**AILA**), the Property Council of Australia (**PCA**), the Planning Institute of Australia (**PIA**), and various community groups (organised and coordinated by the Urban Bushland Council of WA).

An allied industry breakfast held on 1 April 2022, hosted by the Urban Development Institute of Australia (**UDIA**), featured a presentation from the WAPC Chairman which in part addressed the DAP reforms.



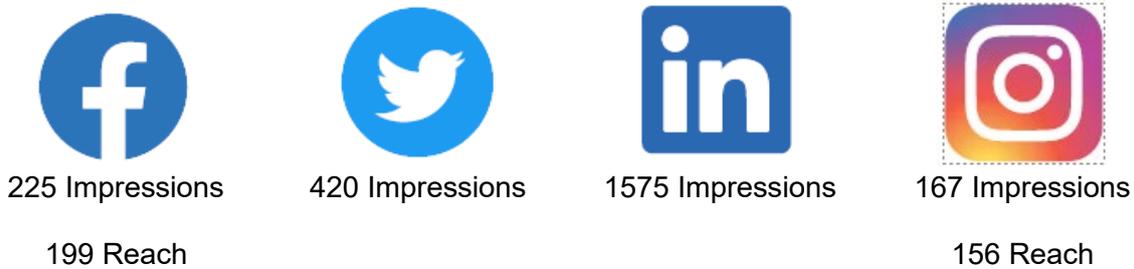
DPLH Planning Reform staff also undertook various briefings with State Government Departments and Agencies upon request, which included the Department of Jobs, Tourism, Innovation and Science (**JTSI**), Development WA and METRONET.

## 6. Consultation Outcomes

During the consultation period, the Departments website DAP reform webpage had over 800 views with over with over 2600 downloads of relevant consultation documents. The Department’s Consultation Hub portal had over 622 page views during the consultation period. The Departments social media channels had over 2000 impressions.

Refer to **Figure 1**.

Figure 1 – Social Media Reach

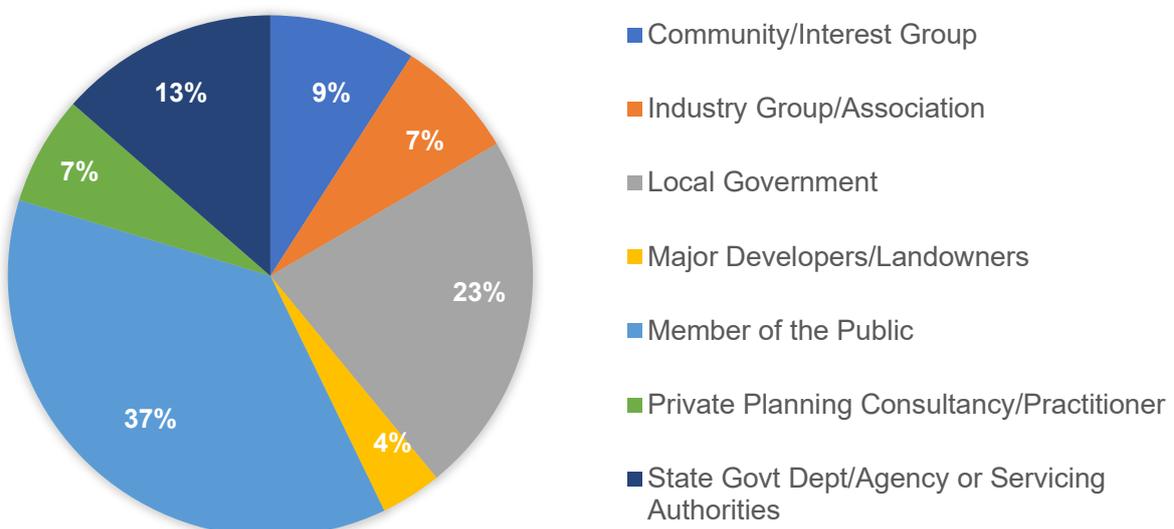


A total of 133 submissions were received from a range of stakeholder groups. These submissions were reviewed and analysed in detail to help identify refinements to be made to the proposed changes to the DAP system.

### 6.1 Stakeholder Analysis

A breakdown of submitters by sector is provided in **Figure 2**. This illustrates a range of feedback was received from a broad range of stakeholder groups involved, interested, or affected by the DAP system.

Figure 2 – Stakeholder Analysis





## 6.2 Key Findings

From the submissions received, there was a general level of support across stakeholder groups for proposals relating to general meeting arrangements and the District DAPs, including boundary areas, panel configuration, thresholds and membership. The concerns were centred on the Special Matters DAP including the project and precinct criteria, the mandatory nature of applications, membership arrangements, fees and processes.

**Table 5** summarises the key matters raised in the submissions.

*Table 5 – Key Matters Raised During Consultation*

<p><b>General</b></p>	<ul style="list-style-type: none"> <li>• Need to define state and regional significance.</li> <li>• Amend the ‘excluded development’ definition to:               <ul style="list-style-type: none"> <li>- Remove ‘warehouse’ development as an excluded development application to enable the applicant to choose the most suitable pathway.</li> <li>- Refine ‘developments by a local government or the Commission’ to require those works that have a commercial purpose to <u>not</u> be classified as an excluded development application.</li> </ul> </li> </ul>
<p><b>District DAPs</b></p>	<ul style="list-style-type: none"> <li>• General support for:               <ul style="list-style-type: none"> <li>- Boundary area configuration and reduction in number of panels (from five to three)</li> <li>- Removal of mandatory thresholds (has the effect of the District DAP being a wholly optional pathway)</li> <li>- Appointment of fixed term Presiding and Deputy Presiding Members with pool of specialists to be retained for use as needed – subject to minor modifications to appointment terms and term limits</li> </ul> </li> <li>• Mixed feedback for the following:               <ul style="list-style-type: none"> <li>- Retaining minimum opt-in threshold at \$2 million</li> <li>- Maximum term for fixed term members being 5 years (suggestion for 3).</li> </ul> </li> </ul>
<p><b>Special Matters DAP</b></p>	<ul style="list-style-type: none"> <li>• Suggested refinements to the project criteria</li> <li>• Low levels of support for the significant precincts (both areas and proposed criteria)</li> <li>• Significant cost of application fees at 100% cost recovery rate</li> <li>• Low levels of support for mandatory nature of applications, particularly when considered with the significant application fees</li> <li>• Queries and concerns with the membership representation and nomination arrangements. Local government were particularly concerned with the lack of representation from elected members</li> <li>• Requirement for a definition of state and regional significance</li> <li>• Various process and implementation considerations and concerns</li> </ul>



More detail of the matters raised in the submissions can be found in **Attachment 2**. This document focusses on key themes that resulted in changes to the proposals and does not include proposals that had a broad level of support from stakeholders where no change from what was advertised is proposed.

## 7. Final DAP Reforms

The detail outlined in **Section 6** and **Attachment 2** of this report was considered when determining how to proceed. The final changes to the DAP system including refinements post consultation are summarised below **Table 6**:

Table 6 – Final changes to the DAP system post consultation

<p><b>District DAPs</b></p>	<ul style="list-style-type: none"> <li>• The District DAP system will be 'opt-in' for all non-excluded applications with an estimated cost of \$2 million or more</li> <li>• The number of geographic panels will be reduced from 5 to 3 (metro inner, metro outer and regional)</li> <li>• The following exclusions will be removed:             <ul style="list-style-type: none"> <li>- less than 10 multiple dwellings. This will allow multiple dwelling developments of any size to be determined by the DAP</li> <li>- 'warehouse'</li> <li>- Public works and development on reserves under a Region Scheme. These will be determined by the WAPC</li> <li>- 'developments by a local government or the Commission'. This will enable developments by a local government or the Commission that have a commercial purpose to be permitted to be determined by a DAP unless the development is a public work</li> </ul> </li> <li>• The introduction of a 'Chief Presiding Member' as a department employee, appointed by the Minister for a term of up to 5 years with reappointment limited to two consecutive terms (i.e. a maximum of 10 years).</li> <li>• Appointing full time and/or part time specialist members for a fixed term of three years with reappointment limited to two consecutive terms (i.e. maximum of six years).</li> <li>• The ability for the third specialist member to be drawn from a pool.</li> <li>• Supporting processes and guidance to clarify:             <ul style="list-style-type: none"> <li>- Training, conflict and misconduct processes for DAP members, along with requirements to provide adequate reasons for decision making, where departing from local planning framework.</li> <li>- That fixed term members are public officers for the purpose of the <i>Public Sector Management Act 1994</i>, the <i>Corruption, Crime and Misconduct Act 2003</i> and bound by the Public Sector Code of Conduct (full time members prohibited from secondary employment).</li> <li>- Delegated functions.</li> </ul> </li> </ul>
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<b>Special Matters DAP</b>	<ul style="list-style-type: none"><li>• The 'special matters' DAP will not proceed and instead a permanent 'opt in' pathway for significant development (\$20 million or more in Perth and Peel and \$5 million or more elsewhere) will be established through the Act with the Western Australian Planning Commission as the decision maker.</li><li>• This new pathway will be modelled on Part 17 of the Act, with some necessary refinements and improvements to make it suitable for a permanent pathway.</li></ul>
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As outlined in **Table 3**, discussions are intended to continue with key stakeholders in an ongoing nature to help develop the process and guidance documentation and assist with the implementation of these changes. Discussions will primarily focus on process improvements required to ensure a smooth transition and that the reforms achieve their intended purpose.

For further information, contact Reform Delivery at [planningreform@dplh.wa.gov.au](mailto:planningreform@dplh.wa.gov.au) or 6551 9360.



## Attachment 1 – Consultation Materials

- [Draft Amendments to the \*Planning and Development \(Development Assessment Panels\) Regulations 2011\* – for consultation March 2022](#)
- [Overview of DAP Reforms – for consultation March 2022](#)
- [Summary of District DAPs – for consultation March 2022](#)
- [Summary of the Special Matters DAP – for consultation March 2022](#)
- [DAP Process Flowchart – for consultation March 2022](#)
- [Feedback Form – Brief](#)
- [Feedback Form – Detailed](#)
- [DAP Reforms – Information Session Presentation - for consultation March 2022](#)
- [DAP Reform Information Sessions – Question and Answers – for consultation March 2022](#)



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# Planning Reform



## Attachment 2 – Key Themes and Issues Raised During Consultation

THEME	REFORM INITIATIVE	KEY ISSUES RAISED FROM SUBMISSIONS	CHANGES IN RESPONSE TO SUBMISSIONS
DELEGATIONS	<ul style="list-style-type: none"> <li>-District DAP report to be submitted by the CEO.</li> <li>-SMDAP report may be delegated from Council to CEO.</li> </ul>	<ul style="list-style-type: none"> <li>-Clarify whether CEO can sub-delegate.</li> <li>-Process clarification required</li> <li>-SM DAP report should be submitted by the CEO.</li> <li>-Elected members removed from process.</li> </ul>	<p><b>Further Consideration</b></p> <ul style="list-style-type: none"> <li>- Further clarification and guidance for these functions required in supporting documents.</li> </ul>
EXCLUDED DEVELOPMENTS	Developments wholly on reserved land under a region scheme and development applications for public works will be excluded	<ul style="list-style-type: none"> <li>-Closer examination of all types of 'public works' to be excluded (i.e. hospitals, medical clinics, ports works and services).</li> <li>-Should only apply to minor works or entirely consistent with scheme</li> <li>-'Public Works' should be considered by Special Matters DAP to ensure State Planning Policy is applied/aims are achieved.</li> <li>-Remove existing 'warehouse' from excluded development.</li> <li>-Developments with 'Strategic Industrial Areas' should be excluded.</li> <li>-WAPC should consider environmental impacts and EPA assessment.</li> <li>-Public consultation and LG engagement should be undertaken and genuinely taken into consideration by WAPC.</li> <li>-WAPC should be accountable for decisions that differ from LG advice.</li> </ul>	<p><b>Change</b></p> <ul style="list-style-type: none"> <li>- Remove 'warehouse' development from the excluded development definition.</li> <li>- Remove 'less than 10 multiple dwellings' from the excluded development definition to allow multiple dwelling developments of any size to be determined by the DAP.</li> <li>- Remove 'developments by a local government or the Commission' from the excluded development definition to enable developments by a local government or the Commission that have a commercial purpose to be permitted to be determined by a DAP unless the development is a public work.</li> </ul> <p><b>Further Consideration</b></p> <ul style="list-style-type: none"> <li>- Guidance information to clarify scope and intent for excluded developments.</li> </ul>
FEES	<ul style="list-style-type: none"> <li>-District DAP Fees to incorporate administrative component and member payment.</li> <li>-Special Matters DAP Fees includes the above and also incorporates the assessment component and design review.</li> </ul>	<ul style="list-style-type: none"> <li>-High application fees significantly diminishes project feasibility and deters development, which will be passed onto purchasers.</li> <li>-Developer disincentive for SMDAP process due to excessive fees.</li> <li>-Unclear if the rates represent cost recovery as no further information is provided.</li> <li>-Consider greater transparency on fee structure and incurred costs such as by including itemised costs.</li> <li>-Significant work required for LG to provide referral assessment, conditions clearance and compliance for SMDAP applications. LGs seek a portion of associated fees.</li> <li>-LGs advocating for increase of LG maximum fee schedule in PD Regs.</li> <li>-Link between negative comments on application fees and the mandatory nature of the SM DAP pathway (can't opt-out into a more affordable pathway) and the 120 day timeframe for assessment (can't opt-out into a quicker pathway).</li> </ul>	<p><b>No Change</b></p> <ul style="list-style-type: none"> <li>- District DAP fee schedule to remain as proposed in Schedule 1 of the <i>Planning and Development (Development Assessment Panels) Amendment Regulations 2022</i>.</li> </ul> <p><b>Change</b></p> <ul style="list-style-type: none"> <li>- Special Matters DAP, including fees, will not proceed as proposed.</li> </ul> <p><b>Further Consideration</b></p> <ul style="list-style-type: none"> <li>- Regular review of fees to assess cost recovery rate, costs of construction and consistency.</li> </ul>
DISTRICT DAP THRESHOLDS	Retain opt-in minimum threshold at \$2m	<ul style="list-style-type: none"> <li>-Monetary figure does not reflect complexity of application, considering current inflated costs, other criteria may be beneficial (i.e. degree of discretion).</li> <li>-Threshold too low for some developments, DAP may be used frivolously to deal with unnecessary applications to avoid LG processes.</li> <li>-DAP should focus on more strategic and more complex proposals.</li> <li>-Suggested increase of threshold to \$5m, to avoid smaller scale developments such as childcare centres and service stations.</li> <li>-Promotes application 'shopping' for best outcome.</li> <li>-Allows developers to negotiate too many 'trade offs' with LGs when selecting their approval pathway.</li> </ul>	<p><b>No Change</b></p> <ul style="list-style-type: none"> <li>- The DAP system will be 'opt-in' for all non-excluded applications with an estimated cost of \$2 million or more.</li> <li>- Reduce the number of geographically grouped panels from the current five (5) to three (3). These will be known as 'District DAPs'.</li> </ul>
MEMBERS	Fixed term Presiding and Deputy Presiding Members	<ul style="list-style-type: none"> <li>-Facilitates consistent decision-making, reduces the potential for conflicts of interest, and ensures sound knowledge of the DAP processes.</li> <li>-Industry stakeholders viewed there to be risk that fixed term appointments and the low remuneration may limit the number of suitably qualified applicants.</li> <li>-Maximum term of 3-5 years appropriate, with limits to how many times a person can hold the position.</li> <li>-All members to have a broad range of experience and knowledge, with current knowledge of industry.</li> </ul>	<p><b>Change</b></p> <ul style="list-style-type: none"> <li>- Introduce a 'Chief Presiding Member' as a department employee, appointed by the Minister for a term of up to 5 years with reappointment limited to two consecutive terms). This position will have oversight of the DAP system and be responsible for stakeholder engagement, governance and training. It is intended that the other specialist members and the DAP Secretariat will report to the Chief Presiding Member.</li> <li>- Reducing the maximum term for specialist members from five (5) to three (3) years. Limiting reappointment of specialist members to two consecutive terms (i.e. maximum of six (6) years).</li> </ul>

THEME	REFORM INITIATIVE	KEY ISSUES RAISED FROM SUBMISSIONS	CHANGES IN RESPONSE TO SUBMISSIONS
		<p>Members to include representation from local government, industry and associated specialist areas (e.g. retail sustainability etc.).</p> <ul style="list-style-type: none"> <li>-Risk permanency may undermine independence from political influence, skill diversity and disincentivise panel members.</li> <li>-Ensure that there is an equal representation between Local Government and Specialist Members.</li> <li>-Extend District DAP membership from 5 to 7 to allow for three additional specialists.</li> </ul>	<p><b>No Change</b></p> <ul style="list-style-type: none"> <li>- The Minister for Planning appointing fixed term Presiding Members and Deputy Presiding Members on a part time or full time basis with a third specialist member either to be appointed or to be drawn from a pool.</li> </ul> <p><b>Further Consideration</b></p> <ul style="list-style-type: none"> <li>-Guidance notes to clarify training, conflict and misconduct processes along with requirements to provide adequate reasons for decision making, where departing from local planning framework.</li> <li>-Implement regular performance review requirements for monitoring of decision making.</li> <li>-Contract and Guidance notes to clarify that fixed term members are public officers for the purpose of the Public Sector Management Act 1994, the Corruption, Crime and Misconduct Act 2003 and bound by the Public Sector Code of Conduct (full time members prohibited from secondary employment).</li> </ul>
SPECIAL MATTERS DAP – PROJECT	Applications that meet development criteria and value thresholds to be assessed by the DLPH and determined by the Special Matters DAP	<p>--Applications should only be determined by the SM DAP, when there no Structure Plan, Local Development Plan and/or Precinct Plan in place, or the relevant Local Planning Framework is out-dated and not fit-for-purpose.</p> <p>Better guidance and/or definition of what constitutes “State and regional Significance” particularly in the absence of any value thresholds (too broad).</p> <ul style="list-style-type: none"> <li>-Needs clear or tangible nexus between the project criteria proposed and the assigned value thresholds.</li> <li>-Use of sqm, NLA, stories/height to complement unit threshold.</li> <li>-Capture large scale “mixed use” projects and value threshold.</li> <li>-Dislocation/disempowerment by affected local governments (and communities) in the rigour of the assessment and determination process.</li> <li>-Enforcing a mandatory pathway which may be adequately catered for by local government (in some instances in tighter timeframes).</li> <li>-Unintended consequences of unnecessarily capturing some development types that could be adequately dealt with under current planning frameworks and delegation for applications that don’t seek policy variation or scheme discretion which may overburden the Specialist DAP.</li> <li>-Ability for Minister to call in applications upon recommendation by DAP (e.g. 99 dwelling development that may have high impact/significance)</li> </ul> <p><u>Need to clarify, review and reconsider:</u></p> <ul style="list-style-type: none"> <li>-Excluded developments (improvement schemes, reserved land).</li> <li>-Rationale and intent for the 100-dwelling threshold for residential development particularly, for the delivery of infill development.</li> <li>-Rationale behind renewable energy, resource projects, strategic industrial areas, lead agency framework.</li> <li>-Rationale for determining the value thresholds and/or unit amounts (e.g. why 100 dwellings is significant but not 99).</li> </ul>	<p><b>Change</b></p> <ul style="list-style-type: none"> <li>- The Special Matters DAP will not proceed as proposed.</li> <li>- A new permanent pathway for Significant Developments is to be established through the <i>Planning and Development Act 2005</i>.</li> </ul>
	Applications in areas of high development pressure/precincts of state importance to be assessed	<ul style="list-style-type: none"> <li>-Undermines the need to undertake precinct planning in strategic and high pressure areas, and contradicts achieving a strategically-led planning system.</li> <li>-Precincts proposed are currently metrocentric. Strategic precincts are also located in regional areas such as Geraldton, Albany and Bunbury etc. and these should be included.</li> </ul>	

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	<p>by the DLPH and determined by the Special Matters DAP</p>	<ul style="list-style-type: none"> <li>-Rationale for the inclusion of precincts and linked project criteria is unclear. For example, it is unclear why only multiple dwellings for example are considered special in a precinct, when in reality, any type of development within this precinct may be special.</li> <li>-Lack of definition for 'State and regional significance', what a significant precinct is, and what a significant development type is. Dollar value, scale or level of controversy does not equate to complexity necessarily.</li> <li>-Large scale 'mixed use' projects should be captured.</li> <li>-Number of multiple-dwellings should be increased to ensure precincts remain significant and facilitate infill.</li> <li>-Unintended consequences of unnecessarily capturing some development types of development that could be adequately dealt with under current planning frameworks and may overburden the Specialist DAP.</li> <li>-Applications should only be determined by the SM DAP, when there no Structure Plan, Local Development Plan and/or Precinct Plan in place, or the relevant Local Planning Framework is out-dated and not fit-for-purpose.</li> <li>-Precincts should not be fixed but allow for other areas if required. The process for creating a new precinct that will be subject to the SM DAP pathway needs to be clear, and subject to consultation with the local governments affected. There should be parliamentary oversight on this process to ensure integrity.</li> <li>-The identification of precincts, and associated development criteria, should be guided by State/local planning strategies and identified in mapping.</li> </ul> <ul style="list-style-type: none"> <li>-Clarify whether you need to achieve both criteria (be within the precinct and satisfy the development criteria) to be eligible.</li> <li>-Define Metronet Station Precinct areas for clarity. Maps provided of the Metronet Station Precincts use a walkable catchment radius, and it is not clear whether the properties on the edge are in/out.</li> <li>--Opposition among local governments within identified precinct areas to their general inclusion, development criteria associated and the boundary area.</li> </ul>	

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SPECIAL MATTERS DAP – MANDATORY NATURE	Applications that meet the criteria for Special Matters DAP projects and precincts are mandatory and required to undertake the DAP process	<ul style="list-style-type: none"> <li>-Mandatory requirement reasonable subject to significant adjustments to project and precinct definitions, criteria, thresholds, exclusions and fees. Pathway should be optional or opt out where reasonably justified.</li> <li>-Mandatory requirement only supported for projects, not precincts.</li> <li>-Rationale, review and monitoring of mandatory pathway needs explanation.</li> <li>-Enforcing a mandatory pathway which may be adequately catered for by local government (in some instances in tighter timeframes).</li> <li>-Mandatory nature and high fees are a disincentive and may have unintended consequence of being cost-prohibitive to smaller developers and many medium density/infill developments unaffordable, unfeasible and/or unviable.</li> <li>- Greater choice of pathway would reduce administrative and regulatory burden on both levels of governments and applicants and remove need for complex advertising where not required by the scheme.</li> <li>-Additional body creates more complicated system which could be incorporated into WAPC functions within existing framework.</li> <li>-Requirement to undertake SDRP as opposed to the local government Design Review Panel is time consuming, onerous and sometimes may not be required at all.</li> <li>-Inconsistent with the approach to removing the mandatory requirement for the District DAPs.</li> <li>-Link between negative comments on application fees, associated with the mandatory nature of the SM DAP pathway and the 120 day timeframe for assessment (cant opt-out into a quicker pathway).</li> </ul> <p>Note: Contentious proposal across stakeholder groups, especially combined with project and precinct criteria.</p>	<p><b>Change</b></p> <ul style="list-style-type: none"> <li>- The Significant Development pathway will be ‘opt-in’ for applications with an estimated cost of \$20 million or more for the Perth and Peel and \$5 million or more elsewhere.</li> </ul>
SPECIAL MATTERS DAP – MEMBERS	Seven members proposed with nominations from: 1-WAPC 2-WALGA 3-AIA 4-EPA 5-PIA 6-DoT 7-Other (property economics etc.)	<ul style="list-style-type: none"> <li>-No rationale for departing from District DAP composition.</li> <li>-Members should be limited to WAPC appointees.</li> <li>-Composition suits strategic proposals, but not development applications.</li> <li>-Clarify industry body and government department nomination process, and selection process.</li> <li>-Exclusion of the District DAP local government councillors from the process will further erode local government representation on decision making.</li> <li>-Concern with WALGA nominating LG representative, as they are not a public interest advocate or LG district with local knowledge.</li> <li>-Accredited nature for architects too limiting as suitable candidates may not be affiliated. This scope of expertise should be expanded.</li> <li>-Concern with having only one planning member as it would limit understanding and experience with the applicable local planning scheme and local context.</li> <li>-Suggest that majority of members should have planning expertise as they have the appropriate skills to interpret and apply planning legislation and policy.</li> <li>-Include Presiding Member of the relevant District DAP.</li> <li>- Reconsider DoT and EPA appointees – too narrow focus and not consider broader economic and social impacts. Risk that these members will side with the referral comments of DWER and DoT/PTA/MRWA.</li> <li>- Various suggestions about who should nominate the different experts with a preference for affiliated member organisations</li> </ul> <p>- ‘Other’- not supported as economic impact is not a relevant planning consideration.</p>	<p><b>Change</b></p> <ul style="list-style-type: none"> <li>- This pathway is to be modelled on Part 17 under the Act and would retain the WAPC as the decision maker.</li> </ul>

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SPECIAL MATTERS DAP – PROCESS	<ul style="list-style-type: none"> <li>-WAPC (supported by DPLH) to assess applications</li> <li>-Statutory timeframe of 120 days</li> <li>-WAPC (supported by DPLH) to coordinate State and LG referrals</li> <li>-LG provided 60 days to comment on application, given due regard</li> <li>-LG responsible for clearance and compliance of conditions</li> </ul>	<p>-should be expanded to be ‘fit-for-purpose’ basis and include expertise in relevant fields such as bushfire, coastal planning, acoustic, engineer, public or environmental health professionals.</p> <p><u>General:</u></p> <ul style="list-style-type: none"> <li>-Support a 12-month review timeframe to ensure the forms are fit-for-purpose and resolve any issues identified.</li> <li>- Value the pre-lodgement process, and the early identification of issues. Establish a process, which should involve Local Governments, relevant State Government Departments/agencies and applicants.</li> </ul> <p><u>WAPC (supported by DPLH) to assess and determine applications:</u></p> <ul style="list-style-type: none"> <li>-Local governments should have the assessing and decision-making role as they are best placed to understand local planning frameworks, local context and the expectations of the community. Comments noted on average local governments take 108 days to determine major applications.</li> <li>-WAPC may not have access to all relevant information and possess local knowledge.</li> <li>-WAPC/DPLH may not have access to qualified multi-disciplinary experts such as architects, traffic engineers, landscape architects etc. to support assessment.</li> <li>-WAPC lacks local knowledge (has to work across 130 schemes), which could compromise integrity and result in less rigour around technical assessments.</li> <li>-Benefit of DPLH coordination of agency referral comments is recognised.</li> </ul> <p><u>Local planning framework should not apply in circumstances where the planning framework is out of date and not fit for purpose.</u></p> <ul style="list-style-type: none"> <li>-Many local planning frameworks are out of date, anomalous, overly prescriptive and inconsistent with broader strategic framework which may be a barrier to a desirable outcome.</li> <li>-Powers to treat scheme as a document of ‘due regard’ should be used sparingly. Without ‘special’ powers, the purpose of a ‘special’ matters DAP is questioned. The focus for assessment should be on achieving best and merit-based outcomes.</li> <li>-Many local governments oppose the Part 17 development assessment pathway (and associated powers of Part 17 of the Act) continuation of any form, which has caused adverse local amenity issues and is considered to be unnecessary and inappropriate outside of a pandemic.</li> </ul> <p><u>Statutory timeframe of 120 days:</u></p> <ul style="list-style-type: none"> <li>-Noted as being consistent with Development WA (formerly MRA) statutory timeframes, which are often extended (average 166 days).</li> <li>The longer statutory timeframe will significantly impact the viability of projects in an already challenging market.</li> <li>-Insufficient and puts too much time pressure on referrals and assessments.</li> </ul> <ul style="list-style-type: none"> <li>-Simpler developments that may be mandatory for the pathway, may be delayed.</li> <li>-Stop the clock mechanisms should be entrenched in legislation, not guidelines.</li> <li>-Link between negative comments on application fees, associated with the mandatory nature of the SM DAP pathway (lack of ability to opt-out into a more affordable pathway) and the 120-day timeframe for assessment (lack of ability to opt-out into a quicker pathway).</li> </ul>	<p><b>Change</b></p> <ul style="list-style-type: none"> <li>- This pathway is to be modelled on Part 17 under the Act, with some necessary refinements, including process and procedural changes, to make it suitable for a permanent pathway.</li> </ul>

THEME	REFORM INITIATIVE	KEY ISSUES RAISED FROM SUBMISSIONS	CHANGES IN RESPONSE TO SUBMISSIONS
		<p><u>LG provided 60 days to comment on application, given due regard:</u></p> <ul style="list-style-type: none"> <li>-Timeframe is insufficient to allow for consultation with the community and Council. 90 days is recommended.</li> <li>-LG should be able to provide comments to assist with the exercise of discretion and ensure development proposals align with strategic visions.</li> <li>-LG should be remunerated with an appropriate fee for assessment referral.</li> <li>-LG should play a more significant role as local planning knowledge experts.</li> </ul> <p><u>LG responsible for clearance and compliance of conditions:</u></p> <ul style="list-style-type: none"> <li>-Not supported by local governments. The body assessing and determining the application (WAPC/DPLH) should deal with the clearance of conditions and ongoing compliance as they would have a better understanding of the rationale for those conditions, the expectations for clearance and the desired outcome.</li> <li>-Decision-maker should have accountability and responsibility for decisions.</li> <li>-LG should review conditions prior to report finalisation to provide comment on its practical implementation, and may be involved in the condition clearing process by way of providing advice.</li> <li>-LG should be remunerated with an appropriate fee for condition clearance.</li> <li>-Adds another stakeholder into the process, which adds red tape and could delay processes.</li> <li>- Places significant burden and risk on local governments.</li> </ul>	

**KEY –**

AIA	Australian Institute of Architects
DPLH	Department of Planning, Lands and Heritage
DAP	Development Assessment Panel
DoT	Department of Transport
DWER	Department of Water and Environmental Regulation
EPA	Environmental Protection Authority
LG	Local Government
MRWA	Main Roads Western Australia
MRA	Metropolitan Redevelopment Authority
PD Act	Planning and Development Act 2005
DAP Regs	Planning and Development (Development Assessment Panel) Regulations 2011
PIA	Planning Institute of Australia
Property economics	Meaning person with experience in property economics, commerce and industry, business management, financial management, engineering, surveying, valuation or transport.
PSA	Public Sector Commission
SMDAP	Special Matters DAP
SAT	State Administrative Tribunal
SDAU	State Design Assessment Unit
SDRP	State Design Review Panel
WALGA	Western Australian Local Government Association
WAPC	Western Australian Planning Commission