

## Response to the Development Assessment Panels reforms

### Summary of Submission

The Property Council of Australia welcomes the opportunity to respond to the Development Assessment Panels reforms consultation. The Property Council is a strong advocate for the positive role Development Assessment Panels (DAPs) play in delivering high-quality built environment outcomes for Western Australia.

Throughout the Department of Planning, Lands and Heritage (DPLH) stakeholder consultation period, the Property Council has consistently opposed the proposed transition to permanent panel membership. There does not appear to be a clear operational, community or industry mandate for changing the system's current operation. Indeed, the current system of employing highly skilled and knowledgeable industry professionals has operated without reproach.

The property industry had hoped the proposed DAP reform and the creation of a Special Matters DAP would adopt the best elements of the State Development Assessment Unit (SDAU). Industry perceives the best elements to be the centralised coordination of referral authorities and the ability to make decisions not constrained by (often outdated) existing planning frameworks, where projects can demonstrate merit and strategic importance.

As identified in the Property Council *Planning to Deliver*<sup>1</sup> report, the ability of high-quality projects to meet the long-term planning ambitions, such as increased residential density, is inhibited by the currency of many Local Planning Strategies:

- Approximately 45 per cent of metropolitan and 27 per cent of regional Local Governments do not have a WAPC endorsed Local Planning Strategy.
- Approximately 29 per cent of metropolitan and 48 per cent of regional Local Planning Strategies are over five years old.
- Approximately 9 per cent of metropolitan and 16 per cent of regional Local Planning Strategies are over ten years old.

Overall, the Property Council supports planning reform consistent with the findings and recommendations of the Green Paper concepts for a strategically-led system, released by state government in 2019. Critically, refocusing the planning reform agenda to focus on reform which enables better strategic planning and more streamlined outcomes, while maintaining clarity consistency and community confidence is vital. The need for clear effective planning processes become more acute in the context of ongoing skills shortages and supply chain led project price inflation in WA. It is critical to ensure that planning reform is focused on where it can have the

<sup>1</sup> Property Council WA. "Planning to Deliver." Access date 14 April 2022.

[https://www.propertycouncil.com.au/Web/Content/Submissions/WA/2021/Property\\_Council\\_WA\\_-\\_Planning\\_To\\_Deliver\\_Report.aspx](https://www.propertycouncil.com.au/Web/Content/Submissions/WA/2021/Property_Council_WA_-_Planning_To_Deliver_Report.aspx).

greatest impact, not just implement reform for reforms sake. The Property Council does question whether the current reforms are placing the effort, both time and cost in the most appropriate direction given the high regard and success of the DAP system to date.

The following submission is informed by the expert membership of the Property Council Division Council and Committees.

### **The Property Council of Australia**

The Property Council of Australia is the peak industry body representing the whole of the property industry. In Australia, the property industry employs more than 1.4 million Australians and shapes the future of our communities and cities.

As industry leaders, we support smarter planning, better infrastructure, sustainability, and globally competitive investment and tax settings that underpin the contribution our members make to Australians' economic prosperity and social well-being.

The Property Council WA membership consists of more than 290 member companies. They are architects, urban designers, town planners, builders, investors and developers. Our members conceive of, invest in, design, build and manage the places that matter most — our homes, retirement living communities, shopping centres, office buildings, education, research and health precincts, and tourism and hospitality venues.

### **Proposed Reform to the DAP System**

The introduction of DAPs in WA in 2011 was a positive and leading practice change, which championed a system with independent decision making that harnessed the expertise of technical experts and elected local government members.

The Property Council supports the continuous improvement to the DAP system and process, however in this instance does not support the changes proposed. Rather, the Property Council has been advocating for the ability to have a greater level of communication with the Presiding Member and the Specialist Members, particularly in relation to complex matters. It is not considered realistic that detailed matters can be thoroughly worked through via a five minute deputation followed by question and answer.

The Property Council has been advocating for a briefing session or the likes, where the appropriate amount of time and rigour can be applied to complex matters. We are of the understanding that greater access to communicate with the Presiding Member and Specialist Members is intended to be part of this reform and we look forward to better understanding what is proposed.

### *Concern - Transition to fixed-term members*

One of the key successes of the DAP system has been that "the involvement of independent experts has helped strike an appropriate balance between local representation and professional advice in

decision making by ensuring that decisions made by the panel are based on the planning merits of an application"<sup>2</sup>.

The Property Council and its members are deeply concerned the proposal to transition the membership of DAPs to five or six fixed-term (3 to 5 years) DAP Members employed by DPLH will undermine the independence, expertise and benefit provided by the existing system. It is impossible to replicate the skills, specialist experience and expertise, and unique geographic understanding in a system that reduces the number of panels from five to three and the pool of expertise to a limited number of fixed-term appointments.

While the reform is intended to 'improve transparency, consistency, and efficiency, the Property Council believes the proposal has the opposite effect in practice. It believes the decision for fixed-term members to be employed by the Department may lead to a loss of independence in decision making. This challenge would be exacerbated by transitioning the third member currently to be drawn from a pool of experts – to a fixed-term role. At a time when there is a skills shortage in WA, there is a significant risk the attractiveness of these roles may be restricted by the fixed-term nature of the contract, and the salary offer may diminish the available talent pool willing to take on such critical and wide-ranging planning responsibility and authority.

The DAP system was designed to establish a planning authority with a broad range of industry expertise, and the proposed changes are likely to compromise this. Indeed, many industry panellists have nominated to participate in DAP positions to "give back" to the community and sector, sharing decades of experience and knowledge.

Industry also views the proposed change, which would see DPLH provide all administrative and governance support for the DAP, may further diminish the system's independence.

The decision to review only the private-sector membership in the DAP system and not consider the role of Council representation is problematic. It is understood one of the concerns sought to be addressed by the transition to permanent members is that members will not have a conflict of interest from other employment; however, there has been no change to Council membership requirements, meaning Councillors sitting on DAPs will still be permitted to hold other employment both on Council and outside of Council.

Instead of transitioning to permanent members, the Property Council proposes the reforms should focus on strengthening protocols around decision making training, and conflict declaration processes.

#### *Support - Removal of mandatory minimum thresholds*

The Property Council supports the proposed change, which removes mandatory minimum thresholds.

<sup>2</sup> Department of Planning, Lands and Heritage. "Development Assessment Panel, Frequently Asked Questions." Access date 11 April 2022. <https://www.dplh.wa.gov.au/getmedia/6eb7ff5d-f853-435b-b224-c6f513c059e2/DAPS-FAQ-Dec2018>.

#### *Support - Transitional arrangements*

The Property Council proposes all applications made under the current system should be allowed to continue within that system to the conclusion.

#### **Special Matters DAP Proposal**

##### *Harnessing the benefits of the SDAU*

The economic, social, and built environment benefits of the SDAU are clear, with Property Council analysis showing that over the eighteen-month application window, over fifty projects, valued at \$5.04 billion in total, were lodged. At the beginning of February, sixteen of the fifty projects had received approval, representing an injection of \$1.6 billion worth of work into WA's economic pipeline. This outcome demonstrates the value to the WA economy of a planning system that is designed to provide outcome led, streamlined, practical analysis and assessment of projects. One key benefit of the SDAU has been the coordination of state government agency. The Property Council proposes this benefit should be carried through any new system.

In contrast, members of the Property Council do not believe the proposed Special Matters DAP provides substantial value or improvement to the planning system. Unlike the SDAU, the inability of the Special Matters DAP to consider applications that do not neatly fit within existing, often outdated, planning frameworks significantly diminishes the value of the proposed new system. The Property Council questions the benefit of introducing another layer of planning when the WA Planning Commission has the ability to utilise Planning Control Areas, Improvement Plans and Improvement Schemes to achieve similar outcomes. It could be argued that Improvement Schemes are in fact a more appropriate planning tool with the inclusion of a Guide Plan to provide the strategic direction of a precinct. Alternatively, the Property Council would strongly support the reinstatement of SDAU under the Part 17 powers.

#### *Support - Statutory timelines*

The Property Council acknowledges the positive addition of statutory timelines proposed for the Special Matters DAP process. However, it recommends instead of creating a Special Matters DAP, consideration be given to the continuation of the SDAU with statutory timelines, with extended powers to assess improvement and redevelopment areas. Consideration should also be given to applying statutory timelines to all DAPs.

#### *Concern - Mandatory nature of process problematic*

A critical concern is the proposal "that it is mandatory for applications to be considered by the Special Matters DAP if they meet the criteria"<sup>3</sup>. The Property Council understands the intention of the fee structure is a 100 per cent cost-recovery model. However, it believes the high fees associated with the pathway will diminish the feasibility of projects and deter development. Notably, the combined administration and assessment fees are proposed to equal \$96,600. For many applications, particularly those identified under *Table 2: Precinct criteria for the Special Matters DAP*

<sup>3</sup> Department of Planning, Lands, Heritage. "DAP Reforms, Special Matters Development Assessment Panel." Accessed 11 April 2022. <https://www.wa.gov.au/system/files/2022-03/20220309-Summary-Special-Matters-DAP.pdf>.

*criteria*, the fees associated with the Special Matters DAP will render projects unviable. For example, the requirement for ten or more dwellings in Cottesloe foreshore and METRONET station precincts to apply via this pathway will add more than \$8000 per dwelling to projects with ten dwellings compared to a standard DAP in fees alone.

Many apartment projects, particularly in the City of Perth, would be required to follow the Special Matters DAP pathway as standard developments in the city and key infill precincts involve apartments of 100+ units, and the current threshold is 55+ units. The Property Council is concerned requiring apartment projects to be assessed via the Special Matters DAP will compromise the viability of future apartment projects, negatively impacting affordability and further constraining the industry's ability to meet infill targets, with fees and charges impacting project feasibility in an already challenging market. By way of example, the City of Perth currently achieves 100 per cent of decisions within statutory timeframes, making the process shorter than what is now being proposed within Special Matter DAPs. As such, it would be cheaper and faster for developers if the City of Perth processed these development applications.

The Special Matters DAP's high cost and mandatory nature may also have the unintended consequence of making developments requiring Special Matters DAP assessment cost-prohibitive to smaller developers, squeezing them out of the market. It is recommended that the Special Matter DAP pathway should be opt-in, consistent with District DAPs.

#### *Concern - Project Criteria guidelines*

The project criteria outlined in *Table 1: Project criteria for the Special Matters DAP* are problematic. There is no clear or tangible nexus between the 'Project Criteria' and the 'Value Thresholds'. However if the program was opt-in allowing for projects in either category to apply these threshold could be applied to restrict the application pool.

The absence of mixed-use development as a category, despite mixed-use developments comprising more than 50 per cent of all SDAU applications, is another concerning limitation of the proposal that requires review, unless the opportunity to reinstate the SDAU was being considered separately to this reform process.

#### *Concern – Clearance of conditions*

The Property Council is concerned that the process outlined for the clearance of conditions will increase instances of red tape delay for projects assessed under the Special Matters DAP. Instead, it proposes that following the determination of an application, the decision-making authority should be responsible for the clearance and compliance of conditions, not local government.

#### *DA amendments*

The Property Council seeks clarification on how DA amendments for projects accessed under the Special Matters DAP will be charged.



**Next Steps**

We look forward to continuing to support Phase Two Planning Reforms and the Department in bring about system changes that bolster community engagement with planning, and enable the timely delivery of high-quality, affordable, built environment outcomes for all West Australians.

While we believe further consideration is required prior to progressing DAP reform, industry is eager to consult on opportunities to enhance the current assessment pathways, supports the removal of minimum thresholds and sees opportunity in harnessing the positive elements of existing assessment mechanisms such as those provided under the Part 17 powers.

If you require further information or clarification, please contact Emily Young, Deputy Executive Director, on 0475 161 328 or [eyoung@propertycouncil.com.au](mailto:eyoung@propertycouncil.com.au).

Yours sincerely,



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**Property Council of Australia**