

The Erosion of Local Government's Planning Powers

Local government in Western Australia began with the creation of the City of Perth in 1856. It made sense to allow local decision-making in an area the size of Western Australia and following statehood in 1890, local communities continued to control their own affairs, with assistance from the state.

The passing of the Town Planning and Development (TP&D) Act in 1928 formally introduced planning control and permitted local governments to prepare planning schemes with the general object of improving and developing their land to the best possible advantage. This gave very wide powers to local government, to decide the character of local communities.

Things changed in the late 1950s when post-WWII industrial development pressures at Kwinana prompted the need for regional planning. The coming into operation of the Metropolitan Region Scheme (MRS) in 1963 saw the beginning of the erosion of local government's planning powers. I accept that regional planning of major infrastructure and land uses, was necessary and has been beneficial but the provisions of the MRS prevailed over any inconsistent provisions in a local planning scheme. A state supervisory body, initially the Metropolitan Region Planning Authority, now the Western Australian Planning Commission (WAPC) allowed local governments to administer the MRS under delegated authority.

In the mid-1970s the TP&D Act was amended to introduce the concept of Statements of Planning Policy, ie. State Government policies which had to be taken into account when local governments prepared or amended a town planning scheme – a further constraint on local planning powers.

1991 brought the introduction of redevelopment authorities, at East Perth, Subiaco and elsewhere, in whose areas of operation all planning schemes were revoked. These new bodies were required to consult with affected local governments but in practice, they did whatever they liked. The various redevelopment authorities morphed into the Metropolitan Redevelopment Authority, which commenced operating at the start of this year. This body is

responsible for the Perth Waterfront project, occupying the site of our heritage listed and first proclaimed parkland on the Perth Esplanade. This project, in my view, is a complete disaster for a whole host of reasons, which I won't go into now.

In the mid-1990s, by an amendment to the TP&D Act, and regulations, local governments lost their control over the content of town planning schemes and amendments once they passed a resolution to prepare the scheme or amendment. Up until this time local governments could discontinue the scheme or amendment at any time they wished and often did so as a result of public objections to proposals. It was a significant change by the Planning Minister at the time, without consultation with local government or the community. Under this legislative change, the Minister can not only instruct the local government to finalise the scheme or amendment but also how to finalise it.

In 1999 the Town Planning Regulations were amended to introduce the Model Scheme Text – a template for the preparation of local planning schemes and amendments that local governments must follow. By this simple move local governments lost the opportunity to design planning schemes to suit the special requirements of their individual districts. For example, the Model Scheme Text contains no provision for the retention of significant trees. With no guidelines for their protection, is it any wonder that so many mature trees are being lost?

In 2002 performance criteria were introduced into the Residential Design Codes by way of a mandatory State Planning Policy. This effectively removed development standards for practically every decision in residential development, so that the body responsible for determining applications for planning approval will not be bound by standards attuned to community expectations. Disagreements over satisfaction of performance criteria can end up being reviewed the State Administrative Tribunal (SAT), which seeks to find a compromise, often at odds with local amenity.

A few years ago, I don't know the exact date because no notice was given, the District Planning Committees of the WAPC were quietly done away with. These committees comprised representatives from groups of local governments.

They discussed regional issues and fed recommendations directly into the WAPC. Obviously the WAPC considered that it no longer needed to hear officially from local government and disbanded these committees, without formally advising local Councils. At least one Council still appoints members to the District Planning Committee for the western suburbs, waiting for a meeting to be called, although there hasn't been one for over two years.

The most significant attack on local government's planning powers, causing the most angst today, was the introduction of Development Assessment Panels (DAPs) via an amendment to the Planning and Development Act, in 2010 and new regulations in 2011. The legislative change required applications above a specified value to be determined by a five member panel, three of whom are appointed by the Minister and two by the relevant local government. The proposal was based on the system operating in NSW (since abandoned), where DAPs considered applications with a value in excess of \$50M. In WA, other than the City of Perth, mandatory DAP applications were defined with a value of \$7M or more and optional DAP applications between \$3M and \$7M.

Well respected local government legal practitioner Denis McLeod, in a conference paper prepared before the introduction of DAPs¹, stated the change involved a radical philosophical change in assessment of development applications in WA,

From a system emphasising decisions by elected councillors responsible to the their local community,

To a system emphasising decisions by a majority of technical specialists who are appointed by state government and are not responsible to the local community.

The justification for this radical change does not stand up to scrutiny, as Ian MacRae, President of the Local Government Planners Association, clearly demonstrated at a recent forum, with a paper titled "DAPs – One Year On".²

¹ Denis McLeod, "Development Assessment Panels in WA. Developing Land – To Whose Advantage? – A Shift From Community Responsibility", paper to Local Government Forum, 8 October 2009

² Ian MacRae, "Development Assessment Panels One Year On", paper to Local Government Planners Forum, 16 August 2012

After extensive research, Ian concluded: *“DAPs have failed to deliver against the avowed criteria of success - “transparency, consistency and reliability;”*

They fail on cost – having overshot the budget;

They fail on efficiency – having introduced new areas of inefficiency and double handling;

On balance they fail on the speed of decision making; and

There is no evidence of them having improved the quality of decisions made, indeed more applicants over the past year than in the previous six years have been unhappy enough to challenge at SAT”.

For many people the DAPs have been the last straw. There is a limit to how much the state government can suppress local communities for no good reason. If the DAP projects were matters of state importance there could be some justification but, almost without exception, none of those projects within the metropolitan area have been in that category.

The whole purpose of introducing DAPs appears to be to take the decision-making of development applications away from local government, leaving it to decide only on simple applications for houses and back sheds. In relation to planning responsibilities, local government has been stripped of its independence and has become merely an instrument for the implementation of state government policy.

I regard this as a most unhealthy situation – one that I will do my very best to reverse. The time has come for people to stand up and be counted, to demonstrate that what the government is doing is totally unacceptable. This is why I have today nominated for the seat of Nedlands in the forthcoming state election.

Max Hipkins

11 October 2012