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Decision Makers : The Role of Development Assessment Panels and the Development Assessment Commission

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Presentation will consider:

- Role & responsibilities of DAPs, & Regional DAPs
- Role & Responsibilities of Development Assessment Commission
- Nature of their decision making role
- Level of community input to decision making process
- Would Regional panels be preferable to individual Council DAPs?
- Are independent Panels preferable to Council appointed decision makers?

A declaration!

- Current legislation has a lot of good points
- Avoid changes simply because of pressure from selected interest groups
- Are areas which do need to be addressed
- Current set up for decision making works reasonably well at this point in time

Relevant Planning Authority?

- Primary responsibility for making decisions on development applications rests with local councils **BUT** s.34(23) requires that a council delegate its powers and functions as a relevant planning authority with respect to the responsibility of determining whether or not to grant development planning consent to either the council's development assessment panel, to a council officer or to a regional development assessment panel
- Councils (i.e. Elected member body) are expected to focus on development of planning policy
- Reason? – Attempt to reduce influence political factors have in development assessment process

Council DAP – establishment & role

- Statutory obligation to establish (s56A(1))
- Panel:
 1. Acts as delegate of Council for planning assessment
 2. Can report to Council on planning trends and other issues which have become apparent during development assessment process (s56A(2)(b))
 3. Performs such other functions assigned to it by Council, but
 4. Cannot perform function involving formulation of policy (s56A(2)(c))
- Council **cannot** direct Panel in its assessment function
- Standard number of members= 7 (variation to 5 or 9 with Minister's approval)
- Appointed by Council
- Presiding member plus up to 3 'council' members and 3 independent members
- Presiding member has both deliberative & casting vote

Regional DAPs

- Constituted by regulation for all or part of the areas of 2 or more councils or a part of the state not within a council area
- 3 at present in SA:
 1. On Eyre peninsula-Eastern Eyre Peninsula Regional DAP (Schedule 28)(Cleve, Franklin Harbour & Kimba councils)
 2. Flinders Ranges area- Flinders Regional DAP(Sched 29) (Flinders Ranges, Mount Remarkable, Orroroo/Carrieton & Peterborough councils)
 3. Riverland- Riverland Regional DAP(Sched 30) (Berri Barmera, Loxton Waikerie & Renmark Paringa councils)
- **Regional Panels:**
 1. Act as delegate of Councils for planning assessment
 2. Can report to any Council for the panel's area on planning & development trends and other issues which have become apparent during development assessment process (s34(18a))
- **Membership requires:**
 1. Independent Presiding member appointed by Minister
 2. Other members appointed by Councils eg Flinders DAP 1 member appointed by each council, Riverland DAP 2 members appointed by each council
 3. No requirement that council appointed members be independent!
- Reasons for having Regional DAP- costs and efficiency & improved quality of decisions

DAPs & Regional DAPs decision making power

- Source is delegation from Council
- Council cannot step in and seek to act itself in any matter to do with development assessment nor can it direct DAP as to what to do
- DAPs can sub-delegate the powers/functions delegated to them
- Generally DAPs will decide Cat 2 and 3 matters where there are unresolved representations, any application for non-complying development and any others that Council staff believe would be better considered at the DAP level.

Development Assessment Commission- Establishment and role

- Established as ‘independent’ body corporate under Act – s10(1)
- 7 members- all independently appointed, expertise in various areas
- Functions(which are broader than DAPs) include:
 1. Assess & determine development applications assigned to it by Schedule 10 of Development Regulations
 2. Act as concurring authority for non-complying development applications
 3. Assess & report to minister on Crown development & public infrastructure applications
 4. Participate in early stages of major development process to determine appropriate level of environmental impact assessment
 5. Act as lodgement authority for all land division applications
 6. Provide advice & reports to minister on trends, issues & other matters relevant to assessments
 7. Provide advice re Urban renewal precincts (still in Bill stage)

Nature of Decision making role

- **Development Assessment Panels**
- responsibility to determine all development applications for which it has delegated authority
- Must assess applications against all relevant Development Plan provisions
- Must not grant consent if DAP assess proposal as “seriously at variance” with relevant Development Plan-s.35(2)
- **Development Assessment Commission**
- Same as for DAPs
- But also range of broader functions
- More independent than DAPs?
- Can be subject to ministerial direction & control but not where exercising discretion in relation to granting of development authorisation

Level of Community Input to decision making process?

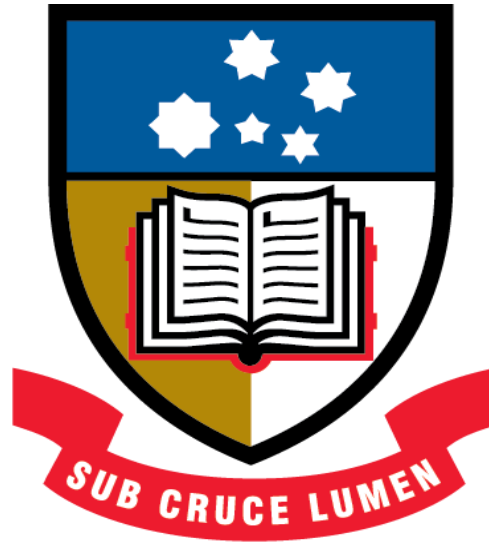
- DAPs and DAC bound to accord representation rights to representors in accordance with legislation's directions
- The council members of DAPs cannot be seen as community representatives on Panels – they have a clear statutory function to perform
- Development Plans fundamentally important in decision making process
- Best community input is at Plan formulation stage
- But community must be confident their input at Development Plan Amendment stage is able to effect changes to DPA where appropriate to reflect community's desires/needs

Regional DAPs in future?

- Is it time to consider move away from individual Council DAPs?
- Greater objectivity?
- Efficiencies in terms of costs, time & resources?
- More holistic approach to planning
- Some examples elsewhere eg WA ,NSW

Should Panels be completely independent?

- Concept of independent panels proposed by Development Assessment Forum in 1998
- Is it time to remove political influences from panels entirely?
- Will independent panels of experts make better informed and more objective decisions ?
- Who should appoint those panels?
- What would role of local government be?
- To whom would panels be accountable?
- How would they be funded?
- Would it encourage greater community focus on the development of planning policy?



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