

# **Critique of DAF Proposals**

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## **1 Introduction**

The Development Assessment Forum ("DAF") was set up in 1997 in response to calls for reform of development assessment systems in Australia, and at a time when the Industry Commission had identified the potential for economic benefits to flow from such reform, in the wake of the earlier Hilmer Report. The DAF draws from a range of peak bodies and its membership includes the Planning Institute of Australia ("PIA"). In 2005, after earlier and wide consultation, it released a report, the "Leading Practice Model for Development Assessment in Australia".

One of the themes of the proposals, underpinning several of the ten "Leading Practices" identified in the model, is that local politicians should be involved in developing policy about planning, but in general, should be excluded from decision-making about specific development proposals put forward for assessment under those policies.<sup>1</sup> This paper addresses this aspect of the DAF proposals.

Feedback on the draft had been sought, which from the development community was generally enthusiastic in its support for these proposals, and local government peak bodies were antagonistic, a position that has been maintained strongly since the final Model was released.

The fundamental position of this paper is that these proposals are misguided at a fundamental level and at a practical level, at least as they apply to Queensland. Indeed, possibly, even having a Development Assessment Forum is misguided, because it leads to a mind set which inappropriately separates plan-making and policy-making, from decision-making about development proposals. Whilst it is acceptable and even convenient and useful at times to make such a distinction, it is dangerous to move too far without re-connecting the two, and recognising their strong symbiotic relationship. The DAF is not only implicitly based on a presumption that one could discuss issues that were purely related to development assessment, but it clearly has gone down a path where it has attempted to quarantine the development assessment process from the involvement of political representatives, who are elected by local

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<sup>1</sup> See Development Assessment Forum (2005) "A Leading Practice Model for Development Assessment in Australia", especially Leading Practices One, Two and Eight (reproduced in Attachment 1)

communities to governance roles that include participation in managing change in the local environment.

## 2 Planning Theory

It is helpful, in understanding the role that politicians should play in the planning process, first to understand the nature of the planning process. It is a common mistake to over-state the importance of town plans and policies.

The body of theory that I have found particularly useful over the last thirty years or so, generally associated with what is known as the IOR School, has its foundations in theories of military planning. Important contributions have been made by Faludi (1973, 1987)<sup>2</sup>, Friend and Jessup (1969)<sup>3</sup> and Friend and Hickling (1987)<sup>4</sup>. In general, these ideas note that while it is important to have a broad strategy, in managing the development of the city, it is the operational decisions that are made in the short term which influence the course of the battle and thence, the outcome of the theatre of the war which the broad strategy is intended to address. These writers suggest there is a dangerous tendency in land use planning to over-emphasise the strategies prepared at the outset of and during the campaign, at the expense of making good, strategically inspired choices in the course of the day-to-day process of the battle.

As I stated in a paper that I presented to the 2004 QELA conference in Cairns:

*"plans are prepared on the basis of limited research, undertaken with necessarily limited resources. The planning agency has limited control over the activities of other actors in the development process, including other government agencies, and limited resources to implement the plan. Plans take a long time to implement, and during that time, values and circumstances change, so that the physical situation and ideas upon which the plan was based become out of date, reducing the relevance of the plan."*<sup>5</sup>

Along the same lines, in a paper delivered to the 2000 National Workshop of Planning Theory, I noted:

*"Fundamentally, plans are never good enough. The planners that prepared them have imperfect knowledge of all the relevant factors, including the way that the environment will perform in the future. At any rate, the plans are prepared with limited resources, and usually less than can be brought to bear on a problem at a time when an investment decision is nearer. Plans are based on assumptions about how decision-makers over whom the planner does not have control will behave in the future – even those decision-makers may not know, if they are consulted. Values about particular issues may change over time, leading to different perspectives as to how to balance those issues, when a development*

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<sup>2</sup> Faludi, A (1973) "Planning Theory", Pergamon, Oxford; Faludi A (1987) "A Decision-Centred View of Environmental Planning", Pergamon, Oxford.

<sup>3</sup> Friend, J. and Jessup, D. (1969) "Local Government and Strategic Choice", Tavistock, London

<sup>4</sup> Friend, J. and Hickling, A. (1987) "Planning Under Pressure: The Strategic Choice Approach", Pergamon, Oxford

<sup>5</sup> Humphreys, J. (2004) "How to Make Plans: A Preliminary Manifesto", Proceedings of the QELA Conference, Cairns 2004

*decision needs to be made. It is irrational to place too much weight on the value of plans.*

*That is not to say, however, that plans are not useful. Firstly, they provide a way of examining how a complex range of issues relate to each other, and therefore a better basis for making an operational decision than if that process has not been undertaken.*

*Secondly, the process of preparing plans involves consultation with the community and other stakeholders, including government agencies whose actions may not be fully under the control of the planning agency, and therefore represent a consensus, or at least an accepted balance of interests, that has been arrived at after a structured process. Accordingly, plans have a status as a common understanding, at a point, of how a future settlement pattern should be arranged, that should be set aside only with due regard to the possible adverse consequence of damaging stakeholder confidence.*

*Thirdly, plans have the potential to be visionary, and to show a desirable way forward, in relation to possibly a complex array of interacting issues. Plans may therefore become rallying points, serving as a basis for common understanding of a better future.*

*(However, when) dealing with plans, (one needs to) have regard to the limitations of the way that they were prepared. "Plans do not necessarily embody higher wisdom; they are mere aids for improving decisions by putting them in a wider context (Faludi, 1987, 216)"<sup>6</sup>*

The operational decision-making process about human settlements, which includes the development assessment process, is properly conceived as on an equal footing with the plan-making process, and in continual interaction with that process. Whereas early ideas about planning saw the development assessment process as a part of "implementing the plan", it is more properly conceived as part of an equal component of managing the urban environment. As Faludi has stated, "the very term implementation suggests a spurious *a priori* claim of plans that they should be followed!"<sup>7</sup>

This is all relevant to the proposals of the DAF, in that they presume that once plans or policies have been devised, then it is a merely technical process to determine how they should be implemented in a particular situation. If one conceives plan-making as an exercise riddled with uncertainty, and planning as a process where decisions are continually being made as to how best to facilitate optimal urban settlement outcomes, then a different approach is suggested.

The approach to decision making about development that is suggested under this model is that preconceived policies and plans may serve to inspire good decisions about development, but not necessarily in ways that will be clearly understood at the time that those policies and plans are prepared. Because of the limitations of plans and the way that they are drafted, and / or where they are set in time, it will often be necessary

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<sup>6</sup> Humphreys, J. (2000) "Planning as Strategic Choice", pp55-65 in Proceedings of the First RAPI National Workshop on Planning Theory, 56-57

<sup>7</sup> Faludi A (1987), op.cit., p216

to make further judgments about values and the way that different issues come together in a particular circumstance, at the time that a decision about development is required.

As a particular subset of that process, the capacity of developers and designers to interact with planners who understand the underpinnings of policy, to arrive at superior solutions, needs to be taken into account.

Again, Faludi has spoken of this:

“Plan as little as possible!

Plan as late as possible!

Where possible let others do your planning!

Plan operational decisions as far as possible”<sup>8</sup>

If one adheres to a belief that the planning system should be related to democratic representative government, then one logically therefore supports the involvement on elected politicians in decisions about development, not just policies and plans.

### **3 Queensland Planning Governance – IPA**

The structure of the Queensland planning system under the Integrated Planning Act implicitly recognises this structure of planning decision making. The Act recognises both plan-making and development assessment in Chapters Two and Three respectively. However, it does not convey a superior role to plans.

1. A developer may apply for “preliminary approval overriding the planning scheme.”<sup>9</sup>
2. The assessment manager may approve development that is inconsistent with the planning scheme, provided that it does not compromise the achievement of the desired environmental outcomes (which are invariably generally expressed) and there are sufficient planning reasons to justify the decision, despite the conflict.<sup>10</sup>

‘Twas ever thus, now and under the previous legislation.

One quibble, related to the theoretical discussion above: Chapter Two is titled “Planning”, as if the development assessment system is not. Development assessment is part of planning, and Chapter Two should be titled “Plan-Making”. Development assessment is properly conceived as making decisions about development having regard to long-term consequences – it is an essential part of ongoing planning activity, with strategic dimensions (albeit that often it is relatively straightforward and the strategic dimensions largely have been resolved).

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<sup>8</sup> Ibid, p.210

<sup>9</sup> Integrated Planning Act 1997, Section 3.1.6

<sup>10</sup> Ibid, Sections 3.5.13, 3.5.14, 3.5.14A

## **4 Queensland Planning Governance – Local / State Government**

Justifiable frustrations on the part of the development community about the involvement of local governments in decision-making about development applications arise primarily in locations where local governments are small, and therefore do not have a great scope to be involved in important planning decisions. In almost all states other than Queensland, local governments can be characterised as relatively powerless in relation to decisions about major developments, mechanisms being in place, frequently exercised, to divert major decisions to state departments who are used to and readily exercise powers to make decisions about major development. This is particularly the case in New South Wales, South Australia and Western Australia, where powerful state departments regularly make all important decisions about major development applications, as well as the planning of major growth areas. In New South Wales and Victoria, the state government often finds itself at loggerheads with relatively small and powerless local governments who find themselves representing local, parochial, NIMBY-based interests in the face of metro-wide strategies that are promoted by state agencies. In New South Wales, this has extended to the phenomenon of prominent local mayors being elected to state government seats as independents, to represent local interests against a State that is perceived to be hell-bent on pursuing broader interests to the perceived detriment of local communities. Metropolitan decision-making about future development has been polarised along fault lines between state and local government. The structure of governance has not been able to produce a satisfactory clearing house for resolving issues about the balance between broad scale and local issues.

In Queensland, the situation is different. Queensland accommodates the two largest local governments in Australia, Brisbane and Gold Coast, which account for approximately 40% of the state population. Additionally, last time I looked, ten of the twenty largest urban areas in Australia were in Queensland. The population is relatively decentralised. The history of government in Queensland, especially under the long National Party tenure, placed emphasis on local, dispersed power bases rather than centralised rule, in a way that is not evident in any of the other states.

With respect to planning, there has never been a powerful central planning agency, which understandably held sway on planning issues. Instead, the best planning was done in local government, led by Brisbane City, but complemented by a culture of innovation and independence in other local government planning.

Local governments historically had responsibility not only for planning, but also for water supply, sewerage, drainage, subdivision approval, most roads and local public transport. This made these local governments relatively well resourced and powerful. There has tended to be a culture of responsible local government, where local Councils had to take on a wide

range of responsibilities for managing the development of their local areas.

This pattern has been reinforced by recent amalgamations, notably in Gold Coast, Ipswich, Cairns and Mackay. Further amalgamations are now proposed, which hopefully will result in larger local governments in Bundaberg, Sunshine Coast, Townsville and Rockhampton, as well, no doubt, as in smaller rural areas, in terms of population. All of this will tend to consolidate power, responsibility and planning decision-making capacity in local governments. This, I consider, is a significant and singular strength of the Queensland system of governance.

## **5 SEQ Realities**

Another relevant feature of the current situation in Queensland, and in particular in South-East Queensland ("SEQ"), is its significant population growth. After years in the doldrums while hundreds of millions of dollars of valuable and scarce planning resources were expended on merely re-working the planning system documents and processes, with little additional substantial planning, the South East Queensland Regional Plan has now brought to everyone's attention the issues that are faced in dealing with this population growth. We are now at a point where local governments are responding to this challenge by preparing Local Growth Management Strategies. (Note, consistent with my comments above, that it has been delegated to local government, each to propose how it will deal with the challenge in its particular local area, rather than a top-down approach to resolving those issues in detail). Next, local planning instruments will be amended to reflect those strategies, first in general, presumably, and then in local plans for smaller areas. The planning context is changing rapidly, and we have the phenomenon of "plan lag", where local plans throughout SEQ do not reflect current thinking about how contemporary planning challenges are to be dealt with. Meanwhile, the economy is booming, and developers are responding to that situation with development proposals that reflect current and future opportunities rather than those which were prevalent when the current plans were prepared. Local governments are in effect being asked to make decisions on the run. Fortunately, most of those on the front have the capacities and planning cultures to approach those challenges with a reasonable degree of sophistication and responsibility. However, in many cases, they need to be able to make decisions about proposals that are not contemplated by their current planning instruments. That is, they are involved in important decisions about development, as much as about plans.

There simply is neither the time nor the resources to prepare all of the plans that are necessary to anticipate the challenges and provide detailed planning frameworks for many of the decisions that are required now.

In this context, if one adheres to a belief that the planning system should be related to democratic representative government, one must support a system where local government representatives are involved in making decisions about development, as well as about framing plans and policies.

## 6 Queensland Planning Governance – BCC Processes

In some respects, perhaps large local governments in Queensland in effect comply with the DAF model, because most decisions about development proposals are in fact delegated to expert assessment, within those organisations.

It is instructive to examine the way that development decisions are made in Brisbane City, Australia's largest local government.

First, when an application is received, it is classified according to its scale and the issues it raises. If it is a Type 4 application, then it will require a Council decision. These applications are assessed to be such by the Manager of Development Assessment, where necessary in consultation with the Chairman of the Urban Planning Committee. The rules are not stringent, but generally, such applications embrace those which are one or more of:

- Large scale;
- Significantly inconsistent with the relevant statutory planning instruments;
- Known to be controversial (including "the Courier Mail test"); and/or
- Having significant cost implications for Council.

The application is managed by the relevant Development Assessment team for the area. Senior DA Team officers have been given delegated powers to decide particular types of applications. The DA Team may seek advice from the City Planning Branch of the Urban Management Department, which includes Urban Renewal Brisbane, the successor to the Urban Renewal Task Force. It may also seek advice from internal agencies including the internal Urban Design section. It may seek advice from the Independent Design Advisory Panel. It may also seek advice from the Planning Guidance Committee, a sub-committee of the Council Establishment and Co-Ordination Committee ("E&C"), which comprises both senior politicians and Council Managers.

If the proposal is a Type 4, then it may go to the Urban Planning Committee, and then to the Council for a decision.

Every Councillor is made aware of all of the development applications in their area. They may request that a particular application goes to the Planning Guidance Committee.

This is a process which is highly evolved and which involves a mixture and balance between technical assessment and political participation. Most applications are dealt with technically. However, there is a system to allow local representatives to be involved in the decision-making process. The local representatives have avenues to become involved in decisions about development. However, in my experience, because the Council is so large,

and with such a broad span of responsibilities, the system does not generally allow for undue or inappropriate political parochial interference in decisions about development.

In my experience, on the contrary, the politicians often play a useful role in the development process in moderating the enthusiastic excesses of technical people!

For this reason, and having regard to my own experience in assisting developers to achieve their objectives (where consistent with my view of the public interest), I was astounded to find in a submission by UDIA (Qld) that 96% of respondents to a survey about the draft DAF model said that they favoured the separation of local politicians from decisions about development! They cannot be the developers that I deal with!

## **7 Beware of Process Zealots!**

There has been far too much emphasis on process reform in Queensland over the last decade. To what effect? Despite the last round of promises of a more simple and performance-based assessment system in 1997, one leading planning lawyer has stated that Queensland now has the most complex development assessment system in Australia.<sup>11</sup> I trust that the currently proposed amendments to the Integrated Planning Act will be at the margin, and not require too much further energy to come to terms with. The system will basically adjust to deal with the issues at hand. We have all been led a merry dance by the process zealots, and we need to get on with doing more, better forward planning and achieving better, more strategically inspired, more performance-based development assessment. The politicians have a role to play in all of this.

The key is in better resourced planning processes in large and capable, democratically responsive, planning agencies, in Queensland, primarily, local governments.

Solutions that may have some relevance for tiny South Australian local governments mostly preoccupied with garage extensions, should gain absolutely no traction in Queensland, even if we continue to listen to stakeholder concerns and strive to improve local government planning processes.

To the degree that change is warranted, it should take the shape of some further local government amalgamations that are designed to result in authorities that are more capable of making effective and efficient and responsible decisions about development, where appropriate with input from relevant state agencies.

## **8 Corruption in the Planning Process**

Perhaps some of what is behind the DAF proposals is influenced by thoughts about corruption in local government. If that is the case, the solution is to address corruption, not to change the system. In

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<sup>11</sup> Michael Walton, Deacons Breakfast Seminar, 22 November 2005

Queensland, the scale and operations of local government do not particularly lead to corrupt decisions about development. It is just as likely that there will be corruption at another level of government. At whatever level of government that decisions are made or influenced, developers will seek to have their way and use whatever means are thought to be available to them. Protection against corruption lies in systems to investigate and punish corrupt processes, and in a political culture that requires that that should be so. More transparent planning processes will tend to work in that direction. However, decisions about urban development that are going to warrant the support of the communities they affect require the involvement of democratically elected representatives.

## 9 Conclusions

In conclusion, with respect to the DAF proposals, to exclude local government from decision about particular development proposals:

- From a theoretical perspective, it is inappropriate to expect that policies and plans (to which politicians may contribute) will adequately and appropriately define the community's interest in urban development, such that the community's representatives can be excluded from development assessment processes, where it is often better understood how relevant contemporary planning issues come together in a particular situation – in principle, politicians should have the opportunity to be involved in development decisions as well;
- In Queensland there is a culture of large and responsible local planning governance, which tends to reduce small-mindedness and parochialism – this is important to remember before embracing solutions that may be more appropriate in other states, where local government is more dysfunctional and parochial;
- One reality of large responsible local government in an environment of rapid growth is that local politicians have neither the time nor the capacity to be involved in decisions about most minor and straightforward development applications. They must focus upon major decisions about development and about policy and plans. The small things they will naturally need to delegate to expert assessment within their organisations. However, leaving it to the local government to decide which decisions it will delegate will build responsibility and capacity, more than if that discretion is removed through some statutory or “top down” administrative mechanism.
- Rapid growth in SEQ requires decisions to be made about development in a context that is rapidly changing and where “plan lag” is prevalent rather than rare – if one adheres to a view that urban planning should be democratically responsive and responsible, then local politicians need to be involved in decisions about development, to the degree that they consider that is appropriate;

- I cannot see independent expert decision making panels, also suggested by DAF, as desirable either in a governance sense, or in terms of appropriate allocation of resources; and
- The Queensland appeals system which includes third party appeals I have found to provide an additional check on rogue behaviour by local governments.

Whilst it is appropriate to examine the systems whereby our urban areas are planned and managed, it is a flawed approach to separate development assessment from policy development, as is fundamental to the conception and workings of DAF. Whilst there are aspects of DA which are essentially straightforward and technical, proposing that DA is essentially able to be treated as a technical exercise has led to inappropriate recommendations. However, if they are going to be adopted somewhere, please not in Queensland!

## **ATTACHMENT 1: Extracts from Development Assessment Forum "A Leading Practice Model for Development Assessment in Australia"**

March 2005

Page 13: **"LEADING PRACTICE ONE: EFFECTIVE POLICY DEVELOPMENT  
Elected representatives should be responsible for the development of policies. This should be achieved through effective consultation with the community, professional officers and relevant experts"**

Page 14: **"LEADING PRACTICE TWO: OBJECTIVE RULES AND TESTS  
Development assessment requirements and criteria should be written as objective rules and tests that are clearly linked to stated policy intentions. Where such rules and tests are not possible, specific policy objectives and decisions guidelines should be provided"**

Page 25: **"LEADING PRACTICE EIGHT: PROFESSIONAL DETERMINATION FOR MOST APPLICATIONS  
Most development applications should be assessed and determined by professional staff or private sector experts. For those that are not, either:  
Option A – Local government may delegate DA determination power while retaining the ability to call-in any application for determination by Council.  
Option B – An expert panel determines the application.  
Ministers may have call-in powers for applications of state or territory significance provided criteria are documented and known in advance. "**