

Ref: 12.1.5

11 November 2004

Mr Jeremy Dawkins  
Chairman  
Western Australian Planning Commission  
Albert Facey House  
469 Wellington Street  
PERTH WA 6000

Dear Jeremy

**Draft Bushland policy for the Perth Metropolitan Region statement of planning policy 2.8 and Metropolitan Region Scheme Amendment No.1082/33 – Bush Forever and Related lands**

As the peak body representing the development industry in Western Australia, the Urban Development Institute of Australia (UDIA) values Western Australia's unique natural environment and appreciates the contribution of the state's native flora, fauna and ecosystems to our urban and non-urban landscapes. In this regard UDIA maintains a vital interest in the development of conservation policy by government, and has an ongoing practice of making contributions to conservation policy development.

On this basis we make the following key comments regarding Perth Metropolitan Region statement of planning policy 2.8 and Metropolitan Region Scheme Amendment No.1082/33 – Bush Forever and Related lands:

- UDIA does not believe that the reservation of small, fragmented areas of urban bushland is an effective mechanism to achieve real conservation outcomes.
- There is currently an imbalanced focus on bushland reservation in the metropolitan region which is being applied to the detriment of conservation in regional areas and the draft SPP and MRS Amendment will further increase this imbalance.
- The lack of effective management of Bush Forever reserves has limited the potential for effective conservation outcomes arising from the policy and without very substantial further funding for management this problem is likely to be exacerbated by proposed SPP 2.8 and MRS Bush Forever Amendment.
- Whilst this is a document which purports to be a planning outcome all reference to the assessments is heavily skewed to the environment. We believe that all planning policy should provide balanced consideration of social, economic and environmental issues and have as a primary focus an aim to ensure proper spatial land use outcomes.
- The existing Bush Forever process to date has been cumbersome and costly for land owners and the draft SPP does not resolve many of the serious problems for landowners that have been identified by UDIA.

- The draft SPP does not allow for the proper compensation of affected land owners or developers.
- The draft SPP and MRS Amendment will place very high, ongoing management costs on individual land owners for limited private and public benefit. We do not believe that this is acceptable.
- The proposed SPP does not adequately consider opportunities for bushland to be incorporated into Public Open Space and better add to the amenity of residential estates.
- The 'taking' of additional private land for a public purpose that is proposed in the SPP is legally questionable as it is above the 10% that is already provided by developers (as a minimum) free of cost for Public Open Space and which legal principle has established as the 'reasonable amount of land' that can be ceded by government from a private party at the time of subdivision.
- UDIA would not support the imposition of local biodiversity strategies which do not provide compensation to landowners at fair market value or which require landowners to pay for the management of bushland reserves.
- We request that opportunities further consultation and debate on conservation in urban areas and proper compensation for landowners prior to the finalisation of this policy.

UDIA suggests that government reconsider its current conservation policy focus on the preservation of urban bushland. We also call for a whole of government approach to resolving the issue of compensation for landowners impacted by planning and environmental policy, particularly in regards to conservation which we note is influenced by a wide range of government agencies in this state.

In this regard, we believe that the draft SPP and MRS Amendment requires redrafting to properly consider the need for balanced social, economic and environmental outcomes, to provide adequate opportunities for the fair and proper compensation of all impacted landowners and to ensure that there is adequate funding available for the long term effective management of all urban bushland reserves by government.

### **The Effectiveness of Urban Reserves**

The growth of Perth has placed pressure on the natural environment in and around the city and today only approximately 28% of the original extent of native vegetation on the Swan Coastal Plain remains. Although most of the vegetation complexes still exist, the majority are poorly represented on small, generally isolated remnants throughout the city. The long term viability of these areas as habitats for native species is limited by a number of factors, including, size, fragmentation, disturbance, pollution stress and the need for active management.

Research undertaken in the Perth metropolitan area shows that native species, particularly native fauna are disadvantaged in urban remnants, with few species of native mammal surviving the effects of long term fragmentation. This suggests that these types of reserves do not contain adequate resources to support viable populations.

In addition, a study of mammals, passerine birds and lizards in native vegetation reserves in Western Australia, found that some species are only found in undisturbed reserves, while others also occupied fields and roadsides. The study found that as a parcel of habitat becomes smaller, it contains disproportionately more species characteristic of disturbed habitats. Small remnants were found to be primarily effective in conserving reptile species, but only where there is active management to exclude fire and predation.

Pollution stress has also been found to decrease the number of rare or moderately abundant species, decreasing species richness.

UDIA is therefore concerned that urban reserves have limited potential to achieve conservation outcomes which are sustainable in the long term in respect of protecting ecological processes, environmental quality, natural habitats and species diversity and abundance. UDIA's research leads to the conclusion that improved conservation outcomes would be achieved by focusing on the reservation of larger, less fragmented and less disturbed areas of native vegetation located outside urban areas.

### **Imbalanced Focus on Conservation in Urban Areas**

The Perth Metropolitan Region is located within the Swan Coastal Plain Bioregion, province SWA2. According to the Department of Conservation and Land Management, 11.15% of the area is currently within formal reserves. This will increase to 13.31% following the inclusion of old growth forest policy areas.

This level of reservation is substantially higher than the current average level of reservation for provinces in the state (6.6%) and is a greater level of reservation than is provided in 67% of bioregional provinces in Western Australia. It is also a significantly higher level of reservation than is currently provided in areas of greater species diversity than the Swan Coastal Plain. For example just 1.62% and 1.52% of the provinces in the Avon Wheatbelt Bioregion are currently in reserves, despite the region having among the greatest species richness in Australia.

In this regard we question the imbalanced focus of the current and preceding government on conservation in urban areas, which can achieve limited conservation outcomes at best, while conservation in regional areas, where there are opportunities to achieve high quality conservation outcomes, is being substantially neglected.

### **Proper Management of Bushland Sites**

One of the primary concerns of UDIA developer members regarding the current Bush Forever process is that sites are not being properly managed by either state or local government after they have been surrendered by land owners.

UDIA has received ongoing complaints regarding that the lack of effective management of bushland areas leading to the sites becoming illegal rubbish dumps, being susceptible to vandalism and fire, suffering serious problems with weed invasion and being unusable for recreation and achieving no or severely limited conservation outcomes. This type of mismanagement can have negative impacts on the surrounding community.

The implementation of local biodiversity strategies as proposed in draft SPP 2.8 will lead to the identification of even more bushland sites which require ongoing management and will exacerbate this problem.

UDIA believes that if sites have been recognised for protection there is a need to ensure that adequate funds are available to enable their proper management.

### **Achieving Balanced Outcomes**

UDIA believes that the proposed SPP and MRS Amendment provide an excellent opportunity to provide for the balanced assessment of new proposals against economic, social and environmental outcomes.

In this regard, we believe that the WAPC as a planning agency is best placed to ensure a balanced outcome in regards to environmental issues.

One of our primary concerns with the draft SPP and proposed MRS amendment is that whilst this is a document which purports to be a planning outcome - all reference to the assessments is heavily skewed to the environment. For example in SPP No2.8 in Schedule No 1 outlines a planning assessment process for NPS is totally dominated by environmental criteria despite previous wordage about balanced outcomes and triple bottom line. We believe that it is entirely inappropriate for a Planning document to pay such scant regard to other land issues such as;

- Location of the site and proximity to infrastructure
- The suite of other planning policies in operation
- Urban infill objectives
- Triple Bottom Line
- Zoning of the land in TPS and MRS
- Reasonable development expectations.

We therefore suggest that the policy is redrafted to provide for more balanced consideration of economic, social and environmental outcomes.

### **Overcoming Current Bush Forever Implementation Problems**

The existing Bush Forever process to date has been cumbersome and costly for land owners and we are disappointed that the draft SPP does not resolve many of the serious implementation problems for landowners that have been identified by UDIA and have been previously presented to the Western Australian Planning Commission.

UDIA has serious concerns that the Negotiated Planning Solution process will become even more difficult for landowners under the proposed SPP and that opportunities for true negotiated or balanced outcomes will be reduced through the implementation of the Negotiated Planning Solution Criteria, which as previously noted, are totally dominated by environmental outcomes.

A survey undertaken by UDIA in late 2002 identified a number of problems confronting developer members whose land was impacted by Bush Forever. This primarily related to the timeliness, simplicity and transparency of the negotiated planning solution process.

A summary of the findings of our member survey is provided below:

- Developers find the process extremely time consuming. 86% of respondents said that it had taken over 12 months to reach a negotiated planning solution for a site.
- 50% of respondents said that they find the process complex and requires developers to liaise with a wide range of stakeholders.
- Lack of a statutory framework for implementation.
- Significant uncertainty among developers regarding the application of Bush Forever principles and justification for the inclusion of an area in Bush Forever estate.
- Developers are uncertain about their rights in negotiation or what they are able to achieve through the negotiation process.
- There is virtually no advice provided on steps to be followed or the way forward to successfully negotiate or conclude outstanding issues.
- Officers are not able to make commitments. As a result, the negotiated outcomes are often changed by the final decision making body.
- Monetary compensation is not being offered in the negotiation process.

While a statutory framework has been favoured by industry to provide a clear and accountable framework for the implementation of Negotiated Planning Solutions we do not believe the proposed SPP will achieve this goal.

As such we urge the WAPC to further develop the Negotiated Planning Solution process to provide real opportunities for the compensation of land owners and developers impacted by Bush Forever and to achieve balanced planning outcomes.

In this regard we suggest that, as a minimum, the proposed SPP and MRS Amendment be amended to provide a statutory basis for Negotiated Planning Solutions which would include:

- Time limits must be set for negotiation of outcomes, agreement on value of land, payment of monetary compensation, and ratification of arrangements.
- Procedural steps in the negotiation process must be clearly identified and documented.
- Nominated flat rate/ha for land, which would remove some subjectiveness from negotiation.
- Clearly identified and communicated trade-offs open to developers to create justification for NPS outcomes.
- Greater opportunity for the application of POS credits for Bush Forever reservation.
- Improved processes and funding for the management of Bush Forever reserves after they are surrendered by landowners.

Furthermore it is evident that to be successful, Negotiated Planning Solutions require trade-offs and the DPI officers who are involved in the negotiation process would therefore need to have sufficient authority to reach a binding agreement.

In addition to these measures, we believe that there needs to be a comprehensive review of the monetary funding available to compensate landowners impacted by Bush Forever. We therefore urge the WAPC to review the funding requirements for Bush Forever to ensure more effective and efficient outcomes.

### **Fair Compensation for Impacted Landowners**

UDIA acknowledges that there are values derived from the preservation of urban bushland with conservation values and that there is strong community desire to preserve more bushland in urban areas.

However we strongly believe that if sites are to be protected for the benefit of all Western Australians, the cost of conservation should be equally borne by all and should not place an unfair or inequitable burden on individual landowners.

Despite this, it is clear that the wider community is reluctant to pay for these types of initiatives and we believe that unless mechanisms are found that provide for palatable community funding of conservation, government must recognise that community aspirations may not be realistic or implementable.

We note that one local authority recently surveyed rate payers and found that while 95% of people would like more bushland areas preserved, only 5% were willing to pay. UDIA recognises that this presents a fundamental problem for government, but we do not believe that this provides a right or mandate for state or local government to simply pass this cost on to individual land owners and companies.

UDIA, with the Real Estate Institute of Western Australia and the Property Council of Australia (WA Division) has formed the 'Coalition for Property Rights' and, fundamental to the aims of this group is to ensure proper compensation for all land owners whose land is 'sterilised' by planning policy.

Policies such as the existing WAPC Bush Forever policy and draft SPP 2.8 are key examples of policies that impact on the use and value of private land without providing appropriate avenues for compensation.

In this regard, we are concerned that the proposed SPP and MRS will legitimise the ability for the state government to undertake 'defacto acquisition' of private land for public purposes without providing any avenues for compensation and potentially imposing long term costs and uncertainty on individual land owners who will be forced to manage urban bushland for conservation purposes.

It has been suggested by UDIA Members that this type of 'defacto acquisition' may be unconstitutional and should be tested in the High or Supreme Courts.

In this regard there is legal opinion that the 'taking' of additional private land for a public purpose that is proposed in the SPP is legally questionable as it is above the 10% that is already provided by developers (as a minimum) free of cost for Public Open Space and which legal principle has established as the 'reasonable amount of land' that can be ceded by government from a private party at the time of subdivision.

There is also a legal view that this type of 'acquisition' could give rise to claims for compensation under common law, however it is our understanding that this would potentially require land owners to determine before the High or Supreme Court that the inclusion of private property within a Bush Forever Protection Area constitutes the taking of land (where the measures result in diminished economic value or constrain the use of the land) and therefore give rise to a right for compensation.

However, even if successful for property owners, this type of response would be very costly and time consuming for both land owners and for government. We believe that it would be far more effective for the State Government to develop a whole of government approach to resolving the issue of compensation for property owners impacted by planning and environmental policy before the SPP and MRS Amendment become law.

### **Management Cost to Land Owners and Local Authorities**

As well as the very high cost burden of the defacto acquisition of valuable urban land without compensation, UDIA has serious concerns that the policy will place significant ongoing cost burdens on small landowners who have a BFPA on their site which is earmarked for 'private conservation'. Furthermore, we have serious concerns that the development of local biodiversity strategies will increase the cost burden on landowners for the preservation of sites that do not have recognised scientific conservation values.

Research statistics compiled by consultants BSD and provided to UDIA show that the cost of managing urban bushland reserves is extremely high. For example, statistics from 3 major Perth local authorities show that, on average, it costs \$1,000 per hectare per year to manage urban bushland reserves. This provides for basic management, such as weed control, labour and some revegetation. Furthermore, current evidence shows that the cost of management of urban reserves increases as the size of the reserve decreases.

It would be completely unreasonable to expect an individual land owner to bear these types of costs for a public benefit (however, if these sites remain in private ownership and therefore outside public access, the level of benefit obtained by the public would be very limited). Despite this, it is evident that without at least some basic level of management urban bushland reserves do not retain any scientific value.

This clearly begs the question as to how local authorities will pay for the ongoing management of any sites identified within local strategies.

UDIA will strongly resist any requirements through local biodiversity strategies for individual landowners to pay for the preservation and/or maintenance of local bushland without access to fair compensation.

### **Conflicting Goals of Urban Consolidation vs Urban Bushland Preservation**

There has recently been extensive debate about the future growth patterns of our city and the need to reduce urban sprawl by better consolidating urban growth within existing urban areas. It is recognised by the State Government that in order to achieve this there will need for significant infill development.

UDIA has concerns that the ever increasing focus of reserving urban bushland is in direct contradiction with the strategic direction of more consolidated growth patterns in Perth as advocated by the Network City Strategy.

As previously outlined UDIA believes that as planning agencies the WAPC as well as individual local authorities have a responsibility to consider the economic and social impacts of the proposed policy as well as the potential impact that such policies will have on the spatial development of the metropolitan region.

### **Consultation with Industry and Landowners**

UDIA is concerned that the proposed policy will provide a basis for both BFPA sites and for sites identified by local biodiversity strategies to be reserved at the cost of the individual landowner without the opportunity for broad consultation with either industry or landowners.

Whilst we thank the WAPC for the opportunity to provide comment on the proposal, we believe that, considering the potential for far reaching impacts, not only on landowners with identified BFPA sites on their land, but potentially on a very large number of property owners whose land could be identified by local biodiversity strategies, there is a need for increased public consultation and debate regarding compensation and funding for compensation on the policy.

In particular, we strongly believe that, if local biodiversity strategies are to be prepared by local authorities, clear guidance should be provided by the state government to ensure that the methodology for preparing the strategies is technically veracious and scientifically valid and industry and local landowners should have the opportunity to participate in determining this methodology.

We acknowledge that the Western Australian Local Government Association (WALGA) has prepared guidelines for the preparation of biodiversity strategies, however there has been no formal opportunity for industry or the community to provide input into or comment on the guidelines prior to implementation. We believe that proper consultation is absolutely necessary for such an important document if it is to form the basis for the preparation of local biodiversity strategies and that the WAPC should be the lead agency in this process.

Thank you for the opportunity to provide comment on draft SPP 2.8 and proposed MRS Amendment No.1082/33 – Bush Forever and Related Lands. Please contact me on 9321 1101 if you would like to discuss any of the issues identified above.

Yours sincerely

**MARION FULKER**  
**Executive Director**