

20<sup>th</sup> May 2004

The Executive Director, Statutory Planning  
Department for Planning and Infrastructure  
Albert Facey House  
469-489 Wellington Street  
PERTH WA 6000

Dear Sir

**THE PLANNING AND DEVELOPMENT BILL AND PLANNING AND DEVELOPMENT (CONSEQUENTIAL PROVISIONS) BILL**

UDIA is the peak body representing the urban development industry in Western Australia. It is in this capacity that we make the following comments on the Planning and Development Bill and the Planning and Development (Consequential Provisions) Bill.

**1. Statements of Planning Policy (Clause 34,35)**

UDIA understands that the proposed amendments to s.5AA TPDA will have some potential benefits for the urban development industry on the basis that:

- It would provide for improved consistency between state and local government policy and statutory instruments.
- It would allow for a more transparent and rigorous formation/consultation process for State Planning Policies (SPPs).

It is our understanding that these provisions will not be used for the reservation of land, however we do have serious concerns about the impact that the amendment will have on issues of compensation.

UDIA seeks clarification regarding which authority will be responsible for compensating land owners impacted by changes to policy and schemes as a result of this amendment.

UDIA believes that it is imperative that the State Government is responsible for providing compensation for owners affected by the impacts of State Planning Policy and subsequent amendments to both regional and local planning schemes. We therefore seek clarification that this amendment will not introduce further opportunities for the State Government to

impose policy initiatives (such as Bush Forever) or inhibitive scheme provisions in local authority areas without providing any avenue for the fair compensation of affected land owners.

## **2. Region Schemes and Amendments (Clauses 47, 50, 59, 60, 129, 130)**

UDIA supports the proposed amendments to Clauses 47, 50, 59, 60, 129, 130 on the basis that they provide for greater transparency and efficiency in amending region schemes and the allowing for the subsequent automatic amendment to local government schemes.

## **3. Local Government Schemes and Amendments (Clauses 93, 95, 96, Schedule 7 and 4, 74)**

UDIA welcomes initiatives aimed at streamlining the process for reviewing local government town planning schemes and making this process more manageable for local government. On this basis we support the proposed amendments allowing for public submissions prior to the preparation of the Scheme Examination Report, continuation of the existing scheme where no changes are proposed and consolidation of an existing scheme but with the opportunity to include amendments which are advertised for public comment prior to gazettal.

## **4. Subdivision of Land**

UDIA welcomes the simplification of planning legislation as it relates to the subdivision process.

### **(Clause 142)**

*Amendment of s.20(5) TPDA*

UDIA supports the retention of the provisions of s.20(5) of the Town Planning and Development Act without modification. As stated in our previous submissions on the Consolidation Legislation, we believe that s.20 (5) is an important provision for developers and would not support the complete removal of this power from the WAPC.

However UDIA accepts that the amendments incorporated in the Planning and Development Bill 2004 provide a level of compromise on this issue and would accept the proposed amendments, however only on the basis that (as proposed) the Commission retains power to approve subdivision at variance to scheme provisions in the circumstances identified.

### **Clause 162**

The proposal to extend the provisions of s.20 TPDA to exempt all subdivision works from development approval under a region scheme or local government scheme is strongly supported by UDIA.

As outlined in our previous submissions to Government, we believe that this exemption should apply to all subdivision works and that, in this regard, it will be necessary in the drafting of the legislation and associated regulations to ensure that there is no ambiguity that all works necessary to achieve clearance of a subdivision are included.

UDIA understands that some local government authorities may have concern about the incorporation of this amendment in the Bill on the basis that they may lose some control over some works not detailed on subdivision plans, such as detailed engineering works (e.g. retaining walls and entry statements).

However UDIA believes that the incorporation of details of all engineering works on detailed engineering drawings provided to the local authority for the clearance of subdivision conditions will ensure that local authorities retain a suitable level of control over these types of subdivision works.

#### **Clause 140**

UDIA supports the removal of any requirement for WAPC approval for leases of either vacant land or buildings.

UDIA has previously submitted that there is no supportable rationale for the involvement of the Commission in the leasing of vacant land. It is our considered view that a lease of vacant land does not constitute a subdivision of the land parcel and, therefore, does not require the Commission's involvement in the approval process.

#### **Clause 153**

Ambulatory conditions enable a third party to determine the requirements which must be met in relation to some aspect of subdivisional works and require a developer to comply with those requirements before the third party will "clear" the condition. The difficulty such conditions create is that where disputes arise concerning the reasonableness of the third party's requirements for satisfaction of the condition, the appeal period may have elapsed, leaving a developer without any legal avenue for resolving the dispute.

Accordingly, the Institute opposes any legislative amendment which simply permits the imposition of ambulatory conditions.

#### **Clause 157**

UDIA would not support the amendment of s.20A TPDA to broaden the specified purposes for which land may be ceded free of cost on subdivision to include any land used for "any public purpose related to the subdivision".

Arguably, this would permit a condition requiring land to be ceded where the subdivision itself did not itself give rise to the public need sought to be addressed by the condition. In other words, the ability to impose conditions for a public purpose would permit the opportunistic acquisition of land. If there is to be an extension of the power to require land to be ceded, expressed in general terms, it should be limited to circumstances where it serves a planning purpose and relates to the subdivision on which it is imposed in the sense that it arises from some public infrastructure need created by the subdivision itself.

UDIA understands that the government no longer intends to incorporate this amendment on the basis that they are awaiting the outcome of a current appeal to the High Court related to this issue, however UDIA would like to register our objection to this proposed amendment on the basis that the state government already takes, without or without adequate compensation, substantial private owned land for purposes such as public open space and conservation and that this amendment would allow for further and potentially unfair or unjust impositions on the property rights of both large and small private land owners.

**Clause 160, 158, 159**

UDIA supports proposed amendments relating to the valuation of POS contribution, however, we believe that a provision enabling a developer to contribute 2% of the 10% POS requirement as a cash contribution towards the cost of developing the POS area, should also be included as a deemed right. This is consistent with current industry and Commission practices.

UDIA does not support cash-in-lieu of POS for 5 lots or less. While this is unlikely to impact on UDIA members it will add to the cost of development and the cost of land and housing in infill areas and is not justified on the basis that infill areas almost always have adequate public open space provision and (for example) a special rural subdivision would not justify cash-in-lieu.

**Clause 224**

UDIA supports the inclusion of enforcement provisions in respect to subdivisional works carried out without subdivision approval.

**Clause 149**

UDIA maintains the position that for pragmatic reasons, the term for subdivision approval should be extended from three to five years as it is the industry's experience that the Department is encouraging the practice of application for whole of subdivision rather than staged subdivision approval. The choice of five years in this instance is also consistent with the five-yearly review of the Local Government Town Planning Scheme.

However, we recognise that the proposed extension to a four year period is a compromise on this issue and will go some way to meeting the concerns of industry on this issue.

**Clause 130**

UDIA seriously questions the need for the WAPC to require development approval at subdivision stage simply because the lot sizes are small. Globally lot sizes are reducing and the building industry is adjusting to designing for smaller lots. Currently many applicants lodge "clayton" DA's for Council approvals for dwellings on lots under 350m<sup>2</sup> - dwellings which future owners rarely build. This is a cost impost on both the applicants and the Councils who process these DA's. It can result in lengthy negotiations between a developer and a Council over a design which is never built and is a process then duplicated when the future owner lodges an application for what they actually want to build. The discretion should therefore be with Councils through provisions within Planning Schemes if desired to require development approval for houses on certain sized lots. In this way, the future home owner/builder can negotiate with the Council over the requirements for the dwelling that will actually be built on the lot. It is therefore recommended that the Model Scheme Text include such a provision. It is not considered appropriate that this matter be resolved at the subdivision application stage given that a developer is rarely the owner or the builder of the future dwelling.

**5. Organisation and Functions of the WAPC**

*Amend s.19 WAPC*

**Schedule 2, clause 6**

UDIA supports the amendment of this clause on the basis that it will provide opportunities for urban development industry representation on the Infrastructure Co-ordinating Committee.

UDIA believes that industry input and representation is integral to ensure the proper functioning of the Infrastructure Co-ordinating Committee.

## **6. General**

### **Part 11**

UDIA supports a more uniform approach to compensation. The proposed extension of the region planning scheme compensation provisions to local government schemes will in effect remove the minimum 6 month time limit on applying for compensation under a local government scheme. The removal of such a time limit is desirable.

### **Clause 258**

The industry supports the provision of a right of appeal against the decision of a local government on the characterisation of a landuse not listed under a town planning scheme. We believe that any discretionary decision by Local Government should be appellable. There have been past examples of Councils deliberately classifying uses inappropriately so as to make them prohibited uses under their Scheme thus denying applicants any appeal right. The fact that the City of Cockburn could, for example, classify a light industry as a noxious industry simply in response to community pressure not to allow the proponents any appeal right (which they would otherwise likely succeed in) is a case in point. It is tantamount to a denial of natural justice.

However we do not support the proposed inclusion of a third party appeal right and question the need for this on the basis that it would provide for a higher level of third party appeal rights than a rezoning or scheme amendment process and we do not believe that this is necessary or appropriate.

Once again the UDIA thanks the Western Australian Planning Commission for the opportunity to comment on the Bill and we trust our comments will be given due consideration and reflected in the final legislation.

Yours sincerely

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