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SPP 4.1 Review

Policy and Priority Initiatives

Department of Planning; Lands; and Heritage

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To whom it may concern

### **Draft State Planning Policy 4.1 Industrial Interface**

Thank you for the opportunity to provide feedback in relation to the Draft State Planning Policy (SPP) 4.1 Industrial Interface. The Urban Development Institute of Australia (UDIA) WA is the peak body representing the property development industry in Western Australia. UDIA is a membership organisation with members drawn from the residential, commercial and industrial property development sectors. UDIA members include both private and public sector organisations. Our industry represents approximately 12.3% of Western Australia's Gross State Product, contributing \$30.45 billion annually to the Western Australian economy and \$251.7 billion nationally. As well as helping to create sustainable and liveable communities, the industry employs a total of 228,500 Western Australians and over 2 million Australians across the country.

The Institute welcomes the release of the draft SPP and strongly supports the attempt to avoid potential land use conflicts between industrial development and sensitive land uses. UDIA supports the draft policy name change and the reason provided for this, which according to the FAQ document is *"to reflect the broader policy measures which extend beyond the application of statutory buffers... providing transitioning compatible zones, reserves and land uses between industry and sensitive land uses to avoid potential conflict."* However, contrary to this statement, beyond the title change, the draft policy retains an emphasis on protecting industrial development through statutory controls. Indeed the draft policy seeks to achieve this primarily through the application of statutory buffers rather than zoning controls.

Another primary concern is the clarity regarding the draft policy's objective of *'protecting existing and proposed industry'* a phrase which is repeated throughout the policy. This statement raises legitimate questions as to whether new industrial development will be required to establish statutory buffers/special control areas. Further, whilst the policy states that its provisions do not apply retrospectively to address or remove existing land use conflicts, the contracting policy requirement of *'protecting existing industry'* needs to be clarified so that the application of the policy and its intent are clear.

The Institute is concerned by the shift in the policy objectives and the outcomes it seeks which are to protect the interests of existing industry above all else. It is concerning that the stated objectives are to *"protect existing and proposed industry...from land uses that would adversely affect operations"*,

whilst the need to protect the community and environmentally sensitive areas from the adverse impacts of industrial development is not similarly identified. With this regard it is disappointing that the existing SPP's objective *"to recognise the interests of existing landowners within buffer areas who may be affected by residual emissions and risks"* is not included in the draft policy.

The draft policy's narrow focus on the protection of existing industrial development, whilst well intended, is likely to give rise to unintended consequences and impede new industrial development. The draft policy is very detailed, prescribing controls such as special control areas which leave little flexibility in managing development. For the majority of industrial development, the market is able to control the interface and separation distances effectively, while the application of further rigid controls and additional red tape may prevent this. Indeed the current planning reform team has already raised concerns about the number of zones and special control areas within the planning system. The draft policy should not be exacerbating an existing problem in this regard. Rather, it should look to existing conventional zones for transitional land uses as reflected elsewhere in the policy, e.g. Light Industrial.

The draft policy also fails to acknowledge the transient nature of most industrial development, particularly industry activity other than the very large, strategic and location dependent industries. The concept of co-location of industrial land uses is only relevant to certain industries (like heavy polluters), not all, therefore this concept should not be thought of in terms of broad industrial planning policy. Successful industrial areas are typically not reliant on a cluster of similar industries, rather they contain a diverse cross section of users to enable it to function successfully through different economic cycles. In addition, the draft policy should also recognise that we operate in a free market where industrial location decisions are based on a variety of considerations. Accordingly, the policy needs to provide greater flexibility in the provision of controls to better reflect market dynamics and the ability of the market to effectively self-regulate in most situations. Similarly, the Institute queries whether consideration has been given to expanding the policy scope beyond solely the management of the industrial interface to set out broader land use and development considerations regarding industrial uses? The draft policy's narrow focus on the industrial interface means that it has perhaps become overly bloated with matters that are addressed through other legislation such as the EP Act.

The draft policy also fails to recognise the role that emerging technologies can play in reducing emissions. This, together with policy's primary measure of 'providing statutory buffers around strategic sites and facilities of state significance', offers existing industrial operations a 'licence to pollute'. Greater emphasis should be placed on improving industrial operations and reducing separation distances to prevent the sterilisation of land to ensure that it is used efficiently.

## Recommendations

1. The draft policy takes a sequential approach to the management of the industrial interface with primacy given to providing transitioning compatible zones, reserves and land uses between industry and sensitive land uses to avoid potential conflict ahead of the application of statutory buffers.
2. The policy's narrow focus is broadened beyond protecting existing industrial interests, to better support new industrial development, protect the community and recognise the

interests of existing landowners within buffer areas who may be adversely affected by emissions and risks from industrial uses.

3. That greater flexibility is provided by the policy, with individual sites and industrial interfaces considered on a case by case basis to ensure the best possible planning outcomes are achieved based upon the particular circumstances of individual sites. The application of statutory controls should only be applied where positive outcomes cannot be achieved through zoning controls.
4. The policy gives greater recognition to improving industrial operations and seeking to reduce separation distances where feasible.

### ***Specific Comments and Recommendations***

#### ***3.1 Where this policy applies and 3.2 Policy exemptions***

This section states that the policy applies to “*planning decision-making for existing and proposed... land that may be impacted by existing and proposed industrial land uses and/or infrastructure facilities*”. This contradicts section 3.2 Policy Exemptions which states that “*the provisions of this policy do not apply retrospectively to address or remove existing land use conflicts*”. UDIA recommends that the application of the policy is clarified to remove ambiguity with it made clear that the policy does not apply to pre-existing industrial land uses.

It is also concerning that the policy applies to decision making concerning industrial land uses that may be permitted on land that is not zoned for industrial purposes. The Institute suggests that the policy measures ‘protecting’ industrial development should only apply to industrial development located on industrial zoned land. On non-industrial zoned land, the provisions of the EPA separation distances should provide adequate controls.

#### ***4 Policy objectives***

The draft policy’s objectives whilst well intended, are flawed by the protections for existing industrial interests above all else and the failure to include reference to existing sensitive land uses or to prevent new or expanded industrial operations from adversely impacting upon sensitive land uses. The Institute queries why reference is given to ‘existing or proposed industry’ but not ‘existing or proposed sensitive uses’.

UDIA strongly recommends that the draft policy’s objectives are revised to ensure the policy appropriately balances the needs of industrial and non-industrial land uses.

#### ***5 Policy Measures***

The Institute is concerned by section 5.1.1 which states that statutory buffers should be designated for a variety of ‘existing and proposed’ strategic industrial areas, including those of State significance which generate off-site impacts and those determined by the Minister on the advice of the WAPC. Given these powers, the Institute queries whether the WAPC has the necessary expertise to be able to make such recommendations to the Minister. The definition of State significance is limited, with

the draft policy offering no guidance about how this is determined, other than to state that these areas are determined by the WAPC. Without further clarity on this issue, genuine concerns exist that sites could be designated as State significant industrial areas without any proper due process, or public consultation taking place. 5 b) implies that all industries (which generate off-site impacts) should be located in a Strategic or General I zone. The reality is that most industries generate off-site impacts, the critical issue is the nature of the impact with consideration given to how it can be managed or mitigated over time, or ameliorated in some other way. The Institute suggests that 5 b) is revised to ensure it only captures those industries with off-site impacts that would adversely affect neighbouring uses other than industrial uses.

The Institute strongly recommends that a robust process is established for the designation of State significant industrial sites/infrastructure facilities with appropriate opportunities for public consultation to ensure that fair and transparent decisions are reached. Once designated, all strategic industrial areas and industrial sites of State significance should be readily identifiable, listed in an Appendix and made available on the Department's website.

Section 5.12 states that "*statutory buffers should take the form of special control areas, or similar.*" It is unclear what 'similar' means? Nevertheless, it is unclear why special control areas are necessary and that appropriate separation distances cannot be achieved through zoning controls. The application of special control areas adds significant complexity to statutory planning controls and is contrary to broader objectives of streamlining the planning system. As the intention of the application of special control areas appears to be to restrict development to compatible uses that are consistent with uses permitted by compatible zones, the requirement for a special control area is absolute and should be removed by the draft policy. Industry's experience is that the EP buffers which are based 'worse case' are overly onerous and do not consider mitigating factors that specific development may implement to mitigate off-site impacts. Once implemented, the removal or reduction of such buffers has been a laborious and difficult process, often taking many years to achieve.

The conflicting nature of the policy is demonstrated by 5.13 (a) ii) which states that land uses should not be considered in the statutory buffer if they have "*off-site impacts that may constrain the operations of the existing buffered Strategic Industries/Facility, or the future planned development/expansion of the Strategic Industrial Area and infrastructure facility of State significance.*" The Institute contends that rather than protecting existing industrial interests above all else, the purpose of the draft policy should be to encourage industrial development with off-site impacts to locate within designated strategic industrial sites. As such, the Institute recommends that clause 5.1.3 f) is strengthened and the inconsistent clause 5.13 a) ii) is removed.

Section 5.1.3 d) requires a notification to be placed on title for approved subdivision and development applications within defined buffer areas. Whilst section 165 of the Planning and Development Act (2005) allows the WA Planning Commission in determining subdivision proposals to place a notification on titles so land owners are "*aware of hazards or other factors seriously affecting the use or enjoyment of that land*", the Act does not include a similar provision relating to development applications. The draft policy also fails to provide guidance regarding the content of the notification.

Nevertheless, given that within the extent of a special control area, sensitive land uses are prohibited and approval can only be granted for compatible development proposals, it is queried whether the use or enjoyment of land for compatible uses is 'seriously affected'. In addition, given the transient nature of industrial development and advances in technology, the degree of an affect, (if any at all given the compatible use), is likely to change with time, requiring modifications to the notices given. Accordingly, the Institute recommends that the requirement to place a notification on the title is removed from the draft policy.

The concept of a number of transitional areas identified by Special Control Areas is cumbersome, particularly as off-site impacts are likely to vary over time as industrial/environmental technology improves or on site operations change. Therefore buffer definitions would need constant reassessment and possibly amendments.

5.1.4 a) states that the extent of statutory buffers should be determined by technical advice from the State Government. However, no reference is given to the separation distance requirements included in the EPA Guidelines. Similarly no reference is given to other land use planning considerations such as the provisions of the Local or Regional Planning Scheme and any other relevant plans, policies or strategies. Instead, b) iii, continues by stating that the strategic planning considerations regarding the extent of buffers include the State's strategic objectives for the strategic industrial area/ State significant infrastructure facility and/or the associated precinct. The failure to give adequate regard to the EPA's separation requirements is a key flaw that the policy should address.

The Institute recommends that the considerations for determining the extent of buffers are expanded to include all relevant land use planning considerations. The Institute also recommends that the strategic objectives for strategic industrial areas and State significant infrastructure facilities should be developed with appropriate public consultation and be publically available to assist industrial development proponents with site identification.

5.2.1 e) is confusing, it states that rural zoned land adjacent to strategic or general industry zones is considered compatible with off-site impacts where the impacts do not affect existing or proposed sensitive uses on rural land. The section then goes on to state that single dwellings on rural land are sensitive uses. Meanwhile, section 5.1.3 c) states that statutory buffers should not affect non-conforming use rights. As such, The Institute recommends that greater clarity is provided regarding the interface between rural and industry lands.

5.2.1 f) states that there is a presumption against zoning proposals that would result in the development of new sensitive land uses adjacent to general industry zones. For the purposes of consistency, the draft policy should also prevent new general industrial development from being located adjacent to sensitive land uses on rural land.

Section 5.2.2 b) and the statement "*Light Industry zones (or other non-industrial zones)*" is unclear implying that the light industry zones are not considered 'industrial zones'. It is also unrealistic to expect that industry will not generate any off-site impacts with this concept counterintuitive to the policy intent of protecting industrial from incompatible land uses. Industrial uses are permitted off-site impacts under various acts. The notion that industrial impacts within an industry zone should be

contained entirely on site is illogical, rather the policy should seek to ensure that any off site impacts are confined to the zone.

Section 5.2.2 g) and the reference to *“where the new or existing industrial land use/infrastructure facility is a Prescribed Premise”* should be made consistent with the EPA’s Separation Distances between Industrial and Sensitive Land Uses (2005) which only refers to ‘new individual industries’ only.

The requirements set out in section 5.2.2 g) ii need clarification about whether these apply to ‘sensitive land uses and/or zones’ particularly when consideration is given to the rural zone. The policy should be explicit about whether impact assessments are considered against the entire zone or to homes and other sensitive uses located within the zone.

The Institute suggests that it should also be made clear that an ‘infrastructure facility’ does not include a High Pressure Gas Pipeline. Whilst section 5.2.2 g) iii refers to ‘any off site risks’ it is important to recognise that the safety risk for the Dampier-Bunbury Gas Pipeline extends well outside of the typical easement that the pipeline sits within, the possibility of enabling the pipeline operator to argue that it should be protected by a statutory buffer and in doing so prohibit industrial expansion should not be supported.

## 6 Implementation

Section 6 states that *“Strategic planning documents and planning schemes should address land use conflict and not defer its resolution or management to subdivision approval or development assessment stage”*. This is contrary to section 6.2 which goes on to state that region schemes should identify ‘broad industrial zones’. No definition of ‘broad industrial’ is provided.

It is unclear why 6.2 d) states that the urban deferred zone is not appropriate for managing statutory buffers, as no reasons are given for this. Further, given that a range of ‘urban zone’ land uses are compatible with industrial development, such as light industrial and public open space, the Institute queries why the urban deferred zone is not an appropriate management tool? Furthermore, this statement gives no regard to any emissions from industry development which might be of a temporary nature? The Institute recommends that the policy be revised to include the ‘urban deferred zone’ as an appropriate tool for managing statutory buffers.

The purpose of local planning strategies according to the WAPC’s Local Planning Manual is to *“set out the local government’s objectives for future planning and development and includes a broad framework by which to pursue those objectives”*. This includes *“identifying the need for further studies or investigation within a local government area to address longer-term strategic planning and development issues.”* Given this purpose it is unclear why section 6.4 states that local planning strategies should undertake the very detailed tasks of identifying all prescribed premises, any designated statutory buffers for existing and proposed strategic industrial areas and other detailed requires set out section 6.4. UDIA recommends that in accordance with the requirements of the Local Planning Manual, Local Planning Strategies should focus on setting out the broad planning objectives for an area and not be required to identify site specific details which would be better addressed through the provisions of the local planning scheme.



Section 6.5 should also provide reference to the requirements of the Local Planning Scheme Regulations. 6.5 f) needs to provide clarification as to the intention of identifying “*land impacted by existing or proposed industrial land uses and infrastructure facilities, including high-pressure gas pipelines*”.

Section 6.9 states that local government may prepare local planning policies to ‘supplement or elaborate on measures associated with the implementation of this policy’. However the purpose of local planning policies is to provide guidance, they are required to be consistent with the provisions of the local planning scheme and therefore State Planning Policies. They should not supplement or elaborate on the provisions of the SPP and therefore this reference should be removed.

### *Definitions*

The definition of buffer provided by the policy is cumbersome and confusing. The inclusion of the definition of the extent of a buffer could give rise to unintended outcomes. This definition which states that “*the extent of a buffer comprises the potential off-site impacts of the land use*” means that the extent could be never ending, particularly when consideration is given to air pollution. The Institute recommends that the definition of the buffer is revised, simplified and better aligned with the intent of the policy which is to control development by preventing the development of incompatible land uses.

The definition of incompatible land uses, which includes “*land uses which attract a large number of people*”, creates confusion and contradicts the definition of compatible land uses. Car parks, public open space and light industry uses could all attract large numbers of people. As such, this reference should be removed. The definition of special control areas should be consistent with that contained in the Local Planning Scheme Regulations. The policy should also give recognition to other relevant considerations such as ‘time’ and hours of operation. Although some industry operates 24 hours a day, seven hours a week, many do not. If a ‘sensitive’ land use primarily operates at different times to the subject industry, is there a conflict? Recognition also needs to be given to the fact that not all impacts are the same, impacts might not be as much of a nuisance, such as light spill.

The Institute appreciates the Department’s efforts in engaging with the development industry on this issue. Should the Department require any assistance or further information regarding this matter, the UDIA would be delighted to assist. Please do not hesitate to contact Chris Green, Director of Policy and Research at [cgreen@udiawa.com.au](mailto:cgreen@udiawa.com.au) or 9215 3400.

Yours sincerely



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