

25th September 2020

West Australian Planning Commission
Locked Bag 2506
Perth WA 6001
Via email: planningreform@dplh.wa.gov.au

Dear Sir/Madam,

Proposed Amendments to the Planning and Development (Local Planning Schemes) Regulations 2015

Thank you for the opportunity to provide comment on the proposed amendments to Planning and Development (Local Planning Schemes) Regulations 2015.

The Urban Development Institute of Australia (UDIA) WA is the peak body representing the property development industry in Western Australia. UDIA is a membership-based 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 12.7% of Western Australia's Gross State Product, contributing \$31.7 billion annually to the Western Australian economy and \$264.98 billion nationally. As well as helping to create sustainable and liveable communities, the industry employs a total of 215,100 Western Australians and 2.044 million Australians across the country. Much of this spending of the development industry is in the provision of infrastructure that ensures that Perth is one of the most liveable cities in the world.

On behalf of our members and the broader industry, UDIA supports the proposed amendments to the LPS Regulations and the intent of the changes to remove unnecessary red tape, streamline the approvals process and improve consultation processes. The Institute commends the Department and WA Planning Commission for the prompt preparation of the proposed regulatory amendments which follow other significant planning reform measures, and in particular the amendments made to the Act in response to our current economic challenges.

Whilst supporting the proposed amendments, more can be done to improve the Regulations and satisfy the objectives that the amendments seek to achieve. UDIA is concerned that a number of key actions identified in the 'Action Plan for Planning Reform' that should be incorporated into the Regulations have not been included in the proposed amendments. In particular, actions such as the targeted reduction in timeframes for lower risk proposals, the introduction of a pre-lodgement advisory service, and a 10-business-day timeframe for additional information requests for single house applications are not included in the proposed Regulations.

Many of the reform initiatives contained in the Reform Action Plan have long been identified and included in previous rounds of planning reform. The failure to incorporate all relevant reforms in the proposed amendments raises legitimate concerns about the Government's commitment to adopting

these reform measures. Furthermore, the amendments introduce increased levels of risk and uncertainty regarding the status of structure plans.

The current challenges facing our State mean that cutting red tape, streamlining approvals and improving public consultation is more important than ever.

Risk-based assessment streams for Structure and precinct plans

Given the recent dramatic increase in development activity arising from the State and Federal Government building stimulus grants, the Institute is disappointed that the Planning Reform Action Plan's C4 and C6 actions which seek to establish a risk-based assessment stream for structure plans and structure plan amendments are not included in the proposed amendments. The Action Plan identified this as an early action, highlighting the *"need for streamlined scheme amendment processes to give effect to key provisions of a structure or activity centre plan."* Given the 'due regard' status of structure plans, the planning system should enable minor structure plan amendments, such as slight amendments to road alignments, or text changes to be adopted without any undue delay. The current process for such amendments is cumbersome and unnecessary slow, frequently taking up to 12 months to process. To remove unnecessary red tape and streamline the planning assessment process, UDIA encourages the adoption of a risk-based assessment stream for structure plans and structure plan amendments.

Increased levels of risk and uncertainty for approved structure plans

There are a number of inter-related clauses which deal with the ongoing operation of a structure plan. *Part 5, r.35A, Amendment to local planning scheme affecting area to which structure plan relates, Part 6, r.66 (3)(c) Recommendation regarding whether structure plan or local development plan under the scheme is satisfactory and Schedule 2 Deemed Provisions cl.28 Duration of Approval (Structure Plan)* are all interlinked and combine to undermine the certainty of development in a structure plan area.

There is currently no ability to appeal a scheme amendment, only an opportunity to provide a submission and currently no ability to lodge a right of review for revocation of a structure plan. This is contrary to orderly and proper planning.

As such, the proposed amendments will remove certainty and undermine long term decision making. This is of particular concern given the increase in community groups adverse to development attempting to initiate scheme amendments to stop or stymie projects despite such projects being located on land that has often long been identified for development purposes.

Lack of reporting and compliance with the Regulations and Local Planning Strategies

As UDIA has previously highlighted, many of the current failings of the existing land use planning framework are not as a result of failings of the system, but rather the failure to fully apply, implement and execute statutory requirements. Much of this is fuelled by a lack of local government reporting, which in turn has led to a lack of evidence-based decision making. This is recognised by Action C10 of the Planning Reform Action Plan which stated that *"mandatory reporting of planning activity by local government and State Government planning authorities will be introduced."* UDIA suggests that the amendments to the Regulations provides the ideal opportunity to address this issue and introduce appropriate reporting requirements for both local governments and the WAPC. Adopting appropriate

reporting mechanisms on key aspects of the planning framework is essential and will enable issues and challenges to be more readily identified and addressed effectively. Reporting would also help to encourage best practice and support better knowledge and information sharing.

Alongside the current lack of reporting, there is limited compliance with key requirements of the regulations. Many local planning schemes are not contemporary and often significantly dated. For example, whilst Part 3 of the Regulations requires local government to prepare a local planning strategy for each local planning scheme, according to the WAPC's website only 16 of the 32 Metropolitan local governments have adopted a local planning strategy. The failure by local governments to prepare local planning strategies undermines the proposed introduction of requirements for local governments to prepare planning strategies in a form approved by the WAPC and the intent to elevate the status of planning strategies by giving regard to them when considering development applications.

As well as seeking to adopt measures that support the enforcement of existing requirements, greater support should be provided to local governments. For example, it is not clear if the Regulations enable local planning strategies to be prepared jointly between neighbouring local governments. The Institute suggests that joint-planning strategies should be encouraged, which would not only enable efficiencies to be achieved but also foster greater consistency and improved development outcomes. This would also be consistent with the Planning Reform Action, A1 which seeks to introduce arrangements for the WAPC to partner with local governments to prepare District Planning Strategies.

Specific Comments

Section	Issue	Recommendation
Part 5 Amending local planning scheme		
34. Terms Used	The definition of a 'basic amendment' is too narrow. To support the aims and objectives of the reforms, basic scheme amendments should also include concurrent local planning scheme amendments that are required to ensure local planning schemes remain consistent with region planning schemes. As public consultation is undertaken through the region scheme amendment process, there is no need to duplicate consultation. Under the existing arrangements, only changes to LPS maps are considered to be basic amendments and not text changes.	Amendments to local planning schemes including map and text changes triggered by region scheme amendments should be a basic amendment.
Basic Amendment	Whilst the MRA Act allows the Minister to amend a planning scheme, the MRA Act does not appear to allow the Minister to incorporate an underlying Development Contribution Scheme which is creating some problems.	The definition of "basic amendment" should also be extended to amendment that is consistent with an existing approved redevelopment scheme under the Metropolitan Redevelopment Authority Act 2011 (WA) or redevelopment area development contribution plan



Section	Issue	Recommendation
		approved under that scheme, where the area is to be normalised.
Part 6 — Review and consolidation of local planning schemes		
66. Report of review	The amendments (66.3.c) introduce a requirement that local governments ‘review of a local planning scheme reports’ include recommendations as to whether any structure plan or local development plan approved under the scheme is satisfactory, should be amended or revoked. It is assumed that the reference to revoking a structure plan is to ensure that structure plans are normalised into the planning scheme in a timely manner. However, UDIA is concerned that this clause may be misinterpreted as an opportunity to revoke structure plans without appropriate justification. This conflicts with and undermines the objectives planning reform action plan which set out to improve certainty.	UDIA suggests that 66.3.c.iii be removed, or alternatively amended to ‘revoked and normalised’ as part of a planning scheme.
Schedule 1 Model Provisions		
Definition of plot ratio & floor area	The model provisions define ‘plot ratio’ as <i>‘the ratio of the floor area of a building to an area of land within the boundaries of the lot or lots on which the building is located’</i> . Meanwhile, the Regulations state that ‘floor area has meaning given in the Building Code’, which in turn is defined as <i>‘the total area of all storeys...’</i> . As a result, basements which have no impact on building bulk or massing, are unintentionally included in plot ratio calculations.	The definition of plot ratio should exclude basements and features such as roof terraces which do not add to the bulk or massing of buildings.
Schedule 2 Deemed Provisions		
1. Terms Used ‘Heritage-protected place’	The current provisions allow internal works within a heritage place to be undertaken without approval so long as the place is not identified on a local government heritage list as having an interior with cultural heritage significance. The amendments reverse this with approval required if a place is on the local government heritage list, unless the list species the interior of the building as not being of cultural heritage significance. Therefore, this amendment, adds to, rather reduces red tape.	The new definition of "heritage-protected place" should be reconsidered to avoid any unintended consequences, particular in the context of internal building works.

Section	Issue	Recommendation
19. Consideration of Submissions	The WAPC is the statutory authority that determines structure plans, however cl.19 permits local governments to request further information and readvertise any modifications proposed to the structure plan to address issues raised in submissions.	Local governments do not have the power to require modification of a structure plan under the deemed provisions, therefore the ability to readvertise structure plans should rest solely with the WAPC.
22. (5) Decision of Commission	The 120 days for the WAPC to make a determination on a structure plan is excessive and should be reduced.	<p>UDIA suggests that 90 days is sufficient for the determination of structure plans and is consistent with the determination period for other planning proposals. It is notable that WAPC only requires 60 days to determine a planning strategy.</p> <p>Clarity is also needed on timeframes for instances where local governments do not provide reports on structure plans.</p>
47(b) When a local development plan may be prepared	<p>The proposed amendments modify clause 47(b) of the deemed provisions to allow a local planning policy to identify when a local development plan may be prepared.</p> <p>We strongly object to this modification.</p> <p>The other triggers for the preparation of a local development plan all have WAPC oversight – that is a local government cannot unilaterally declare a local development plan is required unless the WAPC has required it or agrees to the request.</p> <p>In our experience, local governments occasionally ask for or prepare local development plans on single development sites. The removal of WAPC oversight allows local governments to require local development plans in circumstances that might undermine the planning framework put in place by the WAPC. This is particularly so where local governments may not agree to detail in a planning scheme modified and approved by the Minister for Planning.</p>	The proposed modifications to clause 47(b) should not proceed.
64(3) Advertising arrangements for development applications	The identification and creation of special requirements for ‘complex applications’ is not supported. There are circumstances where an ‘A’ use or a use-not-listed is benign in and of itself and does not warrant extensive (200m) advertising, or sometimes any advertising at all.	Further consideration should be given to the advertising requirements. Ultimately, it should be left to the local government to define what types of applications warrant extended consultation based on the individual circumstances of the application.

Section	Issue	Recommendation
65A Local government may request additional information or material	UDIA fully supports the intent of the proposed amendment, however we are concerned about the potential for negative, unintended consequences to arise from this amendment. The amendment may lead to local governments refusing to accept applications unless all possible types of information and supporting documentation has been provided whether relevant or not.	UDIA recommends that ongoing monitoring of the impacts of this amendment is undertaken.
75(1) Determination timeframes for development applications	<p>We do not support the proposal to change the start of the 60 and 90 day assessment periods from the receipt date to the acceptance date. This would have the effect of extending the assessment period (and deemed-refusal dates) by up to 7 days – i.e. 67 or 97 days. The planning industry should work towards streamlining applications, not increasing timeframes.</p> <p>The statutory timeframe for DAP applications is based on the date the application is received. This approach has been successfully used in conjunction with stop-the-clock periods for which apply when an application is found to be deficient in information.</p>	The proposed modifications to clause 75(1) should not proceed.
77D(1) Cash in lieu requirements for parking	Clause 77D(1) should not apply to a change of use application where no additional floorspace is proposed. Requiring change of use applications to provide cash in lieu of parking is contrary to the intent of reducing costs for simple applications.	Clause 77D(1) should not proceed.
Other Issues not included		
Metropolitan Region Scheme Amendment	Currently, only the erection of a single house and a boundary fence are exempt from requiring approval under the MRS. Some local governments are overriding exemptions under the deemed provisions by invoking the MRS and requiring a development application to be submitted notwithstanding the development is exempt under the deemed provisions.	The MRS will need to be urgently amended to provide for exemptions for most developments (as is provided for by the Peel Region Scheme and Greater Bunbury Region Scheme).



Should the Department require any assistance or further information on the advice provided in this submission, the UDIA would be delighted to assist, please do hesitate to contact Chris Green, Director Policy and Research at cgreen@udiawa.com.au or 9215 3400.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tanya Steinbeck', written over a light blue horizontal line.

Tanya Steinbeck
Chief Executive Officer