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## PLANNING SCHEME REGULATIONS FOR EPA REFERRALS

Thank you for the opportunity to respond on the consultation draft of the planning regulations and discussion paper regarding the referral of new or amended planning schemes for assessment by the Western Australian Environmental Protection Authority (EPA).

The Urban Development Institute of Australia (UDIA) WA is the peak body representing the property development industry in WA, and is a membership organisation with members from the residential, commercial and industrial property development sectors. UDIA WA members include both private and public sector organisations.

As an overarching comment, the intent to **streamline the EPA's assessment activities 'to focus on matters that will have the greatest impacts on the environment' and 'facilitate a more efficient decision-making process for proponents'** is certainly supported. Aligned with this, we are also broadly supportive of the proposed changes to the Regulations. However, with environmental assessments and approvals being a major constraint for industry currently, we feel what is currently proposed in terms of amendments not requiring referral to the EPA is too limited.

There are other meaningful changes that could be made to the Regulations to further support achievement of these objectives. This includes further consideration of mechanisms to facilitate the streamlining of straightforward rezonings from a Metropolitan Region Scheme (MRS) and Local Planning Scheme (LPS) perspective and of previously developed land with little or no environmental value. This would better support sustainable population growth and a more compact and connected city aligned with Government endorsed strategies and policies.

Further, while the subject of the current consultation is a step in the right direction it does not go far enough, with the bigger issue associated with the lack of a strategic approach to environmental assessment and decision-making still having significant implications.

Not only is the lack of a strategic approach causing significant issues for our industry, but it is adversely impacting the efficiency and effectiveness of the EPA and hinders achievement of Perth and Peel @ 3.5 million and the sub-regional planning frameworks. These are not just the WAPC and Department of Planning, Lands and Heritage's strategic documents, they are adopted government strategic frameworks requiring a whole of government response in balancing the needs of a growing population while protecting our environment to safeguard our future.

Based on Perth and Peel @ 3.5 million, around 800,000 new homes are needed. UDIA's 2022 State of the Land Report highlights that Perth's new home market trended down across key metrics (e.g., annual completions, annual sales, and approvals) last year for greenfield and multi-unit developments. For house approvals, we saw a 37% reduction. UDIA's modelling forecasts of new dwelling supply indicate that completions will continuously trend down below the long-term average (11,200) over the coming three years.

To ensure sustainable economic growth and enhanced liveability, while not compromising affordability, all levels of government and industry must work collaboratively to deliver diverse and affordable housing. This must include further streamlining regulatory and approvals processes.

Our submission therefore highlights:

- The significant challenges being experienced by the urban development industry in providing crucial housing supply because of the current piecemeal and highly conservative approach to environmental assessments and approvals;
- The importance of establishing a strategic, planning-led approach to environmental decision-making; and
- Recommendations relating to the currently proposed regulatory changes.

Our response should also be considered in the context of the EPA's cost recovery scheme. It should be borne in mind that industry support for cost recovery was on the basis that there would be an associated improvement in service provision and assessment timeframes. Based on industry feedback, this does not seem to be the case currently, with proponents paying for a level of service they are not necessarily receiving. As revenue is being derived from urban development and associated infrastructure referrals, it should be channelled back into appropriately resourcing such assessments and it is important there is appropriate transparency around the expenditure of funds.

### **Current challenges and implications for housing supply**

As has been raised with the EPA Chair and Director General of DWER on several occasions, environmental assessments and approvals present a major challenge for our industry, and thus for ensuring adequate provision of crucial, diverse supply across the housing continuum to support our growing population.

As noted in our letter to the EPA Chair dated 30 November 2022, the experiences of UDIA WA members were canvassed to understand the scale of the challenges regarding S.38 and S.48 referrals. This member engagement confirmed that lack of coordination of internal referrals and across EPA / DWER, DBCA, WAPC / DPLH, challenges with engaging with DWER/EPA and delays to assessments and approvals are commonly encountered challenges.



At that time, members who were engaged had 142 hectares of existing (MRS zoned) urban land currently undergoing environmental assessment – 82 hectares of which was designated for urban development, representing approximately:

- 2,000 lots;
- \$320 million of capital investment; and
- 1,600 jobs which could be created (640 direct full-time construction jobs and 960 indirect jobs in supporting industries).

There was also a further 300 hectares of potential future urban land, which at a conservative estimate could provide 4,000 additional lots.

Urban and urban deferred land is identified for urban purposes in the State endorsed strategies and is included in WAPC land supply calculations impacting lot supply and housing affordability. Further, State strategic and statutory frameworks feed into industry / market expectations of urban outcomes and there needs to be a balance of social, economic, and environmental considerations in decision-making.

For urban and urban deferred land, extensive and complex environmental assessments, significant process delays and uncertainty created by decision-making that does not recognise and reflect the need for balanced outcomes is unwarranted.

There have also been increasing expectations around offsets for sites where Native Vegetation Clearing Permits have been required, including in terms of the ratio and valuations on pricings. It is becoming increasingly difficult to find, assess and secure suitable offsets, straining the State's offset framework and impacting cost and delivery timeframes. Broadly speaking, the development industry goes above and beyond statutory obligations in the delivery of environmental excellence – for example, in relation to environmental rehabilitation, revegetation and delivery to the State of pristine environmental assets, protected in perpetuity. This is achieved both through project outcomes / deliverables and contributions to the Metropolitan Region Improvement Fund. It is important to acknowledge this in seeking balanced outcomes.

If things continue as they are, the significant impact on the development industry and provision of crucial housing supply will be detrimental for the broader community.

### **Current and future land supply constraints**

To collaboratively establish a shared understanding and robust picture of the state of play of land availability and readiness for residential development across Australia's major housing markets over the next 10 years, UDIA initiated the Development Ready Pipeline project.

The Perth and Peel pilot has included comprehensive spatial analysis (referred to as sieve mapping) to understand the current stock of unconstrained, developable land within undeveloped urban and urban deferred zoned areas, as well as potential future urban land<sup>1</sup>, as well as a developer intention survey and stakeholder workshop.

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<sup>1</sup> GIS sieve mapping involved 17 layers, 14 of which are fundamental constraints.

We are continuing to test and further refine the analysis, including through engagement with DPLH, but to date, the pilot has revealed that:

- **24% of undeveloped urban zoned land** is identified as being '**fundamentally constrained**'<sup>2</sup>, effectively sterilised from future development.
- A **further 18% of all potential future urban land** (e.g. planning investigation areas and urban deferred land), is identified as **fundamentally constrained**.
- Combined, this 'fundamentally constrained' land equates to **between 150,000 to 200,000 potential new homes that cannot be realised**<sup>3</sup>.
- A **further 20%** of other undeveloped urban zoned and potential future urban land has **other types of constraints**<sup>4</sup>, which will prove challenging for the timely delivery of new homes. This will be exacerbated by fragmented land ownership, lack of service agency commitment or funding allocation for required infrastructure.

From an environmental perspective specifically:

- Wetlands, Creeks and Waterways, Floodways, Bush Forever and EPPs were designated in the sieve mapping as fundamental constraints to development.
- Collectively, these **fundamental environmental constraints impact around 3,445 hectares of undeveloped urban zoned and potential future urban land** in Perth and Peel (2,000 hectares of undeveloped urban zoned and urban deferred zoned land, and an additional 1,445 hectares of potential future urban land).
- This equates to the **approximate loss of a conservative estimate of between 47,000 and 63,000 new homes** across urban zoned and potential future urban zoned areas.
- There are also substantial proportions of other urban zoned and potential future urban areas where development potential and delivery timeframes may be uncertain and impacted by other environmental constraints. In the sieve mapping TECs were confined to Remnant Tuart and Banksia Woodland areas and defined as a constraint rather than fundamental constraint. We are currently continuing this analysis to understand the scale and potential implications of such environmental constraints.

It is crucial that constraints on undeveloped urban zoned and potential future urban land are successfully addressed where feasible, and infrastructure delivery aligns with development pipeline intentions to deliver much needed homes in these areas.

Lack of strategic coordination across and between approval agencies and the need for greater certainty around environmental requirements and approvals were identified as key issues impacting future residential development.

The sieve mapping process also highlighted the clear issue caused by the insufficient spatial information and lack of a strategic framework in understanding the nature and extent of environmental constraints, informing decision making and providing greater certainty around where future development can be accommodated.

<sup>2</sup> The fundamental constraints identified are primarily in relation to environmental or infrastructure constraints, including Bush Forever sites, floodways, school sites, rail corridors, service infrastructure easements and major roads.

<sup>3</sup> Based on scenarios of 15 and 20 dwellings per hectare, which is considered conservative.

<sup>4</sup> Such as Threatened Ecological Communities or State Forest.

## A strategic, planning-led approach to environmental decision-making

With land identified for urban development by the State Government becoming increasingly constrained by a range of environmental considerations, lowering environmental assessment thresholds and increasing weight being placed on third party concerns which are not always of direct relevance, certainty of development outcomes is rapidly diminishing. Meanwhile, the piecemeal assessment of individual land use and development proposals provides little certainty of environmental outcomes and prevents opportunities for holistic environmental management responses.

The aim of the Strategic Assessment of the Perth and Peel Regions (SAPPR) was to accommodate population growth and protect our environment. With the State Government abandoning the SAPPR in December 2022, there remains an urgent need for an improved strategic and planning-led approach to environmental decision making.

The recommendations coming out of the Department of Water and Environmental Regulation (DWER) Agency Capability Review, aligned with Streamline WA, are a welcomed start to support greater collaboration and integration between the WAPC, DPLH, EPA and DWER. However, it will be essential for State Government to work collaboratively with industry on a fit-for-purpose solution to streamline assessment and approval processes and provide greater certainty, appropriately balancing environmental considerations and land use objectives. This must also align with work around the establishment of a Federal Environmental Protection Agency and the environmental offsets reform.

### Recommendation:

- DWER must engage with industry as a matter of urgency in scoping the alternative to the SAPPR to ensure it is fit-for-purpose, supports the objectives of allowing the EPA to focus on matters that will have the greatest environmental impact and facilitates the provision of crucial housing supply.

## Changes to the Regulations

Overall, aligned with the objectives, we support the intent of the changes to the Regulations. However, while we feel the changes could deliver some efficiencies through reducing the amount of the 'lesser' amendment referrals and allowing the EPA to channel increased resourcing to deal with more complex matters, the current definition of what would not require referral is too limited.

We would like to make the following **comments and recommendations** to further support the objectives and facilitate the provision of diverse supply across the housing continuum, while still protecting our environment:

- The current definition of 'minor amendment' in the Regulations does not align with the minor and basic amendment definitions in planning legislation. However, it is appreciated that aligning both would require significant rewording of the Regulations for both and there are elements listed under 'basic' in the *Planning and Development (Local Planning Scheme) Regulations 2015* (P&D Regulations) that would justify referral to the EPA. With the Regulations as written capturing the 'error' aspect of a basic amendment and explicitly listing other elements which would not require referral in Reg 43C, we are comfortable with the approach taken.

- In relation to Development Contribution Plans, the current wording in Reg 43C(l) allows for the setting up of DCPs. It is agreed that while these are 'complex' amendments under P&D Regulations, they do not warrant referral to the EPA. There would be benefit in expanding this definition to also allow for spatial, scope and timing changes to existing and extended DCPs, as well as including their rescinding once they have come to their end of life.
- In the interest of achieving the overall objective of freeing up capacity within EPA to focus on matters of greatest environmental significance, a further meaningful change would be options for some rezonings to be streamlined from a MRS and LPS / TPS (Town Planning Scheme) perspective. Ideally, this could be some form of mechanism for straightforward rezonings to not require a LPS/TPS amendment to be referred to the EPA. This could potentially be achieved by:
  - the inclusion of a provision that allows for LPS amendments to not require referral, on the advice of the EPA Chair. This could be used where land has recently been rezoned in the MRS and at that time the EPA acknowledges that the site has little or no environmental value. The EPA Chair could then advise the WAPC via the MRS amendment phase that the subsequent LPS amendment need not be referred; or
  - expanding and/or including a provision that provides for a site that has been the subject of a zone/reserve in a LPS that supports development, and which has been significantly developed / disturbed, so a LPS amendment to rezone the site for another development outcome need not be referred. Examples could include the redevelopment of formal school sites from educational local reserve to a development zone, or a commercial zone that was a shopping centre or car park to a residential zone for instance.
- Related to the point above, further considering the exemption of rezoning of already developed sites, which are likely to have little or no environmental value, will help support government strategies and policies by facilitating infill development, including associated with Metronet. Regulation 43C(h)(i) should be refined and expanded to remove the limitation of a building and provide for this land use change. Where land is already zoned (or reserved) for development, has been developed for that purpose but is simply being rezoned in the LPS to allow for another use, it would be justifiable for this not to be referred to the EPA.
- The term 'environmental values' is used in the Regulations. The use of this term and its ambiguity is of concern as there is no definition in the Regulations. It is noted there is a broad definition of the term in the *Environmental Protection Act 1986*, but it would be beneficial to have greater definition within the Regulations, providing further refinement of the Act definition.
- It is understood the Regulations are proposed to be reviewed 18 months after gazettal to determine if they are working as intended. This review should consider the effectiveness of the changes in achieving the desired objectives (both in terms of efficiencies for the EPA and proponents, taking both views into account), and the value of inclusion of other amendments for exemption which will drive further benefit. There may also be value in doing this initial review after 12 months.
- To assist both government and industry in interpreting the Regulations, there would be value in DWER running briefings / workshops and producing a 'Fact Sheet'.

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We would welcome further engagement with DWER/EPA and DPLH/WAPC on the content of our submission. In response to the issues our members are experiencing, we have established a Working Group as a sub-group to our Environment Committee to identify potential EIA process enhancements and reforms to address identified industry pain points and support the timely provision of crucial housing supply. This Working Group could provide a valuable engagement forum, particularly for the work being undertaken around scoping the proposed alternative to the SAPPR.

Thank you again for the opportunity to provide feedback to the planning reforms. Should you require further information or wish to discuss this please contact Sarah Macaulay, Executive Director – Strategy and Policy at [smacaulay@udiawa.com.au](mailto:smacaulay@udiawa.com.au) or 9215 3404.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tanya Steinbeck', is placed over a light grey rectangular background.

Tanya Steinbeck  
**Chief Executive Officer**