



27 March 2023

Reform Delivery
Reform, Design and State Assessment
Department of Planning, Lands and Heritage
140 William Street
Perth, WA 6000
planningreform@dplh.wa.gov.au

USE AND APPLICATION OF DISCRETION ON DEVELOPMENT APPLICATIONS

Thank you for the opportunity to provide feedback on the reform project regarding the use and application of discretion in the context of development applications assessed and determined under Local Planning Schemes (LPS).

The Urban Development Institute of Australia (UDIA) WA is the peak body representing the property development industry in Western Australia, 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.

UDIA WA is generally supportive of the direction being taken and the draft recommendations. It is acknowledged that when applied appropriately, with a robust and transparent rationale, the ability for discretion in the planning system can help in achieving good urban development outcomes. However, it can also hinder this and the timely provision of crucial, diverse housing supply and delivery of supporting amenities which help create communities. Any additional clarity and standardisation that can be provided to improve consistency in decision-making under LPS's and enhance community and stakeholder confidence in the decision-making process for complex development proposals, is welcomed by our members.

Nevertheless, we wish to be kept informed as the process progresses and engaged further on the drafted amendments to the *Planning and Development (Local Planning Schemes) Regulations 2015*, as well as the detailed guidelines that we understand will be prepared. The details in the latter, which we appreciate will reflect the guiding principles in Appendix B of the Recommendations Report, will be important in providing guidance for assessing officers and decision-makers to ensure effective implementation of the regulatory changes.

We would also like to make a couple of comments at this stage:

- We agree there would certainly be benefit in providing some additional clarity around the meaning of 'due regard'. We appreciate this and any potential inclusion of a definition within the Regulations would need to consider case law and established practice.
- Better defining subjective terms that often arise, such as 'seriously entertained' and 'significantly progressed', may provide better service and more clearly define the scope of appropriate use of discretion in decision making.
- It is unclear whether the scale of the problem is sufficient to warrant the changes necessary to consolidate 'fragmented references to relevant considerations throughout the LPS

Regulations'. Further, attempting to consolidate all relevant (and irrelevant) considerations which are viewed as universal reference points into Clause 67 may be challenging to achieve. Clause 34 of Schedule 1 (Model Provision) is referenced as being separate from Clause 67 (Schedule 2) for a reason – because it provides area-specific standards. Arguably, this could also be extended to Clause 36 (Special Control Areas).

- Providing a mechanism to give clarity as to when discretion cannot be applied could be worthwhile as this is being done already in various ways currently. We agree a model provision standardising the approach makes sense, but it may not warrant a full schedule.
- Established prescribed forms for decision makers would be beneficial in helping to improve transparency. We note that how this presents is to be largely deferred to the future guidelines, and this is an example of where the content of the guidelines becomes particularly important for effective implementation.

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 or 9215 3404.

Yours sincerely,



Tanya Steinbeck
Chief Executive Officer