APPENDIX 11

ATTACHMENT 1

Department of
**Planning**

# Planning makes it happen: phase two

## Planning Reform Discussion Paper

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# Minister's message

Hon John Day, MLA
Minister for Planning

In the past decade Western Australia has been shaped by strong population and economic growth. The Government is committed to ensuring that this growth is supported by a planning system that continues to improve in its efficiency, effectiveness and responsiveness to the State's needs.

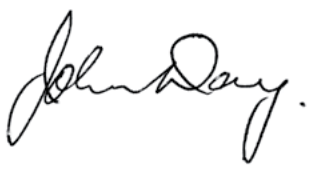
In September 2009, I launched *Planning Makes It Happen – a blueprint for planning reform* which set out the most comprehensive reform agenda for the Western Australian planning system since the establishment of the Metropolitan Region Scheme in 1963. The progressive implementation of these reform initiatives since 2009 has equipped the Government to better manage growth and ensure continuity of land supply, as well as implement essential urban infill targets.

The first phase of planning reform delivered the following key outcomes:

- a draft *State Planning Strategy*
- the *Directions 2031 and Beyond Strategy*
- an *Economic and Employment Lands Strategy*
- the *Multi-unit Housing Code*
- Development Assessment Panels
- a review of key WAPC policies
- delivery of the Urban Development Program Online
- Structure Plan Guidelines
- Model Subdivision Conditions
- the Section 76 process.

In pre-consultation workshops held with planning stakeholders to help define the scope of this Discussion Paper, three common objectives emerged – consistency, timeliness and responsiveness. This second phase of planning reform aims to address these key objectives, and continue the work of Phase One reforms to ensure a responsive and accountable land use planning system in Western Australia.

Government cannot reform the planning system alone – we need local government, the planning industry and the community to come along with us. With this in mind, I welcome your comments and views on the initiatives for planning reform outlined in this Discussion Paper, and look forward to creating an ever better planning system for Western Australia, together.



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# 1.0
# Introduction

The State Government launched its comprehensive reform program *Planning Makes it Happen: a blueprint for planning reform* in September 2009. Now substantially implemented, these first phase reform initiatives continue to improve the planning system in Western Australia.

This Discussion Paper, 'Phase Two Reform', has been initiated to identify further opportunities for improvements to the Western Australian planning system. For Phase Two Reform the primary focus is on statutory decision making processes and land use planning and supply. Other governance and administrative reforms have also been put forward for consideration.

The key aims of Phase Two Reform are to:

- embed best practice in the Western Australian planning system at both the State and local government level;
- ensure further streamlining of planning processes, aligning statutory outcomes with strategic frameworks;
- enable more integrated land use and infrastructure planning and support the timely release of development land in accordance with State Government policy objectives; and
- reinforce the State and regional strategic focus of the Western Australian Planning Commission, supported by the Department of Planning.

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# 2.0
# Reform context

## 2.1.
## Phase One reforms

*Planning makes it happen – a blueprint for planning reform* was launched in September 2009. Implementation of this suite of reforms included amendments to the *Planning and Development Act 2005*, undertaken in 2010, as well as the delivery of several other non-legislative reforms.

In February 2013, the Government released a *Report card for planning reform* to report on the achievements against *Planning makes it happen*, which identified that the Phase One initiatives have largely been implemented. The key Phase One achievements are outlined in the following table.

There is still work occurring to complete some of the Phase One initiatives, as identified in the Report Card. The Government has targeted a number of priority projects to be completed in relation to Phase One reforms, including the completion of the Model Scheme Text review, the Developer Contributions Policy review and the Strategic Environmental Assessment (led by the Department of Premier and Cabinet).

Summary of reform initiatives achieved to date and ongoing priority projects

## PHASE ONE REFORM INITIATIVES ACHIEVED

| | |
|---|---|
| Robust planning framework | Established a robust strategic planning framework, including:<br>• *Draft State Planning Strategy*<br>• *Directions 2031 and Beyond*<br>• *Economic and Employment Lands Strategy – non- heavy industrial for Perth and Peel*<br>• *Capital City Planning Framework.* |
| Development Assessment Panels | Established Development Assessment Panels (DAPs) to include professionals in the determination of applications for substantial developments. |
| Improvement plans | Extended the use of existing strategic instruments such as improvement plans and planning control areas to strengthen state and regional planning throughout the State. |
| Implementation of State planning policies | Provided a mechanism in the Planning Act for local planning schemes to be updated to implement State Planning Policies. |
| Scheme amendments | Section 76 of the Planning Act amended to clarify that the Minister is able to give an order to local government to prepare or adopt an amendment to a local planning scheme. |
| Multi Unit Housing Code | New R-Codes produced to encourage a range of housing types and greater housing choice by removing disincentives to multiple unit developments and promoting a range of dwelling sizes within such developments. |
| Residential Design Codes | Comprehensive review of R-Codes completed and revised R-Codes gazetted, including changes to ancillary housing provisions (granny flats), reducing requirements for planning approval for single houses, and amendments and improvements to specific design requirements. |
| Structure Plan Preparation Guidelines | Structure Plan Preparation Guidelines produced to provide clear and consistent guidance in the preparation and assessment of structure plans. |
| Model Subdivision Conditions | Revised standard conditions produced to support the efficient, timely and consistent determination of subdivision, survey strata and strata applications. |
| Restructure of WAPC committees | Restructure and rationalisation of WAPC committees undertaken and new regional planning committees established. |

## ON-GOING PHASE ONE PRIORITY PROJECTS

| | |
|---|---|
| State Planning Policy 3.6: Development Contributions for Infrastructure | Review of policy in progress, to clarify the range of infrastructure to be covered by the policy and establish guidelines for more effective implementation. |
| Model Scheme Text and Regulations review | Preparation of new model text provisions and associated Regulations in progress, to guide the preparation of local government planning schemes and amendments. |
| Integration of Planning and Environmental Approvals<br>(Strategic Environmental Assessment) | Strategic assessment of the Perth and Peel regions in progress, to minimise delays in the approval process through better integration of the Commonwealth Government's environmental approval requirements and the State's growth plans for Perth and Peel. |
| Metropolitan Region Scheme Text review | Review of MRS text underway, to provide approach consistent with the more recent Peel and Greater Bunbury Region Schemes. |
| Local government reporting | Regulations to be drafted requiring local governments to provide data on development applications. |

## 2.2
## Exploring best practice



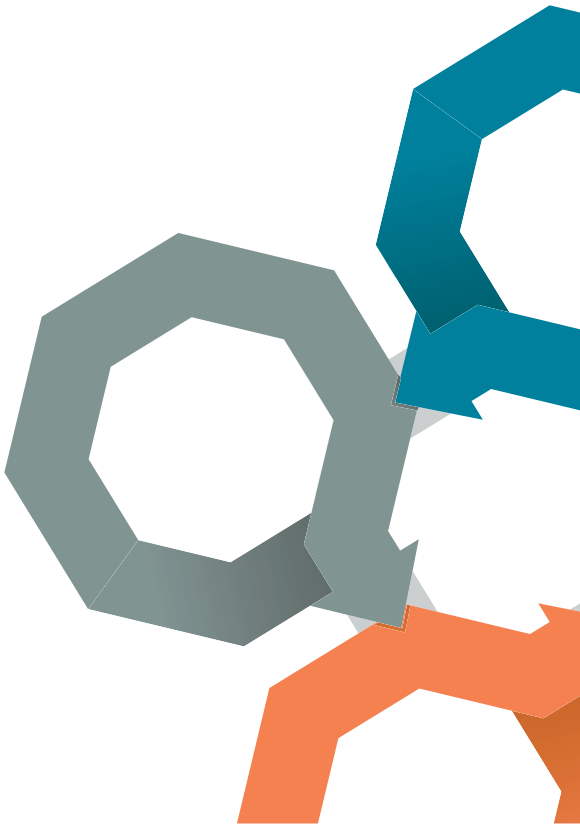
In its 2011 report *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments*, the Productivity Commission grouped what it considered to be best practices into seven broad categories:

- early resolution of land use and coordination issues;
- improving development assessment and rezoning criteria and processes;
- disciplines on timeframes;
- transparency and accountability;
- engaging the community early and in proportion to likely impacts;
- broad and simplified development control instruments; and
- rational and transparent allocation rules for infrastructure costs.

In its 2011 report to the Council of Australian Governments (COAG) on the review of capital city strategic planning systems, the COAG Reform Council identified a number of criteria against which they measured the performance of state strategic planning systems, and identified examples of practices that supported such criterion. The criterion include:

- integration;
- hierarchy of plans;
- nationally significant infrastructure;
- nationally significant policy issues;
- capital city networks;
- planning for future growth;
- urban design and architecture;
- frameworks for investment and innovation;
- accountabilities, timelines and performance measures;
- intergovernmental coordination;
- evaluation and review cycles; and
- appropriate consultation and engagement.

In 2012, the New South Wales Department of Planning recently commissioned *A Review of International Best Practice in Planning Law* www.planning.nsw.gov.au. The paper included several initiatives which are already part of the Western Australian planning system such as the Planning Commission, the strategic environmental assessment of growth plans, and transport and land use integration. The key focus areas of the New South Wales paper are integrating strategic and statutory plans, achieving an appropriate balance of State intervention and local government decision making and the need for local and State government cooperation in growth areas and projects of State significance.



## Development Assessment Forum Model

A national body, the Development Assessment Forum (DAF), was formed in 1998 to recommend ways to streamline development assessment and cut red tape. The DAF's membership includes the three spheres of government - the Commonwealth, state/territory and local government; the development industry; and related professional associations. The DAF provides advice and recommendations to all levels of government and to planning ministers.

The DAF aims to promote leading practice in planning systems and development assessment in Australia through:

- the national harmonisation of similar systems and requirements between jurisdictions;
- the adoption of processes that are efficient and cost effective for proponents, governments, industry and the community;
- improved access for stakeholders to information on leading practice methodologies and outcomes; and
- the adoption and implementation of e-planning systems.

DAF has prepared and published (www.daf.gov.au) a leading practice model as a means of promoting efficient, effective and nationally harmonised development assessment systems across Australia. The table below summarises Western Australia's progress against the ten DAF lead practices through planning reform.

| DEVELOPMENT ASSESSMENT FORUM LEAD PRACTICE | ADDRESSED IN REFORM | COMMENT |
|---|---|---|
| Effective policy development | Stage 2 | Role of WAPC being reviewed |
| Objective rules and tests | Existing | Already part of WA planning system |
| Built-in improvement mechanisms | Existing | Already part of WA planning system |
| Track based assessment | Phase Two | Being considered as part of Phase 2 reform |
| A single point of assessment | Phases One and Two | Implementation of DAPs and minimising planning instruments overlap |
| Notification | Existing | Already part of WA planning system |
| Private sector involvement | Stage 2 | Being considered as part of the Phase 2 reform |
| Professional determination for most applications | Phase One | Implementation of DAPs |
| Applicant appeals | Existing | Already part of WA planning system |
| Third party appeals (in limited situations) | – | Not currently being considered |

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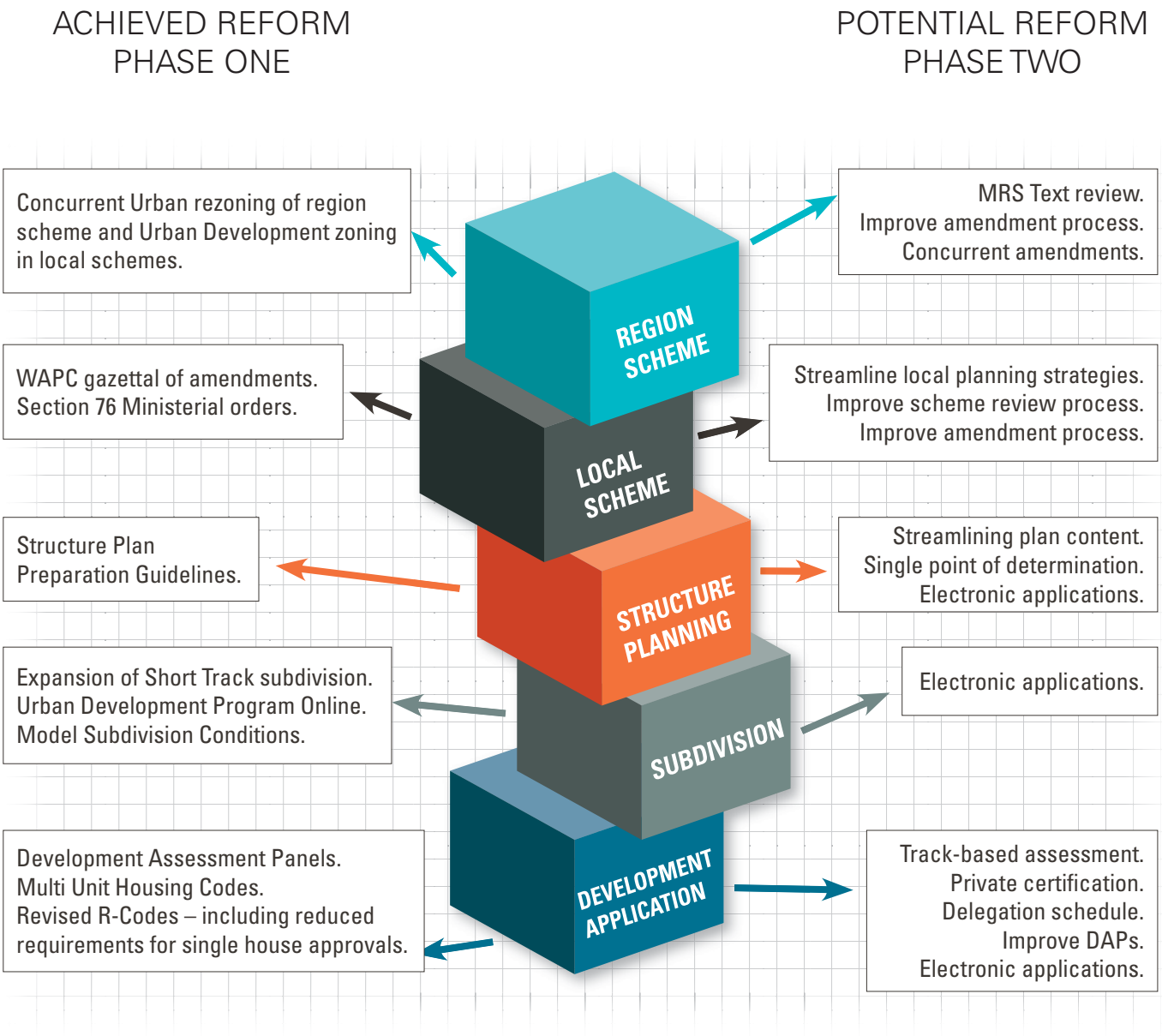
# 3.0 Statutory planning reform initiatives — **we want to hear from you**

The preparation of this discussion paper has focused on identifying opportunities to improve statutory planning processes, by investigating reform initiatives at each stage of the land development process, from region scheme provisions through to development applications. This includes initiatives to streamline approval processes and to ensure that decision making occurs efficiently and by the most appropriate responsible authority, as well as legislative and procedural improvements to the overall planning system. The opportunities that offer the most significant potential outcomes are outlined in this section as 'statutory planning reform initiatives'. These initiatives are not a final Government agenda and are put forward for stakeholder and public consideration and comment (public submissions should reference the number/heading to which they refer).

## Summary of reforms to the statutory planning process



## 3.1
## Review of the Metropolitan Region Scheme (MRS)

For the past 50 years, the MRS has met its intended objectives, however a review is required to consolidate ad-hoc amendments and to bring it in line with the more recent Peel Region Scheme (PRS) and the Greater Bunbury Region Schemes (GBRS). The PRS and GBRS are more succinct and include a more streamlined development approval process.

In the MRS, all development requires approval unless specifically exempted by the Western Australian Planning Commission (WAPC). However, in the PRS and GBRS only development that is of a specified class requires approval by the WAPC. It is proposed to amend the MRS so that development will not require approval unless it is of a class expressly specified in the MRS or by a resolution of the WAPC.

In addition to the above, a review is proposed of the WAPC delegations to local government of development approval under the MRS, with the intent of examining appropriate delegations for development on both zoned and reserved land.

Another reform initiative relates to the long term land use zoning functions of the MRS. Currently the MRS includes the Urban Deferred zone to identify land that may be suitable for future urban use and which has been identified through other strategic planning processes. It is proposed to introduce an Industrial Deferred zone to identify potential future industrial land, such as those sites proposed in the WAPC's *Economic and Employment Lands Strategy*.

## 3.2
## Improve amendment process for region planning schemes

The preparation and approval process for region planning scheme amendments is subject to extensive timeframes. The three main areas that have been attributed with causing delays are the process of 'major amendment' versus 'minor amendment', the environmental assessment process, and the public advertising process.

The procedure for making a region scheme amendment is prescribed in Division 3 of the *Planning and Development Act 2005* and involves a lengthy series of 15 steps, however an alternative shorter process is set out in Division 4 of the Act for amendments that, in the opinion of the WAPC, do not constitute a substantial alteration to a region planning scheme. The effect of such a resolution is that the simplified procedure in Division 4 applies to making what is considered a 'minor' amendment.

It is proposed to restructure the provisions setting out the procedures for amending region planning schemes to effectively reverse the default position. That is, all amendments must follow the truncated process set out in Division 4 unless, in the opinion of the WAPC, the amendment constitutes a 'substantial alteration' to a region planning scheme and is of a class that makes it necessary or desirable to subject it to the longer process in Division 3.

Another area of reform may be the process for referral of proposed amendments to the Environmental Protection Authority (EPA), such that certain amendments with no relevant environmental considerations are not required to be referred to the EPA. These types of exempt amendments would need to be formally agreed to by the EPA and perhaps established in Regulations. Other initiatives may be that the EPA agree to fast track these amendments (rather than exempt them), or that referral is done concurrently with public advertising.

To further increase the efficiency of the amendment process, the reduction of public advertising periods could also be considered. Division 3 amendments could be reduced from 90 days to 60 days and Division 4 amendments could be reduced from 60 days to 42 days. Consideration of reducing these timeframes is appropriate if supported by allowing electronic lodgement of public submissions.

## 3.3
## Sub-regional structure plans to amend region planning schemes

A sub-regional structure plan is a statutory plan covering a large sub-section of a Western Australian planning region, for example three sub-regional structure plans are being prepared for the Perth metropolitan region, to provide the detailed delivery of *Directions 2031 and Beyond*.

Given the lengthy process, planning rigour, environmental evaluation and public consultation that goes into preparing a sub-regional structure plan, it could be argued that it is not necessary to then go through a lengthy and duplicated process to subsequently amend the region scheme to reflect the zonings of the approved structure plan.

It is proposed that consideration be given to the feasibility of introducing amendments to the *Planning and Development Act 2005* to enable an automatic or concurrent amendment to a region planning scheme to reflect the relevant zonings and reservations of a sub-regional structure plan once the structure plan is given final approval by the WAPC and/or the Minister for Planning.

However, it should be noted that this process may only be suitable in certain situations, as some sub-regional structure plans may not go to the level of detail of clearly defining the boundaries of road reserves or lot boundaries for certain zones.

## 3.4 Concurrent amendment of region planning schemes and local planning schemes

Zoning and land use changes often require an amendment to the region planning scheme, followed by a corresponding amendment to the local government planning scheme, which results in a lengthy process and 'double handling'.

The *Planning and Development Act 2005* provides that where the region planning scheme is amended to reserve land for a public purpose, the local government scheme is automatically amended. The Phase One reforms extended the concurrent amendment process to include when land in a region planning scheme is rezoned to Urban, it can be rezoned to Urban Development in the local planning scheme.

In all other cases, where the region planning scheme is amended with respect to the zoning of land, the local government is required to initiate a corresponding amendment to the local scheme no later than three months after the region scheme amendment takes effect.

Consideration is being given to further extend provisions to allow concurrent amendments for all classes of amendment to region planning schemes. For example, the region scheme and local scheme could be concurrently rezoned for Industrial purposes, with the region scheme amendment identifying the specific zoning that would apply under the local planning scheme (e.g. General Industrial, Light Industry).

## 3.5 Improve local planning scheme review process

The preparation and review of local planning schemes is a lengthy and expensive process. Under the current requirements of the *Planning and Development Act 2005*, every local government is required to review their local planning scheme every five years, however in practice schemes are often long overdue for review before the review formally commences. In addition to this, local governments often need to prepare a range of increasingly detailed local planning strategies for a range of land use matters.

A number of improvements to the local planning scheme preparation process are being introduced in the new Model Scheme Text which is currently being prepared by a Department of Planning led working group. Some of the key reforms and changes being considered as part of this process include:

- regulations providing a set of standard provisions that will apply automatically to all local government schemes, including standard processes for development applications, structure plans and development contribution plans;
- reviewing what proposals may be exempt from requiring planning approval, such as removing the need for compliant single houses to obtain planning approval;
- improving administrative provisions, definitions, language and the general user friendliness of schemes; and
- regulations clearly setting out the steps required in the scheme preparation and scheme amendment process, including steps and timeframes to be undertaken by the Department of Planning/WAPC.

In addition to the current Model Scheme Text project, two other substantial reform initiatives are put forward for consideration:

- streamlining the number and content of local strategies required as part of a scheme review; and
- requiring major local planning schemes reviews every 10 years, with minor reviews occurring every five years or less.

As part of this discussion paper comment is welcomed on further opportunities for improving the scheme review process and the content of local planning schemes. It is noted that the implementation of metropolitan local government reform will also assist in the reform and reduction of the number of local planning schemes.

## 3.6
## Improve local planning scheme amendment process

Proposals by local governments or land owners to amend local planning schemes, including land rezonings, can often take a year or more to go through the statutory process and reach conclusion. There are a range of factors leading to long timeframes including the requirement for all amendment proposals to go through the EPA, consultation processes, and reporting processes.

Currently, all proposed scheme amendments must first be considered by the EPA before public advertising. It has been identified however, that a substantial proportion of local planning scheme amendments do not present any significant environmental impacts, especially in established urban areas, and when referred to the EPA, do not require assessment. Examples include rezoning residential land from one R-code density to a higher density or minor changes and additions to scheme text.

Similar to what is proposed under region scheme environmental assessment processes, it is proposed to consider modifying the process for referral of proposed amendments to the EPA, such that certain amendments with no relevant environmental considerations are not required to be referred to the EPA. These types of exempt amendments would need to be formally agreed to by the EPA and perhaps established in Regulations. Other possibilities may be that the EPA agree to fast-track these amendments (rather than exempt them), or that referral is carried out concurrently with public advertising.

Another significant opportunity for streamlining the local scheme amendment process is the possibility of introducing a 'minor local scheme amendment' which sets out a shorter amendment process which would be applicable in certain situations.

There is already the option of a 'minor amendment' to region schemes which provides for a shorter, less complicated process. However, unlike the reform proposed in 3.2 where the majority of region scheme amendments would take the shorter process, a minor local scheme amendment process is only proposed for occasional use, such as for correcting minor oversights.

Situations such as minor extensions or realignments of boundaries for zones and reserves, or minor changes to administrative text or corrections of minor errors, which may have been inadvertently overlooked in an amendment process, may be able to be addressed through a minor scheme amendment process.

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## 3.7 Streamline structure plan process

The structure planning process was identified as an area in need of reform in Planning Reform Phase 1. Both the preparation process and plan content varied considerably between local governments and the detailed and varying nature of contents resulted in long timeframes for approval by local governments and the WAPC. An effective outcome of the Phase One reforms was the *Structure Plan Preparation Guidelines*, released in August 2012, to provide clear and consistent guidance in the preparation and assessment of structure plans.

There is however, still opportunity for further reform of structure plan preparation and approval processes. A recent review of local planning schemes has found inconsistent clauses relating to structure planning processes. There is also duplication and overlap in work undertaken by local governments and the Department of Planning. Content of plans could also be further improved, with a trend emerging for structure plans to cover matters that would be more appropriately dealt with through scheme amendments and development contribution plans. As a part of the Model Scheme Text review, model local scheme provisions will be drafted to guide the preparation of structure plans.

It is also proposed that the Model Scheme Text provisions include the WAPC as the single point of determination for all structure plans. This will eliminate the need for dual approvals from the WAPC and local government and the resultant inconsistent determinations and conditions, as well as separate appeals to the State Administrative Tribunal. Local government would still be involved in the structure plan preparation and assessment process, however would refer the determination to the WAPC.

# 3.8
# Develop a track-based (risk assessment) development assessment model

Building upon a proposal first suggested in Phase One's *Building a Better Planning System*, and current best practice in other jurisdictions, the potential for development assessment based on the Development Assessment Forum 'track-based' assessment model is being considered for the Western Australian planning system.

This model is a risk–based approach where the assessment process is linked to the level of complexity, scale and likely impact of the proposed development. A risk-based approach to development assessment streamlines low risk development applications, reducing the time taken for approval, while concentrating planning resources on more complex and higher impact proposals.

This approach is consistent with the Productivity Commission's recommendation to stream development applications into assessment 'tracks' that correspond with the level of assessment required to make an appropriately informed decision.

The DAF model sets out six different tracks ranging from exempt up to impact assessment (as shown overleaf). The DAF model does not dictate what types of applications should go into each track, leaving the planning authority to determine what types of proposal should be exempt or self-assessable and what requires development approval.

It may not be necessary to apply the exact DAF model to the Western Australian planning system and it could be modified to suit Western Australia's needs. The system could be established through a model schedule and adopted through local planning schemes, or set out in other WAPC guiding documents. The WAPC could establish the number and types of tracks to be used in the Western Australian system, set out the process of assessment for each track and provide a model schedule of types of development suited to each track. Then there may be opportunity for local government variance on which types of development are allocated to each track in their local planning system, to suit the specific needs of the area and the expectations of the local community.

## An example of the Track Based System (DAF model)

| TRACKS | |
|---|---|
| EXEMPT | PROHIBITED |
| Development that has low impact beyond the site and raises no policy implications and therefore does not require an application or assessment.<br>It may need to meet criteria specified in the statutory plan.<br>No consent is required. | Development that can not proceed because of specific restrictions in the statutory plan.<br>No consent can be given. |
| Proponent tests against regulatory requirements | Proponent tests against regulatory requirements |
| No application needed<br>No assessment needed<br>No consent needed | No application needed<br>No assessment needed<br>No consent can be given |
| Proposal can proceed provided it continues to comply with requirements | Proposal cannot proceed |

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| SELF ASSESS | CODE ASSESS | MERIT ASSESS | IMPACT ASSESS |
|---|---|---|---|
| Development that can be assessed against a standard quantitative criteria without the need for professional assistance and can always proceed if the criteria are met.<br>A standard consent will issue. | Development that can be assessed against standard criteria and can always proceed if the criteria are met.<br>The criteria may be complex or performance-based and may require professional advice to demonstrate compliance.<br>Expert assessment will be required.<br>A standard consent will issue. | Development that may have off-site impact and policy implications.<br>It is likely to be measured against performance criteria and policy objectives therefore requires professional assessment.<br>Assessment may benefit from notice and comment from other parties.<br>A conditional consent will issue. | Development that may have a significant impact on the social, environmental or economic attributes of a locality.<br>Assessment requires the submission of an impact evaluation in a prescribed manner.<br>A technically competent reviewer assesses the submitted impact assessment.<br>A conditional consent will issue. |
| Proponent prepares application in accordance with preset criteria including assessment against criteria | Proponent prepares application in accordance with code requirements | Proponent prepares application in accordance with relevant policy and statutory plan requirements | Proponent prepares application in accordance with relevant policy and statutory plan requirements |
| Consent authority or certifier checks assessment | Application assessed by consent authority or certifier against code requirements | Public notice may be needed | Proponent prepares impact assessment in prescribed manner |
| If OK consent authority or certifier issues standard consent | If OK consent authority or certifier issues standard consent | Application assessed by consent authority | Public notice |
| | | If OK consent authority issues conditional consent | Application and impact assessment assessed by expert reviewer and/or consent authority |
| | | | If OK consent authority issues conditional consent |

# 3.9
# Private certification of development applications

As part of Phase Two Reform and the objective of continued improvement towards best practice, it is appropriate to investigate the possibilities for private sector involvement in the development assessment process.

Private planning practitioners are already heavily involved in the preparation of development applications in Western Australia. Further to this, there is the potential for private sector assessment and approval of development applications. There would however, need to be a clear demonstration of need and articulation of benefits in the public interest for this change to occur, including consideration of costs to applicants, processing timeframes and maintaining quality design outcomes.

Comment is sought on whether a private sector assessment and/or approval system would be of benefit to the Western Australian planning system.

There is a range of models of private certification systems. In New South Wales for example, private certifiers are accredited professionals who can issue development certificates. They effectively replace the role of local government in issuing development approvals for certain types of compliant development, and can be accredited to issue construction certificates certifying proposals comply with the Building Code of Australia. The private certifier can issue a Complying Development Certificate for developments that fall with the Complying Development track/definition, such as single dwellings or additions to dwellings. The approval is usually subject to standard conditions.

Brisbane City Council has a fast-track process for certain types of development that comply with their City Plan utilising a process known as RiskSmart. Applications can be prepared and assessed by a council accredited private consultant, they then lodge the application online to Brisbane Council for the planning staff to issue the development approval. The council is required to process the application within five days. One benefit of the Brisbane system is that there is only one local government with one City Plan for the whole metropolitan region. It may be more complicated to become accredited in Western Australia where different local planning schemes and local planning requirements exist for each local government.

In Western Australia, a private certification system for building code compliance was introduced in 2012. Private certifiers are registered with the Building Commission and can issue certificates that plans (and construction) comply with the Building Code of Australia. However, the local government is still responsible for issuing the Building Permit. There has been some demand for private certification of planning applications to be linked to this system, for example the private certifier assesses compliance with the R-Codes prior to assessing compliance with the Building Code.

Private sector assessment and/or approval of development applications could also potentially work with the 'track-based assessment' model (discussed in 3.8), where private planning practitioners could be accredited to assess and/or approve developments of a certain track, such as self-assess and codes assess. Approval powers may be limited to compliant development, or could potentially extend to performance based assessment.

## 3.10
## Standardise delegations of local government development decisions

The delegation of planning decisions from local government councils to local government planning staff varies considerably between Western Australian local governments. The delegation of decision making powers comes from council through the Local Government Act, generally in the form of a delegation schedule which sets out what types of development applications the council will determine and what applications planning staff or the Chief Executive Officer may determine.

Often, in larger, busier local governments planning staff have a higher level of delegation than in smaller local government areas. For example, some planning staff may only approve applications that are compliant with scheme or R-Codes requirements, while others may determine applications up to a considerable size or value, if not a Development Assessment Panel (DAP) application.

It is generally considered appropriate that qualified technical officers are given a level of delegation to determine standard applications, including those proposing minor variations to planning requirements, where there is appropriate oversight in place (i.e. manager or director review and approval). Larger scale development applications are more appropriately determined by DAPs, which include local councillors and objective professionals. Council is therefore generally left to focus on the strategic direction of the local government and overseeing the planning framework on which applications are determined (i.e. setting the policy direction and being involved in local planning strategies and schemes).

It is proposed that a Model Delegation Schedule be prepared, setting out the types of development applications and planning decisions that are appropriate to be determined by planning staff, and what may be more appropriate for council to determine. The aim of this would be to establish best practice, reduce timeframes for development approvals, and improve certainty and consistency in planning decisions.

## 3.11
## Electronic application system

The Department of Planning is developing a single interactive online portal for the lodgement and processing of all applications determined by the WAPC including subdivision, structure plan and development applications. This system will include internal and external interfaces to allow applications to be lodged and tracked by the public and for the WAPC to refer applications to stakeholder agencies and local government for comment.

The establishment of the system will allow quicker processing of applications, which will result in savings on developer's land holding costs (which in turn affect land prices). For example, the deployment of the first stage of the e-lodgement portal in 2012 allowed Form 1C applications (subdivision clearance) to be lodged and approved electronically, which has reduced processing time frames from an average of 13.8 days to 1.3 days and saved developers significant amounts in holding costs.

A full electronic processing and approval system will also improve transparency and accountability and allow for the regular publishing of processing and approval statistics.

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# 3.12 Refining the role of Development Assessment Panels

Development Assessment Panels (DAPs) commenced operation in Western Australia in July 2011 as part of the Government's commitment to improving the planning approvals process in Western Australia. The DAPs system provides more transparency, consistency and certainty in decision making on complex development applications.

The introduction of DAPs was based on the key principles of the Development Assessment Forum's Leading Practice Model. The involvement of independent experts in DAPs, in addition to local government councillors, strikes an appropriate balance between local representation and professional advice in decision making and ensuring that decisions made by the panel are based on the planning merits of an application.

A review of the operation of DAPs has been undertaken and the following refinement and improvements are put forward for consideration (for the full review report see www.planning.wa.gov.au/planning reform)

## Optional and mandatory thresholds

The DAPs Review confirms that the current optional and mandatory thresholds are generally appropriate and are effective in covering significant applications that should be determined by DAPs, while also providing an opt-in option. Some stakeholders have argued that the thresholds should be modified and there should be a wider opt-in range. Comment is sought on the appropriateness of the current thresholds and any need for modifications.

It may also be beneficial to link DAP thresholds/ triggers with council delegations (see also 3.11), where the applicant opt-in values are widened if certain application types are delegated from council to planning staff and hence may be determined more quickly by the local government than the DAP.

## Include lower value regionally significant applications

The DAPs Review has identified that there may be significant applications that should be determined by a DAP that do not meet the thresholds as they are lower value proposals. Applications that are of regional significance may be more appropriately dealt with by a DAP than a local government council.

An example of this is basic raw materials (BRM) extraction (e.g. limestone, sand, rock). Given the finite and site specific location of BRM the decisions of a local government can seriously impact the potential supplies of BRM for Perth or other regions. However, the low cost of BRM means only a capital intensive hard rock quarry application would meet the current DAPs thresholds.

It is proposed that applicants for BRM proposals or other regionally significant proposals (which could either be at the applicant's discretion or defined in the DAPs Regulations) may choose to opt-in to the DAPs process if the development application does not meet the minimum threshold value.

Currently local governments may choose to refer applications to DAPs within the opt-in values. It may also be appropriate to introduce a mechanism for local governments to choose to refer applications that they consider of regional importance (whatever the development value) to be determined by a DAP - this may be particularly beneficial for non-metropolitan local governments.

## Exclusions

The DAPs review has also identified that some types of applications may not be of a level of significance that requires determination by a DAP, for example small scale developments that are permitted uses in the relevant zone and compliant with the requisite planning standards. These could be added to the 'exclusions' list in the DAPs Regulations.

Development applications for storage and warehouses, where a permitted use in accordance with the scheme on industrial land zoned, are not generally considered to be of a significant nature to require consideration by DAPs. It may be appropriate that storage and warehouses be added to the excluded development applications, subject to the development site being land zoned industrial, where it is a permitted use and meets provisions of the scheme.

Comment is sought on any other land use or development types that are clearly not significant enough to warrant DAP determination and should be included on the exclusions list.

## Configuration of panels

To ensure the efficient arrangement of panel meetings and effective chairing, the number and grouping of local governments within the panels was reviewed as part of the DAPs Review. There is currently one local DAP (LDAP) for the City of Perth, five joint metropolitan panels and nine joint regional panels.

For the Perth metropolitan region it is proposed to create a new Central-West Joint DAP (JDAP) by combining Metropolitan Central and Metropolitan West JDAPs. There is also an option to merge the City of Perth DAP with the Central-West JDAP (although retaining the higher value thresholds for City of Perth).

For the regional DAPs it is proposed that the nine regional panels be amalgamated into two or three panels, broadly covering the northern, central and southern regional areas. The City of Mandurah and Shire of Murray would also be moved from the regional DAPs to the Metropolitan South-West JDAP.

**See Appendix for the proposed grouping options.**

## Administration

### DAP applications

Some local governments have requested that the DAPs Regulations should clarify the information required to be submitted as part of a DAPs application, and what constitutes a 'complete application' for the purposes of formally receiving the application and commencing the determination time period. It may also be appropriate to include provisions for pausing or extending the determination period when further information is required from the applicant at any stage of the assessment process.

### Meeting quorum

Current regulations require a quorum to be three members including the presiding member, another specialist member and a local government member. There have been occasions when a DAP has been unable to achieve a quorum. Greater flexibility in terms of what constitutes a quorum is required to ensure panels proceed to meet and deal with applications in a timely way.

It is proposed that three members of a panel, regardless of their membership type, constitute a quorum. One of these members would need to meet the requirements to act as a presiding member.

### Presiding member

When the presiding and deputy presiding member are unable to attend a meeting (due to illness, absence or other cause), it is proposed that another specialist member, who has experience and a tertiary qualification in planning, may act as presiding member. This will help meetings occur as scheduled, ensuring applications are dealt with in a timely manner.

### Special members pool

Currently, specialist members including presiding and deputy presiding members are appointed to a specific panel. It is proposed that three pools be created and members appointed to either the metropolitan pool, or a northern regional or southern regional pool.

Local government members would continue to be appointed to a specific panel.

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# 4.0 Governance and administrative reform

In addition to the statutory planning reform initiatives outlined in Section 3, a number of initiatives have been identified with the potential to deliver significant reform of the governance and administration of the Western Australian planning system at both the State and local level.

## 4.1 Design and development

The Department of Planning and the Western Australian Planning Commission (WAPC) have a number of projects that set out the Government's intended vision for properly planned and coordinated growth. In 2012, a new draft *State Planning Strategy* was released, the *Capital City Planning Framework* was finalised and work has progressed on the next Directions strategy, collectively planning for Perth and Peel as a city of 3.5 million people.

A Directions 2031 a 'Diverse City by Design' tool kit is also being developed, providing fact sheets and best-practice case studies regarding developing attractive and affordable housing at higher densities.

There is also a role for industry, professional associations and universities to play in communicating the vision for Perth and our regional cities, and in sharing and advocating for best practice in planning and design.

Some potential planning reform opportunities to deliver better built form and place design outcomes include:

- the development of a State Planning Policy, design manual or scheme provisions enshrining the importance of, and principles for, quality design, including architectural, urban, landscape and environmentally sensitive design;
- for local governments to establish design advisory panels and/or 'city architects' positions (for larger/urban local governments);
- for development applications over certain thresholds (e.g. multi storey office or apartment developments) to be assessed by a design review panel prior to determination by a Development Assessment Panel; and
- to amend the Multi-Unit Housing R-Codes provisions to require multi-unit housing to be designed by a qualified, registered architect.

Comment is sought on these concepts and any other proposals to improve the design and development across Western Australia.

## 4.2
## Role of the Western Australian Planning Commission (WAPC)

A central reason for the creation of the WAPC was to give greater emphasis to statewide regional land use planning. The WAPC is the statutory authority with statewide responsibilities for urban, rural and regional land use planning, which includes coordination and integration of land use and transport planning, economic and infrastructure development, environmental planning and urban and regional development.

Following the appointment of a new three-year term WAPC Chair, an internal review of the role and function of the WAPC will be completed to ensure that the WAPC has sufficient capacity and flexibility to perform its key strategic functions in statewide urban and regional planning. The review report and recommendations will be made available once completed, however the key objectives are:

- to clarify that the WAPC's primary role and responsibility is the administration of integrated statutory and strategic planning responsibilities throughout the State;
- for the WAPC to operate more effectively as a separate board of management from the Department of Planning and take a more strategic focus towards the planning and development of the State;
- to ensure appropriate induction, ongoing training and professionalism of the WAPC members, including training in statutory decision making, having an up to date induction manual and code of conduct and appropriate protocols and practices in place; and
- to review the structure and membership of the WAPC and its committees, ensure that the WAPC includes a broad range of expertise, including expertise in strategic planning, finance, infrastructure, housing, design and the environment.

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## 4.3
## Improve the function of the Infrastructure Coordinating Committee

The Infrastructure Coordinating Committee (ICC) is established under the *Planning and Development Act 2005* to advise the WAPC on planning for the provision of physical and community infrastructure throughout the State and to perform delegated functions of the WAPC. The Committee membership includes the heads of all infrastructure related government departments as well as representatives of the WAPC and local government.

Western Australia is facing increasing infrastructure pressures as the population grows, costs of infrastructure provision increase, technology changes, and community expectations grow. The role of the ICC in planning and improving the efficiency of infrastructure investment needs to be recognised as increasingly critical to the WAPC's function of strategic integrated land use planning.

Similarly to the review of the WAPC, it is also proposed to review the role and function of the ICC; clarify the type of matters with which the ICC should be involved; develop guiding principles and terms of reference; and develop a 12-month work program.

It is also proposed to review the membership of the ICC to ensure it has a high level strategic focus, including representatives from the departments of Premier and Cabinet, Treasury, State Development, Regional Development, Planning, Transport and Housing. Non-government expert membership could also be included.

In addition, the Department of Planning has also recently established a Senior Officers Group for infrastructure planning, which includes senior staff from government departments and infrastructure agencies, which meets regularly to improve information sharing and integration of infrastructure projects and policies across government.

## 4.4
## Local government planning accreditation

Consideration is being given to the establishment of a planning accreditation system for local governments to formalise induction, training and professional development. Accredited local governments may then receive an increase in the range and volume of planning decisions and functions delegated to them from the Department of Planning and the WAPC.

The accreditation system would include options for training and development of local government councillors and officers and be based on the following factors:

- alignment of local planning framework to State planning objectives and policies;
- currency (age) of local planning scheme and policies;
- adoption of best practice and planning reform initiatives;
- qualifications and experience of planning staff;
- training of all councillors on statutory planning decision making;
- levels of delegation of planning decisions by council to planning staff;
- public accessibility of information on local planning and development applications; and
- annual audit results - such as meeting key performance indicators or development application timeframes and analysis of State Administrative Tribunal appeals.

## 4.5 Funding of region planning schemes and initiatives

The Metropolitan Region Improvement Fund (MRIF) was established in 1960 to fund the delivery of the Metropolitan Region Scheme, particularly the reservation of land under the MRS and the costs of acquisition and maintenance of regional reserves. The MRIF is financed by a land tax known as the Metropolitan Region Improvement Tax (MRIT).

The MRIF and MRIT are only available for funding of the Metropolitan Region Scheme in the Perth metropolitan area. Under the current legislative provisions, there is no funding available from the MRIF for region planning schemes, including the Peel Region Scheme and the Greater Bunbury Region Scheme, or other regional planning initiatives, including improvement schemes, in other areas of the State.

The capacity to reserve land for both regional open space and land for major infrastructure projects continues to be of high importance in both regional and metropolitan areas, particularly in areas of high population and economic growth. Funding to acquire such land is becoming increasingly important.

It is proposed to consider options for funding of other region planning schemes and improvement schemes in areas of the State outside the Perth metropolitan area. One option to achieve this is to legislate to expand the application of a Region Improvement Tax to other parts of the State and establish separate region improvement funds for different regions.

## 4.6 Administrative review of the *Planning and Development Act 2005*

An administrative review has been undertaken of the operational effectiveness of the *Planning and Development Act 2005*, which will be integrated with the Phase Two Reform agenda. The review examined specific sections and wording within the Act to identify opportunities for improvement. It was not a strategic review of the structure, content or issues covered by the Act. Due to the level of detail required, the review of the Planning and Development Act is the subject of a separate report (see www.planning.wa.gov.au/planningreform), however the key objectives of the review are summarised below:

- identify the specific provisions that do not operate satisfactorily and the reasons for such deficiencies;
- identify and recommend measures to ameliorate ambiguities in drafting or resulting from judicial interpretation;
- recommend amendments that would improve the efficiency and effectiveness in the operation of the Act; and
- consider other key matters and issues relevant to the operation and effectiveness of the Act, including, but not limited to, those matters identified in this Discussion Paper.

# 5.0 Consultation and next steps

This Discussion Paper identifies opportunities to reform and improve the Western Australian State and local planning frameworks, for public consideration and comment.

The initiatives outlined in this paper are not the Government's final Phase Two planning reform agenda. Further consideration of the initiatives, taking into account public comment, is required prior to Cabinet review.

Stakeholder and public comment is invited on the planning reform initiatives outlined in this Discussion Paper, in both Section 3 – Statutory Planning Reform and Section 4 – Governance and Administrative Reform. Comment is also encouraged on other opportunities for reforming the Western Australian planning system and the improvements or benefits such initiatives would provide.

Following consideration of all submissions received during the public comment period, a report will be prepared for the WAPC and the Minister for Planning. It will provide a detailed summary of the comments received, and the recommended final reform agenda. The Government will then consider and announce its Phase Two Planning Reform Agenda and an implementation program. Further consultation will be undertaken as specific reforms are further defined and implemented.

**Comments and submissions should be emailed to planningreform@planning.wa.gov.au or submitted online at www.planning.wa.gov.au/planningreform by Friday 13 December 2013.**

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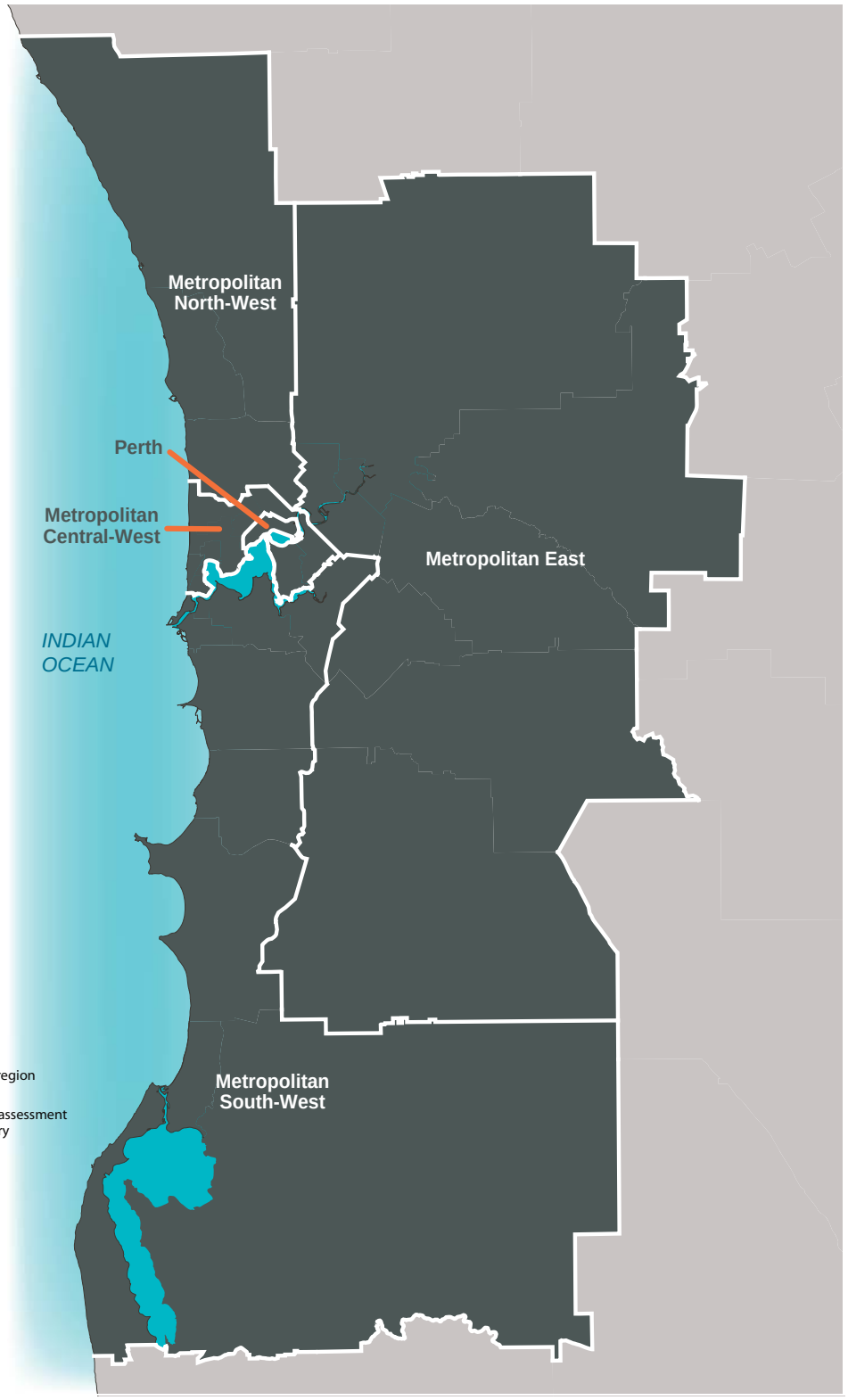
# Proposed Metropolitan DAP Groupings – Option 1

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Department of Planning, WA
On behalf of:
Western Australian Planning Commission


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# Proposed Regional DAP Groupings – Option 1


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# Proposed Regional DAP Groupings – Option 2


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www.planning.wa.gov.au/planningreform

ATTACHMENT 2

Department of
**Planning**

Planning makes it happen:
phase two

# Review of the *Planning and Development Act 2005*

September 2013

# Contents





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# Introduction

The Western Australian Government is committed to continuous improvement of the legislative and strategic framework of the Western Australian planning system. Pursuant to this commitment, the Minister for Planning has commenced a review of the *Planning and Development Act 2005* (the Planning Act), which is the primary piece of legislation governing development and subdivision in Western Australia.

The key aim of this review is to consider the operation and effectiveness of the Planning Act in accordance with the statutory obligation of the Minister for Planning to review the legislation. In addition, the opportunity has been taken to open dialogue with key stakeholders on broader reform, to ensure that the planning system continues to deliver economically, socially and environmentally.

This report sets out issues and proposals for reform identified by the Steering Committee and working groups established by the Department of Planning for the purpose of this review. The Government is now seeking the views of key stakeholders, including local government, planning professionals, industry and the community on all matters addressed in this discussion paper. Other suggestions regarding measures for clarifying, streamlining and improving the planning system are also invited.

This paper should be read in conjunction with the Phase Two reform discussion paper, see www.planning.wa.gov.au/planningreform

# Background

The Minister for Planning has an obligation under section 268 of the Planning Act to carry out a review as soon as practicable after the expiry of five years from the date of its commencement. The Planning Act, which came into effect in April 2006, consolidated and superseded the *Town Planning and Development Act 1928* (1928 Act), the *Metropolitan Region Scheme Act 1959* (MRS Act), and the *Western Australian Planning Commission Act 1985* (WAPC Act). At the time of the consolidation, it was generally acknowledged that the planning system in Western Australia, as embodied in these Acts, was working well. Accordingly, it was determined at that time that there was no need to undertake a fundamental review of every component of the legislation. Most of the provisions of the Planning Act were carried over without substantive review.

The Planning Act:

- establishes the Western Australian Planning Commission (WAPC);
- gives power to the WAPC to make State planning policies, region planning schemes, regional interim development orders, planning control areas and improvement plans;
- establishes the requirement to obtain approval from the WAPC before subdividing land;
- gives power to local governments to make local planning schemes for their local government area; and
- sets out a regime for the payment of compensation for injurious affection caused by the making of a local or region planning scheme.

In 2010, the *Approvals and Related Reforms (No.4) (Planning) Act* was passed, which resulted in amendments to the Planning Act. The purpose of these amendments was to streamline and improve the approvals process in line with a whole-of-government initiative. The key amendments:

- established development assessment panels to determine applications for significant urban, industrial and infrastructure developments;
- extended the use of existing strategic instruments such as improvement plans and planning control areas to strengthen state and regional planning throughout the State;
- enabled the State to create regulations for collecting data on local development decisions to monitor the effectiveness of reforms to the approvals process;
- provided a mechanism for local planning schemes to be updated to implement State planning policies; and
- streamlined and clarified other existing provisions and processes to improve the efficiency of the approvals process.

## Scope of review

The primary purpose of this review is to consider the operation and effectiveness of provisions of the Planning Act that have been in operation since its enactment in April 2006. The objectives are to:

- identify the specific provisions that do not operate satisfactorily and the reasons for such deficiencies;
- identify and recommend measures to ameliorate ambiguities in drafting or resulting from judicial interpretation;
- recommend amendments that would improve the operation of the Act; and
- consider and have regard to such other key matters and issues as appear to be relevant to the operation and effectiveness of the Act, including, but not limited to, those matters identified in this discussion paper.

# Key issues and proposals

## 1 Injurious affection and compensation

Currently in Western Australia, the *Land Administration Act 1997* (LAA) provides the 'standard' statutory framework for the taking of land and the heads of compensation. Land is compulsorily taken only if all reasonable attempts at a negotiated purchase have been exhausted. Generally such land is taken for an impending work. A number of Government agencies have their own statutory taking powers though generally these utilise the Land Administration Act compensation provisions.

The WAPC and local governments have taking powers under the Planning Act to enable land to be taken for the purposes of regional and local planning schemes. The Planning Act, unlike the LAA, also provides a separate and specific 'compensation' called 'injurious affection'.

Injurious affection compensation under planning legislation contrasts with that of the Land Administration Act where the focus is primarily upon compulsorily taking for an immediate work. Planning works on longer timeframes for the identification and implementation of public reserves such as open spaces, railways, freeways, regional roads. Under planning legislation the affected landowner generally controls the process of compensation (other than in the case of compulsory takings). A landowner decides when to sell their property or to lodge development applications, which trigger claims for compensation. Should a claim or the purchase price be disputed, it is the landowner, not the responsible authority, who determines whether to submit the matter to arbitration or the Supreme Court.

The WAPC rarely compulsorily takes land. A majority of its annual land purchases are initiated by landowners. The reservation of land gives landowners a guaranteed purchaser should they wish. Likewise the owner is free to sell their property on the open market in the knowledge that they or a future landowner has a vested right to compensation, the value of which rises as the value of the property rises, including the benefit of upzonings in the intervening period between reservation and acquisition.

The identification of a reservation in a scheme does not provide an immediate right to claim compensation. The mere reservation of land in a region or local planning scheme does not prevent its continued use for the purposes that existed prior to reservation (non-conforming use). The right to compensation arises where the owner is about to suffer 'real' injury such as upon the first sale of the property (affected by a reservation), or refusal of a development proposal that would otherwise be likely to be approved but for the reservation.

In 2005, amendments were made to the Planning Act to standardise the basis upon which injurious affection arising from regional and local planning schemes is compensated.

The Law Reform Commission (LRC) released a discussion paper in October 2007 entitled *Compensation for Injurious Affection*. The final report, completed in July 2008, reflects the results of the LRC's investigation into whether the principles, practices and procedures pertaining to the issue of compensation for injurious affection to land in Western

Australia, require reform. Proposals from the LRC that are supported by the Department of Planning are set out below, along with other identified issues and proposals. The proposals aim to be consistent with a whole of government approach to private property compensation.

## 1.1 Transference of jurisdiction to the State Administrative Tribunal to determine compensation and betterment matters

The LRC recommended (Recommendation 17) *"that s 176(1) be amended to accord jurisdiction to the State Administrative Tribunal (SAT) in respect of compensation, including as to whether the land has been injuriously affected and as to the amount of compensation. Similarly, s 184(4) should be amended to accord jurisdiction to the State Administrative Tribunal in respect of compensation and recovery of betterment value."*

Section 176 of the Planning Act currently sets out two separate processes:

(a) the applicant can apply to the SAT for determination of whether land is injuriously affected; and

(b) where there is dispute as to the amount of compensation to be paid and the manner of payment, then the dispute is to be determined by arbitration in accordance with the *Commercial Arbitration Act 1985*.

The LRC proposes to replace these two processes with a single process whereby the SAT can determine either question.

In addition, section 184(4) states that where there is a dispute about the amount of compensation to be paid and the manner of payment, then the dispute is to be determined by arbitration in accordance with the *Commercial Arbitration Act 1985*. The LRC is proposing that the SAT be given the power to determine such disputes.

The Department supports the idea that the SAT should be a 'one stop shop' for applications for review of planning decisions. The amendments proposed to be made to sections 176(1) and 184(4) will help to remove some complexity in the system by making the SAT the only appeal authority able to determine disputes regarding compensation for injurious affection. As such, the Department supports the proposed amendments set out in the LRC recommendation.

*1.1.1 It is proposed that all matters relating to compensation and injurious affection should be determined by SAT, rather than a separate Board of Valuers or the Commercial Arbitration Act 1985.*

*1.1.2 This will require amendments to:*

- *section 172 to remove the definition of 'Board';*
- *section 176 to remove the reference to the Commercial Arbitration Act 1985 and replace with the SAT;*
- *sections 182 and 183 to remove jurisdiction from the Board of Valuers and transfer to the SAT; and*

- *sections 184 and 188 to remove the reference to the Commercial Arbitration Act 1985 and replace with the SAT*

*This proposal will be subject to integration with amendments to the State Administrative Tribunal Act 2004.*

## 1.2 Ability of original owner to assign compensation rights

The LRC recommended *(recommendation 20)* amendments to section 178(1) and the Model Scheme Text which would have the effect of allowing the original owner to assign compensation rights.

Accordingly to the LRC entitlement to compensation should expire:

(1) for the original owner –

(a) six months after a development application is refused or approved with unacceptable conditions but only in respect of the particular development application refusal or conditional approval (i.e. not in respect of a subsequent development application made by the same owners in good faith); or

(b) six months after first sale, if not assigned to the purchaser;

(2) for a purchaser of reserved land –
six months after a development application is refused or approved with unacceptable conditions provided that the original owner has, at the time of selling the land, assigned to the purchaser, in approved form, his entitlement to compensation upon an unsuccessful development application;

(3) and in any case –
subject to a discretion of the Minister to extend the time limit.

The Department and the WAPC's position on this matter is that the original owner is the only person who is entitled to claim compensation under section 178(1), as the right to compensation is unique to the land owner who is injuriously affected when a scheme or amendment initially takes effect. The right to claim compensation for injurious affection does not pass to subsequent owners. This is because a purchaser is likely to have purchased the land from the original owner at a reduced price, due to the presence of the reservation over the land. Any subsequent payment of compensation for injurious affection would constitute compensation for the loss of something that the purchaser never had and had not otherwise made payment towards.

The WAPC is concerned about the right to claim compensation continuing indefinitely, instead of the parties being required to deal with the injurious affection at the time that it arises. If section 178 was amended as proposed, giving owners the right to assign their right to compensation to a purchaser, then the WAPC may be forced to provide compensation many years after the event that created the injurious affection.

The Department acknowledges that section 178(1) does not clearly express that only the original owner is entitled to claim compensation. As such, it may be necessary to amend section 178(1) to clarify this position.

*1.2.1 It is proposed to amend section 178 (1) to clarify that only the original owner is entitled to make a compensation claim. This will confirm that there are two circumstances in which a land owner has a right to claim compensation for injurious affection for a regional reservation, where:*

- *the land is first sold at a reduced value following the reservation; or*
- *an application to develop the land is refused or granted subject to unacceptable conditions.*

## 1.3 Definition of planning scheme

The LRC recommends *(recommendation 23) "that the words 'or any part thereof' be included in the definition of 'planning scheme' in s 4."*

This recommendation arises from the *Mt Lawley (No 1)* 29 WAR 273 case. In that case, the Full Court held that only the operative amendment of the Metropolitan Region Scheme was to be disregarded during the assessment of the value of the land. This decision was possible due to the definition of 'scheme' in the MRS Act, which included the words *'or any part thereof'*.

When the Planning Act was amended in 2005, a new definition was inserted to address the consolidation of the three previous planning Acts, as the definition of 'planning scheme' in each Act was different. For this reason, the words *'or any part thereof'* were removed.

The Department agrees that this amendment should be progressed.

*1.3.1 It is proposed that the words 'or any part thereof' be included in the definition of 'planning scheme' in s 4, in line with the LRC's recommendation.*

## 1.4 WAPC capacity to take land

In the *Mandurah Enterprises* decision (*Mandurah Enterprises Pty Ltd and Graham v WAPC* [2010] HCA 2), the WAPC took reserved and zoned land for the purposes of the Perth to Bunbury rail project to avoid the severing of a parcel of zoned land from road access. The High Court determined that whilst the Taking Order effected by the WAPC for the purpose of the scheme was not invalid in its entirety (the portion taken in respect of the railway and road reservations remained valid), the Taking Order was invalid to the extent that it purported to take unreserved portions of land.

The taking of the severed portions could have been achieved had the Public Transport Authority used its powers under the *Public Works Act 1902* to take zoned portions for the purpose of the railway work, rather than rely on the WAPC.

The key issue is the timing and funding of infrastructure and the extent to which the WAPC powers ought to be used to effect projects independently of the agency carrying out the infrastructure works in reliance of such takings. In some situations, it may be desirable for the WAPC to have the power to take zoned land for the purposes of a region scheme. For example, if, as the result of a taking, a portion of zoned land would be severed or without legal access.

*1.4.1 With respect to acquisition under sections 190 and 191, it is proposed amendments be made to allow additional acquisition of zoned land in situations where acquiring only the reserved land would leave a parcel of zoned land severed from road access.*

## 1.5 Ability to purchase adjoining land

The LRC recommended (*recommendation 26*) that s 190 be amended to allow the purchase by agreement of land adjoining reserved land if the reserved land is to be acquired by agreement or by taking, whether or not the adjoining land is comprised in the planning scheme and whether or not the purchase is for the purpose of a planning scheme.

The LRC states that section 190 prevents the acquisition of land adjoining reserved land, as the purchase of such land would not be "for the purpose of the planning scheme".

As a result of the *Mandurah Enterprises/Graham* case (see discussion at 3.4), there is some ambiguity as to the scope of section 190 in the purchase of land that is not specifically the subject of the reservation.

Section 14 (j) – setting out the WAPC's functions provides –

> "The functions of the Commission are –
>
> to develop, maintain and manage land held by it that is reserved under a region planning scheme or improvement scheme and to carry out such works, including the provision of facilities on the land, as may be incidental to development, maintenance or management or to be conducive to the use of the land *for any purpose for which it is reserved; ...*"

This suggests that the narrower interpretation of "for the purposes of the scheme" applies both to sections 190 and 191. That is only land that is the subject of a reservation can be subject to dealings. In *Mandurah Enterprises/Graham*, the High Court indicated that it framed the dispute over the 1928 Act equivalent of section 191 as *"...questions of statutory interpretation to be assessed by reference to the statutory presumption against an intention to interfere with vested property rights."*

The Department considers that section 190 should be modified to clearly give WAPC the capacity to purchase the whole of a lot on a voluntary sale basis, even if only part of it is reserved. Given the formulation by the High Court of 'land for the purposes of the scheme' being limited to land reserved for public purposes under the scheme, the terms of section 190 of the Planning Act might be argued to mean that the purchase powers are to be read as narrowly as the taking powers.

*1.5.1 It is proposed to amend section 190 to clarify that the WAPC's powers to negotiate the acquisition of land extend to the whole lot, not just the portion of a lot that has been reserved for a particular purpose.*

## 1.6 Compensation payable only once

On 2 February 2012, a decision was handed down in *Vincent Nominees Pty Ltd v WAPC and Board of Valuers* CIV 2665 of 2008, which considered a number of statutory provisions relating to injurious affection. This case considered a number of provisions under the current Planning Act as wells provisions of the former *Metropolitan Region Town Planning Scheme Act 1959* and the *Town Planning and Development Act 1928*. In this case, a current owner of land that had been the subject of an injurious affection claim prior to purchase, challenged the WAPC's determination to purchase the land at the affected value.

Section 171 provides that if compensation has been paid once, then no further compensation is payable. This provision did not prevent a challenge in the *Vincent Nominees case* to the WAPC's entitlement to deduct the value of compensation previously with respect to a reservation on a property paid in calculating the purchase price. The decision of the Supreme Court supported the WAPC's position in this case. However, to prevent further challenges it is proposed to include amendments to confirm this position. This may take the form of including similar language with respect to voluntary agreements to purchase (s190) as is currently used with respect to compulsory acquisition in section 192(2). That is, where compensation has previously been paid, then the purchase price based on unaffected land value is to be reduced by an amount that bears the same ratio to such value as the previously paid compensation had to the land value at that time.

*1.6.1 Section 171 provides that if compensation has been paid in relation to a matter either under the Planning Act or any other legislation, then no further compensation is payable. It is proposed to clarify this section and/or section 190 to prevent challenges to the WAPC acquiring land at its affected value in the event that compensation has previously been paid.*

## 1.7 Interest accruing where election to purchase process delayed

The Planning Act provides for adjudication of purchase prices, where elections to purchase being made by the WAPC, to be referred to the SAT for resolution. However, the SAT lacks power under its legislation to award interest. A clarifying amendment is proposed to determine how the issue of interest is to be resolved in the case of delay in the determination of a price.

Since the *Nicoletti case (Nicoletti v WAPC* [2006] WASC 131), claimants who are worried that the WAPC is taking too long to make offers following elections (such that they will lose capital gain in circumstances of a rising market), have had the capacity to withdraw their claim and re-lodge new development applications with a view to triggering new compensation claims. This is an indirect way of dealing with the interest issue.

*1.7.1 The Planning Act provides for adjudication of purchase prices following elections to purchase being made by the WAPC to be referred to the SAT for resolution. However, the SAT lacks power under its legislation to award interest. A clarifying amendment is proposed to determine how the issue of interest is to be resolved in the case of delay in the determination of a price.*

## 1.8 Uniform compensation provisions

In 2005, amendments were made to the Planning Act to consolidate the compensation provisions of the three separate acts into a common set of uniform provisions. This resulted in uniform compensation provisions to overcome inconsistencies between compensation rights under both region and local government schemes.

The extension of compensation provisions for region schemes to local government schemes has provided for consistency and advantage to land owners who will not be limited to the period specified in the scheme for making a claim for compensation.

On the other hand, this has resulted in local governments becoming liable for undertakings of the State government in some circumstances. It is proposed to amend the provisions regarding injurious affection to ensure that local governments do not become liable to pay compensation in cases where the injurious affection relates to State government action over which the local government had no control.

*1.8.1 It is proposed to consider amendments to the provisions regarding injurious affection to ensure that local governments do not become liable to pay compensation in cases where the injurious affection relates to State Government action over which the local government had no control.*

## 1.9 Other proposed modifications to injurious affection provisions

A number of other minor and clarifying amendments are proposed to improve the clarity and effectiveness of provisions of the Planning Act relating to injurious affection claims.

*1.9.1 New provision that the lodgement of a claim for injurious affection has the effect of cancelling any previous claims with respect to the same reserved land. This is to ensure that that multiple claims can not be active at the same time (see Nicoletti case).*

*1.9.2 New provision to be introduced to provide that if an injurious affection claim is not acted upon by the claimant within 12-months of lodgement, the claim automatically lapses.*

*1.9.3 Amend section.191(3)(a) to replace '171' with '175' and section (3)(b) replace '180' with '18', to correct the references to the appropriate provisions of the LAA.*

*1.9.4 For clarification, it is proposed to include express power to resume land for a Planning Control Area to be consistent with the resumption powers for Improvement Plans/Schemes.*

*1.9.5 New provision that Improvement Plans be deemed' public works' for the purposes of Part 9 LAA, particularly with respect to agreements to take land under s.168 LAA.*

*1.9.6 New provision to require easements for access in lieu of whole reservations, for example shared use paths along the river..*

*1.9.7 To address some issues in the acquisition of land subject to strata schemes, some suggested amendments to the Strata Title Act may be proposed. For example, (i) inclusion of provision to automatically amend strata schemes at Landgate by excising road truncations, widenings and lots acquired for scheme reserves/ public works when shown on separate deposited plans and the land transfers to responsible authority or taking registered; and (ii) where common property is taken, claimant to be body corporate not individual unit holders body corporate and to decide whether to distribute compensation or pay into common fund for future strata works.*

## 2 Region planning schemes

Under the Planning Act, a region planning scheme may be prepared for all or any of the objects, purposes, provisions, powers or works for which a local planning scheme may be prepared under s 69(1), and may provide for planning, re-planning or reconstructing the whole or any part of a region (s 34(2)). They establish broad zonings of land with which local planning schemes must be consistent, and also provide the mechanisms for reserving or acquiring land for state and regional purposes.

There are currently three region planning schemes operating in Western Australia: Metropolitan Region Scheme (MRS); Peel Region Scheme (PRS); and the Greater Bunbury Region Scheme (GBRS).

The MRS has been in operation since 1963 and provides the legal basis for State planning in the Perth metropolitan region. Under the MRS, all development requires approval by the WAPC unless it is of a class that has been exempted from the need for approval or delegated to local governments for approval. Under the PRS and the GBRS, which were drafted more recently, only those classes of development set out in resolutions by the WAPC require approval.

Following this review of the Planning Act, it is proposed to review the text of the region planning schemes, in particular the MRS, to ensure that the provisions are current and consistent with the Planning Act and other applicable statutory instruments.

## 2.1 Amendment process for region planning schemes

The preparation, development and approval process for region planning schemes is subject to extensive delays. Two of the key legislative requirements that have been attributed with causing delays are the environmental assessment process and advertising processes. Currently the average timeframe for an environmental assessment (and finalisation of a Region Planning Scheme amendment) are between three to five years.

Reform of the region scheme amendment process is proposed as part of the Phase Two reform discussion paper (www.planning.wa.gov.au/planningreform).

The procedure for making a region planning scheme or for an amendment other than a minor amendment involves the following steps:

1. The WAPC or the Minister must form the opinion that matters of State or regional importance require the preparation or amendment of a region planning scheme (s 34(1));
2. The WAPC resolves to prepare a region planning scheme or amendment (s 35);
3. The proposed region planning scheme or amendment is to be referred to the Environmental Protection Authority (EPA) for environmental review (ss 38 and 39);
4. In the case of any region planning scheme or amendment applying to land in the Swan Valley, referral to the Swan Valley Planning Committee is required (s 40);
5. The WAPC must obtain the Minister's consent to go to the stage of seeking public submissions (s 42);
6. If the Minister consents, then public submissions are invited by gazettal and newspaper advertising (s 43). If the scheme or amendment changes the zoning or reservation of any land, then the WAPC is to make reasonable endeavours to give written notice to the owners of the land affected (s 43(4)). The WAPC is also required to consult any public authorities or persons which appear to the WAPC likely to be affected (s 43(5));
7. The WAPC is required to consider all submissions (s 44). Each person making a submission is to be given the opportunity to be heard by the WAPC or a committee established for the purpose (s 46);
8. Further referral to the Swan Valley Planning Committee is required for a scheme or amendment affecting land in the Swan Valley;
9. The WAPC is to report to the Minister on all submissions (s 48);
10. The Minister may withdraw a scheme or amendment, or may give final approval (ss 49 and 50). The Minister may direct the WAPC to again undertake a public inspection process for any scheme or amendment which has been modified after the initial public inspection (s 51);
11. Approval of the Governor is required (s 53);

12. Following Governor's approval, the scheme or amendment is published in the Gazette, but maps, plans and diagrams are not required to be gazetted;

13. Section 55 gives an opportunity to the Governor to revoke the Governor's approval of a region planning scheme or amendment or part thereof even after gazettal;

14. The region planning scheme or amendment and the WAPC's report on submissions are to be laid before each House of Parliament within six sitting days of gazettal (s 56(1)); and

15. The region planning scheme or amendment has effect as if enacted in the Act when it is no longer subject to disallowance (s 56(3)).

An alternative process for amendments is set out in Division 4, which involves less procedural steps. This process is for amendments that in the opinion of the WAPC, do not constitute a substantial alteration to a region planning scheme. The effect of such a resolution is that the simplified procedure in Division 4 applies to making the minor amendment. The steps in the simplified procedure for making an amendment in Division 4 are:

1. The WAPC or Minister must form the opinion in s 34(1);

2. WAPC resolution to prepare the amendment (s 35);

3. WAPC forms the opinion the proposed amendment does not constitute a substantial alteration to the region planning scheme (s 57(1));

4. A copy of the amendment is sent to the Minister (s 58(1)(a));

5. Publication of notice in the Gazette and in a daily newspaper (s 58(1)(b));

6. If the amendment changes the zoning or reservation of any land, then the WAPC is to make reasonable endeavours to give written notice to the owners of the land affected (s 58(1)(c)). The WAPC is also required to consult any public authorities or persons which appear to the WAPC likely to be affected (s 58(1)(d));

7. The WAPC is required to consider all submissions and make a report and recommendations for the Minister;

8. Minister may approve with or without modifications or decline to approve (s 62(1));

9. Amendment published in the Gazette (s 62(2)(a)) but without maps, plans or diagrams; and

10. The minor amendment has effect as if enacted in the Act upon gazettal.

The requirement to refer all Region Planning Scheme amendments to the EPA can add complexity and delays to the process particularly if environmental assessment is required under s.48A of the *Environmental Protection Act 1986* (EP Act). It is important to ensure that the potential environmental impacts of proposed amendments are accurately assessed and taken into account in considering the

feasibility, scope and content of scheme amendments. However, there are classes of amendments which may not raise any significant environmental issues of concern but which are still required to go through the full legislative process of referral.

*2.1.1 It is proposed to restructure the provisions setting out the procedures for amending region planning schemes to effectively reverse the default position. That is, all amendments must follow the truncated process set out in Division 4 unless, in the opinion of the WAPC, the amendment constitutes a 'substantial alteration' to a region planning scheme and is of a class that makes it necessary or desirable to subject it to the longer process in Division 3.*

*2.1.2 It is proposed to amend the process for amendments to provide that only those scheme amendments which are of a class specified in the regulations (to be developed in consultation with the EPA), are required to be referred to the EPA.*

*2.1.3 It is proposed to reduce the required advertising period of Division 3 amendments from 90 days to 60 days.*

*2.1.4 It is proposed to reduce the required advertising period of 'Division 4' amendments from 60 days to 42 days.*

*2.1.5 It is proposed to remove the requirement to advertise amendments in the Sunday Times newspaper.*

*2.1.6 Consideration to be given to formalising the non-statutory pre-referral process with relevant State government agencies and relevant local governments in the Region Scheme amendment process.*

*2.1.7 It is proposed to introduce an amendment to section 63 to allow the adjustment of scheme reserves to cadastre by notice without full consolidation. That is minor inconsistencies due to data set mismatches to cadastre will be able to be corrected by a simple notification and audit system of the GIS data sets.*

## 2.2 The *Swan Valley Planning Act 2005*

The *Swan Valley Planning Act 2005* (SVP Act) requires that region planning scheme amendments within the SVP Act area are to undertaken as 'major' amendments (s 57 (2) of the Act) which may not be appropriate for minor modifications or anomalies. It is proposed that this requirement be refined in the case of minor amendments, to ensure that they do not have to go through unnecessary delays in the processing of amendments.

*2.2.1 It is proposed to amend section 57(2) to enable amendments in the Swan Valley Planning Area to proceed through the process set out in Division 4, unless the WAPC determines such amendment should proceed through the Division 3 process for 'major' amendments.*

## 2.3 Concurrent advertising of Region Planning Scheme and Local Planning Scheme amendments

Land use changes sometimes require an amendment to the region planning scheme and a corresponding amendment to the local government scheme. The legislation currently requires that local government schemes are consistent with the region planning scheme.

The legislation (section 26) provides that where the region planning scheme is amended to reserve land for a public purpose, the local government scheme is automatically amended. The 2010 amendments extended the automatic amendment process to situations where land in a region planning scheme is zoned Urban.

In all other cases, where the region planning scheme is amended with respect to the zoning of land, the local government is required to initiate a corresponding amendment to the local scheme no later than three months after the region planning scheme amendment has the force of law.

It is proposed to further amend this section to allow concurrent amendments for all classes of amendment to region planning schemes.

*2.3.1 It is proposed to amend section 126 to extend allow for automatic amendments of local planning schemes to occur concurrently with region planning scheme amendments for all types of zoning and reservation under the region planning scheme (not just for reservations or amendments to Urban zone as is currently the case). Further, when region planning schemes are amended to remove or reduce reservations, local planning schemes should be automatically amended. The concurrent and/or automatic amendments will be subject to the provision of supporting documentation as requested by the WAPC which may include spatial data and structure plan(s).*

## 2.4 Conflict between a Region Planning Scheme and a Local Planning Scheme priority of instruments

Part 9 of the Planning Act sets out the proposed priority of instruments. There is an inconsistency between the terms of the Planning Act and the Metropolitan Region Scheme (MRS).

Section 123 provides that local planning schemes and local laws are to be consistent with a region planning scheme.

Section 124 (1) provides that if a region planning scheme is inconsistent with a local planning scheme, the region planning scheme prevails over the local planning scheme to the extent of the inconsistency.

However, clause 21 of the MRS provides that where a local planning scheme provision is 'at variance' with any provision of Part III of the MRS, the provisions of the local planning scheme shall prevail.

A clarifying amendment may be required to address the ambiguity arising from these inconsistent provisions to confirm the priority of region planning schemes.

*2.4.1 It is proposed that Section 124 to be amended to clarify that notwithstanding any provision in the MRS or other region planning scheme, the provisions of a region planning scheme prevail over the provisions of a local planning scheme to the extent of any inconsistency.*

## 2.5 Electronic versions

It is proposed to ensure that the Planning Act enables the electronic version of the region planning schemes to be the official version with statutory effect, once the Department has implemented the appropriate technology, processes and supporting environment. This will allow the electronic version to be continually updated to reflect positional changes to cadastral boundaries resulting from geodetic and spatial upgrades by Landgate of their Spatial Cadastral Database (SCDB). This in turn would allow for more efficient consolidation of minor amendments as well as tracking, auditing and actioning of workflows.

In addition, it is proposed that the range of overlays on electronic versions could be extended in scope and accessibility to provide more accurate and up to date information on the constraints and opportunities within a region planning scheme area. The range of data that can be covered in different layers includes infrastructure (such as gas pipelines, water sewerage, power plants etc), environmental constraints (such as wetlands, contaminated sites, Bush Forever sites), and other areas demarcated in relevant planning policy. Further informational layers may be included such as the location of areas designated under local planning schemes (such as development contribution plans and heritage listings). Only data for which the WAPC is responsible will be included in the mapping.

*2.5.1 It is proposed to introduce amendments to relevant sections of the Act (including but not limited to Sections 43, 46, 54, 56, 58, 62 and 63) to ensure that the Planning Act enables the electronic version of the planning schemes to be the official version, once the Department has implemented the appropriate technology, processes and supporting environment.*

# 3 Local planning schemes

Under the Planning Act, a local government may prepare or adopt a local planning scheme or amendment with reference to any land in its district but needs the Minister's approval to do so. The provisions regarding local planning schemes, have remained substantially unchanged since the 1928 Act. Matters which may be the subject of a local planning scheme are contained in section 69 and Schedule 7 of the Planning Act.

Historically, the State has been able to influence the content of local planning schemes through the establishment of the model scheme text (as prescribed in Appendix B of the *Town Planning Regulations 1967*) and, more indirectly, through the development of State planning policies to which the local governments are required to give due regard in the preparation of their schemes.

As a result of the 2010 Amendment Act the legislation now enables the development of general provisions to ensure more consistency in the legal and administrative provisions of the local planning schemes. The regulations regarding the process of amending schemes are being reviewed concurrently with the development of proposed general and model provisions. In addition, in certain circumstances the Minister for Planning will be able to direct local governments to amend their schemes to be consistent with particular State planning policies.

## 3.1 Amendment process for local planning schemes

Local planning schemes are currently made and amended by a process that involves the following elements:

(i) The responsible local government resolves to prepare the scheme, or to adopt a scheme prepared by owners (s 72(1))

(ii) Referral to agencies (Part 5 Dir 3)

(iii) Environmental Review (ss 81 & 82, 85 and 86)

(iv) Public inspection (s 84)

(v) Approval by the Minister (s 87(1))

(vi) Publication in the Gazette, advertising and display (s 87(3)).

The preparation, review and amendment of local planning schemes is slow and expensive. Schemes are often long overdue for review before the review formally commences. Local scheme amendments can also take a year or more for approval. There are a range of factors leading to delays including protracted negotiations and lengthy consultation procedures. Two of the key legislative requirements of the process for scheme amendments that have been attributed with causing delays, as with the region planning scheme process, are those relating to (a) referral of all schemes to the EPA, and (b) advertising and consultation periods of scheme amendments.

Major changes occurred to the planning process following the *Planning Legislation Amendment Act 1996*, which introduced the environmental assessment of local planning schemes and amendments. The intention of the legislation was to give the community greater confidence in the land use planning process because the environmental assessment of proposed land uses and development at the rezoning stage would provide certainty that environmental factors have been given proper consideration long before development occurs.

Since then, concerns have been expressed that these procedures have resulted in increased complexity, delays and costs in the planning process without significantly better planning or environmental outcomes.

Section 81 requires all local planning scheme amendments to be referred to the EPA for advice as to whether an environmental review is required. The EPA is required to respond in 28 days. The *Town Planning Regulations 1967* provide that councils are not permitted to advertise a proposed scheme amendment for public inspection until the EPA has provided written confirmation that an environmental review is not required.

In cases where there may be environmental concerns associated with a scheme amendment, it is important for the EPA to be consulted. However, a great majority of scheme amendments do not require an assessment under section 48A of the *Environmental Protection Act 1986*. In addition, if the EPA does determine that an environmental assessment is required under section 48A of the *Environmental Protection Act 1986*, the amendment process can be lengthy and problematic.

In order not to divert resources from cases where significant environmental issues are present, it is proposed to amend section 81 so that only those schemes which give rise to environmental issues need be referred to the EPA.

*3.1.1 It is proposed to amend section 81 to provide that only those scheme amendments that are of a class specified in the regulations (to be developed in consultation with the EPA) are required to be referred to the EPA.*

*3.1.2 Under section 82, there is no time limit on the requirement for a local government to undertake an environmental review when the EPA has acted under section 48C(1)(a) of the Environmental Protection Act 1986 (EP Act). It is proposed to insert a time period within which the local government must comply with the relevant instructions from the EPA.*

The requirements relating to the advertising of a scheme amendment are set out in Part 5, Division 4 of the Planning Act.

Section 84 provides that *after* compliance with the EPA referral and environmental review requirements in sections 81 and 82, a local planning scheme *is* to be advertised. In practice, when a scheme is prepared, incorporating an environmental review if required, it is sent to the WAPC for a recommendation to the Minister for consent to advertise for public comment. Pursuant to the *Town Planning Regulations 1967*, the Minister may give consent to advertise the scheme with or without modifications or may withhold consent to advertise. A scheme is to be advertised for a minimum of three months.

Local governments have suggested that delays may be reduced if the public advertising of the proposed scheme amendment could occur simultaneously with any requirement of referral to the EPA.

*3.1.3 It is proposed to amend section 84 to (i) reflect the requirement specified in the Town Planning Regulations 1967 that the Minister's consent be obtained prior to advertising; and (ii) provide that, in cases where a referral to the EPA is required under section 81, the Minister may consent to the advertising process proceeding simultaneously with the process of referring the scheme to the EPA.*

## 3.2 Objects of a local planning scheme and local planning strategies

The range of objects which can be included in a local planning scheme is currently very broad. Section 69 provides that a local planning scheme may be made: (i) with the general objects of making suitable provision for the improvement, development and use of land in the scheme area; and (ii) making provision for any of the purposes or powers set out in Schedule 7.

Judicial interpretation of the scope of the power currently set out in Schedule 7 (previously set out in Appendix A to the 1928 Act) is that it elaborates but does not extend or limit the power of the local government to provide for general objects in the scheme (see *Costa & Ors v Shire of Swan* [1983] WAR 22).

Most local planning schemes contain the following provisions:

- the identification and classification of land by way of zoning or precincts;
- the types of uses that are permitted or preferred in those zones or precincts;
- the designation of residential density coding by reference to the codings set out in SPP 3.1 Residential Design Codes;
- the designation of Special Control Areas, which act as an overlay to zones or precincts, where particular additional planning controls are required to be applied;
- developmental standards or requirements by reference to the zone or precinct or by reference to the type of use (for example, the number of car bays required to be provided for particular uses, the maximum heights of buildings, the required building setbacks, provisions relating to landscaping and amenity);
- the power to make local planning policies to support and guide the exercise of discretion in decision-making under the scheme;
- in some schemes, a power to require structure plans prior to development or subdivision approval; and
- the process by which an application for development approval is lodged, assessed, and determined.

The preferred view of the WAPC is that the local planning scheme text should be short and succinct, and that the detailed strategic framework should be set out in the local planning strategy. Currently, the Planning Act does not make any reference to local planning strategies.

*3.2.1 It is proposed to include a reference to the preparation of local planning strategies in the Act, and to elaborate on the range of objects which should be included in a scheme and those which are better dealt with in a local planning strategy.*

*3.2.2 In addition, as part of the review process of the model scheme text and general provisions referred to in 4.1 above, it is proposed to transfer certain procedural provisions into generally applicable regulations. This will achieve statewide consistency in planning approval requirements regarding structure plans, development contribution plans, special control areas and administrative procedures. The Minister for Planning will consult with local governments, the Environmental Protection Authority and other affected parties prior to the general provisions coming into effect. Currently, the amendments contemplates two types of general provisions: those that will apply automatically as regulations; and those that must be approved and adopted as part of the scheme amendment process to have effect.*

## 3.3 Restrictive covenants

The restrictive covenants are a matter that may be dealt with by a local planning scheme as set out in Schedule 7. Schedule 7 provides that a local planning scheme may provide for the power of "extinguishment or variation of any restrictive covenant". *Planning Bulletin 91 Estate Covenants: New Residential Subdivisions* was released by the WAPC in July 2008. This Planning Bulletin explains how restrictive covenants are used in the planning system, including how they are varied or extinguished.

A restrictive covenant is an agreement which restricts a landowner in the use or enjoyment of the landowner's land for the benefit of other land or for the benefit of a public authority. Planning Bulletin 91 provides guidelines concerning the variation or 'extinguishment' of restrictive covenants which purport to restrict residential density in a manner that is inconsistent with the applicable residential design codes for the area. Generally, the WAPC is of the view that these are the only types of restrictive covenants in respect of which it is appropriate for the provisions of a local planning scheme to override. Other types of restrictive covenants should generally only be modified by the procedures set out in the relevant provisions of the *Transfer of Land Act 1893* (TLA).

The language in Schedule 7 is not restricted to any particular type of restrictive covenant and contemplates a much broader power.

*3.3.1 It is proposed to amend Schedule 7 to modify the power of a local planning scheme to modify or extinguish a restrictive covenant. It is proposed that this power only be used in relation to restrictive covenants affecting any land in the local planning scheme area by which, or the effect of which is that, the number of residential dwellings which may be constructed on the land is limited or restricted to less than that permitted by the local planning scheme (including any covenant purporting to limit or restrict subdivision or limit or restrict the maximum area occupied by a dwelling), to the extent that it is inconsistent with the provisions of the residential planning design codes that apply under the local planning scheme.*

It should be noted that the above changes do not propose any changes to existing restrictive covenants relating to control of residential density or subdivision.

## 3.4 Meaning of the term 'adopt'

The term 'adopt' is interchangeably used in different senses in both the Planning Act and regulations when referring to local planning schemes and amendments. In one sense, it is used to mean the initial adoption of a draft scheme amendment by a local government before it goes through the advertising and environmental review process. This is where the local government has not itself prepared the scheme amendment but rather 'adopted' the initial version prepared by landowners, for the purposes of submitting it to the full process of advertising and consultation. In another sense, it means the final adopting by the local government council, as an amendment ready to be submitted to the Minister

for Planning for his approval. This occurs after the scheme amendment has gone through the referral and advertising processes and is ready to be lodged with the WAPC for final approval by the Minister.

*3.4.1 It is proposed to modify sections 72, 75 and 76 to clarify the use of the term 'adopt' in respect of local planning scheme amendments. A distinction is to be made between the initial adoption of an instrument prepared by landowners prior to being submitted through the advertising and referral process, and the final adoption by the Council of a proposed amendment for submission to the Minister for final approval.*

## 3.5 Regulations for Local Planning Schemes

The question of who is authorised to make regulations affecting the content and application procedures under local planning schemes and other planning matters is inconsistent. Sections 256 and 258 empower the Minister to make regulations prescribing provisions in local planning schemes. However, section 261 nominates the Governor as the authority to make regulations concerning planning fees. The Governor also is given a broad power to make regulations under section 263, including the manner applications are made. This inconsistency arises because when the Planning Act was introduced in 2005, it was a consolidation of different statutes, some of which had named the Minister and others the Governor as the appropriate approval authority for new regulations. This oversight should now be corrected.

*3.5.1 It is proposed to delete references to 'the Minister' making regulations, such as under sections 256, 257A, 257B, 258, 259, to be replaced with 'the Governor.'*

# 4 Cash-in-lieu of public open space

In Western Australia, since publication of the *Stephenson Hepburn Report* in 1955 and confirmed by the High Court decision in *Lloyd v Robinson* (1967) 107 CLR 142, it has been standard for any subdivision approval agency to require land equal to 10 per cent of the gross subdivisional area in a residential subdivision vested in the Crown free of cost as public open space (POS).

It is not always consistent with good planning design for land to be given as POS (e.g. the area required to be given may be too small for a useable recreation ground or there may be a more appropriate location for public open space in the locality. Provision is therefore made in ss153-156 for dealing with the giving of cash-in-lieu of POS.

Under the current legislative provisions, cash-in-lieu can apply if the WAPC has approved a plan of subdivision of land on condition that a portion of the land be set aside and vested in the Crown for parks, recreation grounds or open spaces generally and:

(a) the WAPC after consultation with the responsible local government so requires (s153(1)(a)); or

(b) the WAPC, the local government and the owner so agree (s153(1)(b)).

## 4.1 Requirement of a condition to set aside land

The current legislative provisions require that before the WAPC may consider if cash-in-lieu is more appropriate than the setting aside of land, a condition to actually set aside land must have first been applied. That is, cash-in-lieu cannot be considered upfront as a condition in itself. This interpretation was confirmed in *Langer Nominees Pty Ltd & Anor and WAPC* 2007 WASAT 137), which determined that the discretion to approve/require a cash-in-lieu payment was a reviewable decision. The imposition of the condition requiring POS serves as the trigger for the application of section 153 enabling a cash contribution to be made in lieu of the land being set aside.

Given that cash-in-lieu may be more appropriate than the setting aside of land in some situations, it may be more efficient to allow the WAPC to consider the question upfront without the additional step of having to impose the condition to set aside land.

Another anomaly in section 153(2) is that the WAPC may not require cash in lieu where the subdivision creates less than three lots, but it may require actual land for less than three lots. The setting aside of POS land in such subdivisions would usually result in an unusable size of POS. Often land or cash-in-lieu would not be required for two-lot subdivisions, however the provision serves as a deterrant to staging larger subdivisions to avoid a contribution. Where a subdivision creates less than three lots, it is proposed that the option to require cash rather than set land aside may be more consistent in achieving proper planning outcomes.

*4.1.1 It is proposed to amend section 153 to allow the WAPC to impose a condition on subdivision approval that POS requirements be satisfied through the payment of cash-in-lieu (without the requirement of a prior condition on the setting aside of land).*

*4.1.2 Further, it is proposed to delete the limitation in section 153(b) such that cash-in-lieu provisions or the setting aside of land may apply to subdivisions that result in the creation of less than three lots if considered a necessary contribution to the locality.*

## 4.2 Trust account

Section 154 deals generally with money received by a local government under the cash-in-lieu provisions of section 153.

Section 154(1) provides that all money received by a local government under section 153 is to be paid into a separate account of the trust fund established under s 6.9 of the *Local Government Act 1995*.

Local government has questioned why the funds received under section 153 need to go into a trust account rather than a special reserve account as is required for developer contributions under *State Planning Policy SPP3.6 Development Contributions for Infrastructure*. The change to a reserve account is supportable as:

- reserve accounts are established for a specific purpose and strict constraints apply to changing the purpose;

- interest on the reserve account can be restricted to apply to that purpose; and
- the monies are being held in reserve for specific works rather than for a specific individual or company.

*4.2.1 Section 154(1) to be amended to allow for monies received under section 153 to be paid into a reserve account (rather than a trust account) in the same manner as Development Contributions under SPP 3.6.*

## 4.3 Approval of the Minister

Section 154(2)(c) provides that with the Minister's approval, a local government may apply the funds received as cash-in-lieu to the improvement or development of land anywhere in the locality of the local government for the purpose of parks, recreation grounds or open spaces (not just land included in the locality in which the land included in the plan of subdivision is located). As a matter of practice, this decision is often delegated by the Minister to the WAPC up to a certain financial threshold. To streamline the procedure, it is proposed that the WAPC be the final approval authority for the purposes of this sub-section. This should be a sufficient check and balance on how the funds are applied by the local government.

*4.3.1 It is proposed to replace 'Minister' with 'Commission', as the approving authority regarding the potential wider application of funds received as cash-in-lieu provided for under section 154(2).*

## 4.4 Joint subdivision agreement

Section 154(2) provides four ways in which the money held in that part of the trust fund is to be applied. One of the four ways is the reimbursement of a owner (first owner) of land included in a *joint subdivision agreement* for land that has been set aside for open space where the first owner set aside a greater proportion of land than another owner (the second owner). This section was included in the Planning Act in 2005. It was not in the 1928 Act and is yet to be judicially considered.

The issue of what constitutes a 'joint subdivision agreement' has recently been raised, and in particular whether or not a local structure plan or POS strategy could come within the scope of the definition. Accordingly, it is proposed to amend this provision to clarify the scope of 'joint subdivision agreement'.

*4.4.1 Section 154(2)(d) to be amended to clarify the scope and definition of 'joint subdivision agreement.*

### 4.5 Method of valuation

The interpretation of section 155(3)(b)(iv) regarding the calculation of the market value of land has been the subject of dispute. In particular, whether or not the requirement to take "into account the added value of all other improvements on or appurtenant to the land" is appropriate when it comes to calculating the costs of roads and waterway construction pursuant to section 159, has been questioned. This review may present an opportunity to clarify provisions concerning valuation to limit ambiguity and bring the legislative requirements in line with current best practice in valuation methodology.

To reduce disputes, the possibility of prescribing in more detail the preferred methodology for valuations under the Planning Act may be considered, including model calculation worksheets and templates.

In addition, consistent with other proposals to transfer jurisdiction of dispute resolution for matters under the Planning Act to the SAT, it is proposed that disputes as to valuation matters also be referred to the SAT.

*4.5.1 Section 155(3)(b)(iv) to be amended to clarify the matters to be taken into account in calculating the market value of land for the purposes of determining the amount of cash-in-lieu for POS payable, (and also for the purpose of determining road costs recoverable by original subdividers pursuant to section 159). A model worksheet may be developed and included as an appendix or published on the website.*

*4.5.2 It is proposed to amend section 155 to provide that any disputes as to valuation be referred to the SAT rather than determined pursuant to the Commercial Arbitration Act 1985.*

## 5 Subdivision and development control

There is an ongoing need to draft legislation in clear and simple language and to make legislative enactments accessible to the general public as well as the legal profession. This review of planning legislation is an opportunity to clarify and generally improve provisions dealing generally with the subdivision and development approval process.

To some extent the consolidation and amendment to the Planning Act in 2005 achieved further simplification and streamlining of provisions relating to the subdivision process, but there are some ongoing issues that may be addressed in this review.

### 5.1 'Conflict' between subdivision and local planning schemes

In 2005, amendments were made to the Planning Act to require the WAPC to give due regard to local planning schemes when considering subdivision applications and to not give an approval that 'conflicts' with the provisions of a local planning scheme. However, section 138(3) provides that the WAPC may approve a subdivision that conflicts with a local planning scheme in certain circumstances.

Local government schemes are the central instrument for local planning in Western Australia and the WAPC should not be able to disregard schemes in making subdivision decisions. On the other hand, the WAPC should be allowed some flexibility in its discretion in determining subdivisions to ensure that State interests are protected in respect to land supply.

While the current provisions in section 138 are aimed at balancing these concerns, there is some confusion about the meaning of the term 'conflicts', and the situations in which the WAPC is permitted to approve a subdivision that is not consistent with the provisions of a local planning scheme.

Clarifying amendments will be considered to more specifically consider the circumstances in which a local planning scheme may be varied from in approving a subdivision.

*5.1.1 It is proposed to clarify the meaning of 'conflicts' in section 138(3) and/or to further iterate the circumstances in which a subdivision approval may be given that is contrary to the provisions of a local planning scheme.*

## 5.2 Clearance of conditions

The WAPC may require an applicant for subdivision approval to comply with such conditions as the WAPC thinks fit before the WAPC will endorse a deposited plan (diagram or plan of survey). Frequently the WAPC imposes conditions that require a matter specified in the condition to be carried out to the satisfaction of a third party; such conditions are termed 'ambulatory conditions'.

In 2005, the Planning Act was amended in order to provide certainty by validating ambulatory conditions. It is proposed to consider additional processes and procedures to assist in the clearance of conditions by the WAPC and other parties to ensure greater certainty and clarity in the process.

The practice of the WAPC in relying on local government and State agencies to liaise directly with subdividers to facilitate clearance of subdivision conditions is recognised in the legislation but the circumstances in which formal advice from such agencies may be required may need to be further clarified.

*5.2.1 It is proposed to introduce provisions setting out a more formal resolution process for clearing subdivision conditions.*

## 5.3 Recovery of costs of original subdivider

Section 159 provides a procedure for an original subdivider to compel a later subdivider to pay a contribution to the cost of a subdivisional road provided by the original subdivider. This applies to roads or waterways with which the later subdivision has a lot or lots which share a common boundary with the the existing road of the original subdivider.

'Subdivider' is not defined. From time to time there have been disputes over the interpretation of who is liable under this section, and the application of the valuation methodology under section 155 with respect to the cost of roads.

Consideration will also be given to whether or not the scope of section 159 should extend beyond the costs of roads incurred by an original subdivider to costs for other infrastructure such as sewerage, water, drainage and perhaps telecommunications, which are a fundamental requirement to service a subdivision, particularly residential. Where developer contributions do not exist this would enable developers, particularly small developers, to reduce the risk for development as they will be able to seek cost recovery. This is particularly important in areas that are fragmented and/or remote.

*5.3.1 Clarifying amendments are proposed to section 159 ensure that the formula for reimbursement of the costs to the original subdivider are reasonable and accurate. In particular, that the original subdivider may only recover 'one-half' of the 'reasonable costs' from a later subdivider once, and modification of language in section 155(3)(b)(iv) regarding improvements on the land in the application of road and waterway costs.*

*5.3.2 Comments are sought on the proposal to extend the scope of section 159 to enable an original subdivider to recover costs not only for roads but also other essential infrastructure including sewerage, water, drainage and perhaps telecommunications.*

## 5.4 Local government supervision of road design

Sections 168 and 170 provide for local government control over the design and specifications for local roads and waterways and s 170(5) allows for a right to apply to the SAT to review the local government requirements.

In the same context, s 169 empowers the WAPC to publish in the Gazette minimum standards of construction for roads and waterways, apparently intended to apply as models, but to date none have been published or proposed.

Currently, there are no time limits that apply the local government consideration of designs and specifications, nor any minimum standard published by the WAPC to guide them. It is proposed to clarify the requirements in Section 170 as to the timeframe and standards that a responsible authority is bound by in requesting a subdivider to comply with the requirements regarding roads and waterways.

*5.4.1 An amendment to section 170 is proposed to provide a timeframe and refer to standards and specifications for the purpose of providing certainty and clarity to subdividers on complying with requirements of responsible authority for roads and waterways.*

*5.4.2 An amendment to clarify that section 157 – which provides for deemed approval of subdivision works – is subject to the requirement in section 170 that roads and waterways be subject to approval by the responsible authority.*

## 5.5 Definition of 'development'

The current definition of 'development' in the Act (section 4) is: 'development' means the development or use of any land, including —

(a) any demolition, erection, construction, alteration of or addition to any building or structure on the land;

(b) the carrying out on the land of any excavation or other works;

(c) in the case of a place to which a Conservation Order made under section 59 of the *Heritage of Western Australia Act 1990* applies, any act or thing that —

(i) is likely to change the character of that place or the external appearance of any building; or

(ii) would constitute an irreversible alteration of the fabric of any building.

The term 'development' is used both in the definition and in the explanation. This causes confusion when wanting to describe 'development' as purely 'works' being undertaken, as opposed to any 'use' being undertaken. Also, it is often not clear when using the term 'development' whether it is applying to both 'use of the land' and 'development' (works) or just 'works'.

*5.5.1 It is proposed to consider amending the definition of 'development' as follows:*

'development' means the use of any land, or undertaking any works in, on or under any land including —

(a) any demolition, erection, construction, alteration of or addition to any building or structure on the land;

(b) the carrying out of any excavation or other works;

(c) in the case of a place to which a Conservation Order made under section 59 of the *Heritage of Western Australia Act 1990* applies, any act or thing that —

(i) is likely to change the character of that place or the external appearance of any building; or

(ii) would constitute an irreversible alteration of the fabric of any building.

# 6 Time limits on endorsement of subdivision plans

## 6.1 Expiry of plans under section 145

Issues have arisen with the way that applications for WAPC endorsement of an approved plan of subdivision are lodged with the Department of Planning.

Section 145 of the Planning Act requires that a person who has an approved plan of subdivision, must lodge an original diagram or plan of survey of the subdivision to the WAPC for endorsement before the prescribed period expires. Generally, the prescribed period is four years from the date of approval for subdivisions creating more than five lots, and three years in all other cases.

The current process allows an applicant to make an application using the standard Form 1C, accompanied by the prescribed fee and a copy of the original plan of subdivision that has been lodged with Landgate for certification. The 'certified correct' original plan is often not provided to WAPC until some time after the Form 1C has been lodged, and in some cases is not received until after the expiration of the prescribed period.

To address some of the inconsistencies between practice and applicable regulatory provisions and forms, the Department is proposing some changes to its Form 1C and lodgement process. In addition, some legislative change will be considered.

*6.1.1 It is proposed to amend section 145(5), to clarify that the 30-day statutory period for dealing with a request for endorsement of an approved plan of subdivision commences from the date that the WAPC receives a complete and valid application. This includes not only a valid Form 1C but also the 'certified correct' original plan from Landgate.*

*6.1.2 Amend section 145(7) to provide some flexibility for the WAPC to accept an original plan after the expiration of the prescribed period in section 145(2), in circumstances where the applicant has lodged the Form 1C and all other relevant documentation in a timely manner, but due to extenuating circumstances, the original plan was not received from Landgate prior to the expiration date.*

*6.1.3 It is proposed to introduce an option to allow WAPC the discretion to 'roll over' subdivision approvals (once only) for a further two years upon the payment of a reduced fee providing there has been no significant planning changes in respect of the area or servicing authority specifications. Similar provisions could be introduced for development applications.*

## 6.2 Issuance of title under section 146

Section 146 was inserted into the Planning Act as part of the 2005 consolidation. This section operates to prevent the Registrar of Titles from registering a new certificate of title for a subdivided property if the application for a title is not made within the specified time period. The aim of this section is to provide a finite period between a subdivision approval and the right to make a title application, thereby

ensuring that there are no dormant subdivision approvals that may continue to be valid for an indefinite period. The aim is to prevent the approval being acted upon at a much later date when it may be out-of-step with modern planning practices.

If an applicant fails to apply for a title on an endorsed diagram or plan of survey within the period prescribed under section 146 (generally two years from the date of endorsement of the plan by the WAPC), the applicant will be required to recommence the entire subdivision process from the beginning under section 135 of the Planning Act. The approvals of the WAPC under sections 135 and 145 will have lapsed and cease to have any effect.

While section 146 prevents the creation of titles after a certain period, it does not expressly provide for the WAPC's approval to lapse.

*6.2.1 It is proposed to amend section 146 to clarify that once the time period specified to lodge with Landgate for the issuance of title, a diagram or plan of survey endorsed with the approval of the WAPC has lapsed, the effect is that the WAPC approval is deemed revoked, and the endorsed diagram or plan of survey ceases to be valid or effective.*

## 7 Pre-selling – amendments to section 140

Pre-selling (or selling off-the-plan) describes a situation where developers make an offer to transfer or sell land or property that has not yet received title as an individual lot.

Currently, the Planning Act prohibits dealing in land that has not yet received title as a separate lot unless certain preconditions are met. These preconditions are set out in section 140.

Previously, the Land and Housing Industry reference group and the Department of Consumer affairs have proposed that section 140 be amended to restrict the practice of pre-selling. The amendment would effectively restrict the practice of entering into presale contracts for the sale or purchase of land that requires or proposes the subdivision of land into three or more lots unless the WAPC has given approval to the subdivision. While the market conditions that were the impetus for this concern have subsided, it is considered that this review is an opportunity to clarify the operation of this section.

There is some ambiguity in section 140 as to whether the preconditions require WAPC approval of the actual *agreement* to (pre)sell in addition to the requirement for approval of the proposed *subdivision* to be obtained within the prescribed period of time. As a matter of practice, the WAPC does not engage in reviewing and approving the entering into of agreements to (pre)sell land.

The Law Society supports an amendment that reinstates the position under the 1928 Act (as amended) which provides that the validity of an agreement to sell be conditional on WAPC approval of the proposed *subdivision*, without the requirement that the agreement itself be approved by the WAPC.

In addition, the opportunity will be taken to clarify the effect on the rights and obligations of the parties to an agreement, in circumstances where subdivision approval or final endorsement of a plan does not occur within a specified timeframe.

*7.1 It is proposed to amend section 140 to remove the reference to the WAPC approving an agreement to pre-sell land and to effectively reinstate the legislative position under the 1928 Act (as amended). That is, an agreement to 'pre-sell' land may be entered into provided that such agreement is conditional upon approval of the subdivision by the WAPC.*

*7.2 Section 140(3)(b) and section 141 are proposed to be amended to clarify the rights and obligations of the parties to agreements to sell for situations where either (i) WAPC approval is not obtained within the period of six months after the date of entering into the transaction; or (ii) final endorsement of the diagram or plan of survey and/or the issuance of title does not occur within a specified period of time.*

# 8 Enforcement and legal proceedings

In addition to the enforcement provision contained with local planning schemes and region planning schemes, Part 13 of the Planning Act sets out matters relating to enforcement and legal proceedings.

Sections 211 to 235 set out the powers of the Minister, the WAPC, or the local government, as the case may be, to ensure compliance with the provisions of a planning scheme or the Planning Act, including directions by the Minister given under the Planning Act. This review is an opportunity to consider the scope of these legislative provisions and the adequacy of current practice regarding enforcement.

## 8.1 Increase in penalty

The *Heritage and Planning Legislation Amendment Act 2011* had the effect of amending section 223 of the Planning Act to increase the maximum penalty amount for offences under the Act from $50,000 to $200,000, and the daily continuing offence rate from $5,000 to $25,000. Prior to this change, the penalty amounts had not been reviewed since the early 1990s.

As part of this review it is proposed to review the adequacy of the penalty amounts by engaging in a comparative analysis of rates in other Australian jurisdictions and across other Western Australian jurisdiction.

*8.1.1 It is proposed to review the penalty amount under the Planning Act based on the current penalty amounts prescribed under comparable legislation in Western Australia and other jurisdictions.*

## 8.2 Enforcement of local planning schemes and the scope of section 211

Section 211 (based on section 18 of the 1928 Act) enables any person aggrieved by the failure of a local government to enforce or act in accordance with a scheme to request the Minister to consider the matter.

The Minister may determine not to take any action in response to the representations or, if the Minister considers it appropriate to do so, the Minister may refer the representations to the SAT for its report and recommendations.

The Minister may then order the local government: (a) to do all things necessary for enforcing the observance of the scheme; or (b) to do all things necessary for executing any works which the local government is required to execute.

From time to time, the scope of section 211 is challenged by persons aggrieved by the action or inaction of their local government in a particular planning matter. However, this provision is not intended to operate as a third party appeal right but rather is there for serious or significant acts or omissions by the local government which have the effect of not enforcing the relevant local planning scheme.

Further clarification of the scope and process provided by this provision may be considered in this review.

*8.2.1 It is proposed to further specify the scope and process under section 211 to ensure that it is not used as a form of third party appeal right.*

## 8.3 Minister's enforcement powers under section 212

Section 212 allows the Minister to take action on behalf of a local government if it fails to comply with an order or direction given under the sections listed in subsection (1). These include failures by the local government to comply with:

- an order under section 76 (preparing local planning schemes and amendments);
- an order made under section 77A (State Planning Policies);
- a provision of Part 5 Division 5 (review of local planning schemes);
- an order under section 211 (enforcing a local planning scheme); and
- the regulations made under section 258 (preparation and advertisement of local planning schemes and other matters.

*8.3.1 This section will be reviewed to ensure that this power extends to all relevant directions and orders given by the Minister pursuant to the Planning Act.*

## 8.4 Powers of responsible authority – section 214

Some minor clarifying amendments are proposed to this section. Currently, in the case of an unauthorised development, the power of the responsible authority is arguably limited to directing the proponent to remove the development and restore the land to its condition immediately before the development started. It would be prudent to allow other appropriate measures to be directed by the responsible authority where removable of the development or restoration would not result in a satisfactory planning outcome.

*8.4.1 It is proposed to expand the range of measures that a responsible authority may direct a proponent of unauthorised development to undertake. This will be in addition to the power to direct removal of the development and restoration of the subject land.*

## 8.5 Unauthorised subdivision works – section 219

Section 219 provides a person who commences, continues or carries out works *for the purpose of enabling the subdivision of land* otherwise than (a) as shown on a plan of subdivision approved by the WAPC; or (b) as required by the WAPC to be carried out as a condition of approval of the plan of subdivision commits an offence.

In certain circumstances where an applicant is carrying out unauthorised works, the evidentiary burden of establishing the requisite intent that the works are *for the purpose of enabling the subdivision of land* may interfere with the proper and fair implementation of the offence provision in section 219. To ensure that applicants undertaking unauthorised works do not have the opportunity to escape liability for their actions due to the current wording of this section, a modification is proposed to ensure that its objectives are met.

*8.5.1 It is proposed to amend section 219 to remove the requirement that the purpose of the works needs to be established for an offence to have occurred. It will be sufficient for the works to be have been commenced or carried out on land that is the subject of a subdivision application and otherwise than as shown on a plan of subdivision approved by the WAPC, or as required by the WAPC to be carried out as a condition of approval.*

## 8.6 Planning infringement notices – section 228

Section 228 provides for infringement notices to be issued and refers to a 'designated person'. This term is not defined and may require further clarification.

*8.6.1 It is proposed to amend this section to include a definition of 'designated person'.*

# 9 Public works exemptions

The development approval process for public works throughout the State is in need of review. The existing provisions in sections 5 and 6 of the Act have been the subject of frequent legal advice seeking clarification as to whether or not a particular body or type of work comes within the scope of a public work exemption.

The definition of 'public work' is set out in section 4 of the Act, which includes any public work as defined in the *Public Works Act 1902*. This list of public works was originally compiled in 1902 and has been infrequently revised on an ad hoc basis since then. If a work does not come within an exemption under the Act, a development application needs to be lodged with the WAPC for approval under a region planning scheme, unless it comes within one of the separate list of exemptions set out in the region planning scheme.

Section 6 of the Planning Act effectively provides an exemption from development approval for public works undertaken by any of the agencies specified in section 6. Section 5(2) states that a region planning scheme binds the Crown (i.e. all section 6 bodies except local government). This means that the exemption provided by section 6 does not extend to the requirements of a region planning scheme for State agencies but does for local governments. As such, section 6 bodies may be required to apply for approval to commence development, including public works, under a relevant region planning scheme.

## 9.1 Range of public and minor works

There are a number of works and proposals that, under the current legislation, do not fall within the legislative exemptions and so must be forwarded into the WAPC for formal approval. In many cases, the consideration of the applications by the WAPC adds little or no value as there are no complex planning issues to be resolved. In addition to clarifying existing exemptions, this review aims to identify further classes of works that may be appropriate for exemption from the approval process. This may result in amendments to the definitions in the Act as well as revisions to the lists of exemptions in Clause 16 the Metropolitan Region Scheme. The aim is to reduce the number of applications that are unnecessarily adding to backlog in the approvals process, particularly where there are no planning issues in respect of which WAPC consideration would add value.

*9.1.1 The definition of 'public works' will be expanded to include the range of works identified by the WAPC as not requiring approvals. This may be done either by expanding the list to iterate a list of specific works (to be subscribed in subsidiary legislation) or by revising the definition to allow more flexibility in determining whether or not a work amounts to a public work for the purposes of section 6.*

## 9.2 Public and private bodies

There is also often confusion about the range of public and private bodies that may claim the public works and other region planning scheme exemptions. There is further complexity where there are partnerships between State and private bodies doing public works. It is not always clear in the case of corporate or semi-corporate bodies providing utilities and other services that previously were provided by the State, when and if certain exemptions apply. The review will consider the need to be more specific in the definitions of 'public bodies' and the iteration of various bodies that may be entitled to the exemption.

*9.2.1 It is proposed to further clarify the bodies that may claim exemptions for public works under the Planning Act or region planning schemes.*

## 9.3 Discrepancy between local government and State agencies

The effect of sections 5 and 6 is that the 'Crown' is bound by a region planning scheme, but not by a local planning scheme in relation to public works. This subsection carries forward the legal position arising from the decision of the Full Court of the Supreme Court in the *City of Bayswater v Minister for Family and Children Services and Others* [2000] WASCA 151 (Bayswater case) – namely, section 6 bodies are required to apply for approval to commence development, including public works, under the Metropolitan Region Scheme (MRS).This has led to a situation where a local government, not being included in the Crown, is exempt from approval under a region planning scheme for public works, but a State department or agency is not exempt.

*9.3.1 It is proposed that section 5 be amended so that the legislative position returns to the situation prior to the Bayswater case. That is, neither the Crown nor local governments will be bound by region planning schemes in undertaking public works.*

## 9.4 Consultation where exemption applies

Finally, in cases where the exemption under section 6 does apply, there have been implementation issues regarding the requirements in subsections 6(2) and (3). These require a proponent to consult with relevant authorities and have regard to the proper planning and the objects of schemes applicable in the area, even though there is no requirement to submit a formal application. The review may consider whether or not the provisions setting out these requirements need to be strengthened.

*9.4.1 It is proposed to more specifically prescribe the consultation requirements in cases where a section 6 exemption does apply.*

## 10 Crown and State land

The 2010 Amendments inserted section 267A, which was aimed at streamlining the process for the giving of approval or signature of the owner of Crown land or freehold land in the name of the State. It is proposed to further amend this section to allow more efficient delegation of the functions to appropriate officers under applicable legislation.

*10.1 It is proposed to amend section 267A to give effect to the following:*

- If an approval or signature of the owner of Crown land or freehold land in the name of the State is required for the purposes of this Act, the following will apply–

  (a) Where Crown land is a reserve managed by–

    (i) a State instrumentality as defined under the LAA; or

    (ii) a management body referred to in section 46(10)(b) of the *Land Administration Act 1997*; or

    (iii) a local government and the development is consistent with the reserve's purpose and is not for a commercial purpose, the approval or signature may be provided by the management body of the reserve, subject to sub-sections (i) and (j);

  (b) Where Crown land is leased under a Crown lease, the approval or signature may be provided by the lessee, subject to sub-sections (i) and (j);

  (c) Where the road is a main road under the *Main Roads Act 1930*, the approval or signature may be provided by the Commissioner of Main Roads;

  (d) Where the road is a road where a local government has care, control and management under section 55(2) of the LAA but where there is a balcony or other structure proposed to be constructed over that road (whether or not as an encroachment), the approval or signature may be provided by the Minister for Lands (subject to sub-section (i)) and the relevant local government;

  (e) Where the road is a road where a local government has care, control and management under section 55(2) of the *Land Administration Act 1997* but where there is no balcony or other structure proposed to be constructed over that road, the approval or signature may be provided by the relevant local government authority;

  (f) Where Crown land is vested in a person or body under a written law other than the *Land Administration Act 1997*, the approval or signature may be provided by that person or body;

  (g) Where the development relates to a mining tenement granted over Crown land under the *Mining Act 1978*, the approval or signature may be provided by the Minister for Lands [It is proposed further that authorisations may be given to DMP officers under 267A(2)(b)]; or

  (h) Where sub-sections (a)-(g) above do not apply, the approval or signature may be provided by the Minister for Lands;

(i) Where there is a structure proposed to be constructed over a reserve, leased Crown land, road or other Crown land within the meaning of sub-sections (a), (b), (d), (g) and (h), but the encroachment is prescribed for the purposes of section 76(1)(c) of the *Building Act 2011* as a minor encroachment, or the encroachment is authorised under the *Land Administration Act 1997*, the approval or signature of the Minister for Lands is not required;

(j) Where a structure is proposed to be constructed as an encroachment over land the subject of a reserve or Crown lease as referred to in sub-sections (a) or (b) and to which sub-section (i) does not apply, the approval or signature of the Minister for Lands is also required.

- If the approval or signature of the Minister for Lands is required under subsection (1), the approval or signature may be given by:

  (a) the Minister as defined in the *Land Administration Act 1997* section 3(1) (the *Minister for Lands*); or

  (b) a person who is authorised in writing by the Minister for Lands to do so.

- Nothing in this section will limit the ability of the Minister for Lands to otherwise perform a function through an officer or agent.

- (Nothing in this proposed amendment affects —

  (a) a right or obligation that any other person, as an owner of land mentioned in subsection (1), has under this Act in relation to that land; or

  (b) how that right may be exercised or that obligation may be satisfied.

- In this section, 'Crown lease', 'management body', 'managed reserve' and 'road' will have the respective meanings given to those terms in the *Land Administration Act 1997* section 3(1).

## 11 State planning policies

State planning policies (SPPs)are intended to facilitate the coordination of planning throughout the State. Local governments must have regard to SPPs when preparing or amending local planning schemes and the State Administrative Tribunal must likewise have regard to SPPs in determining appeals. Until the 2010 Amendments, SPPs, which are vital instruments for securing the co-ordination of planning matters, could only be incorporated into local planning schemes as and when each scheme was amended.

As a result of the introduction of section 77A in the 2010 Amendments, the Minister now has the power to direct a local government to amend its local planning scheme to be consistent with a particular State Planning Policy. To ensure the fair and reasonable implementation of the powers under this section, it is proposed to prescribe more particular requirements regarding the format and content of SPPs.

A continuing trend is the preparation of supplementary guidelines to assist the implementation of State Planning Policies. The most recent example is the explanatory guidelines prepared as part of the Residential Design Code. It is considered that sufficient weight needs to be given to guidelines as an effective policy tool within the planning system, especially where they are expected to guide the implementation of SPPs and

decision making in general. One further option would provide the WAPC with discretion to adopt a supplementary guideline as a State planning guideline to give it greater weight in the decision making process.

*11.1 Part 3 of the Planning Act may be amended to expressly provide that the WAPC may prepare and adopt supplementary guidelines to assist in the implementation of State planning policies. State planning guidelines are to be taken into account in the determination of proposals. To the extent of any inconsistency, the provisions of a State Planning Policy shall prevail over the provisions of supplementary guidelines.*

## 12 Interaction of the Planning Act with other legislation

This review is an opportunity to consider the interaction of the Planning Act with the provisions of other legislation which impact upon the planning system.

Different legislation impacts upon the power to approve applications for development and subdivision. They do this in a number of ways:

- Some stop a planning decision-making authority from making a decision until the application has been assessed by another entity (for example the *Environmental Protection Act 1986*)
- Some require input from another entity before a planning decision-making authority can determine the matter (for example the *Heritage of Western Australia Act 1990*)
- Others require referral to another entity for their comment (for example the *Swan Valley Planning Act 1995*).

*12.1 It is proposed to commence separate reviews with respect to the interaction of the Planning Act with key legislation that impacts upon the planning system including, but not limited to the following:*

*Environmental Protection Act 1986*

*Contaminated Sites Act 2003*

*Heritage of Western Australia Act 1990*

*Swan Valley Planning Act 1995*

*Swan and Canning Rivers Management Act 2006*

*Mining Act 1978*

## Public submissions

Comments and submissions on the issues and proposals set out in this paper are welcome. The closing date for submissions is **Friday 13 December 2013**.

To make your submission effective:

- Group your points under the relevant headings.
- When you make a comment on a particular proposal, include the proposal number to assist with the consideration of submissions.
- State clearly and simply your point of view and the reasons for it, including any evidence or factual data that could be used to support your opinion.

**Comments and submissions should be emailed to:**

planningreform@planning.wa.gov.au

**Or submitted on line at:**

www.planning.wa.gov.au/planningreform

ATTACHMENT 3


# Review of the Development Assessment Panels

September 2013

# Contents





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This document is available in alternative formats on application to Communication Services.

# 1 Background

Development Assessment Panels (DAPs) came into operation in Western Australia on 1 July 2011. The panels were established as part of the State Government's planning reform agenda *Planning Makes it Happen - a blueprint for planning reform*.

The DAPs system is based on the National Development Assessment Forum's *Leading Practice Model for Development Assessment*. Implementation of DAPs demonstrates the Government's commitment to reform and best practice in the development approval process in Western Australia.

The objective of the DAPs is to provide a greater measure of transparency, consistency and reliability in decision making on complex development applications. The panels include representatives from local government as well as specialist experts in the planning and development industry, to provide balanced and professional decision making that is based on the planning merits of a development application. Fifteen DAPs operate across Western Australia.

The DAPs determine development applications valued above $15 million in the City of Perth, and above $7 million across the rest of the State. Applicants also have the option for DAP determination of applications between $10 million and $15 million in the City of Perth, and $3 million to $7 million across the rest of the State.

The DAPs have now been in operation for two years, allowing sufficient data and statistics to be accumulated to enable a review of how successfully they are operating and whether they are achieving their objectives. In addition to collating operating statistics, the Department of Planning has also conducted forums and surveys with DAP members and local government councillors and planning staff to gather qualitative data to aid the review.

This DAPs review report should be read in conjunction with the Planning Reform Phase Two Discussion Paper, which details initiatives for improvement of the DAPs system.

# 2 Operational statistics

## 2.1 Summary of two years of Development Assessment Panels

The following table provides a summary of DAPs applications and activities for the first two years of operation (including data from 1 July 2011 to 30 June 2013).

### Table 2.1 – Summary of DAPs statistics

| | 2011-2012 | 2012-2013 |
|---|---|---|
| **Applications by type:** | | |
| Development application (Form 1) | 137 | 210 |
| Reconsideration (Form 2) | 10 | 32 |
| SAT Review | 10 | 23 |
| **Decisions made:** | | |
| Form 1 – approved | 86 | 180 |
| Form 1 – refused | 3 | 16 |
| Form 2 | 6 | 27 |
| Applications withdrawn | 8 | 8 |
| **Application fees received:** | | |
| Form 1 | $771,108 | $1,135,752 |
| Form 2 | $1,650 | $4,800 |
| Number of meetings held | 64 | 138 |
| Number of members appointed | 595 | N/A |
| Number of members trained | 321 | 6 |

Over the first two years, the fifteen DAPs operating across Western Australia have determined 318 applications (including development applications and reconsiderations).

In the second year of operation there was a 52 per cent increase in the number of development applications to DAPs. Table 2.3 indicates that the number of applications increased significantly for all metropolitan DAPs, other than Metro-East JDAP, however the application numbers remained fairly constant for the regional DAPs. Table 2.4 also indicates that the number of 'opt-in' applications increased significantly in the second year.

Over both years, approximately 14 per cent of DAP decisions were subject to an application for reconsideration and approximately 11 per cent of decisions were subject to an application for review by the State Administrative Tribunal (this includes refusals and review of conditions of approval).

## 2.2 State Administrative Tribunal applications

The following table provides a summary of the applications for review, i.e. an appeal, submitted to the State Administration Tribunal (SAT) for DAP determinations (including data from 1 July 2011 to 30 June 2013).

### Table 2.2 - SAT applications

| **Total SAT applications regarding refusal of application** | **14** |
|---|---|
| Decision still pending*<br>*Of the decisions still pending 6 relate to DAP decisions of the last 12 months | 7 |
| Mediated outcome to approve application | 6 |
| Withdrawn from SAT prior to mediation | 1 |
| **Total SAT applications regarding condition/s of approval** | **19** |
| Decision still pending*<br>*Of the decisions still pending 10 relate to DAP decisions of the last 12 months | 13 |
| Mediated outcome regarding condition/s | 6 |

The majority of SAT applications within the first 12 months were resolved through a mediated outcome – i.e. an agreement between the applicant and the DAP to resolve the matter. This would generally be through modified development plans which were then approved by the DAP or through modified conditions that were acceptable to both parties. The majority of the SAT applications submitted in the second year are yet to be resolved and no application has yet gone through to a full hearing that has resulted in SAT setting aside (overruling) a DAP's decision on an application.

## 2.3 Applications for each panel

The following table provides a breakdown of the number and type of applications considered by each panel over the first two years from 1 July 2011 to 30 June 2013.

### Table 2.3 - Applications for each panel

| DAP name | Form 1 applications 2011-12 | Form 1 applications 2012-13 | Form 2 applications 2011-12 | Form 2 applications 2012–13 | SAT review 2011-12 | SAT review 2012-13 |
|---|---|---|---|---|---|---|
| Perth DAP | 5 | 17 | 1 | 1 | 0 | 0 |
| Metro Central JDAP | 16 | 38 | 1 | 7 | 0 | 6 |
| Metro East JDAP | 13 | 14 | 1 | 2 | 1 | 1 |
| Metro North West JDAP | 14 | 36 | 0 | 8 | 1 | 6 |
| Metro South West JDAP | 10 | 22 | 0 | 3 | 3 | 1 |
| Metro West JDAP | 16 | 23 | 4 | 4 | 3 | 6 |
| Peel JDAP | 4 | 5 | 1 | 0 | 0 | 1 |
| Mid-West JDAP | 3 | 1 | 0 | 1 | 0 | 0 |
| Wheatbelt JDAP | 2 | 2 | 0 | 0 | 0 | 0 |
| South West JDAP | 4 | 4 | 0 | 0 | 0 | 0 |
| Great Southern JDAP | 4 | 4 | 0 | 0 | 1 | 2 |
| Gascoyne JDAP | 0 | 2 | 0 | 0 | 0 | 0 |
| Goldfields-Esperance JDAP | 0 | 1 | 0 | 0 | 0 | 0 |
| Kimberley JDAP | 2 | 1 | 0 | 0 | 0 | 0 |
| Pilbara JDAP | 44 | 40 | 2 | 6 | 1 | 0 |

The Pilbara JDAP has considered the most number of applications, with 84 Form 1 applications and eight Form 2 applications over the two years. All other regional DAPs have only considered a small number of applications each year. Each of the Perth metropolitan DAPs considered a fairly comparable number of applications each year, with all metropolitan DAPs, other than Metro East JDAP, receiving a fairly substantial increase in applications in the second year.

## 2.4 DAP application values

The following table summarises the value of DAP applications received each year.

### Table 2.4 - Development application values

| | $3m and <$7m | $7m and <$10m | $10m and <$15m | $15m and <$20m |
|---|---|---|---|---|
| **2011-12** | 14 | 28 | 21 | 18 |
| | $68,437,469 | $243,562,969 | $254,490,338 | $310,730,839 |
| **2012-13** | 45 | 29 | 33 | 26 |
| | $192,935,000 | $239,827,900 | $385,973,000 | $446,859,055 |

| | $20m and <$50m | $50m and <$100m | > $100m | Total Applications |
|---|---|---|---|---|
| **2011-12** | 32 | 11 | 13 | **137** |
| | $904,851,883 | $715,291,568 | $3,509,000,000 | **$6,009,765,066** |
| **2012-13** | 44 | 17 | 16 | **210** |
| | $1,243,310,000 | $1,881,191,652 | $3,461,000,000 | **$7,158,096,607** |

In the first two years of operation the DAPs have received 347 applications for approval of development with a total value of more than $13.1 billion.

The number of applications is spread fairly consistently across development values from $3 million up to and over $100 million, with the majority of applications over the two years being in the value range of between $20 and $50 million.

There has been a significant increase in the number of applications in the $3 to $7 million range in 2012-13. This range is the 'opt-in' range (except for the City of Perth DAP), where applicants have chosen to have their application determined by the DAP rather than the relevant local government. There has been a 200 per cent increase in applications in this range in the second year of DAP operations and this range now has the highest volume of applications. There was however no opt-in applications for the City of Perth DAP in the first two years (City of Perth has a separate opt-in range of $10 to $15 million).

# 3 Stakeholder feedback

## 3.1 Stakeholder review forums

A number of review forums were held by the Department of Planning after the first 12 months of DAPs operation, to obtain detailed feedback on the operation, success and issues related to DAPs. The forums included the following stakeholders:

- Panel presiding members
- Panel members – specialist and local government members
- Development industry representatives
- Senior local government planning staff

Key themes emerged from discussion at the forums, generally specific to the particular stakeholder groups. A summary of these themes is as follows:

**Panel presiding members**

- Local government reports and decisions are depoliticised.
- Provides professional rigour.
- Decision making process more efficient in regional areas.
- Improvement in consistency and application of conditions.
- Highlights deficiencies in some local government policy frameworks.
- Reliance on accuracy and comprehensiveness of local government officer's report.
- Considerable preparation time required which is not recognised.
- Ongoing training and mentoring for new meeting chairs is valuable.
- Need for improved planning assessment/analysis in planning reports.

**Panel members – local government and specialist**

- Depoliticises decision making.
- Benefits of professional advice in regional areas.
- Perception from the public that interaction not as robust.
- Local issues not given as much weight as technical criteria.
- Process takes longer in some examples.
- Dollars do not necessarily indicate complexity.
- Short timeframe for members to consider complex reports.
- Suggest grouping some of the metro panels together.

**Industry groups**

- Has increased local government accountability and awareness of good planning processes.
- Very successful – quickly became part of the language.
- Consistency is improving.
- Continue to monitor the independence of officer recommendations and relationship with elected members.
- Suggest broadening the scope of DAPs.

**Local government planners**

- Has streamlined dual approval reports.
- DAP decisions are generally consistent with officer's recommendations.
- Minor variations (Form 2) should be delegated to local government.
- Conditions imposed by local governments not consistent.
- Inconsistency between local governments in relation to council consideration.
- DAPs have increased timeframes on some applications which would previously have been determined under delegated authority.

## 3.2 Survey results

Participants at the review forums were given the opportunity to complete a survey, as shown in Table 3.2. Participants rated their opinion on whether improvements have been shown in development assessment decision making through the use of DAPs to determine development applications instead of local government councillors and planning staff. The survey was taken after the first 12 months of operation.

Survey groups:

- Panel presiding members
- Panel members – specialist and local government members
- Development industry representatives
- Senior local government planning staff

Number of survey responses - 55

In the survey, transparency of decision making and quality of decision making rated very highly with DAP presiding members and industry groups. Presiding members also responded positively on the improvements to the consistency and reliability of decision making. Other DAP members' opinions varied among each of the survey questions, this may be a result of generally different responses from local government members and specialist members of the DAPs. Local government planners' responses were also varied. Overall, industry groups responded very favourably towards all survey questions regarding DAPs decision making.

The biggest area of lack of satisfaction and disagreement was whether DAPs had improved the efficiency and timeliness of decision making; 44 per cent of all respondents did not feel that they had, with over half of panel members and planning staffing providing a negative response. However, 100 per cent of industry representatives felt that efficiency and timeliness had improved.

Table 3.2 – Survey responses

| Survey Question | Survey group | Per cent favourable | Per cent neutral | Per cent unfavourable |
|---|---|---|---|---|
| **DAPs has improved the transparency of decision making** | Presiding members | 89 | 11 | 0 |
| | Panel members | 33 | 41 | 26 |
| | Industry | 100 | 0 | 0 |
| | Local government | 13 | 47 | 40 |
| | **Overall** | **42** | **35** | **24** |
| **DAPs has improved the consistency and reliability of decision making** | Presiding members | 78 | 22 | 0 |
| | Panel members | 33 | 37 | 30 |
| | Industry | 100 | 0 | 0 |
| | Local government | 20 | 47 | 33 |
| | **Overall** | **42** | **35** | **24** |
| **DAPs has improved the quality of decision making** | Presiding members | 78 | 22 | 0 |
| | Panel members | 44 | 41 | 15 |
| | Industry | 75 | 25 | 0 |
| | Local government | 7 | 47 | 47 |
| | **Overall** | **42** | **38** | **20** |
| **DAPs has improved the efficiency and timeliness of decision making** | Presiding members | 22 | 55 | 22 |
| | Panel members | 11 | 37 | 52 |
| | Industry | 100 | 0 | 0 |
| | Local government | 7 | 40 | 53 |
| | **Overall** | **18** | **38** | **44** |
| **DAPs has improved the quality of planning conditions** | Presiding members | 67 | 11 | 22 |
| | Panel members | 41 | 26 | 33 |
| | Industry | 75 | 25 | 0 |
| | Local government | 0 | 47 | 53 |
| | **Overall** | **36** | **29** | **34** |

# 4 Outcomes assessment

The following sections examine key criteria to enable an assessment as to whether DAPs are meeting their original objectives of providing a greater measure of transparency, consistency and reliability in decision making on complex development applications.

## 4.1 Significance of applications

All of the development applications submitted to the DAPs within the first year have been reviewed in relation to whether they could be considered 'significant' applications and reflect the original objectives of DAPs to determine complex, high value applications that require a level of expert decision making. A summary of findings is shown in Table 4.1.

Overall, 93 per cent of applications were considered to be significant development applications, being of a considerable development scale, complexity and value, and therefore appropriate for determination by a DAP. These significant applications required a consideration of many factors, such as access, traffic, design and infrastructure, as well as community consultation and feedback, and often consideration of proposed variations to local planning schemes and policies, and the exercise of discretionary decision making powers.

The threshold values also appear to be appropriate for capturing applications of significance for DAPs. The majority of applications at all values were found to be significant applications, including those at the lower end of the threshold range (below $10 million) and within the $3 - $7 million opt-in range.

Of the ten applications in the first year considered to not be significant applications for the purposes of DAPs determination, four of these applications were for a warehouse or storage in an industrial area. It is considered that applications for such development do not fall within the intent of DAPs to consider significant and complex development applications, particularly where they are on land zoned for industrial development and are a permitted use in the local scheme.

Table 4.1 - Significant applications

| | Not significant | Significant |
|---|---|---|
| **$3m to $7m (opt-in)** | | |
| | 3 (21%) | 11 (79%) |
| **$7m to $10m** | | |
| | 5 (18%) | 23 (82%) |
| **$10m to $15m** | | |
| | 0 (0%) | 20 (100%) |
| **$15m and over** | | |
| | 2 (3%) | 73 (97%) |
| **Total** | **10 (7%)** | **127 (93%)** |

## 4.2 Decision timeframes

While data is not readily available on all local government development application processing timeframes prior to the implementation of the DAPs, anecdotal feedback indicates that it was extremely variable for different applications and between local governments.

The DAPs provide legislated consistent timeframes for decision making which are strictly monitored as soon as the application is lodged by the applicant. The statutory determination period in which a decision must be made is 60 days, unless public comment is required on the application - then it is 90 days. The following decision making timeframes were achieved over the first two years of DAPs:

### Table 4.2 – Decision timeframes

| | 2011-2012 | 2012-2013 |
|---|---|---|
| Number of Form 1 applications determined within the statutory timeframe | 50 (56%) | 111 (57%) |
| Number of Form 1 applications not determined within the statutory timeframe. * See Note | 39 (44%) | 85 (43%) |
| Average number of days over statutory timeframe | 23 | 23 |

*Note: the applications not processed within the statutory timeframe included applications for which an extension of time was granted with agreement between the local government and the applicant. Often the local government requires additional information to be provided by the applicant, which the applicant may take some time to provide (particularly if they need to prepare additional information or modified plans).

The determination time for each development application is also dependent on a number of interface processes with local government. These include the time taken for the application to be processed and assessed, the responsible authority report to be prepared and submitted to the DAPs Secretariat, and the minutes of the DAP meeting being submitted to the Secretariat.

During the first 12 months of DAPs operation, five applications requiring dual approval, that is proposals requiring applications to both the Western Australian Planning Commission (WAPC) and the local government, were determined. The average number of days taken was 95. Close monitoring of the timeframes through the DAPs process has resulted in significant improvements in the time taken for dual approvals to be determined than was the case prior to DAPs where two completely separate approval processes operated.

## 4.3 Consistency of decision making

One of the key objectives of DAPs is to provide consistent and reliable decision making, by including planning professionals in the DAPs to provide a focus on the planning merits of an application. Of the applications determined within the first year, an assessment was undertaken of the differences between the recommendations in the planning authority's (local government or WAPC) report and the DAP's decision.

### Table 4.3 – Agreement with report recommendations

| | Decision unchanged from report recommendation | Significantly different decision to report recommendation | Changes to conditions recommended in report |
|---|---|---|---|
| **Number of applications** | 23 (26%) | 6 (7%) | 60 (67%) |

The intent of DAPs is that planning staff report directly to the DAP and hence the report recommendations should be based solely on the planning assessment of the application. In this situation it may be expected that the DAP would on most occasions agree with the recommendation to either approve or refuse the application, unless a fundamental flaw or lack of consideration of key issues is found in the planner's assessment.

There is however, some inconsistency in the way that applications are treated by each local government. While some are dealt with at officer level only and the report forwarded directly to the DAP, others are considered by the elected council and their decision presented as the report's recommendation.

The referral of applications to council can add extra time to the determination of the application, as well as potentially including non-planning related considerations in the recommendations. Each DAP includes two representatives from the relevant local government and at this point that local community issues can be raised and considered against the assessment and recommendations in the report.

Table 4.3 highlights that a large proportion (67 per cent) of reports had conditions of approval changed by the DAP. This demonstrates that a need for improved consistency and greater rigour in condition setting has been found by DAPs.

The additional scrutiny given to the conditions imposed on development has helped ensure that only those directly and legally relevant to the application are applied. In some circumstances a local government report has imposed a standard set of conditions and the DAPs have reviewed and removed unnecessary or unwarranted conditions, to achieve a decision where the conditions are clearer in intent, relevant and implementable.

Table 2.2 (SAT applications) indicates that only 19 applications have been made to the SAT in the first two years to review condition/s of an approval. This is approximately 6 per cent of all applications determined by DAPs.

# 5 Conclusion

This report has provided an assessment of the first two years of operation of Development Assessment Panels (DAPs) in the Western Australian planning system.

Over the first two years, the fifteen DAPs operating across Western Australia have received 347 applications for approval of development with a total value of, more than $13.1 billion.

Since coming into operation, the DAPs have provided a consistent and reliable process, with positive support from industry and increasing confidence in the process from local government.

As a substantial planning reform, DAPs' operating statistics and analysis demonstrate they are mostly meeting their objectives of providing a greater measure of transparency, consistency and reliability in decision making on complex development applications.

The DAPs have made a significant contribution in ensuring consistency and clarifying the conditions imposed on the approval of development applications, providing greater certainty to industry. The contribution of expert advice from DAP members ensures a focus on the planning issues and consideration of broader issues of impact.

It has been observed that DAPs have influenced a more technical approach, where applications are determined on the basis of the local planning scheme, policies and principles and the appropriate application of conditions. It is entirely appropriate that decisions are based on consideration of these planning instruments and conditions. It is only in this way that the appropriate exercise of statutory planning discretion and a fair, consistent and transparent process can be ensured.

This DAPs review report should be read in conjunction with the *Planning Reform Phase Two Discussion Paper*, which details initiatives for improvement of the DAP system and is open for public comment until Friday 13 December 2013.

# Planning Makes It Happen: Phase Two
# Discussion Paper
# City of Joondalup submission

| | Discussion paper proposal | City comment |
|---|---|---|
| 3.1 | Review of the Metropolitan Region Scheme (MRS) | |
| | In the MRS, all development requires approval unless specifically exempted by the Western Australian Planning Commission (WAPC). However, in the Peel Region Scheme and Greater Bunbury Regional Scheme only development that is of a specified class requires approval by the WAPC. It is proposed to amend the MRS so that development will not require approval unless it is of a class expressly specified in the MRS or by a resolution of the WAPC. | This proposal is strongly supported, provided that it is clear and easily interpreted which development classes require approval, and the model scheme text (MST) is reviewed to be consistent with the MRS exemptions, by constructing these provisions in the same way and listing approval requirements at the appropriate level (i.e. regionally significant development requires approval under the MRS and locally significant development requires approval under local planning schemes). This will avoid the odd arrangement where minor insignificant development is exempt from the need for planning approval under a local planning scheme but still requires approval under the MRS.<br><br>In addition, it essential that the issue of public works to be reviewed in the MRS, in addition to the review being undertaken for the *Planning and Development Act 2005* mentioned in the separate discussion paper. |
| | In addition to the above, a review is proposed of the WAPC delegations to local government of development approval under the MRS, with the intent of examining appropriate delegations for development on both zoned and reserved land. | A review of the delegations is supported, however this must involve consultation with local government. |
| | Another reform initiative relates to the long term land use zoning functions of the MRS. Currently the MRS includes the Urban Deferred zone to identify land that may be suitable for future urban use and which has been identified through other strategic planning processes. It is proposed to introduce an Industrial Deferred zone to identify potential future industrial land, such as those sites proposed in the WAPC's *Economic and Employment Lands Strategy*. | A review of the zoning functions of the MRS is supported. |
| 3.2 | Improve amendment process for the region planning schemes<br><br>It is proposed to restructure the provisions setting out the procedures for amending region planning schemes to effectively reverse the default position. That is, all amendments must follow the truncated process set out in Division 4 unless, in the opinion of the WAPC, the amendment constitutes a 'substantial alteration' to a region planning scheme and is of a class that makes it necessary or desirable to subject it to the longer process in Division 3.<br><br>Another area of reform may be the process for referral of proposed amendments to the Environmental Protection Authority (EPA), such that certain amendments with no relevant environmental considerations are not required to be referred to the EPA. These types of exempt amendments would need to be formally agreed to by the EPA and perhaps established in Regulations. Other initiatives may be that the EPA agree to fast track these amendments (rather than exempt them), or that referral is done concurrently with public advertising. | The proposed reforms are supported and will require a comprehensive review of the *Town Planning Regulations 1967*, in order to simplify and streamline the provisions. |

| | Discussion paper proposal | City comment |
|---|---|---|
| | To further increase the efficiency of the amendment process, the reduction of public advertising periods could also be considered. Division 3 amendments could be reduced from 90 days to 60 days and Division 4 amendments could be reduced from 60 days to 42 days. Consideration of reducing these timeframes is appropriate if supported by allowing electronic lodgement of public submissions. | A review of the public advertising process is strongly supported. However, consideration must be given to a more comprehensive public advertising process, incorporating direct advertising to affected and adjoining owners and occupiers, not just advertisements in the newspaper and letters to owners within the amendment area. |
| 3.3 | Sub-regional structure plans to amend region planning schemes<br><br>It is proposed that consideration be given to the feasibility of introducing amendments to the *Planning and Development Act 2005* to enable an automatic or concurrent amendment to a region planning scheme to reflect the relevant zonings and reservations of a sub-regional structure plan once the structure plan is given final approval by the WAPC and/or the Minister for Planning.<br>However, it should be noted that this process may only be suitable in certain situations, as some sub-regional structure plans may not go to the level of detail of clearly defining the boundaries of road reserves or lot boundaries for certain zones. | Currently sub-regional structure plans are non-statutory strategic level land use planning documents. The proposed change would require substantial amendments to legislation to enact a process to create these as statutory plans. The process that would be followed for automatic MRS amendment is unclear. The City's support for this proposal is on the basis that any proposed automatic rezoning is required to be clearly flagged in the sub-regional structure plan, includes the same information as an MRS amendment, and is separately advertised to the public in the same way as an MRS amendment. |
| 3.4 | Concurrent amendment of region planning schemes and local planning schemes<br><br>Consideration is being given to further extend provisions to allow concurrent amendments for all classes of amendment to region planning schemes. For example, the region scheme and local scheme could be concurrently rezoned for Industrial purposes, with the region scheme amendment identifying the specific zoning that would apply under the local planning scheme (e.g. General Industrial, Light Industry). | This proposal would avoid a duplicated process where it is unnecessary and is supported. |
| 3.5 | Improve local planning scheme review process<br><br>A number of improvements to the local planning scheme preparation process are being introduced in the new MST which is currently being prepared by a Department of Planning led working group. Some of the key reforms and changes being considered as part of this process include: | The review of the MST is strongly supported and its finalisation must be treated as a priority, provided it is consistent with the MRS review. It is assumed that this review will be part of a broader review of the *1967 Town Planning Regulations*, which require a comprehensive review in order to streamline and simply the provision. |
| | • regulations providing a set of standard provisions that will apply automatically to all local government schemes, including standard processes for development applications, structure plans and development contribution plans; | Generally, the standardisation of administrative provisions, processes, definitions and language within schemes is supported, however, these must also be consistent with the provisions of the MRS and have regard to the review mentioned in the discussion paper. In addition, standard provisions that automatically apply to local planning schemes are only supported where they relate to matters local governments area already required to adhere to under separate legislation.<br><br>In relation to developer contributions, standard provisions relating this matter should only be applied following a review of *State Planning Policy 3.6: Developer Contributions*, which is currently highly burdensome and restrictive for local government. |
| | • reviewing what proposals may be exempt from requiring planning approval, such as removing the need for compliant single houses to obtain planning approval; | This proposal is strongly supported, however, these must be consistent with the MRS exemptions, by way of constructing (i.e. it must list those developments that require approval, rather than attempting to exempt every |

| | Discussion paper proposal | City comment |
|---|---|---|
| | | possible insignificant development type, which has been unsuccessful in the past), and the MST requirements must follow on from those of the MRS (i.e. regionally significant development requires approval under the MRS and locally significant development requires approval under local planning schemes). This will avoid the odd arrangement where minor insignificant development is exempt from the need for planning approval under a local planning scheme but still requires approval under the MRS. |
| | • improving administrative provisions, definitions, language and the general user friendliness of schemes; and | The standardisation of administrative provisions, processes, definitions and language within schemes is supported. |
| | • regulations clearly setting out the steps required in the scheme preparation and scheme amendment process, including steps and timeframes to be undertaken by the Department of Planning/WAPC. | Including steps and timeframes for the Department of Planning/WAPC is strongly supported. |
| | In addition to the current MST project, two other substantial reform initiatives are put forward for consideration:<br>• streamlining the number and content of local strategies required as part of a scheme review; and<br>• requiring major local planning schemes reviews every 10 years, with minor reviews occurring every five years or less. | Increasing the review period of schemes from 5 to 10 years, and streamlining the number and content of local strategies is strongly supported. |
| 3.6 | <u>Improve local planning scheme amendment process</u><br><br>Similar to what is proposed under region scheme environmental assessment processes, it is proposed to consider modifying the process for referral of proposed amendments to the EPA, such that certain amendments with no relevant environmental considerations are not required to be referred to the EPA. These types of exempt amendments would need to be formally agreed to by the EPA and perhaps established in Regulations. Other possibilities may be that the EPA agree to fast-track these amendments (rather than exempt them), or that referral is carried out concurrently with public advertising.<br>Another significant opportunity for streamlining the local scheme amendment process is the possibility of introducing a 'minor local scheme amendment' which sets out a shorter amendment process which would be applicable in certain situations. | Both of the initiatives to streamline the local planning scheme amendment process are supported, provided it is clear and readily interpreted which classes of amendment do not required referral to the EPA, or are minor local planning scheme amendments. |
| 3.7 | <u>Streamline structure plan process</u><br><br>There is still opportunity for further reform of structure plan preparation and approval processes. A recent review of local planning schemes has found inconsistent clauses relating to structure planning processes. There is also duplication and overlap in work undertaken by local governments and the Department of Planning. Content of plans could also be further improved, with a trend emerging for structure plans to cover matters that would be more appropriately dealt with through scheme amendments and development contribution plans. As a part of the Model Scheme Text review, model local scheme provisions will be drafted to guide the preparation of structure plans.<br><br>It is also proposed that the Model Scheme Text provisions include the WAPC as the single point of determination for all structure plans. This will eliminate the need for dual approvals from the WAPC and local government and the resultant inconsistent determinations and conditions, as well as separate appeals to the State Administrative Tribunal. Local government would still be | The streamlining of the structure planning process is supported. However, if structure plan provisions are included in regulations, structure plans would more appropriately be dealt with and determined by local government as a delegated function. This would remove the need for the DoP/WAPC to become involved in the detailed development provisions of structure plans, and allow for focus to be provided on the development and implementation of state planning policy. If the WAPC were to be the single point of determination, there must still be an appropriate mechanism to ensure local governments are responsible for determining the detailed local development provisions.<br><br>In relation to developer contributions, it is essential that this issue is considered at the structure planning stage of development. Typically, this occurs after a structure plan is lodged and significantly delays the finalisation of structure |

| | Discussion paper proposal | City comment |
|---|---|---|
| | involved in the structure plan preparation and assessment process, however would refer the determination to the WAPC. | plans and/or the implementation of development. It is essential that these reforms considered the appropriate point at which developer contributions are to be required in the structure planning process. Currently the application of *State Planning Policy 3.6: Developer Contributions* is highly burdensome and restrictive for local government and review of this issue must be an integral part of this process. |
| 3.8 | Develop a track-based (risk assessment) development assessment model<br><br>Building upon a proposal first suggested in Phase One's *Building a Better Planning System*, and current best practice in other jurisdictions, the potential for development assessment based on the Development Assessment Forum 'track-based' assessment model is being considered for the Western Australian planning system. | This proposal requires significantly more detail to be appropriately considered. Currently the proposed 'Tracks' do not reflect the WA planning process and do not link in with the private certification proposal. A more appropriate approach would be to set three different tracks as follows:<br><br>1. Exempt development, a full self assessment is lodged with the building permit. Checked by local government in the set timeframe.<br>2. Development complies 'as of right' and is accompanied by a full self assessment. Only required to be checked by local government. If it does comply 'as of right', determination in set timeframe. If it does not comply 'as of right' moves to track 3.<br>3. Development requires exercise of discretion and is accompanied by a full self assessment and justification for 'variations'. Full assessment by local government and may include advertising. |
| 3.9 | Private certification of development applications<br><br>As part of Phase Two Reform and the objective of continued improvement towards best practice, it is appropriate to investigate the possibilities for private sector involvement in the development assessment process. | Additional information is needed to assess the merits and extent of this proposal. Local planning scheme and the R-Codes include performance based assessment and often require discretionary decisions. Private certifiers would not be able to provide consistency in performance based assessments or discretionary decisions. In addition, the role of private certifiers in relation to advertising and consultation with the public is questionable.<br><br>Considering this, it is not considered appropriate for private certifiers to undertake performance based assessments or to be given authority to make discretionary decisions, particularly when public advertising is involved. This is most appropriately conducted by local government.<br><br>Assessment against 'as of right' requirements is one area where private certification may potentially offer an alternative and benefit to both local government and applicants. However, currently, there is no system in place that would allow private certifiers to have access to previous approvals, adjoining house layout, natural ground levels etc which are needed for appropriate assessment. Prior to even the simplest assessment against 'as of right' requirements being undertaken by a third party, a system would need to be introduced to make this information available. This would be both a cumbersome and |

| | Discussion paper proposal | City comment |
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| | | expensive project. |
| 3.10 | Standardise delegations of local government development decisions<br><br>It is proposed that a Model Delegation Schedule be prepared, setting out the types of development applications and planning decisions that are appropriate to be determined by planning staff, and what may be more appropriate for Council to determine. The aim of this would be to establish best practice, reduce timeframes for development approvals, and improve certainty and consistency in planning decisions. | This proposal is supported in principle. However, local government delegations vary based on the type and number of applications received, with more delegation necessary in larger local governments such as the City of Joondalup. It is essential that the Model Delegation Schedule pick up all decisions that could be appropriate to be delegated, not just those that would be appropriate for a typical local government. This will ensure that larger local governments like Joondalup can continue with sufficient delegation to operate without significant delays in determining applications. |
| 3.11 | Electronic application system<br><br>The Department of Planning is developing a single interactive online portal for the lodgement and processing of all applications determined by the WAPC including subdivision, structure plan and development applications. This system will include internal and external interfaces to allow applications to be lodged and tracked by the public and for the WAPC to refer applications to stakeholder agencies and local government for comment. | This proposal is supported and should be broadened to also include scheme amendments. |
| 3.12 | Refining the role of Development Assessment Panels | |
| | Optional and mandatory thresholds<br>The DAPs Review confirms that the current optional and mandatory thresholds are generally appropriate and are effective in covering significant applications that should be determined by DAPs, while also providing an opt-in option. Some stakeholders have argued that the thresholds should be modified and there should be a wider opt-in range. Comment is sought on the appropriateness of the current thresholds and any need for modifications.<br><br>It may also be beneficial to link DAP thresholds/triggers with Council delegations (see also 3.11), where the applicant opt-in values are widened if certain application types are delegated from Council to planning staff and hence may be determined more quickly by the local government than the DAP.<br><br>Include lower value regionally significant applications. | Widening of the opt-in threshold is not supported, considering the findings of the review. The removal of the mandatory threshold of 7 million dollars is supported. This would allow the proponent to choose the decision mechanism most appropriate for that application's particular circumstance. This would also allow applications that would normally be determined under delegated authority not to be caught in the DAP process purely due to the cost of the development. |
| | Exclusions<br><br>The DAPs review has also identified that some types of applications may not be of a level of significance that requires determination by a DAP, for example small scale developments that are permitted uses in the relevant zone and compliant with the requisite planning standards. These could be added to the 'exclusions' list in the DAPs Regulations.<br><br>Development applications for storage and warehouses, where a permitted use in accordance with the scheme on industrial land zoned, are not generally considered to be of a significant nature to require consideration by DAPs. It may be appropriate that storage and warehouses be added to the excluded development applications, subject to the development site being land zoned | The development of an 'exclusion' list is likely to become cumbersome and may need to be specific to each local government.<br><br>As outlined above, it is considered better to remove the mandatory threshold and have an opt-in system, rather than have exclusions. |

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| | industrial, where it is a permitted use and meets provisions of the scheme. | |
| | Configuration of panels<br><br>For the Perth metropolitan region it is proposed to create a new Central-West Joint DAP (JDAP) by combining Metropolitan Central and Metropolitan West JDAPs. There is also an option to merge the City of Perth DAP with the Central-West JDAP (although retaining the higher value thresholds for City of Perth). | No objections. |
| | Administration<br><br>Some local governments have requested that the DAP Regulations should clarify the information required to be submitted as part of a DAP application, and what constitutes a 'complete application' for the purposes of formally receiving the application and commencing the determination time period. It may also be appropriate to include provisions for pausing or extending the determination period when further information is required from the applicant at any stage of the assessment process. | A standard set of information requirements for DAP applications is strongly supported in order to ensure consistent information (i.e. number of sets of plans, how to provide etc) and appropriate assessment.<br><br>Pausing or extending the determination period reduces the certainty for which an application will be determined, however, given the often complexity of applications, may be appropriate. |
| | Meeting quorum<br><br>Current regulations require a quorum to be three members including the presiding member, another specialist member and a local government member. There have been occasions when a DAP has been unable to achieve a quorum. Greater flexibility in terms of what constitutes a quorum is required to ensure panels proceed to meet and deal with applications in a timely way.<br><br>It is proposed that three members of a panel, regardless of their membership type, constitute a quorum. One of these members would need to meet the requirements to act as a presiding member. | It is considered important and appropriate that at least one local government member be part of the quorum and as such this proposal is not supported unless there is a requirement for a quorum to include at least one local government member. |
| | Presiding member<br><br>When the presiding and deputy presiding member are unable to attend a meeting (due to illness, absence or other cause), it is proposed that another specialist member, who has experience and a tertiary qualification in planning, may act as presiding member. This will help meetings occur as scheduled, ensuring applications are dealt with in a timely manner. | It is not considered necessary for the acting presiding member to be a specialist member and have experience or qualifications. The presiding member should have the ability to appoint an acting presiding member from the membership of the JDAP, irrelevant of whether they have a tertiary qualification or not, provided they have the necessary experience. |
| | Special members pool<br><br>Currently, specialist members including presiding and deputy presiding members are appointed to a specific panel. It is proposed that three pools be created and members appointed to either the metropolitan pool, or a northern regional or southern regional pool.<br><br>Local government members would continue to be appointed to a specific panel. | The current stability in the panel membership leads to a better understanding of the local area and consistency in decision making. Considering this, the proposal is not supported.<br><br>There is also considered to be a need to provide further training for DAP members, particularly in the area of statutory decision making and matters that must be taken into consideration when making a decision. This training should be ongoing and include additional sessions when specific local and state planning legislation or polices change or when specific matters come before the DAP. |
| 4.1 | <u>Design and development</u><br>Some potential planning reform opportunities to deliver better built | |

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| | form and place design outcomes include: | |
| | • the development of a State Planning Policy, design manual or scheme provisions enshrining the importance of, and principles for, quality design, including architectural, urban, landscape and environmentally sensitive design; | The proposal to develop design requirements development is supported, however, these must be mandatory and would best be developed through a State Planning Policy with local planning scheme provisions providing the relevant head of power, similar to the Residential Design Codes. |
| | • for local governments to establish design advisory panels and/or 'city architects' positions (for larger/urban local governments); | The City of Joondalup currently operates a design reference panel, however, it must be made clear through the MST and State Planning Policy, what powers the recommendations of this panel or architects have in the determination of an application. |
| | • for development applications over certain thresholds (e.g. multi storey office or apartment developments) to be assessed by a design review panel prior to determination by a Development Assessment Panel; and | Design review panels and how they operate should remain at the discretion of the local government, however, should provide a clear benefit to the development outcome if implemented. The City of Joondalup currently operates a design reference panel, however, applications to be determined by the DAP are not referred to the panel as the DAP itself includes the necessary skills and expertise to assess design issues and should be able to be addressed through the DAP process. |
| | • to amend the Multi-Unit Housing R-Codes provisions to require multi-unit housing to be designed by a qualified, registered architect. | The proposal for multi-unit housing to be design by a registered architect will discourage multi-unit housing, which the WAPC is currently attempting to facilitate. That industry should be directly consulted on the potential benefits or issues with the proposal. |
| 4.2 | <u>Role of the Western Australian Planning Commission (WAPC)</u><br><br>Following the appointment of a new three-year term WAPC Chair, an internal review of the role and function of the WAPC will be completed to ensure that the WAPC has sufficient capacity and flexibility to perform its key strategic functions in state wide urban and regional planning. The review report and recommendations will be made available once completed, however the key objectives are:<br>• to clarify that the WAPC's primary role and responsibility is the administration of integrated statutory and strategic planning responsibilities throughout the State;<br>• for the WAPC to operate more effectively as a separate board of management from the Department of Planning and take a more strategic focus towards the planning and development of the State;<br>• to ensure appropriate induction, ongoing training and professionalism of the WAPC members, including training in statutory decision making, having an up to date induction manual and code of conduct and appropriate protocols and practices in place; and<br>• to review the structure and membership of the WAPC and its committees, ensure that the WAPC includes a broad range of expertise, including expertise in strategic planning, finance, infrastructure, housing, design and the environment. | The proposals are generally supported.<br><br>The proposal for the WAPC to take a more strategic focus is somewhat at odds with proposals in this discussion paper, specifically for the WAPC to be the single point of determination of structure plans, which could be seen to be operational in nature. |
| 4.3 | <u>Improve the function of the Infrastructure Coordinating Committee</u><br><br>Similarly to the review of the WAPC, it is also proposed to review the role and function of the ICC; clarify the type of matters with which the ICC should be involved; develop guiding principles and terms of reference; and develop a 12-month work program. | The development of longer term infrastructure budgeting to guide the ICC and State Government, in line with that required for local government, is strongly supported. |

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| | It is also proposed to review the membership of the ICC to ensure it has a high level strategic focus, including representatives from the departments of Premier and Cabinet, Treasury, State Development, Regional Development, Planning, Transport and Housing. Non-government expert membership could also be included.<br><br>In addition, the Department of Planning has also recently established a Senior Officers Group for infrastructure planning, which includes senior staff from government departments and infrastructure agencies, which meets regularly to improve information sharing and integration of infrastructure projects and policies across government. | |
| 4.4 | Local government planning accreditation<br><br>Consideration is being given to the establishment of a planning accreditation system for local governments to formalise induction, training and professional development. Accredited local governments may then receive an increase in the range and volume of planning decisions and functions delegated to them from the Department of Planning and the WAPC.<br><br>The accreditation system would include options for training and development of local government Councillors and officers and be based on the following factors:<br>• alignment of local planning framework to State planning objectives and policies;<br>• currency (age) of local planning scheme and policies;<br>• adoption of best practice and planning reform initiatives;<br>• qualifications and experience of planning staff;<br>• training of all Councillors on statutory planning decision making;<br>• levels of delegation of planning decisions by Council to planning staff;<br>• public accessibility of information on local planning and development applications; and<br>• annual audit results - such as meeting key performance indicators or development application timeframes and analysis of State Administrative Tribunal appeals. | The extension of delegated powers to local government is supported, provided this is coupled with receipt of the appropriate fees to cover the cost of the necessary assessment work. |
| 4.5 | Funding of region planning schemes and initiatives<br><br>It is proposed to consider options for funding of other region planning schemes and improvement schemes in areas of the State outside the Perth metropolitan area. One option to achieve this is to legislate to expand the application of a Region Improvement Tax to other parts of the State and establish separate region improvement funds for different regions. | Prior to implementation of this initiate it is recommended that a review be undertaken into the Perth Metropolitan Region Improvement Fund and whether it is adequate in implementing the MRS to meet the community's needs of the Perth Metropolitan Area. |
| 4.6 | Review of the Planning and Development Act 2005 discussion paper<br><br>An administrative review has been undertaken of the operational effectiveness of the *Planning and Development Act 2005*, which will be integrated with the Phase Two reform agenda. The review examined specific sections and wording within the Act to identify opportunities for improvement. It was not a strategic review of the | Many of the key issues and proposals within the Review of the *Planning and Development Act 2005* discussion paper are already included in the issues and comments above.<br><br>A number of other proposals are as a result of the Law |

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| | structure, content or issues covered by the Act. Due to the level of detail required, the review of the Planning and Development Act is the subject of a separate report (see www.planning.wa.gov.au/planningreform), however the key objectives of the review are summarised below:<br><br>• identify the specific provisions that do not operate satisfactorily and the reasons for such deficiencies;<br>• identify and recommend measures to ameliorate ambiguities in drafting or resulting from judicial interpretation;<br>• recommend amendments that would improve the efficiency and effectiveness in the operation of the Act; and<br>• consider other key matters and issues relevant to the operation and effectiveness of the Act, including, but not limited to, those matters identified in this discussion paper. | Reform Commission recommendations.<br><br>Other proposals not already discussed are outlined in the below. Due to the size of the discussion paper, only proposals where comments are provided are included below. |
| | 3.3 Restrictive covenants<br><br>Restrictive covenants are a matter that may be dealt with by a local planning scheme as set out in Schedule 7. Schedule 7 provides that a local planning scheme may provide for the power of "extinguishment or variation of any restrictive covenant". *Planning Bulletin 91 Estate Covenants: New Residential Subdivisions* was released by the WAPC in July 2008. This Planning Bulletin explains how restrictive covenants are used in the planning system, including how they are varied or extinguished.<br><br>The language in Schedule 7 is not restricted to any particular type of restrictive covenant and contemplates a much broader power. It is proposed that this power only be used in relation to restrictive covenants affecting any land in the local planning scheme area by which, or the effect of which is that, the number of residential dwellings which may be constructed on the land is limited or restricted to less than that permitted by the local planning scheme (including any covenant purporting to limit or restrict subdivision or limit or restrict the maximum area occupied by a dwelling), to the extent that it is inconsistent with the provisions of the residential planning design codes that apply under the local planning scheme. | The proposal for the Act to specify the powers a local planning scheme has to extinguish restrictive covenants is supported. However, it is considered that there is planning merit in considering other commonly used private restrictive covenants that may prevent housing diversity, including affordable housing; appropriate streetscapes and that will set inappropriate community expectations. For example, covenants often require a minimum size of dwelling or specific building materials to be used.<br><br>Consideration must be given to maintaining the powers of Schedule 7 in this regard by broadening the matters by which a local planning scheme may extinguish a restrictive covenant. |
| | 5 Subdivision and development control<br><br>• It is proposed to clarify the meaning of 'conflicts' in section 138(3) and/or to further iterate the circumstances in which a subdivision approval may be given that is contrary to the provisions of a local planning scheme.<br><br>• It is proposed to introduce provisions setting out a more formal resolution process for clearing subdivision conditions.<br><br>• Clarifying amendments are proposed to section 159 ensure that the formula for reimbursement of the costs to the original subdivider are reasonable and accurate. In particular, that the original subdivider may only recover 'one-half' of the 'reasonable costs' from a later subdivider once, and modification of language in section 155(3)(b)(iv) regarding improvements on the land in the application of road and waterway costs. | These proposal are supported in principle, however, more information is needed on how these are to be clarified. |
| | • An amendment to section 170 is proposed to provide a timeframe and refer to standards and specifications for the | Further discussion is needed on whether it is appropriate to refer to standards and specifications, and if so, what |

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| | purpose of providing certainty and clarity to subdividers on complying with requirements of responsible authority for roads and waterways. | they should be. |
| | • The term 'development' is used both in the definition and in the explanation. This causes confusion when wanting to describe 'development' as purely 'works' being undertaken, as opposed to any 'use' being undertaken. Also, it is often not clear when using the term 'development' whether it is applying to both 'use of the land' and 'development' (works) or just 'works'. It is proposed to consider amending the definition of 'development' as follows:<br><br>'development' means the use of any land, or undertaking any works in, on or under any land including —<br>(a) any demolition, erection, construction, alteration of or addition to any building or structure on the land;<br>(b) the carrying out of any excavation or other works;<br>(c) in the case of a place to which a Conservation Order made under section 59 of the *Heritage of Western Australia Act 1990* applies, any act or thing that —<br>(i) is likely to change the character of that place or the external appearance of any building; or<br>(ii) would constitute an irreversible alteration of the fabric of any building. | Amending the definition of development is strongly supported, however, further clarity is needed around what constitutes works, including whether removal of vegetation, such as land clearing or the removal of a tree, is covered by this definition. The issues created by the broad scope of the term 'works' will largely be resolved if the MRS, MST and local planning schemes only require planning approval for specific types of development, as is indicated in the reform agenda set out in the discussion paper. |
| | <u>6 Time limits on endorsement of subdivision plans</u><br><br>It is proposed to introduce an option to allow WAPC the discretion to 'roll over' subdivision approvals (once only) for a further two years upon the payment of a reduced fee providing there has been no significant planning changes in respect of the area or servicing authority specifications. Similar provisions could be introduced for development applications. | There is no explanation why this provision is needed. Subdivision approvals are currently valid for 3 or 4 years (depending on the number of lots). A 'roll over' period will still require the approval to be reassessed to ensure 'no significant planning changes' have occurred. This is likely to be akin to a reassessment. It may also reduce the incentive for the timely release of lots. The provision is also not supported for development applications. |