

Christine Ginbey
Department of State Development
1 Adelaide Terrace
East Perth, WA 6004

Via email: westerntradecoast@dsd.wa.gov.au

Dear Christine,

**Draft Planning and Development Legislation (Western Trade Coast Protection Area)
Bill 2015**

The Property Council of Australia welcomes the opportunity to comment on the draft Planning and Development Legislation Amendment (Western Trade Coast Protection Area) Bill 2015.

As a general principle industrial buffers should be contained on site. However, with existing industries this is not always practical and off-site buffers are required while also recognising the legitimate rights and expectations of affected property owners.

The Property Council is the representative body for major property owners in WA, including those with an interest in the industrial, commercial and residential sectors impacted by the Bill. The Property Council has canvassed the views of those affected by the draft legislation.

There is broad recognition of the need for a buffer for the WTC Area to protect the interests of industry and surrounding landowners. Serious concerns have been raised, however, about the infringement on the development rights and expectations of some existing property owners. The extended buffer does not appear to be based on any detailed planning and environmental study. Furthermore there was not sufficient consultation with affected interests, which is necessary for the proper determination of any buffer zone.

The Property Council is calling on the Government to reconsider the application of the Protection Area boundaries proposed in the legislation and permit affected land owners the same development rights and due recognition as other property owners with approved developments. Where amenity impacts are not present or temporary then other measures to manage the impacts, such as memorials on title as provided for in the planning legislation, should also be considered.

The proposals laid out in the Bill comprise two elements:

1. Amendments to the Hope Valley Wattleup Act 2000 and the Planning and Development Act 2005 to formalise the existing buffer as the WTC protection area; and
2. Regulations to set out classes of land use that will be prohibited within the WTC Protection Area.

Following are further specific comments from a property sector perspective in regards to these elements.

Formalisation of the existing buffer as the WTC Protection Area

The importance of the Western Trade Coast for the broad property sector was highlighted in the Property Council's 2015 *Keep WA Growing* report. The report detailed substantial property development that would flow from the growth of industries in the Western Trade Coast area. For this reason the Property Council recognises the need for a buffer for the Western Trade Coast area to protect the interests of industry and surrounding landowners, and to clear up confusion.

However the decision to formalise the Kwinana Industrial Buffer endorsed by the WA Planning Commission in 2010 as the WTC Protection Area, would create further confusion. This is because a number of landowners affected by the proposed 1.5 km WTC protection Area acquired their properties prior to 2010 at which point the prevailing buffer was the one kilometre Kwinana Air Quality Buffer (KAQB). At the time there was no proposal to extend the buffer. Subsequently much of this land was zoned either urban or urban deferred and earmarked for future development.

This was reflected in local planning frameworks, including *The City of Cockburn Local Planning Strategy* and *The City of Cockburn Town Planning Scheme number 3* which earmark development in areas now affected by the extended buffer.

The proposed WTC Protection Area based on the WAPC's 2010 decision, which increased the buffer zone to 1.5km is also inconsistent with numerous strategic planning documents including the Jandakot District Structure Plan (WAPC 2007) and the Metropolitan Region Scheme.

This inconsistency was noted by the WA Parliament's Environment and Public Affairs Committee. In a 2012 report the committee criticises the WAPC for the way the principles of SPP 4.1 State Industrial Buffer had been applied. The committee highlighted the WAPC's decision not to reflect the extended buffer in statutory planning framework raising ambiguity around land use in the area.

The committee also criticises the WAPC for its failure to consult with the affected residents and landowners. This is inconsistent with SPP 4.1 and the WAPC's stated approach to the community being a stakeholder in planning decisions. The WAPC's

buffer zone extension was imposed without public notification or consultation; in fact affected landowners were not notified of the extension until early October 2011. The WAPC's reports are deficient in not properly taking into account landowner concerns, not properly considering pre-existing planning documents and not giving clear reasons for the recommendations and the subsequent decision of the WAPC.

Prohibited land use

The proposed legislation looks to set out classes of land use that will be prohibited within the WTC Protection Area. These regulations will unduly infringe on legitimate and reasonable development expectations of some property owners in the protection area in comparison to other owners in the same locality with already approved development applications.

It is particularly concerning that a group of property owners will suffer significantly as a result of buying into affected areas which at the time of acquisition were not affected at all by any buffer.

It is also concerning that the legislation will significantly curtail the provision of much needed affordable housing adjacent to the Western Trade Coast.

The Property Council recommends that the State Government reconsiders the application of the Protection Area boundaries proposed in the legislation and provide affected land owners the same recognition as other property owners with approved developments in the same locality.

The Property Council would like to continue to be involved in deliberations about the WTC Protection area. We are also confident that a final position can be achieved that ensures proper protection for industry along the Western Trade Coast as well as recognising the legitimate development rights and expectations of affected adjoining property owners.

Yours sincerely



Lino Iacomella
WA Deputy Executive Director
Property Council of Australia

