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Submission on *Discussion paper for planning reform*

The Property Council is grateful for the opportunity to provide feedback on the recently released planning reform discussion paper and congratulates the Reform Team on undertaking this welcome review of Western Australian's planning system.

The Property Council represents around 300 companies across Western Australia in the residential, commercial, retail, retirement living, industrial and tourism sectors. The property industry now employs more people in WA than any other sector, with more than 233,500 jobs.

The industry has long advocated for a planning system that ensures planning and development decisions are made as effectively and efficiently as possible, while incorporating the views of interested stakeholders and the wider community. As the industry responsible for delivering the communities of the future, we have a strong interest in working with Government and the community to get the policy settings and legislative frameworks right. We have a shared interest in creating liveable and productive communities with diverse and affordable housing options, accessible jobs and services, within vibrant precincts that connect to a well-functioning public transport network.

To do this it is critical that the planning system is a facilitator of great development outcomes, and that the State planning agencies and local government decision-makers complete the shift from a purely regulatory approach to clear direction-setting that also accommodates flexibility of outcomes where they will produce the best long-term community-creation results.

Planning has a critical role in balancing private interests with the broader public interest, something that has become more and more challenging as the boundaries between private and public interests have begun to blur – planning decision-makers must cope with an environment where some of the loudest community voices actually represent their own private interests and passions, while industry in many cases is proposing what will be great development outcomes for future communities but is of course also a necessary part of a successful business model.

It is the property industry's position that the best way to deal with these challenges is to create a system that is clear and legible to all stakeholders, transparent to its users, embodies clarity of process and decision-making framework, but accommodates flexibility of outcomes according to the relevant context and an appropriate balancing of all critical issues at the time of the decision.

The comments we provide here, in the attached detailed responses to the various green paper recommendations and in the below statements, indicate the property industry's main priorities for a review of the current planning system, and our feedback on the suggestions included in the discussion paper. The position we take represents our view of how an ideal planning system would operate and is based on the following key goals (which generally align with the findings of the Productivity Commission's 2011 benchmarking report on Australia's planning systems).

- strong commitment to engage all stakeholders, including the community, in setting planning objectives and determining planning outcomes
- clear guidance, targets and intentions in strategic plans while allowing flexibility in statutory decision-making to adjust to changing circumstances and innovation (so long as engagement, transparency and accountability is upheld)
- clear and consistent land use and development controls that are broad enough to allow responsive proposals and discretionary decisions that are appropriate to context
- risk-based planning approval processes applied across the spectrum of planning instruments
- electronic application lodgement, tracking and notification systems
- an efficient and robust referrals system, with WAPC/DPLH empowered to apply rigour and discretion in its treatment of referral responses
- statutory timeframes for all stages of the planning system, with reporting on performance against these timeframes and consequences for not meeting them
- reasonable and transparent rules for charging infrastructure costs to landowners/developers

In the context of these goals, we make the following observations about the advertised planning review outcomes and some of the overarching themes that come through in the green paper recommendations. In our detailed comments on the recommendations we identify a significant number which we support, so in highlighting the issues below we don't wish to imply an overall unhappiness with the review outcomes, but simply to raise some aspects which we are concerned about and that we believe could potentially be rethought.

There appears to be a tendency in the recommendations to elevate the process of planning over the purpose of planning. The focus of improvements should be on ways to make subdivision, land use and development decisions as appropriate as possible to the circumstances at the time of the decision and to achieve the best possible balance of all relevant interests in the proposal.

While consistency of decisions with the previously established strategic planning framework is helpful in terms of aligning with pre-existing expectations, there is always the potential that circumstances and community expectations will have changed over the time since the strategic framework was set. Rather than adding more steps to the planning process to firm up the weight of the strategic plan, as appears to have been the intent of various of the green paper recommendations, it would be useful to focus attention on helping decision-makers balance the various factors and interests in the ultimate development decision, to ensure optimum outcomes on the ground.

Retaining an element of discretion is critical to achieve this, and we have significant concerns about the erosion of decision-maker discretion implicit in many of the recommendations. We understand that this is seen to be a way to ensure community expectations are met – locking in decision-makers to a pre-established planning outcome - however we see this as risking development outcomes that are not contemporary and don't reflect context, and which may therefore be deficient compared to decisions and outcomes that could be possible if discretion was retained.

The world and the context within which planning and development operates is changing more and more rapidly over time, so ensuring the system can be responsive to change and disruption is now more critical than ever. If we are to fully embrace the benefits that swiftly changing technological advancements can bring to communities and be able to respond appropriately to ever-changing community and societal expectations of governments, our systems and decision-making processes need to be flexible to change.

When discretion is incorporated in the system community expectations can still be met if due and expected process is followed, which must include a reasonable opportunity to feed in to planning decision-making. This is what the property industry also seeks. While property owners and developers will always need some level of certainty of planning potential, to protect their interests and investment decisions, they also seek enough flexibility to allow optimum outcomes at the time of decision.

There are a number of recent high-profile planning decisions that perfectly encapsulate this issue. The strategic planners who set planning frameworks can't possibly fully anticipate the kind of proposals that will be received and will ultimately be deemed suitable for the site. If the planning framework does not contain any discretion, the final outcomes may be deficient and the broader and future communities who would benefit from these developments would miss out. This could be the result in local government areas if, as per one example of removal of discretion proposed in the Green Paper, flexibility to vary development standards in a local planning scheme were removed from the LPS Regulations.

In terms of themes, we also detect and have some concerns about an apparent effort to fetter the discretion and remove current advantages of the DAP system as a way of dealing with some of the vocal critics of DAPs, particularly relating to a desire in some quarters to bring in third-party appeals for DAP decisions. It has been a stand-out feature of the WA planning system for a long time that there are no third-party appeal rights, and this has been widely held up as a strong advantage nationally. As far back as 1984 an independent enquiry chaired by Laurie O'Meara for the then Labor Government of WA made the following observations:

“The introduction of third party appeal rights is likely to increase both the time taken and the costs of the planning process in many cases. Whilst effective public involvement is an essential part of the planning process, this can be achieved by providing wide publicity of planning proposals and the opportunity to comment before decisions are made. We have concluded that the likely benefits flowing from a [sic] third party appeal rights are marginal and are outweighed by the disadvantages of slowing down and increasing the costs of the planning process.”

This conclusion was echoed in the 2011 Review of the DAPs Regulations by the then Uniform Legislation and Statutes Review Committee of the Legislative Council. An interesting observation was made by the Committee, that if third-party appeal rights were introduced for DAP decisions then, to produce an equitable outcome, the right should be extended to all planning decisions across WA

including those by Local Government and the WAPC. The Property Council would strongly oppose such an outcome and considers the impact would far outweigh any perceived advantage of allaying one of local governments' and communities' concerns about DAPs.

We note with interest that WALGA took a firm position against third-party appeals in the WA planning system until DAPs were introduced (in fact they still maintained their opposition at the time of the 2011 Committee Inquiry and their support has only come about since then). Our understanding is that this change in position is due to a realisation by WALGA that the Local Government could use a third-party appeal right itself to appeal DAP decisions – this appears to undermine the argument that the appeal right is intended to address community concerns, particularly as community input in the planning process is far better incorporated prior to any decision being made, and by ensuring enough discretion exists to reflect contemporary community views in the decision.

The property industry is encouraged by the effort taken by the Government to determine the current advantages and disadvantages of the WA planning system and to be proactive about identifying potential improvements. We cannot emphasise enough our hope that once the final reform initiatives are agreed by Government, implementation of these begins as soon as possible and occurs as quickly as possible. Having seen a number of reform initiatives agreed but then never implemented over the years, we encourage the Government to resource DPLH appropriately into the future so that it can efficiently and effectively identify implementation mechanisms; draft the necessary changes to policy and legislation; communicate on these effectively with all stakeholders; and progress the changes to finalisation. A number of important change opportunities have been missed in the past, and now that the momentum has picked up again under the current McGowan Labor Government we are keen to see real change occur.

Once again, thank you for the opportunity to provide industry feedback on this critical proposal. Should you wish to discuss our comments please don't hesitate to contact Emma Thunder on 08 9426 1204 or by email to ethunder@propertycouncil.com.au.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'L. Iacomella', written in a cursive style.

Lino Iacomella
WA Executive Director

Schedule of proposals and Property Council comments

1.0	A STRATEGICALLY-LED SYSTEM
1.1	Prominence of Strategic Planning
1.1.1	<i>Provide in the PD Act that strategic planning is a purpose of the Act and provide a definition of strategic planning.</i>
	Support in part – unsure of purpose of defining strategic planning as this may have the opposite of the intended effect, by excluding from consideration under the Act anything that doesn't fall within the new definition.
1.1.2	<i>Provide in the LPS Regulations that the review of a local planning scheme must be informed by, and respond to, a review of the local planning strategy.</i>
	Oppose – the five yearly “audit” of a Local Planning Scheme under r.65 should be as simple and efficient as possible. There is already a requirement to consider as part of that audit whether the associated Local Planning Strategy needs reviewing, if the audit concludes that the Scheme is outdated (r.66(3)(b)). There would be no value in requiring a review of the Local Planning Strategy as an additional step prior to the minor scheme review, which itself was only introduced as an efficiency initiative a few years ago via the Regulations and was supported at the time by the Property Council. Instead, we request that the previously promised change to a five-year audit with only a ten-yearly major review of the scheme and strategy be finalized by undertaking the necessary changes to the Act ¹ .
1.1.3	<i>Provide in the LPS Regulations that a complex scheme amendment must be accompanied by a proposed amendment to the Local Planning Strategy (in the form of a report).</i>
	Oppose – defining an amendment as complex is already an acknowledgement that the proposal has a greater risk profile than standard or basic amendment proposals, which are lower risk as they comply with the existing planning framework and/or have limited external impacts. The additional steps that a complex amendment goes through, of Council consideration before initiation, longer public advertising and more comprehensive justification reporting requirements already impose a more thorough process of consideration on a proposal that doesn't comply with the local planning strategy. To add to this by also requiring an amendment to the Local Planning Strategy would essentially be creating a fourth, even less efficient, assessment track for certain scheme amendment types. The Property Council does not support this. We acknowledge that Local Planning Strategies should be kept up to date when scheme amendments occur so would suggest that an alternative approach could be for the Commission to automatically update Local Planning Strategies if the Minister decides, based on sufficient justification reporting provided with a scheme amendment proposal, to approve a complex scheme amendment that varies from a Strategy. If recommendation 1.1.3 is pursued though, it appears to follow that the related scheme amendment would no longer be classified as a complex amendment so it wouldn't go through the extended complex amendment process. It may be that instead of pursuing a complex amendment, proponents would seek a quicker and easier amendment to the Local Planning Strategy and then follow the standard or basic scheme amendment path for their now compliant proposal. This would undermine the existing risk-based amendment approach and would elevate the weight of the Strategy above the Scheme as a change to it could be considered to pre-empt a change to the Scheme. Any change to the process for amending a Local Planning Strategy in response to this, that would make it as onerous as the current complex scheme amendment process (eg having Strategies

¹ Reference: p.3 https://web.archive.org/web/20150413080628/http://www.planning.wa.gov.au/dop_pub_pdf/planning_reform_blueprint.pdf

	approved by the Minister instead of the WAPC), is not supported by the Property Council as this would not be appropriate for a locally based strategic planning instrument.
1.2	Need to explain sustainability for land use planning
1.2.1	An overarching State Planning Policy be developed which: <ul style="list-style-type: none"> i Provides a definition of sustainability for the planning system which reflects a balancing of economic development, environmental considerations, and social needs; ii Reinforces sustainability as an essential element required to be taken into account in the making of any strategy or policy; and iii Indicates the particular steps related to how economic, social and environmental factors are balanced.
	<p>Oppose - SPP 1 already establishes that the primary aim of planning is to provide for the sustainable use and development of land, and specifically explains the objectives of planning for sustainable communities, economic well-being and ecologically sustainable land use and development. SPP1 also outlines the considerations which should guide decision-making to achieve the primary aim of sustainability, under a series of principles including Community; Economy; Environment etc.</p> <p>Adding another SPP would add to planning system complexity and create red-tape rather than reduce it.</p> <p>The Property Council would caution against over-defining how to balance the different factors that contribute to sustainability as this would fetter the ability for proposals to be treated on their merits and with appropriate use of discretion, particular to circumstances, by decision-makers.</p>
1.3	Housing distribution
1.3.1	Provide that every local planning strategy include a local housing strategy, except for low growth and small regional local governments which only require basic local planning scheme requirements.
	Oppose – the Property Council supported previous planning review initiatives to streamline the scope and extent of information required to be endorsed by the WAPC as part of a formal Local Planning Strategy. The current Local Planning Manual already states that for particular areas other strategies and policies might be required, including housing, so we don't see any need to change the current situation. We particularly oppose including formal reference to a Housing Strategy in the Regulations, as this would remove the ability of the WAPC to apply its discretion as to whether one is required, and would unnecessarily extend the timeframe for establishing a endorsed Local Planning Strategy in cases where a local government should be exempt from requiring a Housing Strategy, if that local government does not fit whatever definition of “low growth and small regional” local government ends up being included in the Regulations wording.
1.3.2	The DPLH to provide guidance for local government in the Local Planning Manual on how to prepare a Local Housing Strategy, including a methodology for local housing analysis.
	Neutral – as long as a Local Housing Strategy is not a statutory requirement under the Regulations (see above) and the methodology to prepare one not so onerous that it pushes out the time taken for Local Government to establish contemporary and appropriate planning frameworks.

2.0	A LEGIBLE PLANNING SYSTEM
2.2	Arranging state planning policies for brevity and simplicity
2.2.1	State Planning Policies be consolidated into a single state planning policy framework with supplementary technical guidance.
	Neutral – SPP1 already exists to “bring together existing State and regional policies...within a central State Planning Framework” and explains the status and hierarchy of the different policy instruments.
2.3	Line of sight
2.3.1	<p>WAPC to establish common strategic “elements” for the State Planning Framework including but not limited to:</p> <ul style="list-style-type: none"> • A “sustainability” element • A “land use element” that includes the distribution of uses of land as well as density • A “housing element” that includes the types of housing • An “environmental element” • An “open space element” • An “urban form and design element” • An infrastructure element. <p>and prepare Technical Guidance for the details of each element to be included.</p>
	Neutral – not clear how this is different to the six principles contained in current SPP 1. If the intent is to fit the policy provisions of all SPPs into consistent “elements” the Property Council is concerned that this would risk including and elevating policy provisions in SPPs simply to fit a formula, instead of ensuring state government policy is as streamlined and relevant and therefore easy to comply with as possible. If the intent is to mirror the “elements” approach in <i>Liveable Neighbourhoods 2009</i> , the Property Council is concerned that, like applications currently which attempt to meet the LN requirements, individual proposals may be assessed rigidly against a formulaic policy framework instead of against a policy framework that is integrated, open to innovation and context-relevant.
2.3.2	Provide that every State Planning Policy, Regional or sub-regional plan and the local planning strategy must follow these elements, unless otherwise agreed to by the WAPC.
	Neutral – however some concern, see above.
2.3.3	Provide that every local planning strategy must explain how it has addressed the requirements of each common strategic element against the requirements of State Strategy, Planning Policy or Regional or sub-regional strategy.
	Neutral – the Regulations already require a local planning strategy to apply any State or regional planning policy that is relevant. If the idea is simply to introduce a template to each Strategy to more clearly demonstrate this application, the Property Council has no issue with this. However we wouldn’t want to see Local Planning Strategies being required to contain irrelevant information or provisions that are unnecessary and add red tape, simply to comply with a centralised planning process or formula.

2.3.4	Provide in the PD Act that all planning decision makers are to have due regard to State Planning Policies.
	Oppose – currently all decisions made under a local planning scheme (including decisions made by DAPs) are made with regard to State Planning Policies because the schemes are prepared with regard to SPPs and because cl.67 of the deemed provisions requires it. The ability for other State planning instruments to diverge from SPP content, such as those determined by the MRA, has been useful in special circumstances where the State Government has decided to exercise discretion to get better and more context-dependent planning outcomes, such as relaxation of coastal setback standards at Scarborough. The Property Council would prefer to see compliance with SPPs written into specific planning instruments where relevant, than a blanket statement of compliance included in the Act, so that the State Government can continue to use its own discretion for special projects such as METRONET precincts.
2.3.5	Provide in the <i>Metropolitan Redevelopment Authority Act 2011</i> that in performing functions under the Act, the MRA must have regard to State Planning Policies.
	Oppose – as above

2.4	Complexity locating and interpreting the local planning framework
2.4.1	Require that a local planning scheme be published with the inclusion of the Local Planning Strategy (in the form of a local strategic statement) and Local Planning Policies in a document to be called a “Comprehensive Local Planning Scheme”.
	Oppose – if the intent is for all elements of the local planning framework to be part of a statutory comprehensive scheme. To give the local planning strategy and local planning policies the same statutory weight as a local planning scheme would drastically undermine flexibility in the planning system and impose significant red tape. If the idea is simply to create electronic documents that combine the different elements of the planning framework in one place that would be fine, subject to systems being in place to make sure any updates or amendments to any part of the framework are incorporated immediately so there is only one ‘source of truth’ – this has been the benefit of the WAPC hosting all current schemes on its own website – and subject to it being clear what weight each different part of the electronic document has so that accessibility doesn’t preclude clarity.
2.4.2	DPLH to provide guidance for local government in the Local Planning Manual on the content and format of a Local Planning Strategy and Local Planning Policies.
	Neutral – information received from the State Government in the past indicated that this was underway, so it should now be resourced to completion.
2.4.3	Local governments currently undertaking, or about to embark on, a substantive review of their planning frameworks delay preparation of local planning strategies and local planning schemes (and related omnibus amendments) until guidance on the format and content of local planning frameworks is available.
	Strongly oppose – many of the difficulties currently experienced by industry with inconsistent local planning schemes would be resolved if local schemes were updated to reflect the requirements of the LPS Regulations. By 19 October 2017 all local governments should have undertaken a review of their scheme to bring them in line with the Regulations, and by March 2018 they should have reported on those reviews to the WAPC. If this had been done then the issues of uncertainty around provisions still in schemes that are superseded by the deemed provisions, and schemes that are significantly out of alignment with the remaining model provisions, would have disappeared – all schemes would be half as long, consisting just of the provisions not covered by Schedule 2 of the Regulations (the deemed provisions), and any departure from the model provisions including for land use and zone names would have to have been justified on a case by case basis as required by the Regulations. If we had seen the Regulations applied as industry expected, then schemes would already be much more

	consistent and streamlined. Instead of further delaying currency and consistency of local planning schemes, by putting a moratorium on all updates until whenever the current planning review is complete and implemented (which could take years), the Property Council seeks a commitment from the State Government to fully resource DPLH's Schemes and Planning Reform teams to provide the assistance and oversight required to complete local government scheme reviews, so that the very welcome initiative of consistency and streamlining that the LPS Regulations promised can be completed. This would significantly resolve many of the issues identified in the Green Paper. To delay a resolution of issues that is already feasible, while other reform initiatives are considered and drafted, would be short-sighted and an opportunity lost.
2.4.4	Provide in the LPS Regulations for a clear distinction of the purposes of Local Structure Plans, Activity Centre Plans, Local Development Plans and Local Planning Policies.
	Neutral – the terms are already defined in the Regulations and it might be better to include any further clarity in State Planning Policies and updates to the Local Planning Manual rather than the Regulations, to avoid over-defining in legislation and fettering decision-maker discretion and ability to respond to context.
2.4.5	The DPLH to provide guidance in the Local Planning Manual on the appropriate use of each local planning instrument.
	Support
2.5	Form of a Local Planning Strategy
2.5.1	The DPLH to update the Local Planning Manual with guidance on the preparation, content and format of a Local Planning Strategy and strategic statement, in a similar form to a Victorian Municipal Strategic Statement.
	Support (if this means that the manual will contain something similar to Victoria's Planning Practice Note 4 'Writing a Municipal Strategic Statement' – it's slightly unclear from the recommendation wording whether the suggestion is that the format of the PPN is what's to be replicated in the Manual, or if the format of the MSS itself is to be used as a guide for the content of Local Planning Strategies).
2.6	Form of Local Planning Policies
2.6.1	The LPS Regulations be amended to provide that local planning policies are to be prepared in a manner and form approved by the WAPC.
	Support
2.6.2	The DPLH to update the Local Planning Manual to provide guidance for the form, content and writing of a local planning policy.
	Support – information received from the State Government in the past indicated that this was underway, so it should now be resourced to completion.

2.7	Consistency of Local Planning Schemes
2.7.1	Provide in the PD Act that deemed provisions are to be included in a comprehensive local planning scheme.
	Neutral – the Property Council can see that inclusion of the deemed provisions with the other parts of a local government’s planning scheme would make it easier to read and understand. However, we are concerned that replication of the deemed provisions in all local schemes might undermine the single source of truth needed for the deemed provisions, particularly if they are subject to change by State Government when state policy positions change. With a move to better use of technology and an online platform for all planning information being created, it seems there might be a better way to approach this, such as for all local schemes to be made available on one website so that whenever the locally specific provisions are displayed there is also a link to the associated but centralized deemed provisions. In industry’s experience the main source of current confusion is that local governments haven’t completed the necessary post-LPS Regulations scheme reviews, to remove the provisions that are now superceded by the deemed provisions – if this were fast-tracked (see comments above) the issue would be significantly resolved.
2.7.2	Provide in the LPS Regulations that a comprehensive local planning scheme is to include a specific section for deemed provisions.
	See above
2.7.3	Provide in the LPS Regulations that there are deemed provisions which set out standardised zones, land uses and land use permissibility which: <ul style="list-style-type: none"> i group like-land uses into themes for which common development standards can be prepared ii identify low risk land use proposals by including suitable parameters for which a streamlined planning process apply iii are mandatory for local government to adopt within their municipalities through the next scheme review or omnibus amendment.
	<ul style="list-style-type: none"> i. Support – if the same development standards can apply to multiple land uses this would help simplify the planning process, as long as appropriateness isn’t sacrificed for consistency. ii. Qualified support – suggest applying basic, standard and complex approach by categorizing application-types into basic ones which are exempt from requiring approval, standard which require a decision but no advertising, and complex which require advertising. iii. This suggestion is unclear – if the provisions are deemed they will apply to all schemes immediately on gazettal in the Regulations so wouldn’t have to wait for a review or amendment. If they are model (as now) they must be included as suggested via the next omnibus amendment or scheme review unless there are good reasons not to. The Property Council is concerned at any suggestion that zone types and land use definitions/permissibilities should be made deemed and apply immediately, as this would result in a situation where huge number of properties across the State would suddenly contain non-conforming uses and development. We are aware that such uniformity was introduced in Victoria in the past but it is understood that there, not only was there a three year lead-in from introduction for all schemes to be compliant, but the schemes there don’t have the same statutory weight as in WA so the implications of non-conformity were not an issue.
2.7.4	The DPLH to revise and keep up to date the Local Planning Manual to ensure it provides local government with the guidance required to prepare and administer its local planning framework and properly reflects the expectations of DPLH and WAPC.
	Support – information received from the State Government in the past indicated that this was underway, so it should now be resourced to completion
2.8	Location of Local Development Standards
2.8.1	Provide in the LPS Regulations that there be a location within the model provisions for mandatory development requirements for key sites and matters.

	Strongly oppose – the Property Council strongly supported the inclusion in the 2015 LPS Regulations model provisions of a clause allowing local government to vary site and development standard under certain conditions ² , and would like to see this variation clause elevated to the deemed provisions. Recommendation 2.8.1 implies that the State Government is moving in the opposite direction now, to reduce flexibility and use of discretion in favour of a rigid regulatory approach that locks in standards for the life of a scheme, whatever the context changes or performance characteristics of specific development proposals. While certainty is useful in the planning system, it is enough to have certainty of process and parameters for application of discretion – in its recommended form, proposal 2.8.1 implies a move towards red-tape and over-reliance on regulation rather than away from it.
2.9	On-line Local Planning Schemes
2.9.1	Develop an interactive Planning Portal for keeping local planning schemes online and accessing them in a legible and user-friendly format.
	Support
3.0	A TRANSPARENT PLANNING SYSTEM
3.2	Community engagement
3.2.1	The DPLH should develop a Community Engagement Charter for all aspects of the planning system that includes principles with regard to: <ul style="list-style-type: none"> i Planning authorities having a duty to engage with the community in a manner that allows residents to contribute to the making or amending of a strategic plan; and ii In the making or amending of a strategic plan, the community, as soon as possible, be given information as to what is proposed and any documents that the planning authority intends to examine.
	Qualified support – it is important that the community engagement be undertaken with clarity and information around what elements of a plan comments are being sought on, what aspects of an area’s development the community can influence, and what other considerations will play a role in decision-making. All of this will allow informed engagement by community, will ensure unrealistic expectations around influence aren’t raised, and will allow decision-makers to make informed and reasoned judgements that balance community input against all other relevant factors. The Property Council would like to see the Charter named “Consultation and Engagement Charter”, to reflect that it is not just community that should be consulted and engaged but all stakeholders to planning decision-making. Early proactive community engagement initiated by proponents should also be encouraged as part of this charter, with the benefits of time savings in the process during the later stages of an application emphasized.
3.2.2	Align engagement processes in the planning regulations to the Community Engagement Charter.
	Neutral – it is difficult to comment until the Charter is drafted, however we would caution against over-regulating the process given stakeholder engagement should be fluid and responsive to circumstance – the current deficiencies of the Planning Act around advertising processes and requirements (below) demonstrates this.
3.2.3	Revise public notification and engagement requirements for planning proposals in the PD Act and LPS Regulations to update out-dated requirements.

² Reference: https://web.archive.org/web/20150303083237/http://www.planning.wa.gov.au/dop_pub_pdf/Discussion_Paper_Planning_and_Development.pdf

	Support – the Property Council supported this when it was first suggested as part of the 2013 Planning Act review discussion paper and we would encourage the State Government to resource the necessary processes to get this implemented as soon as possible.
3.2.4	Make provision within the LPS Regulations that the local planning strategy must be in accordance with the Community Strategic Plan under the Local Government Act to the extent that it is relevant.
	Neutral
3.2.5	DPLH to revise the Local Planning Manual to clarify that: <ul style="list-style-type: none"> i actions in local planning strategies are limited to those matters that can be carried out within the local planning scheme ii acknowledge a concurrent community participation process between a Strategic Community Plan and a local planning strategy.
	Neutral – presumably any commentary will need to reflect that the concurrency will only be feasible where the timing of the two documents align. Neither should hold up preparation of the other given the two strategies haven’t traditionally had their timings aligned.
3.3	Reasons for decisions
3.3.1	The DLPH to publish a Guide as to the Scope of Reasons by Planning Decision Makers, having regard to the Queensland model.
	Support – this will assist the industry to understand and respond to the detailed reasons behind refusals or conditions on approvals as well as assisting the community.
3.3.2	Provide in the LPS Regulations that reasons for decisions are to be provided on planning proposals.
	Support – this will assist industry to understand and respond to the detailed reasons behind refusals or conditions on approvals as well as assisting the community.
3.4	Transparency of DLPH and WAPC statutory reports
3.4.1	WAPC practice be modified to publish Statutory Planning Committee and WAPC agenda items, reports and recommendations on region and local schemes and amendments
	Strongly support.
3.5	Reporting by Local and State Government on planning matters
3.5.1	Provide in regulations mandatory reporting by local government on planning matters.
	Strongly support – this has been promised by the state government since 2009 and made possible with the necessary change to the Planning Act in 2010, and the Property Council has been advocating strongly since this time for its introduction. We seek a commitment from the Government to appropriately resource DPLH to introduce the necessary legislative change.

3.6	Transparency and accountability of Development Assessment Panels
3.6.1	Provide for DAP meetings to be held at regular times and outside of business hours.
	Neutral – however this would not be supported if it caused a substantial increase in DAP application fees to cover associated costs.
3.6.2	Provide for the recording of each meeting of a DAP and made available on the DAP website of DPLH.
	Support and the same should apply to all local government meetings and WAPC meetings.
3.6.3	Provide clarification in DAP Practice Notes: i. If new information is submitted to the DAP after an RAR, the DAP should consider whether a decision should be deferred pending further RAR advice ii. As to when it may be appropriate to defer a decision, such as where issues are raised which require further detailed technical consideration by responsible authorities.
	Neutral – this should be ok as long as it doesn't result in the additional RAR advice being taken to Local Council for endorsement before being provided to the DAP (which despite advice to the contrary some local authorities do) as this would substantially increase timeframes. It would be more workable if the further advice could be provided in writing prior to the agenda being circulated and included in it, or verbally at meetings if the agenda has already been released - this would more closely reflect the approach Councils take in similar circumstances.
3.6.4	Amend the DAP Practice Notes to require reasons for decisions to be given in all decisions made by a DAP, including where the DAP adopts the responsible authority's recommendation contained within the RAR.
	Support – see comments on 3.3.2
3.6.5	Provide for a requirement that applications amended through a SAT process are readvertised unless the amended plans comply with development standards.
	Oppose – this could add significant time and complication to the process. The added time would not just be in the number of days advertised, it would be for the time taken to amend the plans to reflect the changes and make them suitable for advertising (along with associated professional costs); the time for the responsible authority to review the submissions after advertising and prepare a new report on submissions; and additional lead-in time for the DAP meeting once the report has been prepared. If the purpose is to add transparency to the process when a mediated outcome is taken back to a DAP to endorse, better options could be for a summary of the mediation process and its outcomes to be included in papers that are made public prior to final decision; all mediated outcome decisions to be made at a public meeting; and to require the Presiding Member (or whoever attended mediation) to provide a verbal summary of the mediation process at the DAP meeting in front of community attendees. Re-advertising following mediation implies that the negotiated outcomes may be subject to further change based on submissions, which would undermine the value of the mediation and result in proponents being more likely to avoid mediation and proceed direct to SAT. Just like an original decision, mediated outcomes can't diverge from development standards unless discretion exists to allow it under the relevant planning framework – the way this proposal is framed implies that mediated outcomes can be non-compliant with legislation/policy, which is not reflective of the facts and serves to further pervade the misunderstandings the community has about the DAP process.

3.6.6	Provide that where a DAP has been invited to reconsider its decision following a SAT mediation, new specialist members be drawn from the available pool of members.
	Oppose – replacing original decision makers following mediation, reconsideration or appeal is not standard practice for any other planning decision, and may become a precedent for other types of decisions if it were to be pursued. The implication is that the original decision-makers are somehow prejudiced or biased against making a reasonable decision a second time. If this was the case for specialist DAP members wouldn't it also be for elected Councillors in local government decision-making, the WAPC for its decisions and potentially even Ministerial decision-making. The implication, if this recommendation were implemented, would undermine the integrity of the DAP system.
3.6.7	The SAT should consider preparing a framework for allowing parties with a sufficient interest in a matter to make a submission or be heard during SAT mediation of DAP matters.
	Neutral – there are already parameters in place around this, and these should not be further defined otherwise there would be a risk of fettering the discretion of SAT Members in deciding on the matter, whether for or against a third party being heard on an appeal. Over-definition might not only allow for more parties to be heard, it could work the other way, with potentially fewer third parties being heard in cases where proponents disagree and choose to fight against a decision based on legal interpretation of any strictly defined framework.
3.6.8	Provide for expert DAP members to be drawn from a pool of members across the State on the basis of the type and complexity of the application being heard.
	Support
3.6.9	Provide for an expanded and flexible meeting process where the DAP Presiding member is of a view in relation to an application for development that wider community and local government viewpoints need to be examined.
	It is unclear what is proposed here. If additional consultation and engagement is required, beyond that required under a planning scheme, this should be incorporated during the pre-lodgement and assessment part of the application process, not at the meeting stage once the RAR has been finalized and the DAP members have been provided all information. If the idea is simply to allow more and longer deputations, and commentary from the responsible authority, this could be incorporated somehow as long as the principles of natural justice are adhered to and the proponent is given a right of reply. It appears that the current process of deferring a decision for additional information, followed potentially by further structured consultation on targeted matters, might be more efficient, productive and equitable than a free-for-all meeting format that benefits some parties more than others. Again, would the same approach be applied to WAPC and Local Council meetings if the precedent is set for DAPs?
3.6.10	Provide in the DAP Regulations that the WAPC retains its decision-making ability with respect to development applications under region schemes.
	Oppose – it's not clear what the reason for this recommendation is. It appears to be beneficial to perceptions of the DAP system for the WAPC to be subject to the same transfer of decision-making to DAPs that local government is. The decisions made are more efficiently and appropriately dealt with by DAPs than by WAPC which, as noted in the Green Paper, should be focusing on more strategic matters – if the WAPC was to delegate more of its decision-making to Local Government in future these decisions would probably go to a DAP anyway.

3.6.11	<p>Provide for a Presiding Member to be appointed also as the Chief Presiding Member to:</p> <ul style="list-style-type: none"> i Oversee the quality and consistency of DAP procedures and decisions (such as consistency of the use and content of conditions; the quality of RAR reports) and recommend changes to DAP procedures and Standing Orders to DPLH ii Assist in identifying panel members appropriate to sit in accordance with the basis of the type and complexity of the application being heard iii Identify training needs for DAP members for the approval of the Director General DPLH.
	Support - depending on appointment process for the Chief Presiding Members, given the power they will have.
4.0	AN EFFICIENT PLANNING SYSTEM
4.1	Arrangement of the WA planning system
4.1.1	Provide that the PD Act be amended to delete the WAPC function s14.(a)(ii) of advising the Minister for Planning on the administration, revision and reform of legislation.
	Neutral
4.1.2	Provide for a local government accreditation process.
	Support – subject to regular audit and review of accreditation to ensure currency, in the context of regular changes to State policy and legislative frameworks and therefore likelihood of local government compliance changing rapidly, and given regular staff movements and local government election cycles.
4.1.3	Increase delegations from WAPC to DPLH and local government, for the purpose of the WAPC focussing on the State policy framework and regional strategic planning.
	Support - where appropriately resourced, clear decision-making parameters are set and where the necessary skill-sets are in place.

4.1.4	<p>Provide for the PD Act to be amended to:</p> <ul style="list-style-type: none"> i. Revise the membership of the WAPC to 5-7 members to have experience, skills or knowledge of any one or more of the following fields— <ul style="list-style-type: none"> • planning, including strategic land use planning in metropolitan or regional areas • infrastructure planning, delivery, policy and strategy • public administration and public policy • property development • housing supply • corporate or public sector governance • economics, finance or financial management • management of business or commercial ventures • local government. ii. Remove committees of the WAPC from Schedule 2, in favour of an ability for the WAPC to establish committees to advise the Commission on any matter, recognising the Statutory Planning Committee and Executive, Finance and Property Committee carry out core functions of the WAPC and will be required immediately under this new system. A committee would consist of at least one member of the Commission who is to be the chairperson of the committee.
	<ul style="list-style-type: none"> i. Support ii. Neutral – understand the intent of this and flexibility around establishing committees is sensible, however presumably for any of the committees to have statutory decision-making power either in their own right or under delegation of the Commission they will need to be established under the Act or Regulations. Unclear how this is substantially different from existing situation.
4.1.5	<p>The role and purpose of a Coastal Planning Committee be reviewed, and consideration be given to the most appropriate host organisation and regulatory framework for the Committee.</p>
	<p>Support - coastal policy and its implementation requires significant review.</p>
4.1.6	<p>Revise the Service Delivery Agreement between the WAPC and DPLH to accord with the revised roles of the WAPC and DPLH.</p>
	<p>Neutral</p>
4.1.7	<p>Provide for new positions to be created to enable DPLH to recruit senior and experienced town planners to undertake strategic planning and policy development for the WAPC.</p>
	<p>Support – the State Government is encouraged to resource DPLH appropriately to ensure ongoing strategic, innovation and reform work can be undertaken in addition to core statutory functions. This will not only be a case of getting the right numbers of staff but deploying them appropriately across the agency, resourcing key State Government initiatives over internally focused projects, and ensuring morale and motivation is high.</p>
4.1.8	<p>The DPLH and WAPC establish a protocol for the engagement of non-public sector expertise in the scoping and development of policies.</p>
	<p>Support – noting that this has already been undertaken effectively in recent years, for example with the Design WA project.</p>

4.2	Process efficiency for planning proposals
4.2.1	A Planning Reform Team be retained by DPLH to implement proposals arising from the planning review and ongoing reforms to the Western Australian planning system.
	Support
4.2.2	A framework for referral of planning applications, to be incorporated in regulations as appropriate.
	Support – separate comments will be provided by Property Council, outside the Green Paper submission process, on the referrals system.
4.2.3	As an interim arrangement, the DPLH Independent Planning Reviewer be available to assist on issues regarding referral for WAPC matters.
	Neutral – the Property Council supports the use of an Independent Planning Reviewer but understood the position had been vacant for several years, which has been disappointing given the assistance this position was intended to offer industry and other stakeholders.
4.2.4	Provide in regulation that an applicant may seek pre-lodgement advice for development applications.
	Support
4.2.5	Development Assessment Guidance be published by DPLH in consultation with local government and industry bodies.
	Support
4.2.6	Provide in the LPS Regulations that a local government must advise an applicant within 10 business days of receipt of a development application whether additional information is required.
	Support subject to the statutory assessment timeframe still beginning on the day of lodgment and not once the 10 days have passed.
4.2.7	Provide a procedure for local government and developer proponents to agree upfront the scope and content of a local structure plan with the DPLH and other agencies as appropriate
	Oppose – the LPS Regulations provide for the Commission to establish the manner and form of a structure plan which is appropriate given the Commission is the decision maker, not the local government. The WAPC’s Structure Plan Framework needs to be updated, or a standardized manner and form included in the new Local Planning Manual/Design State Planning Policies, to ensure currency and provide certainty of requirements to industry.
4.2.8	Provide in the PD Act that the implementation section (part one) of approved structure plans and activity centre plans are to be read as part of the scheme and have the “force and effect” of the scheme.
	Strongly object – there seems to be significant uncertainty around the intended scope and statutory weight of structure plans and their relationship with schemes and scheme amendments. The property industry understands and supports the intent of the LPS Regulations to create development zones and activity centres where structure plans can guide development through their strategic status as ‘due regard’ documents, so that development in these strategically important areas can occur with a level of flexibility and discretion that is appropriate to rapidly developing areas. We understand that there is a misconception that before subdivision or development can occur in a structure plan area a scheme amendment is required to “normalize” the structure plan,

	<p>and that this misunderstanding is causing concern that structure plans are not effective or efficient planning instruments. However, the Regulations clearly allow for subdivision and development under a structure plan, without an amendment needed to put the associated zoning in place. The Property Council supports the ability for proponents and decision-makers to respond to context under structure plans and not to be locked into strict statutory frameworks. Structure plans allow the appropriate level of flexibility for decision-makers when considering performance-based individual subdivision and development applications, which makes them much more appropriate planning frameworks for rapidly developing strategic areas than highly rigid, inflexible and regulatory zoning and strict land use permissibility approaches. Structure plans should remain strategic guidance documents and not be reverted to the weighty red-tape laden documents full of strict development and land use standards that they were before the LPS Regulations came in – it had got to the point where to allow a variation to floorspace or a different number of car bays a scheme amendment was required to vary the structure plan and allow the development decision to be made.</p>
4.2.9	<p>Provide in the LPS Regulations that local government may refuse to progress a local structure plan or activity centre plan and amendment, if it is of the view that the proposals lacks sufficient planning merit. The amendment should also include ability for a proponent affected by such a decision to seek the views of the WAPC and the power for the WAPC to direct a local government to progress a proposal.</p>
	<p>Strongly oppose – one of the biggest successes of the LPS Regulations, that was most supported by the Property Council, was the move to only one decision-maker and point of appeal for structure plans. Recommendation 4.2.9 appears intended to undo this significant shift and create a situation where local government has the ability to halt the progress of a structure plan despite not being the final decision maker, similar to a local planning scheme amendment initiation step. This situation with scheme amendments required the introduction of s.76, and it would appear to be a backwards step to retrofit an initiation and s.76 call-in to the structure plan process, when the move to total State Government control of structure plans is already complete. The situation under the LPS Regulations should be retained, where local government must progress the plans but is able to provide its own recommendation on a plan’s merits when it forwards the structure plan to the WAPC for a decision.</p>
4.2.10	<p>Provide for development contribution plan cost and cost contributions schedules to be included as a schedule in local planning schemes.</p>
	<p>Support</p>
4.2.11	<p>Establish a Development Contributions Infrastructure Panel to review proposed local planning scheme amendments that include Development Contribution Plans, with the cost of the review to be included as a development contribution plan administration cost.</p>
	<p>Neutral – the intent behind this is sensible, however it would be less expensive and a longer-term solution for the State Government to ensure DPLH is appropriately resourced with people who have the skills and knowledge to assess development contribution plans, and for these staff to be involved in pre-lodgement review and post-lodgement assessment. However, if this is not possible and the idea is to stop local government from including detail that wouldn’t ultimately be endorsed by the Minister, then a Panel review prior to advertising is sensible.</p>

4.2.12	Provide for in the PD Act an ability for the Minister for Planning to: i require a special report from a local government on the operation of a development contribution plan ii instruct a local government to take particular actions for the administration of a development contribution plan.
	Support
4.2.13	Provide in the LPS Regulations for a voluntary 'deemed-to-comply' check for single houses and provide in the P&D Regulations a specified fee for the service.
	Oppose – the purpose of this is unclear. 'Deemed to comply' single house proposals are exempt from requiring planning approval, and the onus and risk is on the proponent to determine whether a proposal does indeed comply. This would usually be undertaken by the applicant's planning/building specialist or during pre-lodgment discussions with the relevant local government. The Property Council is not clear who is intended to benefit from the voluntary check and associated fee, as currently it is organised by the proponent at market rates or provided as a complementary part of the local government's overall planning service. The only advantage to industry could be if the check prevented time being wasted in the building application process when planning compliance is checked, however the timeframes for building permits must be complied with anyway so there would appear to be little advantage to adding this step and associated fee.
4.2.14	Provide in the LPS Regulations and R-Codes a fast-track 30-day planning approval process for single house applications that require only minor variations to the R-Codes.
	Support – assume the idea is part of imposing the risk-based assessment track approach on all planning processes, which is supported. If exempt proposals are classified as basic, minor variations to the 'deemed to comply' criteria could be 'standard' and subject to a shorter process, and only more significant variations would need to go through the existing lengthy approval process. Parameters around notification, advertising and local government delegation requirements could also be factored in to the process differences between standard and complex development applications. This would add efficiencies and streamlining to the process which the Property Council would support.
4.2.15	A framework for "Basic", "Standard" and "Complex" streams for region scheme amendments, local planning strategies and amendments, and local structure plan/activity centre plans and amendments be developed by DPLH for implementation through regulation.
	Strongly support
5.0	PLANNING FOR CONSOLIDATED AND CONNECTED SMART GROWTH
5.1	Planning for targeted urban infill
5.1.1	That the State Government develops clear arrangements for the planning and delivery of the key urban infill locations of activity centres, urban corridors and station precincts, including prioritising of areas which require State and local government collaboration.
	Strongly support – in our recent METRONET report the Property Council highlighted the need for a new governance framework for planning and delivery of key infill precincts both aligned to METRONET and for precincts/locations which have other strategic objectives. The new framework needs to ensure control of all necessary planning and infrastructure delivery decisions is in the hands of State Government while ensuring local government is engaged and buys in to the

	ultimate outcomes, along with community and industry stakeholders.
5.2	Updating growth management policies
5.2.1	A new Consolidated and Connected Smart Growth State Planning Policy that builds on the State Government’s METRONET policy and establishes contemporary smart growth principles and practices.
	Neutral – it is unclear whether this is simply introduction of different terminology for planning policy already being prepared under Design WA and following on from METRONET and Perth&Peel@3.5million , or whether a different approach to planning in WA is proposed via a new SPP. We are aware of the Smart Growth approach and terminology in planning literature but understood it to be just a different way of saying what the State Government already pursues as good planning practice. More definition of what is meant here is needed for the Property Council to make informed comment, however we are cautious about the idea of introducing yet another SPP when the intent of the planning review is to streamline and reduce red-tape. All of the State Government’s SPPs, if contemporary, should be aimed at creating the Smart Growth objectives of liveable communities that are walkable, compact and contain a choice of housing, work and leisure opportunities, so a specific ‘Smart Growth’ SPP seems superfluous and would be adding an unnecessary layer for proponents and decision-makers to deal with.
5.3	Planning for land use and infrastructure coordination
5.3.1	The WAPC to assist with land use and infrastructure coordination for the delivery of priority precincts through a renewed Committee.
	Neutral – this is intrinsically linked to whatever new governance framework is introduced for strategic precinct planning. Given the work already being done by the State Government via the METRONET Taskforce, Infrastructure WA, the City Deals team and the MRA/LandCorp Board it would be the Property Council’s preference to get additional clarity on what is intended with all of those bodies and the different pieces of work they are doing, along with the WAPC through Design WA and other initiatives, before we comment on introduction of another WAPC Committee. On face value it seems more likely that a governance arrangement separate to the WAPC rather than as a sub-set of the WAPC will be needed to effectively implement complex priority precincts.
5.4	Coordinating State infrastructure with regional rezonings
5.4.1	Provide in the Metropolitan Region Scheme an “Industrial Deferred Zone”.
	Support
5.4.2	The WAPC to ensure that any requirements for State infrastructure are in place in the lifting of Urban Deferment or Industrial Deferment, and that the draft Guidelines for Lifting of Urban Deferment 2017 be amended accordingly.
	Neutral – does this mean that WAPC will have the power to require servicing authorities to provide infrastructure when all other land use parameters are in place so that deferral can be lifted, or that any proposal will have to wait until state infrastructure is locked in before it can move from deferral to the more certain zoning of Urban or Industrial, which gives proponents the certainty to proceed to the next step of planning and financing their projects. What is the intended role of Infrastructure WA and/or DPC in this? And what are the options for proponents to accept the risk themselves and proceed to deferral being lifted without certainty of infrastructure, given any subdivision or development will be conditional on servicing so the risk is on the landowner until then anyway?

5.5	Coordination of infrastructure for land development
5.5.1	Provision be made for advice on the forward planning of State infrastructure, including utility providers to assist local governments in the preparation of local planning strategies and structure plans.
	Neutral – this is unclear in terms of role, responsibility, costs etc. Presumably this could simply mean local governments being given access to the Infrastructure Coordination Framework data that the ICC has been preparing (as previously discussed by the state government with industry), which would make sense and should be extended to industry access too.
5.6	Coordination of land use and transport for corridor development
5.6.1	The MRS be updated to include “Urban Corridor” as a category of Reserved Roads based on Perth and Peel @ 3.5 Million, with the Department of Transport being made responsible for coordinating a whole of transport portfolio response to planning proposals along the corridor.
	Neutral – the idea of Urban Corridors is a good one but additional planning should be undertaken before inclusion in the MRS rather than relying on the content of Perth and Peel@3.5million, as industry did not know this was intended and would seek to have further input into location and identification of such corridors before they are locked in to region scheme reservations. Given transit corridors need to be more flexible than historical road engineering requirements perhaps reservation of a specific corridor in a region scheme is not the best idea, and identification in a strategic document, supported by whole of transport portfolio operation planning, would be preferable.
5.6.2	A review be undertaken of regional road reservations in place to accommodate road widenings within the Metropolitan Region Scheme for designated Urban Corridors.
	Neutral – see above. Given the difficulties of altering road reservations in the context of neighbouring private property and the impact on property owners and local community expectations, perhaps inclusion of urban corridors in the region scheme is not a strategic approach.
5.7	Liveable Neighbourhoods
5.7.1	Liveable Neighbourhoods be elevated to a state planning policy and maintained and refined as a best-practice approach to new greenfield development at regional, district and local level, rather including it into a single Neighbourhood part of Design WA.
	Neutral – the Property Council’s understanding of the proposal for Design WA is that each different element of design will become an individual SPP, including Neighbourhood Design (which is what we have been advised is the new name for Liveable Neighbourhoods), once the ongoing revision to that document is complete. So we are unclear how recommendation 5.7.1 varies from what is already outlined under Design WA. The Property Council does not object to the existence of an effective greenfields neighbourhood design policy as long as infill precinct development, multiple housing development at all scales, and new and innovative ways of delivering single and grouped homes are all also addressed via an equivalent and equitable policy platform. One type of development should not be easier to align to state policy than another, so we support the current approach to incorporating all development typologies and scales (Neighbourhood, Precinct, House and Apartment) in one suite of SPPs. Members of the Property Council have been involved in the review of Liveable Neighbourhoods and in the formulation of Design WA and we are keen to see these finalized so that industry and community can finally have certainty of policy settings.