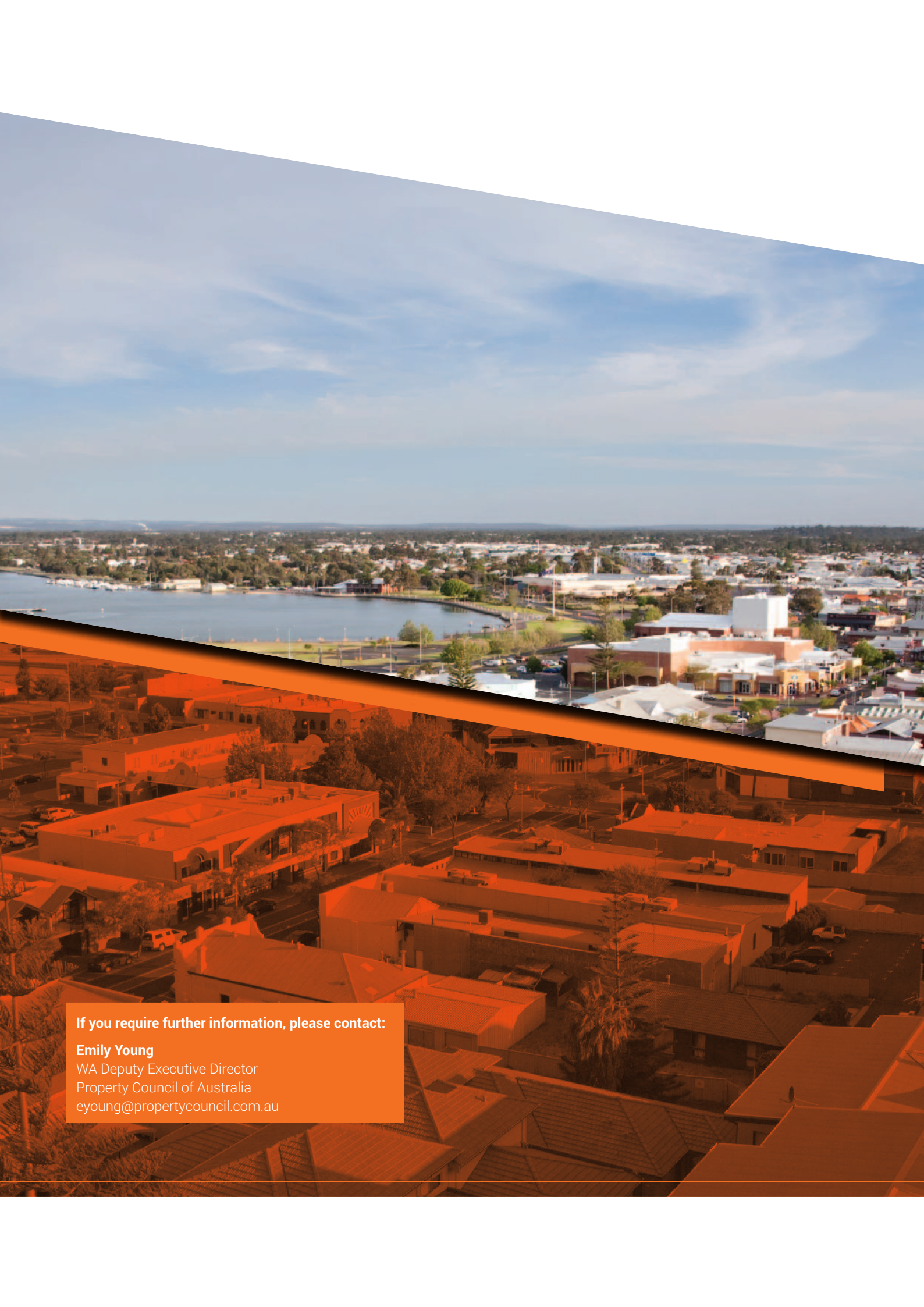


Planning to Deliver

Ideas to transform the Western Australian Planning System



IMAGE: DevelopmentWA



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Foreword

Tension is a feature of Western Australia's planning system.

Planning decisions are tense and to some extent, they should be. Decisions made are critical to the success of places and shape our environment for decades to come.

The quantity of tension felt by participants in the planning process is worthy of scrutiny.

High tension is felt by communities when they expect their local area will stay the way they know and love, but is then subjected to massive change. High tension is felt when people try and understand the system, but get overwhelmed and lost in an array of planning strategies, policies and plans.

High tension is felt by investors and developers who do everything right, tick every box in the planning process, but find their project cancelled by an obscure clause. This level of tension is also felt from endless red tape, and an invisible, impenetrable and unaccountable series of approvals by relevant government agencies.

For the benefit of everyone, reducing tension in the planning system is a shared, non-partisan priority and the benefits of an efficient planning system are truly worth aspiring to.

A system that works for the community is one that is understandable, sets clear expectations about the future, makes everyday life - lived between home, work and school - easy, provides a diversity

of housing for all residents (including future generations) and keeps property prices affordable for homeowners and businesses.

A system that works for developers reduces the time and cost of approvals, provides clear rules and direction, encourages creativity and innovative design in the built environment, and meets demand for housing, commercial and industrial property and social infrastructure when and where it's needed.

While the costs of red tape and planning delays are difficult to estimate, modelling prepared by the Property Council has found that if the red tape costs incurred by the State's property industry were to represent just one per cent of the value of building permits in the first six months of 2021, they would exceed \$80 million.

Improved efficiency in the planning system will deliver for WA, ensuring economic agglomeration, prosperity and strong communities.

As WA continues to grow, so too will the demands on our planning system. A well-resourced system centred around principles of certainty, transparency and accountability will drive positive planning outcomes and give greater confidence to existing communities – allowing WA to grow and change with the support of those who have underwritten its success to date. We will need homes, schools, hospitals, retail spaces, ports, transport

links and tourism precincts, and our aspiration should be to deliver these efficiently for the benefit of all.

This research aims to provide a clear, executable plan for planning reform that will ensure a more streamlined process, driven by empowered decision makers, able to deliver state-of-the-art built environment assets, across all sectors of property. We have considered the impacts of reform on the community, regulators, industry and government – focusing on solutions that will upgrade digital accessibility, streamline efficiencies and create greater certainty for the public and the development community.

I wish to acknowledge the contribution of the Property Council WA committee members, Division Councillors, and members who generously donated their time, expertise, and experience in developing this research. I also wish to express my thanks and recognise our research team Belinda Moharich, Moharich & More and Amanda Shipton, Align Strategy + Projects.



Sandra Brewer
WA Executive Director
Property Council of Australia

Introduction

An efficient and effective planning system is a key foundation for the creation of sustainable, healthy and prosperous communities.

Against a delivery landscape of increasing development intensity and infill, challenges in accessing unconstrained land, growing community expectation regarding transparent and accountable governance, and public sector resourcing constraints - the importance of an agile, legible, high functioning and high performing planning system is only increasing.

In June 2021 the WA Government called for submissions and ideas on planning reform to continue to make the planning system more transparent and consistent, and reduce unnecessary red tape. This follows a period of reform which began with the release of an independent review of the WA planning system in 2018.

In response to this opportunity, the Property Council WA presents its ideas to transform the WA planning system.

The Property Council WA's membership base includes over 270 companies who engage with planning in a diversity of ways. Their role is to ensure timely and relevant approvals necessary to deliver new communities and transform and evolve existing neighbourhoods and centres of business and community activity.

Property Council WA members have extensive experience and perspectives on the functionality of planning instruments and processes. Also, the outcomes required to enable the State's vision for a more sustainable urban form, and vibrant and prosperous communities to be realised.

Delivery environment for planning and development



Increasing **development intensity**, requiring more detailed considerations and place context.



Reduced **availability of unconstrained land** to readily respond to market demand, and housing affordability.



Growing **community expectation** about involvement and influence in planning decisions.



COVID-19, as a major strategy disruptor triggering the reconsideration of planning, growth, demand and investment assumptions across our State, and the need for flexibility and adaptability to respond to circumstance.



Public sector resourcing constraints, which challenge agency response times and the ability to maintain an effective planning framework.







The WA planning reform journey

The WA Government's call for ideas from industry and the community on Phase 2 Planning Reforms during June 2021 follows a journey of continuous reform since 2017, with the commissioning of an independent review.

The reform program also builds on the work of successive governments prior to 2017 to reform and improve the planning system often in a bipartisan effort.

The findings of the independent review, commissioned in 2017, were set out in a Green Paper released for public consultation in May 2018 entitled *Modernising Western Australia's Planning System*. The primary recommendations of the review were to elevate the importance of strategic planning and make the planning system more efficient, open and understandable to everyone.

Government's response was the Action Plan for Planning Reform (the Action Plan) released in August 2019. The Action Plan included three goals to underpin planning reform actions for WA, and 19 reform initiatives to achieve the goals:

- Planning creates great places
- Planning is easier to understand and navigate, and
- Planning systems are consistent and efficient.

As part of the State's COVID-19 economic recovery plans, the State Government accelerated a number of measures within the Action Plan together with a proposal to establish a new development application process for significant projects. A program of legislative, regulatory and policy changes was implemented in 2020 and 2021 to create a more robust planning system and support Western Australia's economic recovery, including exemptions from planning approval for certain land uses, and greater certainty of approval process for certain planning instruments across local government.

Now, the Phase 2 Action Plan for Planning Reform Call for Submissions presents some 24 proposals for changes that could be made to the WA planning system under the three goal areas together with a call for other, new ideas and priorities.

WA Planning Reform, Since 2017

2017	Independent review of the Western Australian planning system commissioned by the Minister for Planning.
2018, May	<i>Modernising Western Australia's Planning System</i> , a Green Paper outlining ideas for reform of the planning system was released for public consultation.
2019, Aug	<i>Action Plan for Planning Reform</i> released, with three goals and 19 reform initiatives.
2020, Jul	<i>Part 17 Planning and Development Act 2005</i> (Special provisions for COVID-19 pandemic relating to development applications) commences.
2021, Feb	Amendments to Planning and Development (Local Planning Scheme Regulations) 2015 commences.
2021, May	Public consultation for Phase 2 of the Action Plan for Planning Reform.

Research approach

Industry conversations

Research into the strengths, issues and opportunities for reform associated with the WA planning system have arisen from a series of structured conversations with Property Council WA members across June and July 2021.

Supported by an environmental scan of existing reports and reviews, the conversations captured the experiences of the property industry across the themes of planning regulation, land use and masterplanning; and infill developments:

- Planning regulation discussions captured the views of local government members;
- Land use and Masterplan discussions, focused on matters of land development, and the processes relevant to the formation of new, master planned communities; and
- Built form considerations, considered particularly the challenges of delivering in infill settings.

The planning system

Planning is complex and multifaceted. It includes a hierarchy of strategic and statutory planning instruments which, working together with a suite of processes and decision makers, seek to deliver decisions that enable considered development to occur.

For the purposes of identifying strengths, issues and opportunities, consideration has been given to:

- The planning framework - the strategies, policies and plans required to guide land use and development outcomes at State, regional, and local scales;
- The procedures and processes that contribute to, and result in planning decisions and outcomes;
- Planning leadership, and the way the system is administered; and
- Resourcing, roles and responsibilities.

Proposals for reform

Transforming the wealth of ideas that emerged through the research into proposals for change has involved a distillation and prioritisation of lasting system improvements, as distinct from matters of continuous improvement and good governance.

Industry stakeholders were strongly aligned about avoiding change for the sake of change, and to resist the tendency to address short comings by adding additional layers without amending or indeed removing, instruments that are no longer relevant. The unintended consequence being to add further complexity.

“ The pursuit of continuous improvement should be a priority for all State agencies and GTE’s ”¹





Impacts of an inefficient planning system

An inefficient planning system impacts on the property and construction industry, governments, and the whole community in a number of ways.

- Inefficient approval systems result in unplanned project delays and a corresponding escalation of project costs. In addition to holding costs, real imposts arise from requirements for further studies, policy responses, project redesigns, and representations.
- Escalating development costs and inconsistent supply pipelines increase the cost of bringing product to the market, and therefore housing affordability². The significant economic and social implications of housing affordability have been highlighted by Australia's heated property market and the growing number of people requiring support to access housing during 2021.
- Complex or ambiguous approval pathways create uncertainty. Bolder projects are more likely to be avoided with the risk of the unrealised sunk costs and expenditure if projects cannot proceed or are significantly delayed.
- In price sensitive and lower-margin areas, even six months delays have a big impact. With no scope to absorb additional cost, projects either do not proceed or stay carefully aligned to a 'path of least resistance.' This is at the expense of innovation, quality, and diversity of built form in our communities – the very outcomes the planning system seeks to facilitate.
- Delays and uncertainty impact on the economic contribution of the property and construction industry, where every one million dollars spent in residential construction supports nine jobs³.
- Complex, layered approval systems, ambiguous requirements, and contested approvals also come at significant administrative cost to government, and leave a legacy beyond a single project.
- Litigious, adversarial environments break down stakeholder relationships and erode confidence in the planning system for all. This includes the community, local government, referral agencies, and other decision makers.
- In an inefficient planning system it is challenging to attract and retain peak professionals into regulation roles. Further, resources are distracted away from strategic, forward-thinking efforts.

Government's urban development agenda is to facilitate the development of vibrant, sustainable, well-connected communities. Delivering this agenda requires responsive, well designed, forward thinking, coordinated developments which in turn, rely heavily on a mature planning and approval system.

Strengths of the WA planning system

There are many aspects of the WA planning system that make a strong contribution to our community, facilitating good and timely decision making and subsequent development outcomes. Through the course of engagement with industry, key strengths have been captured, and are considered aspects that should be retained – and not diluted as unintended consequences of system changes.

The Western Australian Planning Commission (WAPC) -

The WAPC is a unique and valuable State body, with centralised control and a clear purpose. It is approachable and easy to work with. The inclusion of agency Directors General in the composition of the WAPC offers whole of government perspectives, although Machinery of Government changes are considered to have impacted on the value of these positions.

Strategic planning focus - WA's strategic planning framework offers a consistency of approach. It will be important to ensure the addition of extra layers and multiple pathways, does not reduce certainty and legibility, thereby eroding this focus.

Maturing infill policy - The maturation of infill policy development, via the State Planning Policy No. 7 suite of policies is encouraging “thinking in 3D”. There are challenges for proponents around consistency of implementation, and navigation of the policy suite, and implementation support is important.

Certainty and consistency of process - Region schemes, local planning schemes, the Model Provisions and Deemed Provisions offer certainty and consistency of process, to the benefit of all stakeholders.

Scheme amendment processes - Strengths of the scheme amendment processes include: time saving of concurrent amendment of region scheme and local planning schemes for Urban zoned land (PD Act section 126); the inclusion of scheme amendment streams enabling a more appropriate, fit for purpose assessment; and PD Act section 76 powers to initiate scheme amendments, other than by local government which has reduced major bottlenecks at times.

Availability of a “toolbox” of planning instruments -

The opportunity to apply Planning Control Areas, Improvement Schemes, Redevelopment Areas in appropriate circumstances. The selection and application of these tools needs to be transparent, such that their value and intent is not eroded by political application.

Development Assessment Panels (DAPs) - DAPs are considered a good tool. They assess projects on merit, and appraise the genuine impact on existing communities, giving due consideration to activists opponents. The independence of DAPs members contributes to its strength. Feedback from Design Review Panels (DRPs) and local government planners can be ‘whittled away’ in RARs, by elected Councils, acting in the interest of a minority of constituents.

Design Review Panels (DRPs) - DRPs offer developers a level of certainty, early in the process. DRP comments could be better aligned with comments from local government planner comments in planning reports / RAR.

The State Development Assessment Unit (SDAU) - The SDAU represents a new way of doing business and a useful tool for developments which do not fit into the normal planning framework. They can resolve referral authority issues. SDAU extension post January 2022 would be an important part of the WA planning framework moving forward, with some modifications and refinement to the process, for example to post lodgement timeframes.





Department leadership - State Government planning leadership on major projects has proven useful in the past to streamline issues and processes. The opportunity for State planners to act as facilitators and assume ‘trouble shooting’ roles in major projects can support timeliness of decisions.

The Government's appetite for planning reform is refreshing. It should be acknowledged for giving genuine thought to how to make improvements to the system.



Ideas to transform the WA planning system



Reforms to Deliver More Outcomes Focused Framework	Reforms for Delivering Built Form	Process Improvements	Administrative Improvements
Elevate the State Planning Strategy and strengthen the relationship with other planning documents (Proposals 1-3)	Stronger implementation of State infill targets (Proposals 17-18)	Enable concurrent planning process approvals for master planned projects (Proposal 26) 	Improve understanding of the planning system (Proposal 30)
Improve the legibility, useability and function of State policy instruments (Proposals 4-13)	Greater certainty for the public and developers regarding intended development (Proposal 19) 	Address inefficiencies in referrals processes (Proposals 27-29) 	Adopt a 'digital first' and 3D articulation of planning instruments (Proposals 31-32)
Effective, up to date local planning frameworks (Proposals 14-15)	Formatting of planning instruments to enable consolidated 'rule books' (Proposals 20-22)		Deliver digital registers of applications and planning instruments (Proposals 33 -35) 
Unlocking access to LPS amendments (Proposal 16)	Enabling early developments where places are in transition (Proposal 23)		
	Improving outcomes from Design Review and Development Assessment Panels (Proposals 24-25)		

 = Priority areas for reform



Reform themes

A number of themes emerged from the research as critical elements of an agile, legible, high functioning and high performing planning system. These themes are relevant to, and sit across, the suite of suggested reform proposals. These are:

- **A strategically-led planning framework** – A clear, strategically-led, outcomes focused planning framework is valued and prioritised over a policy-driven system.
- **Clarity** - Providing clear, legible advice to the community, and all stakeholders about the planning system and their opportunities to influence planning decisions will improve the quality of outcomes for all stakeholders.
- **Certainty** - More certainty regarding timeframes, procedures, considerations, decisions, and roles and responsibilities across the planning system will deliver greater confidence for all stakeholders. It should be noted that absolute certainty in terms of built form, such as height limits, can often diminish and discourage creative and design excellence, and therefore should not be a feature of WA's planning system.
- **A strong State planning agency** - Strong planning leadership from a high performing, adequately resourced State planning agency is critical to successfully administer the WA State planning system.
- **Keeping the vision** - For planning visions to be delivered, they need to be championed, understood, owned, and reflected across the diversity of decisions and investments that contribute to a place.

Reform proposals

The Property Council WA's proposals for change to the WA planning system amount to 36 proposals, categorised as:

1. Reforms that deliver **a more outcomes focused framework**, including elevating the role and functionality of the State planning framework, and a number of improvements to the local planning framework.
2. Reforms for **delivering built form development**, including stronger implementation of State infill targets and greater certainty around development outcomes for all stakeholders.
3. Improvements to **planning processes**, including opportunities for concurrent approvals for master planned projects and making improvements to referrals processes; and
4. **System administration** ideas that adopt a 'digital first' approach and the development of a handbook for all users.

Across the proposals for reform are matters described as 'quick wins' – proposals requiring adjustments to existing instruments and processes – that, if adequately resourced could be actioned in a relatively short timeframe. Other proposals require Government's commitment to a considerable work program, particularly as they call for the need to make legislative change, or structural changes to the format and delivery of key planning instruments.

Four key areas for reform have been prioritised, and are considered to be the matters to make the most significant impact on the WA planning system.



Property Council WA Reform Priorities

Recognising the need to manage and resource reform activity concurrent with the ongoing orderly administration of the WA planning system, the Property Council WA has identified the following four priority reform areas, each of which is further explained in the subsequent sections of this report:



Greater certainty for the public and developers regarding intended built form developments

Proposal 19: *The Minister in respect of amendments to LPSs, and the WAPC in respect of the approval of Precinct SPs, must ensure that development standards in planning instruments for infill are reflective of the type of the intensity of development contemplated, by increasing as-of-right heights, and reducing the capacity for discretion.*



Introduce concurrent planning process approvals for master planned projects

Proposal 26: *Amend the legislation to allow for concurrent amendment of various planning instruments, and subdivision and/or development approvals for master planned projects.*



Address inefficiencies in referrals processes

Proposal 27: *Empower and resource government planners to advocate for good applications on planning grounds in their discussions with referral agencies.*

Proposal 28: *Amend legislation to deem an approval granted under the PD Act as approval under other specified legislation (for example road access under the Main Roads Act 1930, or Local Government Act 1995).*

Proposal 29: *Provide a State-led application pathway for projects that trigger matters of State interest, with an assigned State planner, and an assisted and coordinated referral regime.*



Digital registers of applications and planning instruments

Proposal 33: *Government to design a centralised, online planning application platform to be available for all development applications regardless of decision-maker.*

Proposal 34: *Data collected from this system to be made publicly available.*

Proposal 35: *A requirement for the status and application of planning instruments, including in preparation, to be made available through a searchable cadastre-based GIS database.*

Reform proposals for a framework that delivers planning outcomes

Provide State strategic direction

Proposals:

1. Elevate the SP Strategy by amending the PD Act to -
 - 1.1 Provide a separate approval process for the SP Strategy, including a requirement for advertising and consultation.
 - 1.2 Confirm the status of the SP Strategy in the WA planning framework.
 - 1.3 Require the SP Strategy to be maintained and kept up to date.
 - 1.4 To require SPPs to be consistent with the SP Strategy.
2. Elevate the SP Strategy by ensuring that legislators refer to the SP Strategy in their decision to approve subordinate planning instruments and policies.
3. Require the SP Strategy to be drafted in such a way as to ensure there is a direct relationship between the strategic objectives proposed, and the planning documents that can be used to implement those objectives.

Section 14 of the PD Act sets out the functions of the WAPC. This list includes –

(b) to prepare and keep under review –

- (i) a planning strategy for the State; and
- (ii) planning policies,

As a basis for coordinating and promoting land use planning, transport planning and land development in a sustainable manner, and for the guidance of public authorities and local governments on those matters; ‘

Section 14(b)(i) is the power used to prepare the SP Strategy. The first SP Strategy was published in 1997, and since that time has been updated once. The current version, *State Planning Strategy 2050*, was published in 2014.

The vision as set in the SP Strategy is –

Sustained growth and prosperity

The vision of sustained growth and prosperity envisages a future where Western Australians enjoy high standards of living, improved public health and an excellent quality of life for present and future generations.

Sustained growth and prosperity can be summarised by four reference points; diversity, liveability, connectedness and collaboration.

- a diverse state; offering a diversity of ecosystems, landscapes, enterprises, people and cultures
- a liveable state; the place of choice for the brightest and the best
- a connected state; as connected to the rest of the world as any other place
- a collaborative state; enabling alignments that progress the State's sustained growth and prosperity.

There is no statutory framework for the preparation of the SP Strategy beyond the power granted in section 14(b)(i). Therefore, there is no enshrined process for its preparation nor any requirement for consultation (although it is acknowledged that in practice, this does occur).

Part 3 of the PD Act sets out the power to make SPPs. SPPs may be made by the WAPC ‘with the approval or on the direction of the Minister’. There is no mention in Part 3 of the PD Act that SPPs are to align with or implement the vision in the SP Strategy.

There is a lack of connection between the SP Strategy and the suite of SPPs.

While it is acknowledged that not all objectives outlined in the SP Strategy can be implemented via the planning system, the structure of the SP Strategy and the structure of the SPP suite bear no resemblance or relationship.

There has been an attempt to rectify this position by the gazettal of SPP1: State Planning Framework (SPP1) which attempts to build a bridge between the language used in the SP Strategy, and other policy and statutory documents. While this is a laudable intention, the better outcome would be for the SP Strategy to speak directly to those implementation documents so that it is clear that the SP Strategy is the primary strategic document in the State's planning framework, and the document that keeps the vision.

State Planning Policies

Proposals:

4. Consolidate the SPPs into a single document with a shared set of definitions and consistent format for each policy.
5. Within that document, make explicit the connection between the objectives of the SP Strategy and each of the SPPs.
6. Amend section 26 of the PD Act to allow the preparation of either SPPs or State Planning Codes.
7. State Planning Codes are documents which should be prepared in circumstances where the measures are to have direct application in the assessment of development and subdivision applications.
8. Amend the format of SPPs for consistency, and to identify which parts of the document apply to the making of planning instruments, and which parts of the document (if at all) apply to the assessment of development and subdivision applications.
9. Amend the MRS text to include a requirement to have regard to any SPP, to provide consistency with the GBRS and PRS.
10. Provide greater resourcing to review SPPs and maintain their currency.
11. Publish and maintain an SPP review program.

State planning policies are the primary policy instrument in the Western Australian planning system. Part 3 of the PD Act sets out the process for their preparation and approval.

Section 26 of the PD Act set out the matters for which SPPs may be made. Section 26(2) provides that –

A State planning policy is to be directed primarily towards broad general planning and facilitating the coordination of planning through the State by local governments.

Implicit in this statement is that an SPP is a document which ensures coordination and implementation of State planning objectives to be delivered through the LPS framework.

However, section 26(3) then provides that an SPP can also be prepared for any matter which may be the subject of an LPS. That is, rather than an SPP providing broad planning (as set out in 26(2)) it may also be prepared to provide very detailed planning standards. Section 26(3) is in the following terms –

Despite subsection (2), a State planning policy may make provision for any matter which may be the subject of a local planning scheme.

Section 26(4) then provides that an SPP may be made to apply to general 'classes of matter' or to particular regions of the State.



State Planning Policies as at August, 2021

SPP#	SPP Name	Policy Date
2.0	Environment and natural resources policy	June 2003
2.1	Peel-Harvey coastal plan catchment	February 1992
2.2	Gnangara Groundwater Protection	August 2005
2.3	Jandakot Groundwater Protection	June 2017
2.4	Planning for Basic Raw Materials	July 2021
2.5	Rural planning	December 2016
2.6	State coastal planning	July 2013
2.7	Public drinking water source	June 2003
2.8	Bushland Policy for the Perth Metropolitan Region	June 2010
2.9	Water resources	December 2006
2.10	Swan-Canning river system	December 2006
3.0	Urban Growth and settlement	March 2006
3.2	Aboriginal settlements	May 2011
3.4	Natural hazards and disasters	April 2006
3.5	Historic heritage conservation	May 2007
3.6	Development contributions for infrastructure	April 2021
3.7	Planning in bushfire prone areas	December 2015
4.1*	State industrial interface	May 1997
4.2*	Activity Centres for Perth and Peel	August 2010
5.1	Land use planning in the vicinity of Perth Airport	July 2015
5.2	Telecommunications infrastructure	September 2015
5.3	Land use planning in the vicinity of Jandakot Airport	January 2017
5.4	Road and rail noise	September 2019
6.1	Leeuwin-Naturaliste Ridge	January 2003
6.3	Ningaloo Coast	August 2004
7.0	Design of the Built Environment	May 2019
7.2	Precinct Design	February 2021
7.3	Residential Design Codes Volume 1	July 2021
7.3	Residential Design Codes Volume 2	May 2019

SPP subject matter and overlap

It can be seen from this list that SPPs cover a broad array of subject matters – either subject matter or location specific.

Because of the number of SPPs, there is potential for both overlap of subject matter, and conflicts between the requirements within one SPP and another. An example of such an overlap is SPP3.4 and SPP2.6 in relation to storm surge and coastal erosion.

It is acknowledged that to some extent, inconsistency is inevitable given the competing interests to be managed. However, in a policy context, guidance should be given where such inconsistencies occur.

Each SPP contains its own glossary of definitions, where same or similar terms are given different meanings, or different terminology is used. Combined, the suite of SPPs in operation exceeds 600 pages in length.

Consideration should be given to combining the SPPs into one State Planning Policy, with a consistent set of definitions, and policy objectives for each policy which aligns with the SP Strategy.

Combining the SPPs would provide benefits including –

- Making it easier for the public to understand the extent of policies which together make up the Western Australia SPPs;
- Impose a rigour on drafting, to ensure consistency of language, tenor, format and level of detail;
- Making it easier for one policy to refer to another, and providing the capacity to advise the circumstances where one policy is to take precedence over another.
- Allow for frequent updating of policies for textual changes (for example, minor textual amendments to the SPP could be undertaken when substantive amendments were being undertaken in respect of other policies, thereby reducing the administrative burden of amendment).



SPP application and format

Some SPPs include directly implementable provisions, while others include only policy statements and directions as to how other planning instruments are to be prepared and implemented.

Some SPPs are incorporated by reference into LPSs, either through the Model Provisions or the Deemed Provisions. Examples of these are –

- Clause 27 of the Model Provisions requires SPP3.6 – Development Contributions to be read as part of the LPS.
- Clause 29 of the Model Provisions allows other SPPs to be read in to the LPS
- Clause 25 of the Model Provisions requires SPP7.3 – Residential Design Codes to be read as part of the LPS.

Even where SPPs are not incorporated by reference, there is a requirement for a decision-maker to have regard to an approved SPP in certain circumstances –

- Clause 67(2)(c) of the Deemed Provisions requires a decision-maker to have ‘due regard’ to any approved SPP in determining a development application under a LPS;
- Clause 40(c) of the GBRS requires regard to be had to any SPP
- Clause 37(c) of the PRS requires regard to be had to any SPP
- Section 241 PD Act requires the State Administrative Tribunal to have due regard to an SPP ‘which may affect the subject matter of the application’

There is no requirement for a decision-maker under the MRS to have regard to a SPP.

There is a general lack of clarity around when an SPP is to directly apply, and even when it does, which part of it is directly applicable. This arises because of the variable nature of the format of the various SPPs -

- Some are Codes, which are drafted to have direction application and implementation through the local planning framework (for example SPP7.3).
- Some are required to be incorporated (for example SPP3.6)

- Some provide guidance for the preparation of other planning instruments (for example SPP3.4)
- Some include detailed guidelines for the preparation of other planning instruments (for example SPP4.2)
- Some purport to contain development control provisions (for example SPP4.2)
- Some SPPs do all of these things

A policy, in the true administrative law sense of the word is a document which does not alter a legislative power or the basis of its exercise, but is used to explain the way that the power should be exercised.

As a starting point, consideration should be given to separate, in a legislative sense, documents which are not strictly ‘policy’ in the administrative law sense of the word, and are instead codes which are to be applied directly.

Removing, for example, the R Codes from the SPP suite, would make sense, as would the removal of the draft development contribution provisions in SPP3.6. Instead, these directly applicable documents would be better characterised as Codes.

Similarly, guidelines explaining how implementation of the SPP is to be achieved should also be removed. It is acknowledged that this process is already underway through an SPP review program, and the more contemporary SPPs have a set of accompanying guidelines to assist in the preparation of documents, or assessment, of particular matters covered in the SPP.

In respect of all SPPs, consideration should be given to the format of those documents to explain which parts of the SPP are there to guide the preparation of other planning instruments (for example, LP Strategies), and which parts of the SPP are there as an assessment tool for subdivision and development.

Maintenance and currency of SPP suite

Concern has been raised about the age of some of the SPPs (the oldest dating back to 1997), the lack of review of those documents, and once it is determined that a review is to occur, the time taken to facilitate that review.

This leaves a number of SPPs in draft mode for many years (see for example SPP2.8, and SPP3.6).

While it is acknowledged that the Department and the WAPC have embarked upon a program of review, the progress of that review, and the program, are not available to the public.

Draft planning documents are given weight once advertised in accordance with the principle enunciated in *Coty (England) Pty Ltd v Sydney City Council (1957) 2 LGRA 1171*, and adopted in Western Australia (see for example *Clive Elliott Jennings & Co Pty Ltd v Western Australian Planning Commission [2003] WASCA 276*). Therefore, allowing SPPs to remain in an advertised but not yet finalised state for any period of time creates uncertainty as to how the existing, and the amended SPP is to be reconciled.

As discussed above, some delays may well be addressed by the consolidation of the SPPs into one document, which would allow more frequent 'omnibus' style amendments to occur to update terminology and references.

Other WAPC policies

Proposals:

12. Provide greater resourcing to review non-SPP policies and maintain their currency.
13. Publish an audit and review program for its non-SPP policy suite to address overlap and inconsistency.

Related to the number and scope of SPPs, is the number of non-SPP policies in existence that relate to the same or similar subject matter. In many cases, newer policies were prepared to replace those older policies, however the older policies have not been repealed in a timely way.

An example of such a situation is *Liveable Neighbourhoods* which was intended to replace a number of the WAPC DC policies. Those DC policies have not been rationalised.

Further, and consistent with the concerns raised in respect to SPPs, a number of non-SPP policies remain in draft for long periods of time. As an example, the current version of *Liveable Neighbourhoods* was approved in 2009. A draft of a new version was published in 2015, but has remained in draft for 6 years.



Local planning strategies

Proposals:

14. Undertake an audit of the status of LP Strategies throughout the State to identify areas of priority for preparation or review.
15. Assign State planners to local government and encourage collaborative process for preparation or review of LP Strategies in those priority local governments.

LP Strategies have been a requirement of the Western Australian planning framework since their inclusion in the now repealed *Town Planning Regulations 1967* in October 1999.

The purpose of a LP Strategy is to set out the long-term planning direction of a local government area, having regard to the suite of SPPs, so as to provide a rationale for the zoning and other standards and requirements included in a planning scheme.

In many ways, the LPS should then be the servant of the LP Strategy, providing an implementation mechanism for that strategic vision. In practice, local governments would prepare or update their LP Strategy at the same time as they prepare their new planning scheme.

Feedback received through the workshop process expressed frustration at the time taken to prepare and have approved a LP Strategy. The concerns raised related to the ever-increasing array of information that was required to be collated in order to prepare the strategy, and then the time lost in the interactions and questions from State planners regarding the form and substance of the document.

The observation was that significant resources were absorbed in the to-ing and fro-ing of that process which was considered to be inefficient, and had the capacity for knock-on effects in terms of timing of new LPSs.

Given a LP Strategy is a document which synthesises the requirements and implements the objectives of the SP Strategy and SPPs, a more interactive and collaborative approach between State and local government should be encouraged for the preparation of LP Strategies.

Recognising that the preparation of an LP Strategy is an iterative process, an assigned State planner to a local government could be actively involved in the preparation of the LP Strategy. That approach would ensure that when formally lodged by the local government, the LP Strategy could be rapidly assessed and move through the process of advertising, to adoption in a timely manner.

Reducing these timelines will also serve to better engage the community in the process. Currently, there is a significant lag time between the advertising of LP Strategies, and their commencement. This creates confusion within the community as to what the purpose of the consultation was, and undermines confidence in the system as the community questions whether its views have been taken into account.

Finally, LP Strategies should be living documents, rather than 'set and forget'. To this end, local governments should be encouraged, and the State resourced, to amend LP Strategies as the need arises, rather than awaiting the next LPS review.

Status of LP Strategies across WA:

- *Approximately 45% of metropolitan and 27% of regional Local Governments do not have a WAPC endorsed LP Strategy.*
- *Approximately 29% of metropolitan and 48% of regional LP Strategies are over 5 years old.*
- *A further approximately 9% of metropolitan and 16% of regional LP Strategies are over 10 years old.*
- *There is evidence of considerable lag times in the preparation of LP Strategies, including 5 years or more to development of a draft document suitable for certification to advertise by the WAPC. In other cases, it has taken as long as 8 years from the point of WAPC certification to advertise to achieving an endorsed WAPC LP Strategy.*

Local planning scheme amendments

Proposal:

16. Section 72 of the PD Act and the LPS Regulations be amended to avoid the need for adoption by the local government of an LPS amendment prepared by a landowner, provided the proposal does not conflict with relevant SPP, analogous to the provisions allowing WAPC approval of subdivision in section 138(3) of the PD Acts.

The commencement of the LPS Regulations in 2015 introduced a risk-based streaming of LPS amendments into basic, standard and complex amendments. It is recognised that this streaming has been successful in reducing the administrative resources and timeframes.

Part 5 of the PD Act sets out the power to make local planning schemes. Under that legislation, it is the relevant local government to whom the power is granted.

Section 72 allows a local government to either prepare an LPS (or amendment) or adopt an LPS (or amendment) prepared by any or all owners of the land the subject of the proposed LPS. The process for doing so is set in regulation 35 of the LPS Regulations.

Unlike applications for development approval where the Applicant has a statutory right to have its application assessed and considered, no equivalent right is afforded to landowners who seek an amendment of the relevant LPS as it relates to their land.

Without a resolution to either prepare or adopt under section 72, the scheme amendment can go no further – it is entirely reliant upon Council of the local government to make the resolution, so that the amendment can be advertised.

This power can be used by Councils to stop meritorious scheme amendments before they even start.

Section 76 of the PD Act gives the Minister power to order a local government, on any representation that a local government has failed to adopt an LPS amendment, to prepare and submit the LPS amendment to the Minister for approval. Feedback received during the workshops suggested that this was a useful power.

That said, the power has only been used on a handful of occasions over the past 10 years.

The section 76 mechanism is entirely at the behest of the Minister, and in circumstances where the documentation disclosed the date upon which the initial representation was made, it is clear that on average, from the date of the representation, to the date the order is made, is over 12 months. Section 76 cannot be invoked until the local government has failed to adopt the LPS amendment. Therefore, conservatively, the process from lodging the LPS amendment, through to the Minister (should she wish to act), then through the LPS amendment process could be 2-3 years.

As is clear from the subject matter of section 76 orders that were made, the majority related to higher density of residential land use in infill environments. Some local governments use their power to adopt LPS amendments as a veto power to any higher density development in their local government areas.

While section 76 works well, the process is long and at the behest of the Minister to intervene. Amendments should be made to the legislation to allow a process whereby proposed LPS amendments that meet prescribed criteria to proceed to advertising without the requirement for adoption / initiation by a local government.

The criteria would need to be carefully considered, however a list of exceptions analogous to section 138(3) of the PD Act which sets out the WAPC's capacity to approve subdivision inconsistent with an LPS provides a useful starting point.



Exercise of Ministerial Power under Section 76 PD Act (2012 – 2021)

Date of Order	Date of Representation	Subject	Local Government	Minister for Planning
21.06.12	27.07.11	Rezone land for higher residential density	Stirling	Day
28.06.12	00.10.11	Rezone to allow marine supply base	Exmouth	Day
13.07.12	21.11.11	Amendment to allow shopping centre	Joondalup	Day
13.07.12	24.10.11	Rezone land for higher residential density	Stirling	Day
25.10.12	-	Rezone land from Rural Residential to Residential R2.5	Port Hedland	Day
01.11.12	-	Rezone land for higher residential density	Claremont	Day
09.11.12	30.09.11	Rezone land from Rural to Rural Residential	Mandurah	Day
05.02.13	-	Rezone land for higher residential density	Canning	Day
22.05.13	-	Rezone land for mixed use development	South Perth	Day
14.06.13	17.10.11	Rezone to Town Centre Development zone	Subiaco	Day
16.09.13	-	Rezone from Civic to Residential	Stirling	Day
25.11.13	-	Rezone from R15 to R50	Subiaco	Day
13.12.16	00.07.15	Rezone land for higher residential density	Nedlands	Faragher
20.06.17	-	Rezone from Rural to Rural Residential	Mandurah	Saffioti
23.10.17	00.06.16	Rezone from R40 to R80, including an additional use	Nedlands	Saffioti
13.11.17	12.01.17	Amendment of Special Use Zone provisions in Hamersley	Stirling	Saffioti
08.03.18	-	Inclusion of additional piece of traffic infrastructure in to DCP	Swan	Saffioti
22.05.18	-	Rezone from Hotel and Residential R10 to Special Use zone	Nedlands	Saffioti

Reform proposals for delivering built form development

Stronger implementation of State government infill targets

Proposals:

17. The Government and the Chair of the WAPC must provide vocal, continuous messaging as to the need for infill development.
18. Deploy State planners to local governments to assist with the preparation of local planning framework documents (LP Strategy and LPS amendments (and associated documents) to facilitate infill development.

Perth and Peel @ 3.5 Million adopts an infill housing target of 47%. This is low, compared with the aspirations of other Australian capital cities. Notwithstanding, these targets are not being met.

A recurring theme of the feedback received in the workshops has been the misalignment of the State's infill objectives, and the lack of implementation of those objectives through local planning frameworks. Where Councillors have been elected on anti-development platforms, some Councils can be resistant to any amendment to the local planning framework which would allow density or height. This is reflected in the number of section 76 orders made – relating to scheme amendments for residential density.

Strong leadership is required by the State to champion the vision of the compact city, and explain the benefits of this form of settlement for future generations. A greater emphasis and connection with the SP Strategy will assist in this goal. Assistance must be provided to planners working in resistant local governments to facilitate the implementation of State infill targets in the local planning framework.

By collating and publishing more detailed data on location and volume of infill development across local governments, Government can better monitor progress towards implementation of infill targets. This more detailed information will inform allocation of resources and focused messaging.



Greater certainty for public, developers

Proposals:

19. The Minister in respect of amendments to LPSs, and the WAPC in respect of the approval of Precinct SPs, must ensure that development standards in planning instruments for infill reflect the intensity of development contemplated, by increasing as-of-right heights, and managing the capacity for discretion.

When planning frameworks are amended, they lack certainty for the public, but also developers.

Infill areas throughout the metropolitan region are planned either by way of Activity Centre Precinct SPs, or special provisions inserted into the LPS.

The preparation of these planning instruments is often preceded by public consultation meetings and workshops. Public submissions are then received through the statutory advertising process.

Approval is granted to those planning instruments (whether a new Precinct SP, or amendment to the LPS) where development is contemplated at specified heights, but with a broad capacity to vary.

In some of the larger infill areas in the Perth metropolitan region, an observation could be made that the 'as-of-right' heights in these planning instruments are too low, and for that reason, developers seek significant variations to height in applying for development approval. The *Canning Bridge Activity Centre Plan* is a case in point, where heights are contemplated at 10 and 15 storeys in the most intense areas of development, but in fact are being approved at up to 30 storeys.

The effect of this arrangement is to breed distrust in the public as to the plan making, and decision-making processes. The flow on effects of this distrust cannot be understated –

- Delays in obtaining development approval;
- Challenges to approvals that are granted, in the Supreme Court;
- The mobilisation of vocal anti-development groups who seek involvement in every step of the planning process.

Planning instruments for infill areas should be drafted to more explicitly describe the height, bulk and scale of the built form that is intended, rather than over-reliance on discretion.

"We need to do better at explaining to the community how discretion works."

More legible built form planning instruments

Proposals:

20. Consider the format of the various planning instruments, and how they might be electronically presented as a single, unified 'rule book'.
21. Amendments to legislation should be made so that information as to who the decision-maker is for development is located in the one place, rather than the current situation where this occurs variously, by way of regulation or Instrument of Delegation (note that this could be most easily achieved by an amendment to the text of the MRS).
22. Planning instruments prepared to facilitate high density development in infill contexts should be required to be prepared in a three-dimensional form.

While the advent of the LPS Regulations, and the Deemed Provisions have provided greater nimbleness in the wholesale amendment of LPSs throughout the State, the legibility of the framework for the public has been greatly diminished.

There was a time when an LPS provided the bulk, if not all relevant standards and requirements that related to land within a local government area. Today, there is a need to synthesise a number of documents in order to determine what can be developed on a lot, to whom the application is made, and who will be the decision-making authority.

Those documents include –

- The LPS;
- Any Precinct SP or Standard SP made under the LPS;
- Any SPP incorporated by reference in to the LPS (most notably, the R Codes);
- Any LPP which varies the R Codes (the R Codes allow variation of particular development standards by way of LPP);
- The relevant RPS;
- The relevant Instrument of Delegation made under section 16 of the PD Act, whereby development adjacent to certain land reserved in an RPS, or of a certain genre, is to be determined by the WAPC.
- The DAP Regulations, to determine whether the application is a mandatory or optional DAP application.

Some of those documents referred to have force 'as if enacted'⁴, while others are given only 'due regard'⁵. Therefore, apart from identifying the documents which are relevant, there is also a need to determine the weight to be given to the various documents in the framework.

This confusing web of documents significantly impacts upon accessibility and understanding to the public at large, and creates a barrier to development, requiring the engagement of experts to navigate even relatively simple projects through the system.

In the Victorian system, there are parts of planning frameworks prepared by the State and apply throughout, and parts that are prepared by the relevant local government for its area only. When a consumer accesses the local planning scheme on the Victorian Department of Environment, Land, Water and Planning's website, what is produced is a document which dovetails the State and local government components into the one document.

Consideration should be given in Western Australia as to how a better 'single document' approach could be applied.

Related to this issue of legibility, is the way the various planning instruments explain or prescribe development standards. While most planning frameworks are conceived in the third dimension, the current template in the Model Provisions and the requirements of the State in respect of Precinct Plans, requires those standards such as height and setbacks to be reduced to writing. In order to develop, those written standards need to then be extrapolated back to the third dimension. Each of these points of translation can lead to misunderstanding and differences in interpretation.

Further, for the public (who are likely not versed in translating clauses with development standards into a three-dimensional vision) makes these documents impenetrable – causing confusion at best, and mistrust at worst.

We live in an age where the technology is available to prepare scheme provisions as models which could illustrate to the public what the ultimate vision for an area is in an urban design sense. This technology should be utilised so that all stakeholders have a clear understanding of the regulator's vision for their locality.

Places in transition - considerations for first-cab-off-the rank developments

Proposal:

23. Amend clause 67(m) to preclude its application in respect of infill development where height and scale is governed by a Precinct SP.

Planning instruments drafted for the purpose of infill areas usually contain detailed and fine-grained development standards and requirements to ensure that to the extent possible, existing properties are not affected during the transition from low density to higher density.

It is clear that in an infill scenario, someone has to be the first to redevelop. Regulation 67(m) of the Deemed Provisions requires a decision-maker to consider the compatibility of a development with its setting. While the clause requires a consideration of the future character of the setting, the State Administrative Tribunal in recent decisions, has taken into account the quality and age of existing development to refuse compliant (or near compliant) development⁶.

Such a position belies the fact that there is always a tension between the existing, and proposed form of development in infill projects, and fails to recognise that the drafters of these instruments have considered potential impacts on existing development in their preparation, and the community has had an opportunity to make submissions during the instrument preparation phase.

This undermines certainty for the developer to obtain approvals in a timely manner and jeopardises the implementation of infill visions.

Amendments to the planning framework should be considered to ensure that clause 67(m) cannot be used as a reason for refusal in respect of otherwise compliant development.



Improvements to Design Review, and Development Assessment Panels

Proposals:

24. Change should be made to the DAP application procedure, to allow for pre-determination briefing sessions for an applicant to present its application, and for DAP members to ask questions.
25. Careful consideration should be given to any amendment to the DAP system to ensure independence and expertise is retained

Design Review Panels

Infill development is inherently more complex than built-form development in a green field context. The design process must take into account a number of existing stakeholders, respect the planning framework, and deliver a product that is economically viable.

Feedback from the workshops expressed satisfaction with the concept of Design Review Panels, and in the main, the useful advice received through that process. Concern was raised about the variable quality of some local government DRPs, and the appointment of a small number of experts on multiple local government DRPs. It is acknowledged that the SPP7 (DesignWA) suite of documents is generally increasing the quality of both the advice and process.

Development Assessment Panel Protocols

Workshop participants expressed overwhelming support for the Development Assessment Panels as decision-makers – the consensus conveyed at the Infill workshops was that nothing would have been built in Perth, had complex infill development been left to local politics.

While we understand that the procedures around DAP decision-making is currently being considered, it is apposite to note that improvements to the process could be made.

One of the criticisms of the current process is the lack of involvement of the DAP in understanding the application, and the amendments that have been made through the DRP, and then local government RAR assessment journey. As noted, infill development is complex, and the design process is iterative. Specialist DAP members in particular would benefit from involvement prior to the date of determination to ask questions, and challenge the applicant in respect of concerns they might hold, in much the same way that occurs in the local government context, and Councillor briefing sessions.

The lack of this feature in the current system tends to 'back-end' a number of complex applications into the State Administrative Tribunal system, where an opportunity exists for meaningful discussion 'around the table' at mediation.

This is an inefficient solution, which consumes valuable court resources, and costs both the State and developers in both lost time, and money.

Quantifying the impact of delay:

Of all JDAP matters finally determined in the SAT in 2019 –

- *There was a total of 8,284 days lost between the date of the original JDAP decision, and the finalising of the matter at SAT, with an average of 285 days.*
- *31% of those matters involved infill housing, proposed to deliver 540 dwelling units.*
- *The total construction value of development delayed was \$339.5 million.*

Permanent DAP Members

The Action Plan for Planning Reform proposes the appointment of permanent panel members.

Workshop participants highlighted the value of the use of specialist panel members who were independent of the government and with contemporary industry experience in varied fields.

Concerns were raised as to whether the perception and reality of independence would be maintained once DAP members were appointed to permanent positions, and the challenges of maintaining currency in that environment.

The expertise provided by specialist DAP members is highly regarded by industry. There is significant concern that a transition to bureaucrat DAP members would diminish the pool of expertise currently provided in the system. Further the seniority of a salaried position within the Department would need to be carefully considered to attract the level of expertise required to these roles.

Special Matters DAP

The Action Plan for Planning Reform proposes the establishment of a Special Matters DAP to consider 'complex proposals'. Acknowledging that further work is to be undertaken by way of draft amendment regulations, at this stage, the Property Council WA simply confirms its support for this proposed reform.

Projects that are complex and difficult to approve through a normal planning process are often the ones that have the most potential to contribute to community and economic potential. They deserve to have a specialist, dedicated process to assess the merit. The feature in a Special Matters DAP process that is of most value is the ability to seat representatives from key government agencies around the table at the same time.

Reform proposals to deliver process improvements



Concurrent Planning Process Approvals

Proposal:

26. Amend the legislation to allow for concurrent amendment of various planning instruments, and subdivision and/or development approvals for master planned projects.

Delivering residential land under the current system in Western Australia is hampered by the requirement for sequential rather than concurrent planning processes to take land from rural broadacre, to residential subdivision.

Typical greenfield subdivision requires the following planning processes to be completed in order –

- RPS amendment
- LPS amendment
- Structure plan preparation and approval
- Subdivision approval.

Similarly, large and strategic built-form projects suffer the same time delays caused by the need to amend various planning instruments. In circumstances where the built-form is already planned and detailed, there is often still a requirement to step through the following processes in order

- RPS amendment (particularly for industrial proposals)
- LPS amendment
- Structure plan preparation and approval
- Local development plan preparation and approval
- Development application.

Under the current framework, the easiest option to date for large projects has been to implement an Improvement Scheme under Part 8 of the PD Act, which removes the land from the requirements of the relevant RPS and LPS. Such a process requires State government interest and involvement.

In other jurisdictions, models have been implemented to allow for Master Plans to be prepared, which when approved, would override existing planning instruments, and would run with the land over time, notwithstanding any subsequent changes to the planning framework.

Such a proposal is not recommended in this case, for two reasons –

- First, introducing yet another type of planning instrument does nothing for the legibility of the planning framework;
- Second, planning schemes in Western Australia have force and effect as if enacted, and therefore, there is no power for them to be amended by a planning approval.

Instead, what is proposed is legislation which allows for a combined development-led application to be made which allows for each of those documents to be amended / assessed / approved concurrently.

“The same level of detail is going into every layer of planning.”

While the details of that process would need consideration, in the first instance, the process should only be available in circumstances where a precinct is identified as being amenable to concurrent planning processes in a planning instrument, or where approval is sought from the WAPC to invoke the process. It is envisaged that this would operate in much the same way as the WAPC must consider whether land should be developed by way of a community scheme pursuant to section 18(2) of the *Community Titles Act 2018*.





More Effective Referrals Processes

Proposals:

27. Empower and resource government planners to advocate for good applications on planning grounds in their discussions with referral agencies.
28. Amend legislation to deem an approval granted under the PD Act as approval under other specified legislation (for example road access under the *Main Roads Act 1930*, or *Local Government Act 1995*).
29. Provide a State-led application pathway for projects that trigger matters of State interest, with an assigned State planner, and an assisted and coordinated referral regime.

Planners as project managers rather than post boxes

The feedback in the workshops raised the concern of the role of government planners in the management of referrals to ancillary agencies.

In many organisations, when a development or subdivision application is lodged, the referral process is managed by administrative staff.

Referrals are sent out without any value judgment from the professional planner as to whether the application otherwise complies with the planning framework, or any value judgement as to whether the proposal assists in achieving the vision as outlined in the planning framework.

The language and intent in this process is important. As an example, under *Queensland's Planning Act 2016*, the language used is 'referral manager', which connotes an active role in the process.

"Honour strategic planning in decision making"

"Avoid single issue decision making"

In a strategically-led planning system, planners should be confident to be able to advocate for an application that achieves the vision of the planning framework. Resources should be assigned to allow planners to take on this role, and manage an application from lodgement, through the referral process, and to determination.

Primacy of development and subdivision approvals

An enduring issue with the timeliness of process, and quality of outcomes, is the issue of referral of applications to State agencies, such as Main Roads WA and Department of Fire and Emergency Services.

In a strategically-led planning system, issues relating to road access, for example, should not occur at the development application stage, nor should another State government agency be able to effectively thwart the implementation of the vision outlined in the planning framework. Equally, another agency should not be able to unilaterally propose changes to its infrastructure such that it has the effect of frustrating the

implementation of a planning framework. That is particularly so given an LPS has force and effect 'as if it were enacted'⁷.

"Referral agencies should be better engaged when the plans are produced. Consider these agencies part of the urban development solution"

The PD Act and relevant Regulations should be amended to confirm that a development approval, once issued, is deemed to provide approval for matters such as crossovers and access under the *Local Government (Uniform Local Provisions) Regulations 1996* and *Main Roads Act 1930*. While this places quite an onus on the decision-making authority, it does provide some certainty to applicants, who can face long delays and development approvals rendered useless by the conduct of other agencies.

Referrals management

One of the strengths of the planning system raised by workshop participants was the process set out in Part 17 of the PD Act, 'Special Provisions for COVID-19 pandemic relating to development applications'. While the powers set out in Part 17 are far reaching, it was the capacity for the active management of referral agencies by the Significant Development Assessment Unit (**SDAU**) which was the element of the process which was most valued.

Other jurisdictions have similar, non-COVID-19 related processes. The stand-out in this regard is what is colloquially known as the SARA process under Queensland's *Planning Act 2016*. SARA is the acronym for the State Assessment and Referral Agency.

Under that regime, any development application which involves a matter of State interest (the triggers for which are set out in the *Planning Regulations 2017*), is referred to the SARA for approval by the State. SARA seeks advice from various technical agencies but is not bound by that advice, and has a broader role in considering whether the proposal meets the State's policy objectives set out in the State Development Assessment Provisions (similar to WA's SPPs).

Importantly in the context of referrals, the SARA collates all information received from external agencies, but uses this information to inform a decision based on planning principles and State policy, rather than being fettered by the referral advice received.

It should be noted that the Western Australian system, even without the Part 17 PD Act amendments, has historically operated in a way that is similar to the referral agency function of SARA. This is because the decision-maker in the Western Australian context has always been the manager of referrals (unlike Qld, where unless the application is one to be assessed by SARA, it is the *applicant* who is responsible for coordinating referrals).

That said, in the Western Australian context, a broader use of a model which allows for development that involves a matter of State interest (as prescribed) to be *actively* managed through the referral process would be welcomed.



Reform proposals to deliver administrative improvements

Improve understanding of the planning system

Proposal:

30. Prepare a handbook outlining the planning system and subdivision and development processes in WA.

Workshop participants involved in the development industry for many years fondly described a document prepared by the then Ministry for Planning – *Planning for People – An Introduction to the Planning System in Western Australia*, WAPC August 1996.

This short document included flowcharts and diagrams explaining the planning framework, the process of amendments to that planning framework, and process of application for approval of development and subdivision.

As early as 2004, there were calls for that document to be updated. Recommendation 2 of the Legislative Assembly's Public Account's Committee Report on the Inquiry into Development Contributions for Costs associated with Land Development was –

The Department for Planning and Infrastructure should produce a concise handbook outlining subdivision and development processes in Western Australia.

No such handbook was prepared. The closest equivalent is the document *Making Good Planning Decisions*, WAPC March 2021. This document, however, is prepared for a Development Assessment Panel member, and is therefore focussed on elements of decision-making rather than process.

While the DPLH's website contains all information required, navigation requires a base level of understanding of how the framework operates.

Digital first

Proposals:

31. Government to adopt a 'digital first' policy to new planning instruments and planning processes.
32. Government to allow Precinct SPs to be prepared in a three-dimensional digital format.

Detailed and high-quality digital planning and environmental data (**GIS data**) is available to the public through the State Government's Shared Location Information Platform (**SLIP**) and by local governments through proprietary GIS systems such as Nearmaps.

What is missing is the use of this data to prepare planning instruments which take advantage of the opportunity to express planning concepts, impose restrictions, and outline development standards in a three-dimensional form. Particularly in areas of infill (Precinct Structure Plan areas for Activity Centres), adopting such an approach would allow proponents to 'plug in' their own proposed development into the model, and undertake a 'first pass' assessment of the project in a digital form.

This proposal would assist in demystifying the planning standards that apply to a site, and allow the public to understand, and interact directly with, the planning instruments which dictate built form outcomes in their neighbourhood.





Digital registers of applications and planning instruments

Proposals:

33. Government to design a centralised, online planning application platform to be available for all development applications regardless of decision-maker.
34. Data collected from this system to be made publicly available.
35. A requirement for the status and application of planning instruments to be made available through a searchable cadastre-based GIS database.

There is currently no central register of development applications or subdivision applications available to the public.

In respect of development applications, depending upon the decision-maker, information could be spread between local governments, the WAPC, the Metropolitan Redevelopment Authority, the DAP Secretariat, and the State Administrative Tribunal. Information as to the existence of an application is only available where the application required advertising, or where the decision was to be made in a public forum (in which case information may appear in Meeting agendas).

Further, the development approval pathway is not always clear on its face, given the number of planning instruments, and delegations that are in place.

The provision of a single point of entry, online development application portal would have a number of advantages including –

- Providing a positive interface for community;
- Reducing confusion as to the assessment pathway for development applications;
- Allow the centralised collection of important data on development applications, referral times, and the time taken to finalise an application.

Allowing applicants and their consultants access to progress of applications as they proceed through the system in real time, would assist by reducing the need to make direct contact with assessing officers, and allow information to be provided immediately where gaps have been identified.

Efficient administrative processes rely upon data that can identify where friction in the system exists. To date, most changes to processes in a planning sense occur as a result of subjective observations, or pressure from particular stakeholders.

A comprehensive digital register would allow a much more accurate review of application and assessment processes, and could more easily pinpoint processes or practices that could be improved.

In relation to planning instruments, the adage 'you don't know what you don't know' so often applies. It is not always clear what planning instruments or policies apply to a particular site or locality. This is heightened in respect of draft instruments. A due diligence assessment of a development site cannot easily determine whether draft documents which affect the site are in preparation, and if they are, what their status is. It is not uncommon for part of a due diligence process to require trawling through years of Council minutes to understand what planning instruments might be intended to apply to a site or locality.

This creates confusion and encourages a narrative of secrecy in the planning system.

Allowing information regarding draft instruments, including information regarding milestones, status, and anticipated finalisation, able to be interrogated on a site or locality basis through a GIS mapping system would address this concern.

The opportunities arising from digitisation is one of the matters identified in the Draft State Infrastructure Strategy. The Property Council WA endorses the recommendations regarding digitisation of planning processes set out in that Strategy.

Resourcing

The detail and scope of information required to be provided in planning decisions has increased over time. This is partly due to the fact that easily developable land in Western Australia has become more scarce, and the move towards the provision of higher density in an infill setting requires a finer grained approach to assessment.

Further, in order to 'unlock' this land for development requires the preparation of planning instruments and amendments to existing planning frameworks.

A recurring theme throughout the workshop was the need for government to ensure resourcing of the department kept pace with changes in demand and additional resourcing was provided to meet increased market activity, as a minimum.

Further, it is clear that in order to meaningfully implement the reform agenda, and embed new practices, it will be necessary to commit further resources.

While an underlying theme to each of the proposals in this Report speaks to the adequate resourcing of the planning system, we note it in this section as a stand-alone proposal in recognition of its significance.



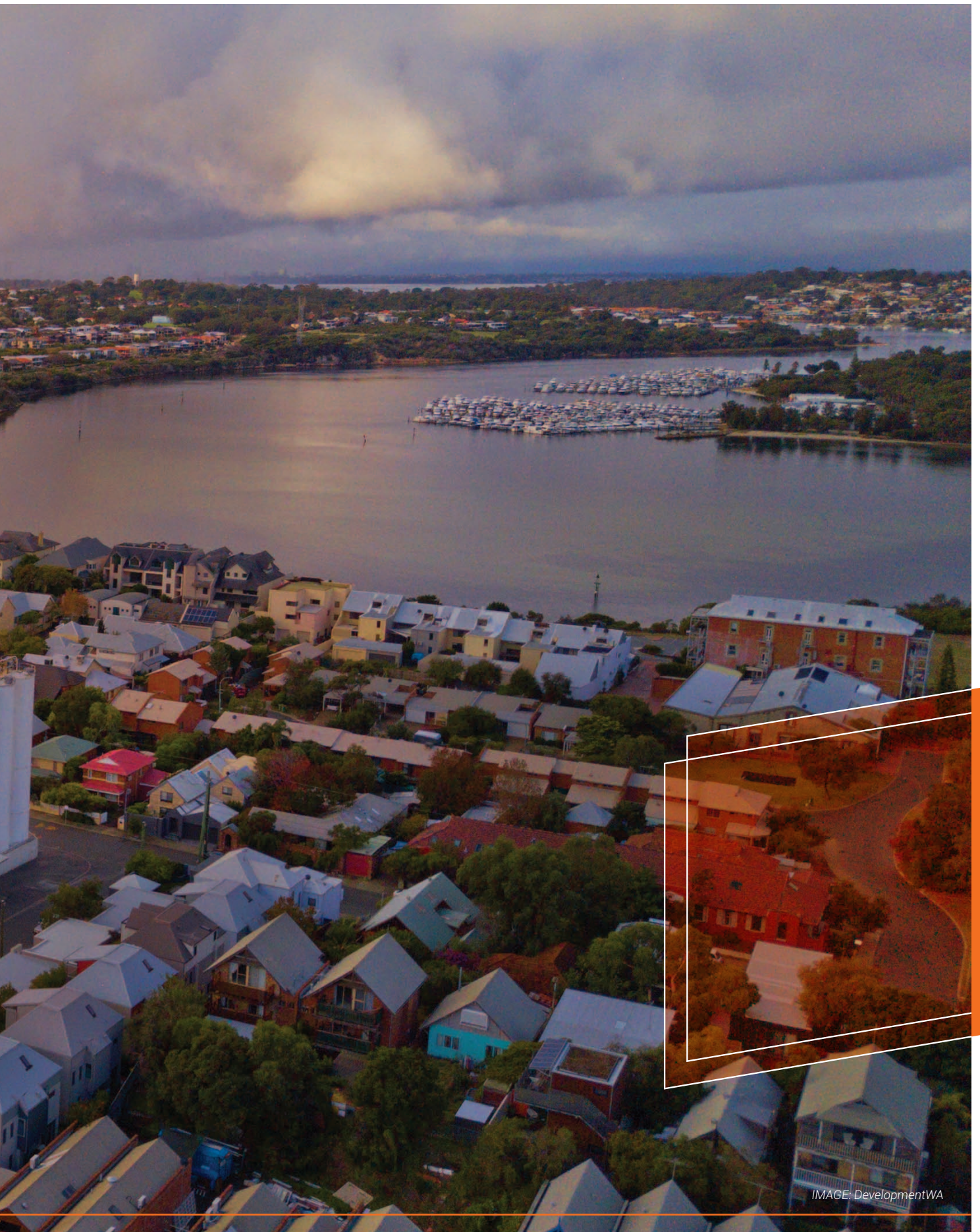


IMAGE: DevelopmentWA

Appendices

Ideas to Transform the Western Australian Planning System

	Proposal	Inputs Required					Alignment with Action Plan Goals		
		Legislative amendment	Planning instrument amendment	Process	Resourcing	Leadership	Creates Great Places	Is Easy to Understand / Navigate	Systems Are Consistent And Efficient
REFORM PROPOSALS FOR A FRAMEWORK THAT DELIVERS PLANNING OUTCOMES									
1	Elevate the SP Strategy by amending the PD Act to - 1.1 Provide a separate approval process for the SP Strategy, including a requirement for advertising and consultation. 1.2 Confirm the status of the SP Strategy in the WA planning framework. 1.3 Require the SP Strategy to be maintained and kept up to date. 1.4 To require SPPs to be consistent with the SP Strategy.	✓	✓	✓	✓	✓		✓	✓
2	Elevate the SP Strategy by ensuring that legislators refer to the SP Strategy in their decision to approve subordinate planning instruments and policies.			✓		✓			✓
3	Require the SP Strategy to be drafted in such a way as to ensure there is a direct relationship between the strategic objectives proposed, and the planning documents that can be used to implement those objectives.		✓	✓					✓
4	Consolidate the SPPs into a single document with a shared set of definitions and consistent format for each policy.		✓		✓			✓	✓
5	Within that document, make explicit the connection between the objectives of the SP Strategy and each of the SPPs.		✓					✓	
6	Amend section 26 of the PD Act to allow the preparation of either SPPs or State Planning Codes.	✓						✓	✓
7	State Planning Codes are documents which should be prepared in circumstances where the measures are to have direct application in the assessment of development and subdivision applications.		✓	✓				✓	✓
8	Amend the format of SPPs for consistency, and to identify which parts of the document apply to the making of planning instruments, and which parts of the document (if at all) apply to the assessment of development and subdivision applications.		✓		✓			✓	✓
9	Amend the MRS text to include a requirement to have regard to any SPP, to provide consistency with the GBRS and PRS.	✓							✓
10	Provide greater resourcing to review SPPs and maintain their currency.				✓				✓
11	Publish and maintain an SPP review program.				✓				✓
12	Provide greater resourcing to review non-SPP policies and maintain their currency.				✓				✓
13	Publish an audit and review program for its non-SPP policy suite to address overlap and inconsistency.				✓				✓

Proposal		Inputs Required					Alignment with Action Plan Goals		
		Legislative amendment	Planning instrument amendment	Process	Resourcing	Leadership	Creates Great Places	Is Easy to Understand / Navigate	Systems Are Consistent And Efficient
14	Undertake an audit of the status of LP Strategies throughout the State to identify areas of priority for preparation or review.				✓	✓		✓	✓
15	Assign State planners to local government and encourage collaborative process for preparation or review of LP Strategies in those priority local governments.				✓	✓	✓		✓
16	Section 72 of the PD Act and the LPS Regulations be amended to avoid the need for adoption by the local government of an LPS amendment prepared by a landowner, provided the proposal does not conflict with relevant SPPs, analogous to the provisions allowing WAPC approval of subdivision in section 138(3) of the PD Act.	✓							✓
REFORM PROPOSALS FOR DELIVERING BUILT FORM DEVELOPMENT									
17	The Government and the Chair of the Commission must provide vocal, continuous messaging as to the need for infill development.					✓	✓		
18	Deploy State planners to local governments to assist with the preparation of local planning framework documents (LP Strategy and LPS amendments and associated documents) to facilitate infill development.				✓				✓
19	 The Minister in respect of amendments to LPSs, and the WAPC in respect of the approval of Precinct SPs, must ensure that development standards in planning instruments for infill reflect the intensity of development contemplated, by increasing as-of-right heights, and managing the capacity for discretion.		✓			✓	✓	✓	✓
20	Consider the format of the various planning instruments, and how they might be electronically presented as a single, unified 'rule book'.		✓		✓			✓	✓
21	Amendments to legislation should be made so that information as to who the decision-maker is for development is located in the one place, rather than the current situation where this occurs variously, by way of regulation or Instrument of Delegation (note that this could be most easily achieved by an amendment to the text of the MRS).	✓	✓					✓	
22	Planning instruments prepared to facilitate high density development in infill contexts should be required to be prepared in a three-dimensional form.		✓		✓		✓	✓	
23	Amend clause 67(m) to preclude its application in respect of infill development where height and scale is governed by a Precinct SP.	✓					✓		✓
24	Change should be made to the DAP application procedure, to allow for pre-determination briefing sessions for an applicant to present its application, and for DAP members to ask questions.			✓					✓
25	Careful consideration should be given to any amendment to the DAP system to ensure independence and expertise is retained.					✓			

Appendices (Continued)

	Proposal	Inputs Required					Alignment with Action Plan Goals		
		Legislative amendment	Planning instrument amendment	Process	Resourcing	Leadership	Creates Great Places	Is Easy to Understand / Navigate	Systems Are Consistent And Efficient
REFORM PROPOSALS TO DELIVER PROCESS IMPROVEMENTS									
26	An amendment to the legislation to allow for concurrent amendment of various planning instruments, and subdivision and/or development approvals for master planned projects.	✓	✓	✓	✓	✓	✓		✓
27	Empower and resource government planners to advocate for good applications on planning grounds in their discussions with referral agencies.				✓	✓	✓		✓
28	Amend legislation to deem an approval granted under the PD Act as approval under other specified legislation (for example road access under the Main Roads Act 1930, or Local Government Act 1995).	✓							✓
29	Provide a State-led application pathway for projects that trigger matters of State interest, with an assigned State planner, and an assisted and coordinated referral regime.	✓		✓	✓			✓	✓
REFORM PROPOSALS TO DELIVER ADMINISTRATIVE IMPROVEMENTS									
30	Prepare a handbook outlining the planning system and subdivision and development processes in WA,				✓	✓		✓	
31	Government to adopt a 'digital first' policy to new planning instruments and planning processes.			✓	✓	✓		✓	✓
32	Government to allow Precinct SPs to be prepared in a three-dimensional digital format.		✓	✓	✓	✓		✓	✓
33	Government to design a centralised, online planning application platform to be available for all development applications regardless of decision-maker.			✓	✓	✓		✓	
34	Data collected from this system to be made publicly available.				✓			✓	✓
35	A requirement for the status and application of planning instruments, including in preparation, to be made available through a searchable cadastre-based GIS database.			✓	✓			✓	✓

Glossary

Abbreviation	Term
AC	Activity Centre
DAP	Development Assessment Panel
DAP Regulations	Planning and Development (Development Assessment Panels) Regulations 2011
Deemed Provisions	Schedule 2: Deemed Provisions for Local Planning Schemes in the LPS Regulations
DPLH	Department of Planning, Lands and Heritage
DRP	Design Review Panel
GBRS	Greater Bunbury Region Scheme
LPP	Local Planning Policy
LPS	Local Planning Scheme
LP Strategy	Local Planning Strategy
LPS Regulations	Planning and Development (Local Planning Schemes) Regulations 2015
Model Provisions	Schedule 1: Model Provisions for Local Planning Schemes in the LPS Regulations
MRS	Metropolitan Region Scheme
PD Act	Planning and Development Act 2005 (WA)
Precinct SP	Precinct Structure Plan
PRS	Peel Region Scheme
RPS	Region Planning Scheme
SDAU	Significant Development Assessment Unit
SPPs	State Planning Policies
SP Strategy	State Planning Strategy 2050
Standard SP	Standard Structure Plan
WAPC	Western Australian Planning Commission

Footnotes

1. Infrastructure Western Australia (2021) *Foundations for a Stronger Tomorrow draft State Infrastructure Strategy, draft for public comment, July 2021*
2. Property Council Australia Residential Development Council and MacroPlan (2017) *Cutting the Costs – Streamlining State Agency Approvals*
3. National Housing Finance Investment Corporation (2020) *Building Jobs: How residential construction drives the economy*
4. See for example section 87(4) PD Act in respect of LPS.
5. See for example section 27(1) Deemed Provisions, in respect of Structure Plans.
6. See for example, *BHY Alexander Unit Trust and City of Nedlands [2021] WASAT 41*
7. Section 87(4) PD Act





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Disclaimer:

This document has been prepared by Belinda Moharich, Moharich & More and Amanda Shipton, Align Strategy + Projects with, and on behalf of, the Property Council WA.

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