



31 August 2021

Ms Elyse Maketic
Director
Department of Planning, Lands and Heritage
Gordon Stephenson House, 140 William Street
Perth WA 6000

Sent via email: planningreform@dplh.wa.gov.au

Dear Ms Maketic

PLANNING REFORM PHASE 2

The Chamber of Minerals and Energy of Western Australia (CME) is the peak representative body for the resources sector in Western Australia. CME is funded by member companies responsible for more than 88 per cent of the onsite workforce,¹ ranging from mining (mineral and petroleum commodities), manufacturing (alumina, basic inorganic chemicals and explosives) and support services (aviation, gas transmission pipelines and electricity supply).

The value of royalties received from the sector totalled \$9.3 billion in 2019-20,² accounting for 28.8 per cent of general government revenue.³ Making 47 per cent of the WA's total gross value added by industry,⁴ commodity exports will continue to be a significant contributor to the Australian economic recovery.⁵

Overview

CME welcomes the opportunity to provide input to the Department of Planning, Lands and Heritage (the department) on the next phase of reforms to streamline the planning system and improve consistency across local government. We value the ongoing dialogue with the department's Strategy and Engagement team and recent invitation to present to the Industrial Lands Steering Committee is also appreciated.

As a principle, CME supports whole-of-government reforms that improve regulator efficiency and raises whole-of-economy productivity. Reform proposals that reduce duplication of effort and inconsistency in decision-making process across and within the two tiers of government are welcome, improving transparency of assessments and quality of consultation.

In the case of planning, we acknowledge the system is complex with multiple layers of regulation (self-, quasi- and direct), government entities (local, State and statutory) and stakeholders (proponent, community and industry). On top of this, planning decisions can have varying spatial and temporal dimensions requiring different controls such as separation distances, transition zones and balancing the socioeconomic needs and equity of generations (intra- and inter-).

Further to supporting the proposed objectives of this second phase of reforms, this submission highlights key issues experienced to date by the WA resources sector in interacting with the planning system and the intersection with local governments. We acknowledge the matters raised would require the department to work closely with other agencies like the Department of Local Government, Sports and Cultural Industries (DLGSC). CME will continue to engage with the DLGSC on progressing reforms to how local governments operate (see Appendix A) and consider the themes raised in this submission are relevant for the department and DLGSC to include in this scope of planning reforms.

An ongoing challenge for the WA resources sector is how competing and conflicting land uses are prevented and managed for the future benefit of all parties involved. **CME supports good planning practices that**

¹ Government of WA, [2020 Economic indicators resources data](#), Safety Regulation System, Department of Mines, Industry Regulation and Safety, 1 April 2021.

² Ibid.

³ Government of WA, [2019-20 Annual report on State finances](#), Department of Treasury, 25 September 2020.

⁴ Cassells, R., Duncan, A., Kiely, D. and Salazar, S., [BCEC Quarterly economic commentary](#), Bankwest Curtin Economics Centre, 26 November 2020, p. 2.

⁵ Commonwealth of Australia, [Resources and energy quarterly](#), Office of the Chief Economist, Department of Industry, Science, Energy and Resources, 29 September 2020.

strategically design the interface between different land uses, including optimal use of buffers to avoid encroachment on industry. Unlike other industries, our member companies typically have assets with lives of 50 years or more, inclusive of asset life extensions and closure. This timeframe well exceeds any existing planning strategy. It is crucial planning reforms consider the value commercial and industrial land uses place on long-term security in tenure and retaining unfettered transport access to and from export facilities. These themes of sustainability underpin the remainder of this submission.

In preparing this submission, CME has also liaised with the Kwinana Industries Council on systemic planning issues in protecting industrial land. Should the views in their submission align with the underlying messages and recommendations conveyed in our submission, CME provides in-principle support. See Appendix A on past CME submissions, which may be of relevance to these reforms.

A complex and fragmented system

CME notes local governments may need flexibility retained in their planning processes to accommodate local issues and context. However, as demonstrated by the 3,000 submissions made to the DLGSC in 2019, reliance on self-regulation alone in local governments may be insufficient. The recent views of the Auditor General on local governments further supports this assertion, highlighting an increase in reactive regulation and response management by the DLGSC as cost-ineffective and resource-intensive.⁶ A rebalance of government effort focusing on earlier interventions which promote good governance in local government is therefore required to prevent the costly escalation to authorised inquiries or issuing of Show Cause Notices.

The same need for good governance applies to the planning system. Therefore, **CME supports release of the draft *Planning Engagement Toolkit* earlier this year by the department. Clear and consistent principles on what constitutes best practice consultation and engagement are welcome, helping to improve good governance and capability in local governments.**

We also strongly support the recent Schedule 2 clause 67(2) amendment for local government to consider 'compatibility of the development with the desired future character of its setting; and the relationship of the development to development on adjoining land'. However, despite the Schedule containing an exhaustive list of factors to consider in assessing an application for development approval (DA), local governments are not bound to adhere. Like State Planning Policies (SPPs), they are not bound by the clause unless it is directly enshrined in their local planning scheme (LPS). As the courts have determined, the expression 'due regard' has limited application and could conflict with other policies.⁷ **This lack of binding enforcement in local government planning can create a disconnect with land tenure and can lead to disputes or costly and lengthy escalation to the State Administrative Tribunal (SAT).**

Where regional planning schemes are insufficient in regulating local government planning, the Western Australian Planning Commission (WAPC) can intervene. As such, there has been an increasing trend towards the ad hoc development of discrete statutory planning instruments such as planning control areas, improvement plans or schemes in mixed land use areas with one or more local governments, i.e.:

- Kwinana-East Rockingham industrial area
- Cockburn Coast Precinct
- Browse Liquefied Natural Gas Precinct
- Ashburton North Strategic Industrial Area (SIA) Improvement Scheme No. 1
- Anketell SIA Improvement Scheme No. 1
- Maitland SIA
- Port Hedland West End Improvement Scheme No. 1
- Mandogalup
- Rowley Road
- Anketell Road
- Bunbury Outer Ring Road.

CME considers without making changes to the legal standing of SPPs, the above-fragmented approach is likely to become unsustainable. These statutory instruments require several years for consultation to establish an improvement plan, drafting of the improvement scheme followed by finalisation for gazettal. This unsustainability is discussed further in the sections below.

⁶ Office of the Auditor General WA, [Regulation and support of the local government sector](#), report 21: 2020-21, 30 April 2021, p. 2.

⁷ Government of WA, [Making good planning decisions](#), Development Assessment Panel practice note, 11th edition, March 2021, pp.10 and 65.

A sustainable and strategic approach to planning that is shared

As populations increase across the Perth and Peel regions, there needs to be an increased focus on integrated, longer-term land use planning by all tiers of government for both brownfield and greenfield applications. CME, therefore, endorses recommendations in the recently released *10-year Industrial Land Strategy* (see Appendix B) and *Draft State Infrastructure Strategy* (the draft strategy, see Appendix C) that relate to planning and protecting industrial land and transport corridors.

More robust protection to all types of industrial land uses – whether it be SIAs, General Industrial Areas (GIA), Technology Parks or State Agreement / Proposal tenure – should be considered to prevent a piecemeal approach and reduce the risk of incompatible land uses being near each other or otherwise loss of value due to logistical constraints in access to and from major transport nodes. Any planning reform should focus on proactively managing the land use decisions ex-ante, rather than the current focus on managing the ex-post impacts of industrial land use.

We welcome clarification of the WAPC functions and powers to include a focus on informing emerging trends and challenges. The WAPC has experience which could provide insights into what types of industrial precincts are likely to require statutory intervention. Implementation of these powers will assist whole-of-state strategic planning and coordination alongside the Industrial Lands Authority (ILA).

The objectives to improve access to clearer explanatory materials and transparency of the Development Assessment Panel decision-making processes for the public is supported. However, it is unclear if the new Special Matters Development Assessment Panel (the panel) will consider:

- Non-complex proposals with existing complex land use conflicts.
- Non-complex proposals with no existing complex land use conflicts but are likely to present a risk of future complex land use conflicts if inadequately managed now, i.e. estates of significance to the State for economic diversification.

CME, therefore, wish to ensure the criteria for developments to be considered by the new SMDA panel are not confined to 'significant tourism, unique aesthetic qualities' and metropolitan areas. The panel should have remit to consider developments with significant economic qualities and regional areas.

Expanding the State Government-led structure planning process for areas of economic or strategic importance with fragmented land ownership is strongly supported by CME. International competition for attracting foreign investment into new energies and critical minerals is intensifying, becoming a tight race between countries with natural endowments like Australia. The loss of strategic land close to the coast to other suboptimal uses (i.e. lower long-term economic value) or failure to protect existing industries and their transport routes undermines the State's competitive advantage of geographic proximity to the rising Asian middle consumer class. This economic opportunity extends beyond the typical pit-to-port supply chain into downstream processing, creating sustainable, high-value-adding jobs. However, this strategic value is not directly shared with local governments who depend on ratepayers here and now. The vision and importance of getting the planning right first to avoid conflict later needs to be shared by whole-of-government and reflected in local planning strategies and their LPS.

Should there be an opportunity to shape structure plans as part of this planning reform phase, CME recommends the department consider the interim strategic advice provided by the Environmental Protection Authority (EPA) on managing land use impacts across the Perth and Peel regions.⁸ See Appendix D for a selection of longstanding recommendations centred on protecting land for future generations.

State Planning Policies

A proposed new system for reviewing SPPs and their regulations is welcome. However, it is worth noting that the last version of *SPP 4.1 State Industrial Buffer Policy* was gazetted more than two decades ago in 1997. There has been little made publicly available on the status of the 2017 version of the *Draft SPP 4.1 Industrial Interface* since. Through our ongoing correspondence with the Strategy and Engagement team, we understand the WAPC has approved the draft.

For our members with existing projects in built urban and semi-urban areas, as well as members looking to invest in new or expanded projects, the certainty that existing and future industrial land uses, transport corridors and servicing infrastructure facilities will be protected from encroachment in the long term is critical.

⁸ Office of the Environmental Protection Authority, [Perth and Peel @ 3.5 million: Environmental impacts, risks and remedies](#), interim strategic advice of the EPA to the Minister for Environment, July 2015.

With an estimated \$140 billion of resource sector projects in the development pipeline,⁹ the importance of having confidence in how industrial interfaces are managed transparently cannot be understated.

The proposed new system to resolve conflicts with Main Roads WA following a development approval is supported in-principle. The ability to have formalised, final resolutions and prevent likelihood of escalation to SAT is welcome. The interaction between local governments, planning and transport due to the different ownership of sections of the road can be complex for proponents to navigate, making it difficult to secure long-term access to transport routes to and from export facilities. In regional and remote WA where access to roads or applications to improve capacity of the roads needs to be negotiated across multiple local governments, this can be challenging.

CME recommend any reforms to local government planning approaches that involve DAs with a) complex land use decisions or b) an interface directly or indirectly with an economically significant industrial land use exercise the precautionary principle and incorporate risk-based assessments into the decision-making process. Currently, local governments inconsistently assess the overall risk for these types of DAs. This may be because:

- Some local governments may not value the importance of protecting the industrial land use or transport corridors because the economic benefit does not substantially accrue to them via rates or any at all.
- On other occasions, local governments may value the direct economic benefit such as developer infrastructure contributions because budgeting is done annually, which can be at the expense of future generations and economic activity.
- Inadequately assessing the likely impact by focusing on a period limited to 12-months. As industrial land uses can have projects operating up to 50 years, post-construction monitoring of impacts may need to extend out longer to consider fluctuations in weather, operational land use intensity or changes in technologies and how this affects future surrounding ratepayers.

CME therefore prefers local governments assess these kind of DAs with a minimum risk rating of medium as a matter of caution, addressing these inconsistencies or incompleteness in assessing likelihood and impact. Locating incompatible land uses in proximity with industry should not be deemed as low risk when a longer-term view is applied.

Should a DA encompass an industrial precinct that does not have SIA designation, the above precautionary approach ensures there are no unintended consequences. Our preferred best practice is the use of non-regulatory controls, underpinned by risk-based assessments and linked to outcomes, as the primary tool for managing land uses. If there are no reforms to the planning system to incorporate risk into local government decision making processes, then there should be a secondary reliance on regulated controls. As noted above SPPs are not binding unless their status is elevated or it is enshrined in a LPS, hence we recommend a focus on a risk-based precautionary approach in all DAs within an industrial precinct.

Centralised referral process

In-principle, CME supports the objective of central referral process for agencies, utilities and departments to improve the consistency of approach and decision-making of heritage, environment and traffic matters. However, **CME cautions expansion of the special COVID-19 pathway must not unintentionally hasten DAs at the expense of proper regard for separation distances or transition zones.**

In exploring this referral model and looking to other jurisdictions on best practice, we strongly recommend obtaining clarity on the outdated *EPA Guidance Statement No. 3: Separation Distances between Industrial and Sensitive Land Uses* (2005) as the first priority. The Policy Framework implemented by the Department of Water and Environmental Regulation currently does not have policies, guidelines, or procedures that reference guidance to separation distances or land use planning which can create ambiguity in referrals.

As this will involve more than one agency, CME recommends addressing some of the intra- and interagency themes already identified by the *Streamline WA* initiative to date (see Appendix A), such as:

- Reform is pursued for effective and practical opportunities that have been adequately consulted upon and benefit both the regulator and proponent.
- Reform is underpinned by regulatory stewardship (shared ownership), consider whole-of-project outcomes and embraced by whole-of-government.
- Remove unnecessary prescription if it can be replaced by a risk-based system and approach.

⁹ Government of WA, [Industry activity indicators](#), Safety Regulation System, Department of Mines, Industry Regulation and Safety, 1 April 2021.

Land to support industry

The work of the ILA to collaborate with local governments to provide serviced light industrial land in regional towns is a welcome initiative. There are more than 10,000 businesses that supply goods and services to the WA resources sector and the provision of information on land which will be set aside for future industrial areas, its ancillary services and supporting facilities is supported. Despite being an enabler of economic activity, GIAs often do not receive the same attention as SIAs for various reasons.

However, the *10-year Industrial Land Strategy* is silent on how existing industrial areas that are not district estates operated by the ILA will be treated. Like what is underway for Westport and the Strategic Industrial Hub (Henderson, Latitude 32, Kwinana and Rockingham) over the Western Trade Coast (WTC) industrial zones, CME considers development of a collective vision or use of a planning instrument with binding effect on multiple local governments could be useful in these instances. The current dependence on the district, subregional structure plans or regional planning and infrastructure frameworks may be insufficient. There is a need for greater inclusiveness and collaboration with local governments in proactively planning to prevent and reduce conflict between residential, commercial and industrial land uses.

CME recommends contemporary guidance is published on minimum separation distances and transition zones for areas adjacent to certain profile types of SIAs. Based on the collective experience of developing improvement schemes, it may be possible for the ILA, WAPC and EPA to work together to establish a minimum expectation that certain SIAs will at least have a set buffer distance. By prescribing a default distance for relevant SIAs, it should provide certainty and consistency to existing stakeholders and future proponents on navigating the referral process.

20-year State Infrastructure Strategy

Over a dozen recommendations and actions made in the recent draft strategy are on planning and land use. To minimise duplication and whole-of-government effort, CME recommends this second tranche of reforms address some of the cross-cutting themes identified in the strategy. **The most critical recommendation relevant to these reforms that CME would like to emphasise support for is '28b applying State planning system tools in a more consistent and proactive manner to industrial and technological precincts'.**

CME acknowledges the department is not the suggested lead agency for some of these actions and notes many, if not all, relate to the State and not necessarily local government. However, the focus on supporting further infill development and prioritisation of the Strategic Industrial Hub will have direct implications on the local government planning system. In the absence of finalising *SPP 4.1 Industrial Interfaces* and improving its enforcement status, current and future industrial uses may be inadequately protected.

If the land use does not have protection or a designated status, urban encroachment may restrict the capacity of industry to expand or innovate and, therefore, can constrain economic growth. This opportunity cost will be more pronounced where a risk-based assessment approach or application of the precautionary principle is absent in local government planning decision-making processes. For example, a list of known gaps where industrial land may not be protected:

- State Agreements – Supporting road, rail or port infrastructure that may be excluded from the agreement because another party built or operated it.
- SIAs or GIAs – CME notes the first formalisation of an SIA was in 2012 for the WTC, following endorsement of the *Directions 2031* framework in 2010. For existing industrial precincts that are not managed by the ILA or fail to have a perceived identity of significance to the local economy, the interface between industry (light, heavy and strategic) and urban zones can be unclear, sometimes leading to dispute and costly escalation to the State Administrative Tribunal.
- Statutory land use planning improvement frameworks – Land that is yet to be recognised as requiring a special planning and development instrument, acknowledging progressing a scheme can take three to four years. Further to the draft strategy recommendation 27, more foresight involving local government is needed to identify priority areas and be subsequently treated as such.
- Region schemes – There are no zones available for future industrial land uses, servicing industries or reservations for predominantly private purposes such as expanded freight transit routes to and from ports and intermodal transport facilities in the Metropolitan Region Scheme (MRS).
- *Port Authorities Act 1999 (WA)* – Land next to 'port land' that is not vested or acquired by a port authority but, because of its proximity, is of economic significance to industry for facilitating access.

CME also understands in accommodating the endorsed recommendations of the 10-year Industrial Land Strategy and this draft strategy, there will be changes to region planning schemes. As part of this phase of

consultation with local governments on planning reforms, CME would like to recommend the department finalise outstanding SPPs and actively engage to ensure LPS are prepared to be updated.

Green Paper

CME recommends the department reconsider some of the supported proposals from the Green Paper consultation, including:

- 2.7.3 Provide in the LPS regulations deemed provisions that set out standardised zones, land uses and land use permissibility. CME welcomes a review and rationalisation of classifications to encourage a more consistent approach for rating and taxing purposes.
- 5.4.1 Provide in the MRS an 'Industrial Deferred zone'. CME supports the inclusion of this category in all region schemes (MRS, Peel and Greater Bunbury Region Schemes). In the absence of incorporating risk-based assessments into planning, a top-down approach would help ensure local governments can consider the implications of a future full build-out of industry, transport and infrastructure corridors.
- 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. We understand the governance of the transport portfolio will be considered under the draft strategy.

Conclusion

We welcome the program of planning reforms currently underway. CME and its members strongly endorse initiatives to ensure the planning system is modern and robust in managing and protecting different land uses for current and future generations. It is important there is a balanced representation of all private sector industries in strategic state-based planning and land use matters. Any streamlining of planning processes in local government should not have inadvertent or unintended consequences for the operation and longevity of existing and future industrial land uses, its transport corridors and infrastructure facilities.

While not directly relevant to the proposed reforms, we would like to take the this opportunity to highlight that draft SPP 4.1 is yet to be finalised since consultation began five years ago. Before significant changes are proposed to local government planning and Westport becomes underway, it is of utmost importance the policy is endorsed as a matter of priority by the Minister.

CME continues to welcome an open dialogue with the department and DLGSC and would be happy to discuss the issues raised in this submission further. Should you wish to do so, please contact Adrienne LaBombard, Manager – Industry Competitiveness, at A.LaBombard@cmewa.com or on 0400 912 525.

Yours sincerely



Robert Carruthers

Director – Policy & Advocacy

Enc: Appendices A to D

Appendices

Appendix A – Past CME submissions relevant to land use and planning

- [*Inquiry into the Petroleum and Geothermal Energy Legislation Amendment Bill 2013*](#), submission to the Standing Committee on Legislation, October 2013.
- [*Draft Guidance Statement – Land Use Planning, Roles and Responsibilities*](#), submission to the Department of Environment Regulation, March 2015.
- [*Draft SPP 5.4 – Road and Rail Noise*](#), submission to the WAPC, December 2017.
- [*Draft SPP 4.1 – Industrial Interface*](#), submission to the WAPC, February 2018.
- [*Modernising Western Australia's planning system*](#), submission to the department, July 2018.
- [*Phase 2 Review: Local Government Act 1995*](#), submission to the DLGSC, March 2019.
- [*Streamline WA – Request for regulatory reform proposals*](#), submission to the Department of Mines, Industry Regulation and Safety, March 2019.
- [*Streamlining \(Mining Amendment\) Bill 2021*](#), submission to the Department of Mines, Industry Regulation and Safety, May 2021.

Appendix B – List of relevant recommendations from the 10-year Industrial Lands Strategy

- 5. Protect existing industrial areas in the Perth and Peel regions from residential encroachment
- 9. Continue the Regional Development Assistance Program work to facilitate serviced light industrial land
- 10. Develop an agreed state-wide approach for establishing and ongoing management of technology parks, including enabling infrastructure
- Develop improvement schemes for Mungari, Rockingham, Oakajee and Kemerton SIAs.

Appendix C – List of relevant recommendations from the draft State Infrastructure Strategy

- 17c and d. Prioritise regional centres based on strategic importance to the State and align to integrated regional land use plans
- 19a. State level settings to facilitate cross-sectoral planning and coordination of services
- 23. Embed rigorous infrastructure appraisal in the planning decision-making framework to ensure infrastructure servicing and operational burden placed on the State informs decisions
- 27a and b. Develop a framework to identify State priority areas and whole-of-government endorsement of the framework and priority area locations
- 28b. Applying State planning system tools in a more consistent and proactive manner to industrial and technological precincts
- 28e. Planning for the long-term need for additional industrial and technology land, with a priority on the Perth metropolitan area and the South West Advanced Manufacturing and Technology Hub
- 30b. Centrally coordinate strategic infrastructure site identification
- 46d. Including provisions in planning and regulatory frameworks that enable investments in alternative water supplies and wastewater systems
- 54. Refresh state-wide strategic transport planning
- 63. Conduct further strategic planning in the Fremantle Inner Harbour, Outer Harbour and port masterplan to support future redevelopment
- 64. Undertake further planning and staged expansion of Australian Marine Complex common user infrastructure.

Appendix D – List of relevant recommendations from the EPA interim strategic advice

- 5a. The WAPC protects wetlands and minimises the potential impacts, including their buffers, at structure planning and subdivision design stages; supported by a whole-of-government policy for identifying and implementing buffers

- 9b. The State Government establish a clear, contemporary whole-of-government policy position on the protection of the Peel-Harvey estuary system, including a planning mechanism to ensure land use is compatible with land capabilities
- 12b. Develop processes to undertake a transparent risk/benefit analysis where incompatible land uses are prioritised in priority areas
- 15b. Transport and planning to use air quality information to inform strategic land use and transport planning at the regional scale
- 16a. The WAPC and department develop a whole-of-government agreed policy on the development and implementation of buffers, adopting a precautionary approach where specific emission sources are not yet known
- 16b. The WAPC to identify buffers around SIAs in the finalised sub-regional structure plans and enforce them through subsequent statutory planning
- 29 through to 32 on infrastructure agencies and corridors.