



GOVERNMENT OF WESTERN AUSTRALIA



Proposed Amendments - Planning & Development (Development Assessment Panel) Regulations 2011

Planning Reform

Consistent Local Planning Schemes - Consultation SUBMISSION

The Department of Planning, Lands and Heritage requests your comment on the principles for proposed changes and implementation actions aimed at improving the consistency of local planning schemes across the State. These proposals relate to land use terms and definitions, zones and reserves, and land use permissibility for commercial and industrial type zones in the Perth and Peel regions and are open for comment until midnight, **26 May 2023**. These proposed changes will inform future changes to the Planning and Development (Local Planning Schemes) Regulations, 2015 (**Regulations**), which will be the subject of a future consultation exercise. The following Feedback Form is provided to guide a detailed submission.

This Feedback Form has been prepared in six (6) parts. Please include your feedback about:

- The proposed changes to land use terms (and associated definitions) in Part A,
- The proposed changes to zones and reserves (and associated objectives) in Part B,
- The proposed changes to land use permissibility for commercial and industrial type zones in the metropolitan Perth and Peel region scheme areas in Part C,
- The proposed development requirements for commercial and industrial type zones in the metropolitan Perth and Peel region scheme areas in Part D,
- The recommended approach for implementation in Part E, and
- Any other feedback in Part F.

Please email a completed form to planningreform@dplh.wa.gov.au.

Submitters Details:

Submitter's name	Adrienne LaBombard
Email address	[REDACTED]
Are you submitting on behalf of an organisation?	
Yes	
Organisation name (if applicable)	
The Chamber of Minerals and Energy of Western Australia (CME)	
Submitter/ Organisation type	
Other professional or association	
Submissions may be published as part of the consultation process. Do you give permission for your name and your company's name (if applicable) to be published?	Yes, please publish my details



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Overview:

The Action Plan for Planning Reform (**Action Plan**) includes goals, initiatives and actions aimed at making local planning schemes more consistent and legible, and improving associated guidance. To achieve these objectives, work to improve the consistency of the use of land use terms (and associated definitions), zones, and reserves in local planning schemes across the State, and land use permissibility and development requirements in commercial¹ and industrial² type zones in the Perth and Peel region scheme areas has been undertaken.

A report for Stakeholder Consultation Report has been prepared. This report provides key project and background information, the changes recommended to bring greater consistency across local planning schemes, and a recommended approach to implementation. The proposals include:

- Changes to land use terms (and definitions) to apply to all local planning schemes State-wide,
- Changes to zones and reserves (and objectives) to apply to all local planning schemes State-wide,
- Standardised land use permissibility for commercial¹ and industrial² type zones, to apply to local planning schemes within the Perth and Peel region areas only.
- An approach for development requirements for commercial¹ and industrial² type zones, to apply to local governments within the Perth and Peel region areas only.

The recommended approach for implementation is presented as a series of short term and long term actions, and includes proposed changes to Schedule 1 – Model Provisions for Local Planning Schemes (**Model Provisions**) and Schedule 2 – Deemed Provisions for Local Planning Schemes (**Deemed Provisions**) of the Regulations, the development of local planning scheme guidelines, and the development of an industrial code, in addition to other implementation actions aimed at improving consistency of local planning schemes.

Notes:

- ¹Commercial type zones includes Local Centre, Neighbourhood Centre, Centre, Mixed Use and Service Commercial zones, as proposed.
- ²Industrial type zones includes Light Industry, General Industry and Rural Enterprise zones, as proposed.





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Comments:

PART A – LAND USES TERMS (& ASSOCIATED DEFINITIONS)

A number of changes are proposed to land use terms (and associated definitions) included in the Model Provisions to achieve greater consistency across local planning schemes State-wide.

1. LAND USE TERMS & ASSOCIATED DEFINITIONS TO BE LESS PRESCRIPTIVE

(Section 3.1 (Page 12) of the Stakeholder Consultation Report)

The review process identified that the more specific or prescriptive land uses and associated definitions become, the more likely it is that more land uses and definitions will need to be added to the Regulations, creating additional levels of complexity. The primary principle forming the basis of proposed changes to land use terms and definitions, is the preference to have land uses and associated definitions to be less prescriptive.

Do you support the principle that land uses and associated definitions are to be less prescriptive?

Conditional support

Please include any comments about this approach below:

Please see comments below on the proposed new land use 'Renewable Energy Facility'.

2. PROPOSED CHANGES TO LAND USE TERMS & ASSOCIATED DEFINITIONS

(Table 2 (Page 12 – 13) and Appendix A of the Stakeholder Consultation Report)

Clause 38 of the Model Provisions provides a list of land use terms and associated definitions that can be included in a local planning scheme. Various land use terms and definitions associated are proposed to be modified, deleted, replaced or added to:

- Be less prescriptive/more flexible and improve implementation.
- Be more clear and consistent across all local planning schemes.
- Align with similar definitions in state planning policies, position statements and other relevant legislation (where applicable).
- Recognise changes in the way land uses operate.
- Provide for ongoing technological and business improvements.
- Address bugbears identified by local governments and industry during preliminary engagement activities.

These proposals are summarised in **Table 2** of the Stakeholder Consultation Report, and further detail can be found in **Appendix A** of this report.



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Are there any proposed changes to land use terms (and associated definitions) that you do not support?

Yes

For each proposed land use term (and associated definition) that you do not support, please outline further detail below. Please list the particular land use/s, why you do not support the proposed change and any modification you wish to recommend.

Further to the proposed modification to land use 'Service Station... to allow for the various types of fuel (currently limited to petroleum products) and the charging of vehicles', more flexibility should be afforded to the new land use 'Renewable Energy Facility'. These energy-related uses will likely evolve following advancements such as behind-the-meter battery energy storage systems. CME notes the corresponding DPLH Position Statement from 2020 may also need to be reviewed to reflect the State's Energy Transition Strategy currently underway. There continues to be uncertainty about how low carbon technologies will be adapted or adopted in domestic or business applications and whether this will have bidirectional relationships with the grid. With the recent handing down of the 2023-24 State Budget, whole-of-government Asset Investment Plans to decarbonise the South West Interconnected System (and other significant infrastructure relevant to the Perth metropolitan region) are yet to be finalised given the pending release of the inaugural 10-year State Infrastructure Program in August later this year. The Peel Region Scheme (PRS) area will likely be a hotspot for hydrogen in whichever form (colour) it becomes commercially viable.





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PART B – ZONES & RESERVES (& ASSOCIATED OBJECTIVES)

A number of changes are proposed to zones and reserves (and associated objectives) included in the Model Provisions to achieve greater consistency across local planning schemes State-wide.

3. ZONES & RESERVES TO BE LESS PRESCRIPTIVE

(Section 3.2 (Page 14) of the Stakeholder Consultation Report)

Similar to the approach associated with the proposed changes to land use terms (and associated definitions), the primary principle behind the changes to zones and reserves is that the zone names and associated objectives be less prescriptive and more general, to minimise the need for further amendments to the Regulations in the future.

Do you support the principle that zones and reserves are to be less prescriptive?

Conditional support

Please include any comments about this approach below:

Not all schemes have 'industrial deferred' or 'special control area'. While land use reservations may be provided for future urban development, current and future expansion needs of port authorities and roads maintained under the *Main Roads Act 1930*, there is no similar consistent protection for current and future needs of industrial zones. In these situations where no protection is offered by the Metropolitan Region Scheme (MRS), PRS, Great Bunbury Region Scheme, Improvement Scheme or State Planning Policy (SPP), a prescription may still be required. CME notes any review to identify discrepancies between region scheme zonings and local planning schemes would be a resource-intensive exercise; however, this may be required for areas of strategic economic importance (and not limited to areas with recognised priority status).

4. PROPOSED CHANGES TO THE OBJECTIVES OF ZONES & RESERVES

(Section 3.2 (Page 14) of the Stakeholder Consultation Report)

Clause 16 (2) of the Model Provisions provides a list of zones and associated objectives that can be included in a local planning scheme. The objectives of some zones refer to specific State planning policies. It is suggested that any reference to a State planning policy refer to 'applicable State planning policy', rather than the specific number and or name of the State planning policy.





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Do you support changing the objectives of the zones that refer to specific State planning policy, to 'applicable State planning policy'?

Conditional support

Please include any comments about this proposal below:

We note this change would require local governments to be regularly informed of changes to SPPs. As SPPs typically reference other government policies, local governments must also be regularly informed of those changes. CME understand local governments often rely on the expertise of planning consultants to be kept informed, which may not guarantee good land use planning decisions or best practice engagement on non-statutory matters. Additionally, while CME welcomed the gazettal of 'SPP 4.1 Industrial Interface' last year, it references an outdated environmental policy from 2005 of which the WA Government was silent on committing to a review (Recommendation 30b of the State Infrastructure Strategy to review Environmental Protection Authority's (EPA) Guidance Statement No. 3 on Separation Distances between Industrial and Sensitive Land Uses). Meanwhile, EPA's 'Environmental Factor Guideline – Social Surroundings' from 2016 relies on 'appropriate distances in mind, informed by recognised published separation distance guidelines'. Any planning guidance provided to local governments should allow for future proofing of upcoming changes to these environmental policies. We recommend strengthening statutory obligations to demonstrate due diligence in exercising the precautionary principle and broader application of the 'seriously entertained' planning proposal principle. Without building in stronger protections, this ambiguity (circularity) of referencing interagency policies and documents can increase the residual risk between competing land uses at the expense of intergenerational equity and future economic benefit to the State.

5. PROPOSED CHANGES ZONES & RESERVES

(Table 3 and 4 (Page 15 – 16) and Appendix B of the Stakeholder Consultation Report)

It is proposed to modify, add or rationalise the zones and reserves contained in clause 16(2) of the Model Provisions to:

- Be less prescriptive/more flexible and improve implementation.
- Be more clear and consistent across all local planning schemes, and improve application.
- Align with similar definitions in state planning policies, position statements and other relevant legislation (where applicable).
- Recognise changes in the way land uses operate and how zones need to guide these.





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- Implement best-practice across all zones.
- Address issues identified by local governments and industry during preliminary engagement activities.
- Provide a greater ability for zones to guide the appropriateness of the land use and development within the respective zone.
- Address administrative edits (i.e. removing the 'zone' after Rural Townsite and Special Use).

Two zones (Commercial and Special Residential) are proposed to be deleted. These zones are considered to have been made redundant by either the proposed addition of new zones (i.e Commercial to be replaced by widened Centre zones) or through previous decisions of the Western Australian Planning Commission (**WAPC**) (i.e Special Residential zone).

The zones and reserves identified for change are set out in **Table 3** and **4** of the Stakeholder Consultation Report, along with a summary of the principles guiding the changes proposed. Detailed rationale is provided in **Appendix B** of this report.

Are there any proposed changes to zones and reserves that you do not support?

Yes

For each proposed land use term (and associated definition) that you do not support, please outline further detail below. Please list the particular land use/s, why you do not support the proposed change and any modification you wish to recommend.

We recommend the zone objectives for 'Strategic industry' are specifically reviewed by the relevant agencies to ensure compatibility and complementarity, i.e. DevelopmentWA and the Department of Jobs, Tourism, Science and Innovation.





PART C – LAND USE PERMISSIBILITY AND DEVELOPMENT REQUIREMENTS FOR COMMERCIAL AND INDUSTRIAL TYPE ZONES IN THE METROPOLITAN REGION AND PEEL REGION SCHEME AREAS

Land use permissibility and development requirements form a substantial part of local planning schemes. Currently the Model Provisions provide limited direction on the standardisation of the content of land use permissibility and development requirements. Given the vastness and diversity of issues across the State, a staged approach to achieving more consistent land use permissibility and development requirements in local planning schemes is being proposed. Commercial¹ and industrial² type zones in the Perth and Peel region scheme areas were identified as a priority for improving the consistency of land use permissibility and development requirements in local planning schemes within these regions.

6. PROPOSED LAND USE PERMISSIBILITY IN COMMERCIAL & INDUSTRIAL TYPE ZONES (PERTH AND PEEL REGIONS ONLY)

(Section 3.3.1 (Page 17) and Appendix C of the Stakeholder Consultation Report)

A standardised zoning table for commercial¹ and industrial² type zones in the metropolitan Perth and Peel region scheme areas is proposed to improve consistency. The land use permissibility is proposed to be set out in the form of a zoning table (lists land uses and assigns a permissibility to each land use within a zone). This can be found in **Appendix C** of the Stakeholder Consultation Report. Further details associated with these changes can be found in **Appendix D** of this report.

This is proposed to be implemented through updates to the Model Provisions (refer Part E of this Feedback Form for further detail and questions about the recommended implementation approach).

Do you agree with the need for a standardised zoning table for commercial¹ and industrial² type zones in the Metropolitan Perth and Peel region scheme areas?

Yes

Please explain why below:

We understand some local governments rely on the 'Economic and Employment Lands Strategy: Non-heavy industrial – Perth metropolitan and Peel regions' from 2012 for developing their land use zoning plans. While there is a separate treatment of heavy industries from non-heavy industries in the strategy, the interdependence of 'light industrial land' in servicing both industry types may not properly reflect today's economy and future directions (i.e. combining Westport with Western Trade Coast and Critical Minerals Industries aspirations). For example, DevelopmentWA has recently said, 'the demand for industrial land in light, general, special and heavy industry areas continues to be sustained and above long-run absorption rates' and 'fragmented land ownership [in general industrial areas] is resulting in high land costs which, when coupled with high development costs, is discouraging development'. We



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recommend elevating the importance and protection of 'light industrial land' when implementing the zoning table for all industrial-type zones in the MRS and PRS areas.

Do you think the standardised zoning table for commercial¹ and industrial² type zones could apply outside of the Metropolitan Perth and Peel region scheme areas?

Conditional support

Are there any proposed land use permissibilities that you do not support?

Yes

For each proposed permissibility that you do not support, please outline further detail below. Please list the particular zone and land use/s, why you do not support the proposed permissibility and any modification you wish to recommend.

'Renewable Energy Facility' and 'Service Station' are designated a respective 'P' and 'D' permissibility with 'General Industry'. Noting our comments above on making Renewable Energy Facility more flexible, its impacts may be more similar to Service Station. Therefore, its 'P' designation may need to change to a 'D' in requiring local government to exercise its discretion in granting development approval.

7. PROPOSED CHANGES TO THE PERMISSIBILITY DEFINITIONS

(Section 3.3.1 (Page 17 – 18) of the Stakeholder Consultation Report)

In recognition of the importance of the zone objectives in determining the permissibility of land uses, it is recommended that the permissibility definitions contained in clause 18(2) of the Model Provisions and Clause 1 of the Deemed Provisions be updated as follows:

class A use, in relation to a zone,

- a. means a use identified in the zoning table for this Scheme (regardless of the symbol used) as a use that is consistent with the zone Objectives, but is not permitted in the zone unless the local government has exercised its discretion by granting development approval after advertising the application in accordance with clause 64;*

class D use, in relation to a zone,

- a. means a use identified in the zoning table for this Scheme (regardless of the symbol used) as a use that is consistent with the zone Objectives, but is not permitted in the zone unless the local government has exercised its discretion by granting development approval; but*
- b. does not include a class A use;*

class P use, in relation to a zone,



a. means a use identified in the zoning table for this Scheme (regardless of the symbol used) as a use that is consistent with the zone Objectives and does not require approval consistent with cl 61(2) of the Deemed Provisions;

class X use, in relation to a zone,

a. means a use identified in the zoning table for this Scheme (regardless of the symbol used) as a use that is not permitted in the zone;

Do you support the proposed changes to the permissibility definitions?

Support

Please include any comments about this proposal below:

Insert comments here

PART D – DEVELOPMENT REQUIREMENTS IN COMMERCIAL¹ & INDUSTRIAL² TYPE ZONES (PERTH AND PEEL REGIONS ONLY)

An audit of local planning schemes in the metropolitan Perth and Peel region scheme areas identified significant variation in the way development requirements for commercial and industrial type zones were addressed. To achieve greater consistency across local planning schemes in the Perth and Peel regions, it is recommended that a standard approach to development requirements in commercial¹ and industrial² type zones is applied.

8. APPROACH TO OUTLINING DEVELOPMENT REQUIREMENTS

(Section 3.3.2 (Page 18 – 19) and Appendix D of the Stakeholder Consultation Report)

Ideally development requirements for industrial² type zones and potentially the Service Commercial zone will be addressed through an industrial design code (similar to the R-Codes but addressing industrial zones). The development of an industrial design code similar to the R-Codes, would enable provisions and/or acceptable outcomes to be developed consistent with development requirement principles specified in a design code. This would ensure an overall consistency whilst also accommodating those localities or developments that might need a different approach.

In the interim it is recommended that a combination of development provisions in the local planning scheme and local planning policy be used. It is suggested that primary controls be introduced to local planning schemes (Perth and Peel regions scheme areas only) under Part 4 (General Development Requirements) of the Model Provisions. Primary controls are proposed to include lot sizes, setbacks and building height (if applicable). It is suggested that a local planning policy is used to address discretion in relation to the above primary controls, and other elements of design including general matters; site layout and building; community spaces, landscaping and verges; parking and access; loading and waste; and other matters. It is recommended that this interim approach is outlined in a guidance document (local planning scheme guidelines).

More detail can be found in **Section 3.3.2** of the Stakeholder Consultation Report, and **Appendix D** of this report (refer to section 4.3.5).



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Do you support the development of an industrial design code for defining development requirements for industrial² type zones and potentially the Service Commercial zone?

Conditional support

Please explain why below:

The intent to develop a code that provides for transition to other zones is appreciated and supported. However, CME notes variation in primary development controls may be needed for industrial-type zones. There is no one-size-fits-all approach regarding setbacks and heights, acknowledging there will be guidance on applying discretion. The industrial design code must be an overarching framework incorporating SPP 4.1's risk-based and precautionary principle approach.

In the absence of an industrial design code, do you support the inclusion of guidance on development requirements in the proposed local planning scheme guidelines?

Conditional support

Please explain why below:

The consultation report cites the 'EPA separation guidelines' as an example of other guidance document references. We reiterate comments from Part B Section 4 above to ensure interagency references are kept up to date and recommend this guidance is tailored to local governments to provide clarity and consistency in application.

Please include any other comments you have on this proposal below:

Insert comments here





PART E – RECOMMENDED IMPLEMENTATION APPROACH

(Section 4.4 of the Stakeholder Consultation Report)

Short to mid term actions (1 – 3 years) and long term actions (3+ years) are proposed to implement the proposals to achieve more consistency across local planning schemes. These actions include changes to the Model Provisions, Deemed Provisions, development of local planning scheme guidelines, development of a design code for industrial zones and potentially the service commercial zone.

9. RECOMMENDED SHORT TERM ACTIONS

(Section 4.4.1 of the Stakeholder Consultation Report)

Short term actions, proposed to take place over a period of 1 to 3 years, include:

- Updates to the Model Provisions to include:
 - The proposed changes to land use terms (and associated definitions), zones and reserves (and associated objectives).
 - The proposed zoning table and primary development controls for commercial and industrial type zones for the Perth and Peel region scheme areas.
 - Modified use class definitions for P, D, A and X.
- Preparation of a standardised zoning table and primary development controls (similar to the proposal for commercial and industrial type zones discussed above) for all other model zones (existing model zones – eg. residential, and proposed model zones eg. cultural). It is noted that the R-Codes contain development controls for residential.
- Undertaking a review of supplemental provisions included in local planning schemes to identify those that might have broader application to other local governments (for example significant tree register) through inclusion in either the Model Provisions or Deemed Provisions.
- Local governments located in the Perth and Peel region areas to commence scheme amendments to update their schemes to be consistent with the updated Model Provisions, and incorporate the primary development controls summarised in Part D.
- Updates to the Deemed Provisions to include:
 - Model provisions relating to non-conforming uses and restrictive covenants.
 - Provisions for the establishment and maintenance of a significant tree register (refer to Section 3.4 of the Stakeholder Consultation Report for further details).
 - Separation of land use terms in the Deemed Provisions from other terms defined.
 - A requirement for the decision-maker of an Application for Development Approval to include the land use definitions of all approved land use/s as an advice note on a decision (refer to Section 3.3.3 of the Stakeholder Consultation Report for further details).
- Investigate elements of the Model Provisions that could be included in the Deemed Provisions and the appropriateness of a 'Deemed Local Planning Scheme' that would include combining all elements of the Model Provisions and Deemed Provisions.



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- Prepare contemporary and consistent guidance for the preparation and amendment of local planning schemes.
- Prepare a design code for industrial² zones and potentially the Service Commercial zone.
- Publish approved variations to the Model Provisions, along with justification.

Do you support the short term implementation actions recommended?

Conditional support

Please list any implementation actions that you do not support and include any comments or improvements you have below:

Scheme amendments to update local planning schemes to be consistent with the updated Model Provisions is welcome; however, application to existing and future industrial-type zones will need to be clear. This may require a review of Improvement Schemes, both finalised and under development, to identify if they may have broader application to other local governments through inclusion in either model or deemed provisions. Whilst the comprehensive review included in Appendix D considered recent State Administrative Tribunal decisions, it does not explicitly consider non-planning State Government documents such as Improvement Schemes, EPA's 'Perth and Peel @3.5 million – Environmental impacts, risks and remedies' from 2015, DevelopmentWA's recommendations from the '10-year Industrial Land Strategy' and last year's State Infrastructure Strategy. To future-proof the land use planning system, we recommend these other documents are also reviewed.

10. LOCAL PLANNING SCHEME GUIDELINES

(Section 4.4.1 (7) of the Stakeholder Consultation Report)

The preparation of guidance for local planning schemes is recognised as a key supporting action for improving the consistency of local planning schemes. The guidance is proposed to provide:

- Guidance on the process of preparing and amending a local planning scheme.
- Greater transparency on the process for varying model provisions and for sharing information on approved variations to the model provisions.
- Translation and alignment of non-model land uses, zones and reserves with those contained in the model provisions.
- Guidance for the preparation and inclusion of development provisions.
- Improved guidance on the inclusion in schemes of additional uses, restricted uses, special use zones, non-conforming uses and special control areas.





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- Improved guidance and updated manner and form for undertaking reports of review and amendments to local planning schemes.

In addition to the type of guidance outlined, is there any other guidance you would like provided in local planning scheme guidelines? Please include additional areas of guidance below:

Improved guidance on the inclusion of special control areas in schemes is welcome. For transparency and consistency, we also support the publication of approved variations, with their justifications, to model industrial land uses. CME notes DevelopmentWA have indicated 'introduction of Improvement Scheme's as the preferred planning framework when planning updates are required'. Providing upfront guidance to ensure existing and future areas are proactively treated as strategic (i.e. Industrial Deferred) will help avoid future conflict and land acquisition.

We note the comprehensive review included in Appendix D recommends the consideration of 'standard buffers for SIAs only'. CME does not support this statement's inclusion in the guidance. Industrial estates without designated Strategic Industrial Area status may still require transitional zones.

We also note the review suggested consideration of 'the need for an Industrial Development/Industrial Investigation or Industrial Deferred Zone' but note DPLH has not adopted this in this consultation. Without including this category as a default in the model provisions, CME supports the inclusion of this new land use category as recommended guidance to local governments.

11. RECOMMENDED LONG TERM ACTIONS

(Section 4.4.2 of the Stakeholder Consultation Report)

Long term actions, proposed to take place over a period of 3 plus years, include:

- Updates to the Model Provisions to include a standardised zoning table and primary development controls for all model zones, to be applied State-wide (with consideration of regional variations).
- Updates to the Deemed Provisions to include relevant elements from the Model Provisions.
- Consider implementation options for a 'Deemed Local Planning Scheme' (subject to outcomes of investigation and consultation).
- Release and implement a design code for industrial² zones and potentially the Service Commercial zone.
- Conduct an ongoing review of the implementation of the standardised zoning table and objectives for the commercial¹ and industrial² type zones.

Do you support the long term implementation actions recommended?

Conditional support





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Please list any implementation actions that you do not support and include any comments or improvements you have below:

Primary development controls for all model zones to be applied State-wide, even considering regional variations, may be ambitious given the volume of priority reforms on the agenda. CME recommends a staged approach which may take longer than the proposed three years.





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PART F – OTHER

12. FURTHER COMMENTS OR SUGGESTIONS

Do you believe there are any other elements of Local Planning Schemes that could change that would bring greater consistency across local governments? Please outline any other suggested improvements or comments below:

Further to the Productivity Commission's report on Australia's maritime productivity from last year, we support 'Finding 7.3: Planning systems should allocate land around ports to highest value uses'. Therefore, local governments have a strategic role that may not be adequately captured in the current planning system.

THANK YOU FOR YOUR FEEDBACK.

