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Planning Law Update

Green paper on modernising Western Australia's Planning System

In May 2018 the State government released a green paper for planning reform entitled 'Modernising Western Australia's Planning System'. This is an independent discussion paper and not government policy. However, it is likely to be influential in the formulation of a subsequent white paper which will set out the Government's reform agenda for the planning system. Many of the proposals in the green paper would, if implemented, have a significant impact on the role of local government in the performance of its planning functions.

The green paper addresses 5 key reform areas:

- (1) making strategic planning the centre of the planning system;
- (2) making the planning system easy to access and understand;
- (3) increasing community engagement in the planning system;
- (4) making the planning system more organised and efficient;
- (5) reforming the planning system to deliver quality urban infill housing.

The overarching reform principles applied by the green paper to each of these areas are fairness, transparency, integrity and efficiency.

A strategically led planning system

The green paper concludes that the centre of the current planning system in Western Australia is occupied by local planning schemes which are primarily concerned with statutory processes and decisions about what can be developed. This leads to a proposal-driven system. However, there is often a disconnection between schemes and State, regional and local planning strategies which are intended to set the direction and objectives for future development.

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The green paper proposes that strategic planning and not local planning schemes be at the centre of planning in Western Australia. The practical implementation of this proposal would involve amendments to the *Planning and Development (Local Planning Schemes) Regulations 2015 (LPS Regulations)* which would require local planning scheme reviews (conducted every 5 years) to be informed by and responsive to the review of a local government's local planning strategy. Further, any scheme amendment which is inconsistent with an existing local planning strategy would need to be accompanied by a proposed amendment to the strategy.

A key component for future local planning strategies will be a local housing strategy which identifies the additional infill housing which each local government is required to accommodate. The green paper acknowledges that local governments have not been provided with a methodology by which to determine where additional housing ought to be located. It proposes that the Department of Planning, Lands and Heritage (**DPLH**) will prepare guidelines to assist local governments with this local housing analysis.

An understandable planning system

The green paper highlights the complex and often confusing nature of State and local government planning frameworks and the various documents which comprise them. It also highlights the complexity and lack of clarity about approval processes. It proposes several measures to remedy this situation. State planning policies are to be consolidated and reorganised into common elements (eg sustainability, land use, housing, environment, open space, urban form and design and infrastructure). These elements are to be standard for all State policies and plans. In addition, local governments' local planning strategies would also have to address these elements.

The green paper also notes the often confusing assembly of instruments which comprise a local government's planning framework (eg scheme, local planning strategy, local planning policies, structure plans, activity centre plans, local development plans). It proposes that each local government have one 'comprehensive local planning scheme' which includes the scheme, local planning strategy, the local planning policies and the deemed provisions in Schedule 2 of the LPS Regulations. The scheme, local planning strategy and local planning policies would need to be prepared in a form and manner approved by the WAPC. Local government schemes, strategies and policies (and amendments) would also need the endorsement of the Western Australian Planning Commission (**WAPC**) and then the approval of the Minister.

It is recommended that there be a halt to the substantive review by local governments of their existing schemes and local planning strategies until the format and content of the new comprehensive local planning schemes is settled.

To overcome the existing lack of clarity regarding the circumstances in which it is appropriate to prepare local structure plans, activity centre structure plans, local development plans and local planning policies, it is proposed to amend the LPS Regulations to clarify the distinction between these instruments and the circumstance in which each is appropriate.

The green paper draws attention to the large number of differently named zones in local planning schemes and the inconsistency between schemes in the permissibility of land uses within similar zones. It is proposed that this position be addressed by introducing deemed provisions which set out standard zones, land uses and land use permissibility. These will be mandatory for each local government.

The green paper refers to a common source of frustration with the decisions of Development Assessment Panels (**DAPs**) which routinely vary development standards established under local government planning frameworks. It is proposed that local governments be given the ability to provide for certainty over key development requirements by inserting mandatory requirements into their local planning schemes which are not subject to variation.

Community engagement in the planning system

The green paper emphasises that community engagement in the planning system requires it to be transparent. In particular, it makes a number of recommendations to increase the transparency of decision making:

- (1) amendment of the LPS Regulations to require decision makers to provide reasons for their decisions on planning proposals;

It proposes that each local government have one 'comprehensive local planning scheme' which includes the scheme, local planning strategy, the local planning policies and the deemed provisions in Schedule 2 of the LPS Regulations.

- (2) the publication by the WAPC and the Statutory Planning Committee of their agenda item reports and recommendations on region and local schemes and amendments;
- (3) mandatory reporting by local governments on planning matters;
- (4) with respect to Development Assessment Panels (**DAPs**):
 - (a) DAP meetings are to be held at regular times outside business hours;
 - (b) DAP meetings are to be recorded and the recordings to be made publicly available;
 - (c) DAP decisions may be deferred for further local government advice, if after the local government provides its responsible authority report, new information is submitted to the DAP (as is often done by applicants)
 - (d) DAPs are to provide reasons for their decisions;
 - (e) in SAT proceedings against DAP decisions, any amended proposal is to be advertised unless it complies with all development standards;
 - (f) if SAT invites a DAP to reconsider its original decision, this is to be undertaken by new specialist DAP members;
 - (g) SAT should allow parties with a sufficient interest in a DAP matter to make a submission or participate in mediation;
 - (h) allow the presiding member of DAP to seek wider local government community viewpoints about a development application;
 - (i) remove the DAP's ability to review WAPC decisions on development applications under region schemes; and
 - (j) appoint a chief presiding officer for DAPs to oversee the training and selection of DAP members and the quality and consistency of DAP procedures and decisions.

Improved efficiency of the planning system

The green paper proposes a number of improved efficiency measures relating to the roles and functions of the WAPC, DPLH and local government. Those relating to local government include:

- (1) the introduction of an accreditation system for local governments under which:
 - (a) local governments could determine certain subdivision applications; and
 - (b) the category of 'optional DAP application' would be removed so that these applications would be determined by an accredited local government;
- (2) the right of applicants to seek pre-lodgement advice for development applications;
- (3) the introduction of a 10-day maximum period following receipt of a development application within which local governments can acquire additional information from an applicant;
- (4) procedure for local governments and developers to agree up-front about the scope and content of a local structure plan;
- (5) giving local structure plans and activity centre plans the force and effect of the local planning scheme;
- (6) giving local governments the ability to refuse to progress unmeritorious local structure plans and activity structure plans subject to the WAPC's overriding power to direct the local government to do so;

- (7) the introduction of greater oversight and control over development control plans by a new infrastructure panel and, in some cases, the Minister;
- (8) the fast tracking (30 days) for approval of single houses that require only minor variations to the R-Codes.

Urban Infill Development

The green paper proposes a number of initiatives to facilitate the delivery of local governments' urban infill targets. However, the green paper acknowledges that at least half of this development would need to be in greenfields sites.

As noted earlier, it is proposed that local planning strategies for each local government must contain local housing strategies setting out where each local government's infill housing is to be located. Smaller regional local governments will be exempted from this requirement.

A number of measures are proposed to assist local government in this exercise. First, the WAPC will assist with infrastructure coordination for the establishment of activity centres, urban corridors and station precincts. Local governments are also to be given advice on the forward planning of State infrastructure to assist in the preparation of local planning strategies and structure plans. Local planning strategies will need to address infrastructure and link it to a 10 year capital expenditure program. Finally, the Metropolitan Region Scheme would be updated to show 'urban corridors' as a category of roads.

The Submissions period for the green paper closes on Friday, 20 July 2018.

For further information please contact Andrew Roberts on 9383 3133 or by email on aroberts@mcleods.com.au. The information contained in this article should not be relied upon without obtaining further detailed legal advice in the circumstances of each case.

