



31 October 2024

Planning Reform Team  
Department of Planning, Lands and Heritage  
140 William Street, Perth WA 6000

Via email: [planningreform@dplh.wa.gov.au](mailto:planningreform@dplh.wa.gov.au)

### **Metropolitan Region Scheme Draft Clause 28 Notice**

Thank you for the opportunity to provide feedback on the draft Metropolitan Region Scheme Draft Clause 28 Notice.

The Urban Development Institute of Australia (UDIA) WA is the peak body representing the property development industry in WA, with members across both private and public sector organisations. Our Vision is for 'Diverse living options in thriving, connected communities', and we strive to support this in working towards our Purpose of 'Great places + Housing choice = Better lives'.

UDIA WA welcomes the updated Metropolitan Region Scheme and acknowledges the goal of the Clause 28 Notice to be improving clarity around requirements for development approvals under the MRS, focusing on strategic matters, the protection of state reservations and proposals of state or regional significance. Ensuring clarity on these matters for the development industry is important to creating certainty in the development process. This is key to the timely delivery of affordable and diverse housing and the creation of great places for the community to live in.

Please see below our comments for consideration and addressing in finalising the Notice:

#### **Provision 1: Development of State or Regional Significance / Public Interest**

- Whilst acknowledging that further guidance may be in preparation, further clarity on what will constitute 'state or regional significance' or 'public interest' and how these matters will be assessed would reduce unnecessary uncertainty for proponents and local government.
- This clarification should include assessment criteria (transparency around any specific or additional assessment criteria that such application will be subject to is crucial given the WAPC's ability to 'call in' proposals), and agencies responsible for determining significance / public interest.
- Will local government be expected to refer an application to WAPC if it considers it might be of state or regional significance/public interest? If so, what is the process to be followed by WAPC in considering such referrals?
- Will the provision apply to development applications retrospectively or will WAPC have a timing threshold to advise local governments of a development application that it has determined will be under its consideration?
- Such timing and process considerations must be made clear.

### **Provision 2: Land abutting a Regional Open Space Reservation**

- Ensuring that both ‘ancillary’ and ‘incidental’ development are defined terms would be of assistance in ensuring that there is no confusion or doubt as to what these terms constitute. These terms are not defined in the *Planning and Development Act 2005* or the *Planning and Development (Metropolitan Region Scheme) Bill 2024*, but ‘incidental use’ is defined in the Deemed Provisions under Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
- Please confirm each exception is ‘or’.

### **Provision 3: Land abutting a Regional Road Reservation**

- See comment under Provision 2 regarding defining ‘ancillary’ and ‘incidental’ development.
- If the earthworks and drainage referred to in 3a) is associated with residential development of four or fewer dwellings, is it still an exception?
- Please confirm if a) to e) are ‘or’ and all exceptions listed are ‘or’.

### **Provision 4: Public Works**

- Ensuring that both ‘Public Work’ and ‘Residential Public Work’ are defined terms or references to their definitions in legislation are included would be of assistance in ensuring that there is no confusion or doubt as to what these terms constitute.

### **Provision 5: Development in a Bush Forever Area**

- The title refers to ‘development in’, but the text refers to ‘development in or adjacent’. This should be clarified as the current wording of provision implies that if you are clearing native vegetation on adjacent land, it requires WAPC approval.

### **Preliminary Recommendation for Delegation**

- Broadly, the role of and the procedures relating to consultation with referral agencies require clarification throughout the document. In Provision 6 for example, it is unclear which agency/agencies would have potential referral obligations given there is no one specific agency involved in activity centre development.
- In Provisions 2–6 and 11, references to ‘local government, subject to the advice from the relevant referral agency being accepted’ are included. It would be useful if this phrasing is clarified, specifically:
  - Does ‘accept’ in this context mean that the local government must accept all the advice of the applicable referral agency?
  - Does the WAPC retain decision-making authority in instances where the recommendation of a local government is inconsistent with a referral agency’s advice recommendation?



- How will it be determined which agency or agencies are consulted and will there be a timeframe attached to this consultation?
- Is WAPC/DPLH considered to be a 'relevant referral agency'?

We trust that our comments assist in the finalisation of the Notice, to ensure that matters of ambiguity are clarified to support its effectiveness in streamlining the approvals process. Should you require further information or wish to discuss this further, please contact Isaac George, Policy Officer at [igeorge@udiawa.com.au](mailto:igeorge@udiawa.com.au) or 9215 3409. Thank you again for the opportunity to provide feedback.

Yours sincerely

A handwritten signature in black ink, which appears to read 'Sarah Macaulay', is positioned below the 'Yours sincerely' text.

Sarah Macaulay

**Executive Director – Strategy and Policy**