



Special State Council Meeting

Agenda

25 May 2020

NOTICE OF MEETING

Special Meeting of the Western Australian Local Government Association State Council to be held via video on Monday 25 May 2020 commencing at 5:00pm.

1. ATTENDANCE, APOLOGIES & ANNOUNCEMENTS

1.1 Attendance

Members	President of WALGA, Chair Deputy President of WALGA, Northern Country Zone Avon-Midland Country Zone Central Country Zone Central Metropolitan Zone Central Metropolitan Zone East Metropolitan Zone East Metropolitan Zone Goldfields Esperance Country Zone Gascoyne Country Zone Great Eastern Country Zone Kimberley Country Zone Murchison Country Zone North Metropolitan Zone North Metropolitan Zone North Metropolitan Zone Peel Country Zone Pilbara Country Zone South East Metropolitan Zone South East Metropolitan Zone South Metropolitan Zone South Metropolitan Zone South Metropolitan Zone South West Country Zone	Mayor Tracey Roberts JP President Cr Karen Chappel JP President Cr Ken Seymour President Cr Phillip Blight Cr Jenna Ledgerwood Cr Paul Kelly Cr Brooke O'Donnell – Deputy Cr Cate McCullough President Cr Malcolm Cullen President Cr Cheryl Cowell President Cr Stephen Strange Cr Chris Mitchell JP Cr Les Price Mayor Mark Irwin Cr Frank Cvitan Mayor Albert Jacob JP – Deputy President Cr Michelle Rich Mayor Peter Long Cr Julie Brown Mayor Ruth Butterfield Cr Doug Thompson Mayor Carol Adams OAM Mayor Logan Howlett JP President Cr Tony Dean
Ex Offiiios	Chair Commissioner, City of Perth Local Government Professionals WA	Mr Andrew Hammond Mr Jamie Parry
Secretariat	Chief Executive Officer EM Strategy, Policy & Planning EM Governance & Organisational Services EM Commercial & Communications EM Infrastructure Manager Strategy & Association Governance Policy Manager, Planning & Improvement Senior Planner – People and Place Project Officer, Planning Executive Officer Governance	Mr Nick Sloan Mr Mark Batty Mr Tony Brown Mr Zac Donovan Mr Ian Duncan Mr Tim Lane Ms Vanessa Jackson Mr Chris Hossen Mr Ashley Robb Ms Margaret Degebrodt

1.2 Apologies

East Metropolitan Zone Great Southern Country Zone North Metropolitan Zone	Cr Catherine Ehrhardt Cr Ronnie Fleay Cr Russ Fishwick JP
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1.3 Announcements

1.3.1 WALGA acknowledges the Whadjuk Nyoongar people who are the Traditional Custodians of this land we meet on today and pays respects to their Elders past, present and future.

2. DECLARATIONS OF INTEREST

Pursuant to our Code of Conduct, State Councillors must declare to the Chair any potential conflict of interest they have in a matter before State Council as soon as they become aware of it.

3. MATTER FOR DECISION

3.1 Proposed Planning and Development Amendment Bill 2020.

4. CLOSURE

3. MATTER FOR DECISION

3.1 Proposed Planning and Development Amendment Bill 2020 (06-03-01-0001 VJ)

Vanessa Jackson, Policy Manager Planning and Improvement

Recommendation

That WALGA:

- 1) **Advocates to the State Government that the proposed *Planning and Development Amendment Bill 2020*, which proposes significant changes to the *Planning and Development Act 2005*, is not supported for the following reasons:**
 - a) **The Bill has been presented to Parliament without proper consultation with the Local Government sector contrary to the principles of the State and Local Government Partnership Agreement;**
 - b) **Without due consideration of the full impact of the proposed 26 amendments, there is the potential for unintended consequences due to the haste in the drafting of this Bill;**
 - c) **The Bill provides unfettered powers to the WA Planning Commission, circumventing meaningful involvement of local communities in the planning process;**
 - d) **No evidence has been provided for the new assessment pathways, to support the proposition that the current planning system is unable to process these applications adequately, fairly and efficiently to meet the needs of the economy in these unique times; and**
 - e) **No evidence has been provided for the new assessment pathways, to support the proposition that this proposal would have a positive effect on the state or local economies.**
- 2) **Writes to the Premier and Minister for Local Government to raise the sector's concerns with the Government's actions in setting aside the State and Local Government Partnership Agreement for the fast tracking of proposed legislative reforms under the cover of COVID-19 recovery.**

Executive Summary

- The proposed *Planning and Development Amendment Bill 2020* (the Bill) has been presented to Parliament without proper consultation with the Local Government sector, which is contrary to the principles of the State and Local Government Partnership Agreement.
- Of note is the proposal for a new WAPC development assessment pathway to circumvent Local Government in the assessment and decision making process for “significant development”, without proper justification.
- The Bill proposes the creation of a “Special Matters” Development Assessment Panel (DAP), which would not include Local Government Elected Members. The definition of “Special Matters” is inadequate.
- These proposals are being fast tracked through the legislative process through the COVID19 legislative provision, without any evidence or proper justification.
- The proposed Bill is currently being debated in the Legislative Assembly, therefore an advocacy plan has been prepared for State Council's consideration.
- WALGA's advocacy position on legislation is to uphold the general competency principle for a Local Government to determine what is best for its community

Attachments

Planning and Development Amendment Bill 2020 ([here](#))

Attachment 1 - WALGA summary of proposed changes to the *Planning and Development Act 2005*

Policy Implications

WALGA's relevant Advocacy Position Statements include the following:

1.1 State-Local Government Partnership Agreement

WALGA supports the establishment and signing of a Partnership Agreement between the Western Australian Government and the Local Government sector that documents a commitment to improving cooperation between the two sectors at strategic and project levels.

The Partnership Agreement should also incorporate a communication and consultation protocol that guides communication and consultation between the State Government and the Local Government sector with a minimum of twelve weeks of collaboration for legislative proposals that will impact Local Government operations and eight weeks of consultation for regulatory or compliance changes that will affect Local Government.

6.1 Planning Principles - All legislation and policy that deals with planning and development must:

- Ensure role clarity and consistency across all legislation controlling development, to avoid confusion of powers and responsibilities;
- Be easily interpreted by, understood by and accessible to all sections of the community, and
- Be amended only with WALGA involvement and/or consultation/involvement with Local Government.

6.2 Planning Reform - The Local Government sector supports the underlying principles of planning reform and the continuing focus of streamlining the planning system.

6.5 Development Assessment Panels - The Association does not support Development Assessment Panels (DAPs), in their current structure.

Background

On 1 May 2020, senior staff of the Department of Planning Lands and Heritage (DPLH) confidentially advised the WALGA President and Association's officers that the Minister for Planning was going to table amendments to the *Planning and Development Act 2005* (PD Act).

One of the amendments would allow the State Government to assess and approve certain development applications for an 18 month period, bypassing both the DAPs and Local Government assessment pathways, with the aim of stimulating economic development to assist in COVID 19 recovery.

The State indicated that this proposal would provide the following advantages over the current planning framework:

1. Large developments would be fast-tracked to help the economy recover from the pandemic sooner. Significant' applications will be processed through this system, estimating around 10-20 applications per year.
2. Bottlenecks caused by referral agencies would be removed, allowing applications to be processed faster; and,
3. Proponents with 'Significant' developments can seek the Ministers support to have their application considered by DPLH/WAPC (Note – these 'Significant' applications are yet to be defined)

A second amendment would be the creation of a 'Special Matters' DAP. This DAP would not include a Local Government Elected Member as in the current system. Applications that fall into the "Special

Matters” category are not clearly explained. No further details are provided on the other proposed amendments, other than DPLH staff commenting that the amendments are part of the current Planning Reform Agenda.

Following this meeting, on the 7 May 2020, Association officers met with staff from the Minister for Planning’s office to try to gain a greater understanding of the rationale behind the proposal. It is the Association’s understanding that the new assessment pathway has been proposed by the Minister for Transport and Planning, and the Parliamentary Secretary to the Minister for Transport; Planning, with the proposals justified as part of the State’s COVID 19 recovery plan; however, no detailed economic justification was provided.

A further verbal briefing on the 8 May 2020, was undertaken by the DPLH to members of the Department’s Local Government Stakeholder Reference Group, established as part of the Planning Reform Agenda. The meeting was to advise the group of the proposal and seek guidance in how the new development assessment pathway would be established, i.e. administration, processing, referrals, decision-making and timeframes. Attendees at this meeting included Elected Members from the Cities of Karratha, Kalamunda, Armadale and Shire of Serpentine Jarrahdale, and Planning Executives from the Cities of Vincent, Busselton, Kalamunda, Armadale, Perth, Belmont, Northam, South Perth, Cockburn, Melville and Shires of Serpentine Jarrahdale and Broome, as well as Association officers. All members were required to sign confidentiality agreements prior to attending the meeting.

The State has been advised numerous times by WALGA that verbal conversations from Department and Ministerial officers on the broad generalities of the proposal should never be considered consultation with WALGA and the Local Government sector.

Based on the impact that this proposal would have on the Local Government sector, on 18 May 2020, Association staff provided a briefing to State Council’s People and Place Policy Team to discuss the proposal and an appropriate political response. The following resolution was passed by the People and Place Policy Team:

Disappointed that the State government is proposing an amendment to the Planning and Development Act 2005 that will bypass local involvement in both Development Assessment Panels and decision making by Local Governments on ‘significant’ Development Applications, without any consultation with the Local Government sector; therefore, the People and Place Policy Team recommends that these concerns and an immediate review of the State and Local Government Partnership Agreement should be undertaken at an emergency meeting of State Council.

On 20 May 2020, proposed amendments to the PD Act were tabled in Parliament, with the suspension of Standing Orders enacted in order to debate the proposed Bill. The Bill was accompanied by an Explanatory Memorandum and seven fact sheets (155 pages in total).

The Bill will be further debated in the Legislative Assembly on 26 and 27 May 2020.

Comment

The proposed Bill is being fast tracked through Parliament under the rationale of an economic stimulus package to assist in the State’s recovery from the COVID19 pandemic.

It is noted that significant proposed amendments to the PD Act have not been discussed with the Local Government sector prior to presentation of the Bill in Parliament. This lack of consultation is contrary to the principles of the State and Local Government Partnership, which would normally require consultation of a minimum of twelve weeks for legislative proposals for any impact on Local Government operations. Given the breadth of the proposed amendments, and the two new proposed development assessment pathways, formal consultation with the sector is required.

The apparent ignoring of the State and Local Government Partnership Agreement is concerning as this may set a precedent for other legislative amendments also being fast tracked under the rationale of COVID 19 reforms.

It is also noted that the new assessment pathways have been proposed without justification, from either an economic perspective or a process improvement perspective. The new assessment pathways would create wide-ranging and potentially unfettered powers for the WA Planning Commission to consider and approve development applications which may be inconsistent with Local Planning Schemes and potentially other State Acts and regulations. The Bill has the following section under s.275 as follows:

- *The WAPC is not bound by any legal instrument, which is to say any planning or non-planning law, rule or other requirement;*
- *The Commission is not strictly bound by any planning consideration and may consider any other matter in the public interest;*
- *While the Commission is not strictly bound by any planning or non-planning law, rule or other requirement, it must still give due regard to relevant considerations in making a determination.*

The concept of “due regard” is a common planning premise; however, as outlined above, the WAPC would not be bound by any legal instrument. The wording within the Bill implies that the WAPC will be the one stop shop for the approval under other legislative requirements, but will not be bound by them (ie the Contaminated Sites Act 2003; the Environmental Protection Act 1986; the Heritage Act 2018; the Swan and Canning Rivers Management Act 2006; and the Swan Valley Planning Act 1995.) These powers are extremely disconcerting and have the potential to undermine the State and Local planning framework, if the intent is that the WAPC will be the approval authority for these Acts, or issue an approval in contravention of these Acts.

The Bill would provide the WAPC with powers to set aside any local planning controls (e.g. land use permissibility, height controls, floor space ratio, etc.). Furthermore, the Bill and supporting documents do not adequately explain community consultation processes.

Consequently, the Bill represents a concerning and substantial shift away from a system that currently acts to serve the community’s interests, to one that would provide the State with arguably unnecessary and potentially undesirable influence in local matters. Public participation in normal development applications (such as through advertising) provides some degree of citizens’ involvement to have a say in development decisions, not just because they are personally affected, but because it is also their democratic right to express community concern. This can often help to provide a good measure of broader social, environmental and economic concerns compared to a specific development entitlement.

This proposal is a fundamental shift in the WAPC’s role and function, moving from strategic matters and subdivision control into complex development assessment applications. The resourcing of this new assessment pathway within DPLH and the actual assessment process, has also not been determined.

It also appears that the “Special Matters” DAP removes Elected Member representation, instead requiring a representative with “local government knowledge”. “Special Matters” developments are not clearly defined in the Bill; however, the Explanatory Memorandum mentions using the DAP for Special Precincts, and significant development proposals. These changes would further remove local representation from the planning system.

Both of these new assessment pathways are a major shift in the role of Local Government in the planning assessment process, arguably undermining the expertise that exists in the assessment and consideration of development applications, devaluing the sectors experience and competency in applying their local planning scheme requirements.

A series of 26 other amendments are also proposed. These amendments can be grouped into nine broad themes, as outlined in Attachment 1. Most of these items were raised through the 2013 review of the PD Act (State Council resolution 274.5/2013). State Council provided support for several of these changes on the condition that the Local Government sector is involved in the preparation and further discussion of the individual reforms. Over the last 6 months, the Planning Reform Action Plan

have been discussed through the formation of various DPLH Stakeholder and Working groups, considering broad concepts and ideas, not any formal proposals. DPLH advised that formal public consultation on all of the reforms would occur due to the breadth of the different reforms proposed.

Summary of Key Concerns

These concerns have been gathered into three main themes:

- No evidence of planning system delays - There is no evidence to support the Government's proposition that the current planning system is unable to process applications adequately, fairly and efficiently to meet the needs of the economy in these unique times:
- Removal of local decision making - This reform is undemocratic, fails to adhere to longstanding principles of good governance, and conflicts with the principles of the State and Local Government Partnership Agreement. In addition this proposal conflicts with WALGA's advocacy position on legislation, to uphold the general competency principle for a Local Government to determine what is best for its community:
- Evidence of market need – there is no evidence - No evidence has been provided to support the proposition that this proposal would have a positive effect on the state or local economies.

Given that the Bill proposes substantial changes and that Local Governments have not been meaningfully or adequately consulted about these changes, it is recommended that WALGA advocates to the State Government that it does not support the proposed Bill.

Finally, it is also recommended that an urgent meeting with the Premier and the Minister for Local Government be held, to discuss whether the State and Local Government Partnership Agreement will be disregarded for the fast tracking of other proposed legislative reforms that impact the sector, under the guise of it being for COVID-19 recovery.

Attachment 1

WALGA summary of proposed changes to the *Planning and Development Act 2005*

The following table outlines the key changes proposed in the *Planning and Development Amendment Bill 2020*. A number of other changes have not been listed here, priority has been given to those proposals that may have a direct impact on Local Government.

Note other changes to the *Planning and Development (Local Planning Scheme) Regulations 2015* have been proposed as part of a ‘phase 2’ of these reforms, and that these have not been addressed in this table. Where the table speaks to a previous decision of State Council on reforms to the Planning and Development Act, it refers to the following resolution: **RESOLUTION 274.5/2013**.

Proposed Changes	Explanation	Impact on Local Government
Special Covid 19 Development Powers	<p>A new pathway for ‘significant developments’ - interim 18-month measure. Significant development is defined as:</p> <p>“\$30 million or more, involving residential development of 100 or more dwellings, or commercial development with the total net lettable area of 20 000 m2 or more space.”</p> <p>WAPC is approval authority – DPLH will assess - streamlined advertising, consultation and assessment processes.</p> <p>Ministerial call in power for ‘any development’, on recommendation from the Premier. These would not be restricted to the requirements of the significant definition.</p> <p>Under s.274 of Part 17, new WAPC powers includes setting aside the ‘normal’ planning rules that otherwise apply to a development application. These rules are replaced with new powers defined under s.275 as follows:</p> <ul style="list-style-type: none"> - The WAPC is not bound by any legal instrument, which is to say any planning or non-planning law, rule or other requirement; - The Commission is not strictly bound by any planning consideration and may consider any other matter in the public interest; - While the Commission is not strictly bound by any planning or non-planning law, rule or other requirement, it must still give due regard to relevant considerations in making a determination. <p>This power may become permanent following the initial interim period.</p>	<p>WAPC is not bound by the local planning framework</p> <p>Local Planning Scheme will be a due regard consideration. Therefore it may be disregarded when a decision is made.</p> <p>WAPC can consider matters besides planning considerations.</p> <p>WAPC must consult with the Local Government when making a decision and give due regard to their submission.</p> <p>WAPC can consider matters besides planning considerations. It could also lead to rezoning by stealth. For example, in a zone where a land use is prohibited under the Scheme, there appears no limitation to now allowing such development if it is deemed significant development, or development of State / Regional significance (referred by the Premier).</p> <p>There is no requirement that mandates community consultation of a proposal where a Local Planning Scheme requires it.</p> <p>This reform was not raised in previous reviews of the Planning and Development Act or the recent planning reform agenda.</p>
DAPs	<p>Creation of ‘special matter DAP’.</p> <p>Based on technical specialties as opposed to geography.</p> <p>“To provide more refined technical expertise and more narrowly focused in order to better deal with some of the State’s most important but challenging planning matters.”</p> <p>Other DAPs will remain in place, though they will be renamed ‘district DAP’.</p>	<p>Detail will come with changes to the DAP Regulations, however it has not been clearly stated that a Local Government Elected Member will sit on the special mater DAPs. Only that a representative of the ‘local government sector’ will participate.</p> <p>WALGA’s current position is opposed to the existence of DAPs.</p>

		<p>This reform was not raised in previous reviews of the Planning and Development Act or the recent planning reform agenda.</p>
Public Works	<p>Expand the definition of public works by reference to region and local planning schemes.</p> <p>Allows for proposals by 'public authorities' to now be considered as public works</p> <p>Changes to the level of regard the WAPC must have to a local planning scheme when making a decision on an exempt public works</p>	<p>An expansion of public works exemptions would allow a greater range of State Government agencies and government trading enterprises to be exempt from development approval under a local planning scheme.</p> <p>Public Works approvals are assessed by the DPLH and approved by WAPC.</p> <p>These have to give due regard to the local planning scheme, which is an increase from the existing level of regard they must give.</p> <p>This expansion of works that could be classified as public works was included in previous reviews of the Planning and Development Act.</p> <p>WALGA supported these proposals, subject to being involved in the drafting of the provisions.</p>
Planning Schemes & Amendments	<p>Clarify the Minister's power to direct local governments for failing to have a satisfactory scheme or amendment.</p> <p>Clarify the Minister's power for consent to advertise new schemes or amendments. This power can be delegated.</p>	<p>Clarify the Ministers powers where a local government resolved to prepare the amendment, but failed to proceed to advertise the amendment in accordance. This occurrence is rare and is unlikely to cause any significant issues across the sector.</p> <p>Provides the Minister with a power to require consent before a Local Government advertises a scheme amendment. This may create additional regulatory tasks for a Local Government and will also delay the process by requiring a Local Government to await consent where they currently do not.</p> <p>This was included in previous reviews of the Planning and Development.</p> <p>WALGA did not support the requirement for a Local Government to seek consent from the Minister to advertise a scheme amendment.</p>
EPA referrals	<p>Introduction of s.48AAA into the new EP Act, and permits regulations to be made prescribing classes of planning schemes that may not require referral to the EPA.</p> <p>Currently all scheme amendments must be referred to the EPA to determine if an assessment is required or not.</p>	<p>Will remove the requirement for Local Governments to refer some scheme amendments to the EPA prior to advertising.</p> <p>This would reduce regulatory burden on Local Governments and speed up the assessment of scheme amendments that are unlikely to have a detrimental impact on the environment.</p> <p>WALGA in its recent submission to the review of the EP Act made recommendations similar to this proposed change.</p> <p>This matter was referred to in previous Planning and Development Act.</p> <p>WALGA supported the proposition that some scheme amendments could avoid the need for EPA referral.</p>

<p>State Planning Policies & planning code (new instrument)</p>	<p>Introduce a new requirement for all planning-related decision-makers to have due regard to the State policy framework in decision-making.</p> <p>Introduce the concept of a 'planning code' to remove current legal ambiguity where a State Planning Policy is 'read into' a Local Planning Scheme. Will in effect create a new type of policy that will in effect govern prescriptive and mandatory policies.</p>	<p>The LPS Regulations already make it a requirement for Local Government to have due regard to State Planning Policies – these changes have been proposed to ensure state agencies and the WAPC must have due regard when making decisions. This proposal was not included in previous reviews of the Planning and Development Act or the planning reform agenda.</p> <p>The ramifications of this on Local Government decision making are still unclear, but they are likely to afford greater reliance on the provisions of planning codes when making a decision than currently afforded. A transitional provision of the Bill will establish the R Codes as a planning code immediately.</p> <p>The establishment of 'planning codes' was included in previous reviews of the Planning and Development Act.</p> <p>WALGA did not support the proposition at that time, noting that further discussion with the Local Government sector was required around the role of State Planning Polices.</p>
<p>Cash-in-lieu</p>	<p>The first proposed amendment will allow the WAPC to request cash-in-lieu without first having to request the land be given up.</p> <p>Reformulate the use of the trust account.</p> <p>Currently cash-in-lieu funds are received under s.153 need to go into a trust account rather than a special reserve account as is required for developer contributions under <i>State Planning Policy SPP 3.6 Development Contributions for Infrastructure</i> (SPP 3.6).</p>	<p>Will likely reduce the administrative burden where there is agreement that a cash-in-lieu contribution is supported. This may make it easier to impose cash-in-lieu contributions on smaller strata subdivisions.</p> <p>With regards to trust account, it provides clarity as to how cash-in-lieu for POS monies are to be managed. Many Local Governments have requested this change.</p> <p>This matter was referred to in previous reviews of the Planning and Development Act.</p> <p>WALGA supported these proposals.</p>
<p>Acquisition of land</p>	<p>This clause amends s.190, and clarifies the capacity of a responsible authority (i.e. the Commission in relation to a region planning scheme and local government in relation to a local planning scheme) to acquire or purchase zoned land to avoid sterilisation of development potential.</p>	<p>Under the current application of s.190, it appears a responsible authority is not entitled to purchase the unreserved portion of a lot that is otherwise reserved, as this unreserved portion of land could not acquire 'for the purpose of a planning scheme'. This can result in unfavourable outcomes, including remaining unreserved portions of land becoming sterilised.</p> <p>This new section would afford Local Government additional powers to acquire land that is not reserved when acquiring land that is reserved.</p> <p>This matter was referred to in previous reviews of the Planning and Development Act.</p> <p>WALGA supported these proposals on the proviso that these powers be applied to Local Government as well.</p>
<p>Community Infrastructure – Development Contribution Plans</p>	<p>Clarify community infrastructure is a type of infrastructure contemplated for the purposes of clause 5, and then further detail what is further expected as community infrastructure.</p> <p>Defines Community Infrastructure as:</p>	<p>There may be an impact on Local Government that are currently operating community infrastructure contribution schemes. Unclear what would occur where they were collecting on an item that doesn't conform to the new definition.</p>

	<p>Community infrastructure, including community centres, libraries, schools and other educational facilities, child care centres (including outside school hours care services) and sporting facilities.</p>	<p>This definition is limited but the categories provided in the Bill are consistent with those provided in the Draft SPP 3.6 Infrastructure Contributions. The definition in the Bill is not inconsistent with WALGA's recommendations on the Draft SPP 3.6.</p> <p>This matter was not referred to in previous reviews of the Planning and Development Act or the Planning Reform Agenda.</p>
<p>Ministers Powers over LG</p>	<p>The proposed provisions aim to address the following particular areas of reform:</p> <p>Clarifies that an obligation imposed on a local government to comply with duties under regulations includes all regulations made under the PD Act.</p> <p>Expand the oversight of the Minister's use of such powers, by requiring any such notice be laid before Parliament and subject to Parliament's scrutiny.</p>	<p>Clarifies that a LG must comply with all regulations made under the Act as opposed to only regulations made under one section.</p> <p>The Minister will now be required to table the notice before Parliament when making one. This is a transparency matter.</p> <p>This matter was referred to in previous Planning and Development Act.</p> <p>WALGA supported this proposal on the proviso that the Minister's powers not be amended.</p>