

## **Flying Minute - Draft Amendments to the Planning and Development (Local Planning Scheme) Regulations 2015 (05-047-01-0011 VJ)**

*Vanessa Jackson, Policy Manager, Planning and Improvement*

**That the submission on the draft amendments to the Planning and Development (Local Planning Scheme) Regulations 2015 be endorsed.**

### **RESOLUTION 137.FM/2020**

**CARRIED**

### **Executive Summary**

- On 20 August 2020, the WA Planning Commission released draft amendments to the Planning and Development (Local Planning Schemes) Regulations 2015.
- The public comment period is between the 20 August 2020 and 18 September 2020.
- A submission is prepared for State Council endorsement via Flying Minute.

### **Attachment**

WALGA submission on the draft amendments to the Planning and Development (Local Planning Scheme) Regulations 2015.

### **Policy Implications**

WALGA's Current Policy positions on Planning Reforms: -

#### **6.1 Planning Principles** - All legislation and policy which 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;
- be amended only with WALGA involvement and/or consultation/involvement with Local Government.

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

### **Background**

The draft amendments to the Planning and Development (Local Planning Schemes) Regulations 2015 (LPS Regulations) fit within three main areas of proposed reforms: -

1. *Cutting Unnecessary Red Tape* - proposing to include a broader range of exemptions for small projects and exempt more change of use applications in retail, commercial and industrial area. These exemptions will make it easier for people to undertake small improvements to their homes or businesses, getting more people back to work and boosting the local economy.
2. *Streamlined Planning Process* - to streamline approvals for single residential dwellings, improve the assessment and referral process for development applications, provide more consistent and contemporary community consultation requirements.
3. *Improved Consultation Practices* – to improve community engagement and consultation process, making the planning system easier to navigate and establishing clear and transparent consultation practices. The proposed regulatory reforms will support new planning laws recently passed by



Parliament and complement changes to State Planning Policies, including the revised residential design codes policy.

## Comment

The release of draft amendments to *the Planning and Development (Local Planning Scheme) Regulations 2015* (LPS Regulations) is welcomed. Since the introduction of the provisions in 2015, the Association has advocated for amendments, to clarify the provisions and to remove some of the unintended consequences that occurred following the gazettal of the Regulations. It is acknowledged that this first round of amendments will be followed by additional amendments in 2021, with many of those amendments also addressing the concerns raised by the Association over the last 5 years.

Local Government as the level of government that predominately administers and applies the LPS Regulations, is a key stakeholder in any review. In July, the Department of Planning Lands and Heritage established three working groups to work through the review of the *Planning and Development (Local Planning Schemes) Regulations 2015*, being: -

- Local planning frameworks, including local planning strategies, schemes and amendments, and local planning policies.
- Structure plans, activity centre plans and local development plans.
- Development Assessment Processes, including consultation.

WALGA called for expressions of interest from the sector to attend these working groups and provided 51 officer nominations to the Department, representing 32 Local Governments from metropolitan, regional and rural areas. The involvement of Local Government planners, in the discussion on the proposed amendments has been positive. It is hoped that similar engagement continues to occur as part of future reforms to the planning system.

The intent and approach that has been taken by the draft LPS Regulations is broadly supported, however, there remains a number of matters that require modification. These matters are addressed in the broad comments and recommendations in this report, while a detailed spreadsheet of 73 comments provided:-

- 14 amendments are supported
- 42 amendments have been given in-principal support, subject to conditions
- 1 amendment is unable to be supported because proposal is unclear
- 16 amendments are not supported.

In regards to the proposed amendments that are not supported, the following rationale is provided on the main themes: -

1. Several 'Discretionary' uses are proposed to be exempt from requiring planning approval (cl.61(2)(b)). Although the types of uses outlined are accompanied by conditions, the preparation of a Local Planning Scheme has been based on carefully choosing the uses that are 'Permitted' and the ones that require discretion in order to be considered, based on the location and information provided by the applicant. In effect exempting these 'Discretionary' uses, automatically makes them 'Permitted' uses across all 139 Local Government's Planning Schemes. The dictionary definition of discretion is: -
  - *the right or ability to decide something*
  - *choice, or the right to make a choice, based on judgment*
  - *the right to choose something, or to choose to do something, according to what seems most suitable in a particular situation.*

Therefore, it is not possible to exempt these land uses and remove the judgement needed to determine whether these land uses are appropriate for the particular zone. Further, without any analysis being undertaken on the potential impact of this change on all Local Planning Schemes, this change is not supported.

2. Publishing the Local Planning Scheme, Local Planning Strategy and State Planning Policies on a Local Governments website (r.16, cl.25, cl. 27, c.29, cl.31). Through the draft regulations there are requirements for a Local Government to place various large documents on their website, even though these documents are already held centrally on the WAPC website. For smaller Local Governments, this could place a strain on the IT platform, and for all Local Governments it duplicates information which could also result in older versions being maintained on a website. It would be preferable for just the link to the WAPC website be provided on the Local Governments website, rather than being a mandatory requirement to host the documents.
3. Only one request for further information (cl.65A(3)). This clause outlines that a Local Government can only ask for additional information once, however, there should be no limit on the number of times additional information can be requested, as the submission of new information can change the development footprint, which upon reassessment, can require additional details to be provided. And combined with the clause that provides an applicant with the right to refuse submitting additional information (cl.65B), there is the potential for more applications to be refused. Local Governments aim to assist applicants with their development applications, to help with economic stimulus, these clauses seem to be counter to this objective.
4. Car parking provisions - Generally support reforms that enable economic recovery and these exemptions should assist in that endeavour by reducing costs for businesses. However, an effect of these car parking reforms will be an increased demand for parking in on-street and off-street public bays in urban centres, particularly through cumulative impacts, and reduced income streams, i.e. cash-in-lieu, to provide alternative forms of parking and transport modes for local communities. Further, a ten year period does not allow enough time to raise enough capital to fund multi-storey car parking facilities. These facilities cost \$20 million plus to construct, therefore, 10 years is highly unlikely to be sufficient time to raise adequate capital, design and construct these structures. Local Governments should therefore be given the opportunity to extend the ten year period in particular circumstances, with the approval of the Commission. Refunding contributions after 10 years is also not supported.
5. Site Works (non-residential) - This provision exempts site works less than 500mm above or below the natural ground level, within 1m of the boundary. There is no condition that the site works must also comply with the clearing regulations, therefore, this could result in large non-residential sites being excessively cleared and significant vegetation or trees removed prior to lodging a Development Application.
6. A new clause has been included that specifies that as part of the review of a local planning scheme and report presented to the WAPC, advice must be provided as to whether a structure plan or Local Development Plans is either satisfactory, should be amended or approval revoked. It would be difficult at the report of review stage to know whether an approved structure plan or local development plan require amending or revocation, or whether they are satisfactory in their existing form. Given the number of structure plans and local development plans that currently exist within some Local Governments (some have over 300), it would be difficult for this assessment to be made within the required 6 month period.

During the public consultation period, the Association sought feedback from the Local Government Sector to inform a representative submission to the WA Planning Commission. Given the short consultation period, feedback was only received from the Cities of Bayswater, Belmont and Busselton, Shire of Harvey and Town of Victoria Park.

The attached submission was presented to the SP&P Policy Team for feedback on 9 September 2020. Members discussed the complex technical nature of the changes, but supported the submission as the comments have been prepared by Local Government and WALGA technical officers. The public comment period closes on the 18 September 2020.

## FLYING MINUTE OUTCOMES

Total Invited to Survey: 24

Total Finished Survey: 16

**That the submission on the draft amendments to the Planning and Development (Local Planning Scheme) Regulations 2015 be endorsed.**

Signature Page

<b>First Name</b>	<b>Last Name</b>	<b>Completed Date</b>
Carol	Adams OAM	14/09/2020 at 13:00
Phillip	Blight	14/09/2020 at 20:36
Julie	Brown	15/09/2020 at 14:40
Ruth	Butterfield	Not Completed
Karen	Chappel	16/09/2020 at 13:12
Cheryl	Cowell	13/09/2020 at 15:46
Malcolm	Cullen	16/09/2020 at 10:24
Frank	Cvitan JP	11/09/2020 at 20:51
Tony	Dean	14/09/2020 at 9:22
Catherine	Ehrhardt	Not Completed
Russ	Fishwick JP	Not Completed
Logan	Howlett JP	14/09/2020 at 11:24
Mark	Irwin	Not Completed
Paul	Kelly	16/09/2020 at 13:47
Jenna	Ledgerwood	17/09/2020 at 13:45
Peter	Long	12/09/2020 at 12:02
Cate	McCullough	Not Completed
Chris	Mitchell JP	17/09/2020 at 6:55
Les	Price	09/09/2020 at 22:42
Michelle	Rich	Not Completed
Ken	Seymour	09/09/2020 at 14:02
Stephen	Strange	Not Completed
Doug	Thompson	14/09/2020 at 11:41



Cr Ronnie Fleay declared an interest as a member of the WA Planning Commission and did not vote.

## **COMMENTS**

**Carol Adams OAM** on 14/09/2020 at 13:00

In short the City of Kwinana is supportive of the draft amendments but seeks some further changes to the amendments to ensure that the amendments do not result in unforeseen consequences. I have tried to attach the submission form but will send separately to WALGA for consideration.

## **SECRETARIAT COMMENT**

The comments in the City of Kwinana submission align with comments made in the WALGA submission, both are seeking improvements to the wording of the amendments and ability for the changes to be implemented without unintended consequences.

The submission has been forwarded to the WAPC to meet the 18 September 2020 deadline.

#	Schedule or Part	Regulation or Clause	Proposal (extracted from the Regs)	WALGA	
				Position	Comment
all	all	all	Manner and form	In-Part	Throughout the draft regulations there are references to the 'manner and form approved by the Commission' however, no exact details are provided on the exact manner and form. It is therefore difficult to comment on the clauses if the manner and form hasn't been drafted. When the 2015 regulations were released, the subsequent forms that were released caused many problems, both in their inaccurate content, and inability to be used by local government or applicants (i.e.. Form 6 - single house)
3	Part 1	r.3	Excluded Holiday Period	Support	Formally excluding the Christmas and Easter Holiday periods within the advertising period is supported, as this already aligns with public consultation processes at Local Government
8	Part 3	r.11(2) (a)	The Local Planning Strategy must be in a manner and form approved by the Commission	In-Part	As the detail of the 'form and manner' of the Local Planning Strategy has not been provided as part of this public consultation process, it is difficult to provide full support of this proposal. Preliminary discussions with DPLH have provided a broad outline of the changes being considered, but no exact details of the form and manner expected.
12	Part 3	r.16	A LG must ensure that an up to date copy of the endorsed Local Planning Scheme is published on the website of the LG and if possible, made available for public inspection at a public place	In-Part	Support that up to date information is provided on a LG's website. However, for some smaller Local Governments uploading larger documents onto their website can adversely affect the functionality of the platform. And given the WAPC website already hosts the most up to date document, why would the LG need to have a copy on their own site? There should be an option for a LG just to have a link from their website to the WAPC website. A quick audit of LG websites indicates that this already occurs and is a suitable option. This needs to be reviewed to ensure that this option is possible rather than create an unnecessary burden on a LG's website.
13	Part 3	r.18	(b) with the approval of the Commission, by a notice of revocation — (i) prepared by the local government; and (ii) published on the local government's website	In-Part	Support that the new clause removes the publishing of the notice in a local newspaper, and for the LGs websites to be used. The Clause should be amended to include publishing of the notice on the Commissions website.
16	Part 4	r.22	<ul style="list-style-type: none"> <li>Replace all requirements for presentation of hard copies of applications and associated planning documents in a physical location with a requirement for online publication. Community members will be able to access documents and plans from the comfort of their home, in their own time.</li> <li>Advertising requirements prescribed in the Planning and Development (Local Planning Scheme) Regulations 2015 will acknowledge the preference for online and digital engagement, with more traditional methods to be used at the discretion of the local government.</li> </ul>	Support	Modernising the advertising requirements to online and electronic is supported.
27	Part 4	r.33	<ul style="list-style-type: none"> <li>Replace all requirements for presentation of hard copies of applications and associated planning documents in a physical location with a requirement for online publication. Community members will be able to access documents and plans from the comfort of their home, in their own time.</li> <li>Advertising requirements prescribed in the Planning and Development (Local Planning Scheme) Regulations 2015 will acknowledge the preference for online and digital engagement, with more traditional methods to be used at the discretion of the local government.</li> </ul>	Support	This regulation refers to Regulation 76A, which also outlines the preference to online and electronic advertising. The cross referring of many of the provisions to r.76 occurs often throughout the document, and in effect becomes very repetitive throughout the document. If there was a more streamlined approach, this would be supported.
32	Part 5 Division 1	r.35A	Amendment to a local planning scheme affecting area to which a structure plan relates.	Support	Supported, however, this should also apply to the preparation of a local planning scheme, not just amendments to local planning schemes where structure plans apply. Secondly, clarification on how this 'statement' is to be incorporated into Scheme Amendment documentation should be provided by the Commission, for example is it intended that the 'statement' be incorporated into Form 2A (under R.35(1)) and therefore form part of the Council resolution.

34	Part 5 Division 2	r.38, r.42, r.47, r.51	New advertising requirements for complex and standard amendments, modifications to these, and amendments to local planning schemes, in line with the preference to online and digital methods.	Support	Modernising the advertising requirements to online and electronic is supported.
57	Part 5 Division 5	r.64	Advertising of amendment to local planning scheme, publishing on the LGs website.	In-Part	The interrelationship between the Regulations 64(2)(b) and 76A, is that local governments will be required to publish all gazetted scheme amendment documents on their website. Is the intent for this to be required in perpetuity? it is suggested that a time limit is applied, as a list of amendments forms part of a scheme and the information will be incorporated into the scheme.
61	Part 6 Division 1	r.67	New clause as part of the review of a local planning scheme and report presented to the WAPC - requiring advice as to whether a structure plan or Local Development Plans is satisfactory, should be amended or approval revoked.	No	This amendment has not been discussed at the Working group meetings prior to the release of the amendments. It would be difficult at the report of review stage to know whether an approved structure plan or local development plan require amending or revocation, or whether they are satisfactory in their existing form. Given the number of structure plans and local development plans (some have over 300) that currently exist within some Local Governments, it would be difficult for this assessment to be made within the required 6 month period. And if structure plans and local development plans require consideration as part of the report of review, then does the WAPC also consider that local planning policies will also need to be reviewed?
67	Part 8	r.76A	New clause to outline the publication and inspection of documents that local government is required to publish.	In-Part	The provisions has the following wording - 'if reasonably practical' and considered 'appropriate in the circumstances'. These terms are very vague and unless there is some guidance or examples provided, a local government would have to revise their public consultation policies and determine the 'circumstances' that a notice in the paper would still be required, and a copy of the documents placed in the Council office's. This will ensure that the community understands when various advertising mediums would be used.
89	Schedule 1	cl.25	New model provision, a local government must ensure that the R-Codes are published on the website of the Local Government. And if practical, publicly displayed.	No	Support that up to date information is provided on a LG's website. However, for some smaller Local Governments uploading larger documents onto their website can adversely affect the functionality of the platform. And given the WAPC website already hosts the most up to date RCodes documents (all of the SPP's and numerous supporting documents), why would the LG need to have a copy on their own site? The LG should just provide a link from their website to the WAPC website. A quick audit of LG websites indicates that this already occurs and is a suitable option. This Clause needs to be reviewed to ensure that this option is possible rather than create an unnecessary burden on a LG's website. Suggest re-word to 'ensure a link to the RCodes on the DPLH website is published on the website of the local government'.
91	Schedule 1	cl.27, cl. 29, cl.31	New model provision, a local government must ensure that State Planning Policy 3.6, other State Planning Policies and Environmental conditions from the EPA, are published on the website of the Local Government. And if practical, publicly displayed.	No	Support that up to date information is provided on a LG's website. However, for some smaller Local Governments uploading larger documents onto their website can adversely affect the functionality of the platform. And given the WAPC website already hosts the most up State Planning Policies and numerous supporting documents, why would the LG need to have a copy on their own site? The LG should just provide a link from their website to the WAPC website. A quick audit of LG websites indicates that this already occurs and is a suitable option. This Clause needs to be reviewed to ensure that this option is possible rather than create an unnecessary burden on a LG's website. Suggest re-word to 'ensure a link to the SPP's on the DPLH website is published on the website of the local government'.
121	Schedule 2	cl.4	Additional clarity on how the procedure for the Local Government to make and advertise a Local Planning Policy.	In-Part	Additional clarity is required on the process for obtaining WAPC endorsement, including how long the WAPC has to consider and approve the local planning policy. Without this, the final endorsement of the Local Planning Policy could take several months, which is not an outcome that benefits the Local Government sector. It is also unclear whether the intent of cl 4(1) is that the Commission must endorse a policy that amends or replaces a deemed-to-comply requirement of the R-Codes once advertising has been completed, or prior to advertising occurring. This should be clearer.

124	Schedule 2	Part 3 cl.8 (1)	Heritage List - Local Government <u>may</u> establish and maintain a heritage list.	No	This change from <u>must</u> to <u>may</u> does not align with the compulsory undertaking of a Local Heritage Survey, as set out in <i>Heritage Act 2018</i> (in Part 8 (103) (1)). There has been little justification or evidence put before local government, who directly administer this clause in the Deemed Provisions, on this late change to the Regulations after five successful years in operation. The requirement that local government must establish and maintain a Heritage List, currently works well across all tiers of government and provides a solid statutory base to help fulfil the objectives of the Heritage Act 2018. Recommend that Part 3 Clause 8 should NOT be amended from 'must' to 'may', and instead state that "The local government must prepare and consider a heritage list of places within the Scheme area that have been identified as having cultural heritage significance."
132	Schedule 2	cl.16 (1A)(b)(ii)	A Precinct Structure Plan must also include arrangements for the management of services for the subdivision and development control.	In-Part	Unclear how Precinct Plans will ensure the management of services or the staging for the subdivision and development covered by the plan. Further detail in the SPP will need to be included to better inform comments on this provision.
132	Schedule 2	cl.16 (1A)(b)	The information that must be included in a Precinct Structure Plan	In-Part	This clause should be updated to allow for Precinct Plans to also incorporate subdivision and/or amalgamation.
134	Schedule 2	c.18 (2)(b)	May advertise the structure plan to affected landowners and by placing a sign on site	In-Part	Is this supposed to say 'must' instead of 'may'? This would impact the former mandatory requirement to erect a sign/s on site advertising the proposed Structure Plan.
135	Schedule 2	cl.18 (2)(3A)	Timeframe for the period to make a submission is increase from 28 days to 42 days	Support	Support increasing the advertising timeframes to 42 days so as to align with the standard scheme amendment advertising timeframes.
137	Schedule 2	cl.20 (1a)	Local Government must prepare a report on the proposed structure plan and provide it to the Commission within 60 days.	In-Part	Recommend increasing the report preparation time from 60 days to 120 days to align with the time that the WAPC have to consider a structure plan proposal. This is on the basis that a more rigorous assessment is usually undertaken by the local government, so it is questionable why the WAPC are afforded more time to make a decision.
140	Schedule 2	cl.24 (1A)	Structure plan may be approved that provides further details of development before development commences.	In-Part	Support that the applicant must clearly demonstrate via further information that the Precinct Plan is capable of being implemented. A further provision should be included requiring any development to be consistent with those documents approved by the local government as a result of this clause.
141	Schedule 2	cl.28	Duration of the Structure Plan approval is 10 years, or longer with Commission approval, and can be extended with Commission's approval.	In-Part	The Structure Plan ceasing to have effect once a Scheme Amendment is adopted will ensure the additional planning framework is removed upon normalisation of the Structure Plan into the Scheme. There needs to be clear guidance in how any extension process will be undertaken i.e. if you apply at 9 1/2 years will the Commission have to approve it before the 10 years expires? Or will it continue to be valid until WAPC approval is obtained?
154	Schedule 2	cl.47	Inclusion of additional information as to when a Local Development Plan can be prepared.	Support	Support Local Planning Policy's being a mechanism for requiring a local development plan.
159	Schedule 2	cl.51 (1A)	Local Government must not approve a Local Development Plan if it proposes to amend or replace a deemed to comply requirements of the RCodes, which needs the Commission's approval.	InPart	It is unclear whether that the Commission must endorse a Local Development Plan that amends or replaces a deemed-to-comply requirement of the R-Codes once advertising has completed, or prior to advertising occurring. This should be specified. Given the majority of LDP's have been created by proponents to work around the RCodes, this provision may result in a substantial number of Local Development Plans being sent to the Commission.
162	Schedule 2	cl.61	Development for which development approval not required	Support	An additional point is required to be added, to ensure that the Scheme and Local Planning Policies are also checked before an applicant seeks to apply any of the exemptions within this clause. The Clause should state...Development approval is not required for works if - (c) the works comply with <b><i>the requirements of the local planning scheme and endorsed local planning policies</i></b> .
163	Schedule 2	cl.61	Development for which development approval not required	No	Site Works (non residential) - This provision exempts site works less than 500mm above or below the natural ground level. If a landowner uses this clause in 2021, then the new levels created are the 2021 natural ground level. So what happens if a landowner uses this exemption every couple of years? This could create problems if there is incremental cut and fill over time, Local Government does not have the time nor resources to monitor this. It is also unclear if this will permit unauthorised clearing of larger sites without DWER approval? The Clearing Regulations are specific in only permitting clearing for the purposes of fire breaks and building envelopes, or to enable development to be undertaken, but this exemption could be accessed for site works across an entire site, removing substantial vegetation, or removing significant urban trees prior to lodging a DA (thus removing the need to consider them as a constraint). It is also not clear if the intention was for 'site works' to be exempt, but only if a DA has been granted for the site, so it's clear what site works would be needed to facilitate the development, and protect any existing trees. It is unclear whether this provisions was actually meant to be for properties where the RCodes <b><i>do</i></b> apply, rather than the current draft provision being where the RCodes <b><i>do not</i></b> apply.

163	Schedule 2	cl.61	Development for which development approval not required	In-Part	Demolition of a Single house (exemption 2) - one of the major concerns with the 2015 Regulations was the exemption for planning approval of the demolition of a single house. Previously several local governments required a planning approval for demolition to ensure that the residence that replaces the existing dwelling will be in keeping with the existing streetscape and to discourage demolition without any subsequent development which results in the land being vacant for an extended period of time, adversely affecting the streetscape. This clause should therefore include 'local planning scheme provisions' to allow local government to request a planning approval for a demolition when specifically required in the local planning scheme to cater for the above circumstances. The other 'exempted' uses are supported, with the removal of swimming pool as it is already exempt under the RCodes.
163	Schedule 2	cl.61	Development for which development approval not required	In-Part	Can exemption points 2 and 4 be merged together? (Demolition of various uses, but demolition of a 'cubby house' is its own line item) .
163	Schedule 2	cl.61	Development for which development approval not required	In-Part	Single house (exemption 7) - one of the major concerns with the 2015 Regulations was the exemption for planning approval of a single house. This provision has failed to acknowledge that approval for a single house is required in a floodplain area, bush fire prone area, on a lot without dedicated or public road access, or within the townsite area where design requirements have been set. Specifically, without the connection to local planning policies, there is the potential for sea containers, dongas or relocated dwellings to be placed within a townsite as a 'single house' without any regard for streetscape issues. The local government is best placed to consider these applications on their merits, rather than as a blanket state wide requirement. The Clause should therefore state...(d) the works comply with the requirements of the local planning scheme and endorsed local planning policies.
164	Schedule 2	cl.61	Development for which development approval not required	In-Part	Demolition of a flag pole (Exemption 5) - also has its own line item? And the Conditions specified in Column 2, are worded differently to the Conditions of 2 and 3 (works located in a heritage place).
165	Schedule 2	cl.61	Development for which development approval not required	In-Part	Exemptions 7 and 8 relate to approvals not required, if the RCodes applies and the works also comply with the deemed to comply requirements of the Rcodes. A new clause must be added that they must also comply with the requirements of the requirements set out under this Scheme. This connects the Local Planning Policies that can be prepared under the RCodes to be included and also any Special Control Area requirements.
166	Schedule 2	cl.61	Development for which development approval not required	Support	Exemption 9 - as requested in the 2015 review of the Regulations, the following addition to temporary election signage is supported, as it aligns with legal advice received by the Association and current practice by members. New condition added (c) The advertisement is not erected or installed until the election, referendum or other poll is called and is removed no later than 48 hours after the election, referendum or other poll is conducted.
166	Schedule 2	cl.61	Development for which development approval not required	In-Part	Exemption 10 for a sign of a kind specified in a Local Planning Policy. This clause needs to be reworded to specifically state that the sign is exempt but only when it meets the relevant requirements of a Local Planning Policy, to ensure that the sign does comply with the requirements before being exempt.
166	Schedule 2	cl.61	Development for which development approval not required	In-Part	Exemption 11 for changing an existing sign - concerns have been raised in regard to the potential for third party signage to be installed on a site, which has occurred in several members localities, advertising a product or business that is not located on the development site. These risks could be addressed through an additional condition for the exemption to be accessed, either - 1. "The sign will not be advertising goods, services or businesses not available or located on the land" or 2."The sign will not be advertising goods, services or businesses not available or located on the land, if the Scheme otherwise prohibits such signage".
167	Schedule 2	cl.61	Development for which development approval not required	In-Part	Exemption 12 - the condition relates to separate legislation, ie whether or not a building permit is required for a water tank(s) should not be the 'condition' of whether a development approval is required.
168	Schedule 2	cl.61	Development for which development approval not required	In-Part	Flagpoles - Exemption 14 (c) states that an exemption is possible if the flagpole is not used for 1 or more advertisements. Assuming that this is only for non-residential zonings, otherwise every single house in WA could have an advertising flagpole. Suggest that this clause be removed, as the intent of this section is to exempt flag poles for flags, not flag poles for signage.
169	Schedule 2	cl.61	Development for which development approval not required	In-Part	Exemption 15 - Solar Panels. There is no comment in this section in regards to solar panels within ANEF contour areas around Perth and Jandakot airports. This needs to be clarified as they have the potential to be reflective and interfere with the airport's operations.

169	Schedule 2	cl.61	Development for which development approval not required	In-Part	Exemption 19 - Not clear why this clause is needed 'works that are wholly located on an area of land identified as a regional reserve under a region planning scheme. Is this to remove the need for dual approvals? It is also not clear how this then relates to the footnote on Page 170 which states that approval may be required from the Commission for <u>development</u> on a regional reserve under a region planning scheme. This referencing is very confusing, given the definition of 'development' in the PD Act and 'works' in the Regulations is identical.
173	Schedule 2	cl.61 (2)	Development for which development approval not required	In-Part	This Clause states that development approval of the local government is not required for the following uses (a) a use that is wholly located on an area identified as a regional reserve under a region planning scheme. Shouldn't this just be added into the new exemption 19 (on Page 169) as it repeats the same information, it just uses 'development' rather than 'works, which as stated above are one and the same definition.
174	Schedule 2	cl.61 (2) (b)	Development for which development approval not required	In-Part	States that development approval is not required for a 'P' use. Must also state that a condition of the 'no development approval' is that the proposal also complies with the requirements of the Scheme. Many Schemes have P uses, but have specific provisions to guide the proposal, and/or have a local planning policy to outline the expectations of that landuse. Must include dot point (iii) complies with the requirements outlined within this Scheme. Then if an exemption has been used, but incorrectly, then the Local Government can follow up on the activity.
174	Schedule 2	cl.61 (2) (ba)	Development for which development approval not required	No	This clause states that 'D' uses, ie discretionary uses, can be exempt providing that they comply with the Table provided in cl.61. This was never discussed in the working groups, and seems to be overreach. The exemptions were always discussed as 'like for like' P uses, and therefore not needing planning approval, expanding this into 'D' discretionary land uses is not supported. The land use tables of Local Government have been carefully considered (and approved by the State), allowing the Local Government the discretion as to whether or not the proposal does fit in the zoning based on the information provided by the applicant. It is also counter to the actual word 'Discretionary', the application needs to be assessed, considered and possibly the discretion is applied, depending on the circumstances. Therefore the inclusion of this clause is not supported.
175	Schedule 2	cl.61 Table	Discretionary uses exemptions	No	This table is based on 'D' uses being exempt. The conditions on the proposals are not consistent - in the working groups 400m2 was discussed as being scale, but not all of the land uses are given this condition (ie a restaurant or cafe could be more than 400m2, discretionary and not need a planning approval in a Commercial or mixed use zone). Discussions at the working groups did not anticipate this much flexibility. 400m2 is a significant size to be exempt from development approval and does not align with the State's explanation to help small businesses, 80m2 to 150m2 is a small business, not 400m2. Do not support this clause, as mentioned above.
176	Schedule 2	cl.61 Table	Discretionary uses exemptions	No	Even 400m2 for a Hotel or Tavern seems too large to exempt, given the amenity impacts that this form of development can have, noise, traffic, carparking etc. (in only Metro and Peel), it is unclear whether this m2 has been discussed with industry? Also a 'Recreation-private' use on the upper floor of a building can create noise and vibration issues, which should be considered during the planning application process, not through enforcement after an exemption is accessed. It is also not clear why this use has been added as it wasn't discussed in the Working group. Do not support this clause, as mentioned above.
177	Schedule 2	cl.61 Table	Discretionary uses exemptions	No	Use 12 exempts Bulky Goods showrooms from all Light Industry zones. This was not discussed at the Working groups and it is unclear whether this conflicts with State Planning Policy 4.2 - Activity Centres. It is too broad an exemption across the state to be supported. Do not support this clause as mentioned above.
177	Schedule 2	cl.61 Table	Discretionary uses exemptions	No	Home Occupations in all Zones (even if a D' use) are exempt. Do not support this clause as mentioned above.

178	Schedule 2	cl.61A	Advice by Local Government that development approval is not required for erection of, or alteration or additions to, single house.	In-Part	As this section is optional for an applicant to seek the advice on whether a single house needs a development application, but mandatory for Metro and Peel LGs, there will be some resourcing implications to meet the 14 day timeframe (but this should be covered through the \$290 fee). In regard to the \$290 fee, assuming that a LG can then charge the Planning Application fee if a DA is needed? Or is it expected that a LG will take the \$290 off the DA fee cost? Concerned that this section refers to metropolitan Region or the Peel region. The Peel region includes the Shires of Murray, Waroona, Boddington and the City of Mandurah, it is unclear why the proposed 'advice' would include all of these Local Governments? Seems strange to have a 'revoke' clause for these local governments in 61 A (5) (b) when it may be simpler to have all of the Peel zone members just able to 'make an election' to provide the advice under 61 A (1)(b). Actually, 61 A (5) (b) would enable all Metro Local Governments to 'revoke' providing this advice - assuming that there will be a process for how a local government seeks the WAPC approval to not providing this advice. There is also no provision to request more information, if an assessment is being undertaken, then there may be instances where not all of the information is provided in order to undertake the assessment.
182	Schedule 2	cl.63A	Action by Local Government on receipt of an application.	In-Part	This clause needs to be amended, it states that a Local Government <b>must</b> consider whether the application complies with the information contained in cl.62 and cl.63, within 7 days of receiving the application. However, cl.63A(2) then makes it an optional process for Local Government to provide this written advice to the applicant. Therefore cl.63A(1) needs to be amended to state that the Local Government <b>may</b> ... given that the application is considered 'accepted' by this subsequent clause. The 7 day time period should be increased to 14 days or such a time as agreed to with the applicant. If the application is straight forward, but missing a few details, it would be quicker to do this all within the one request.
183	Schedule 2	cl.64	Advertising Applications	No	Do not support specifying advertising required based up type of application, as this overcomplicates advising development applications. Not supportive of all DAP applications being treated as complex applications that require advertising pursuant to clause 64(2). Not all DAP applications are complex in nature and may not warrant advertising – the requirement to advertise should simply be determined by the land use permissibility or the discretion of the local government.
183	Schedule 2	cl.64 (2)	Advertising Applications	In-Part	If the applicant is required to advertise, what evidence is required to be provided to demonstrate this has been undertaken in accordance with the Regulations? Is it expected that the advertising will only be the sign on site? Otherwise, there could be privacy issues in providing the applicant with owners/occupiers details 200m around the proposed site.
184	Schedule 2	cl.64(3)(b)	Advertising Applications	In-Part	The specified radius of 200m for advertising is an arbitrary figure, however cl.64(3)(b)(ii) permits Local Government to expand the advertising radius at its discretion. This is supported. It may be more appropriate to change the wording to "to the owners and occupiers of every property that is within 200m of the proposed development, <b>as a minimum advertising radius</b> ". And as in the draft CDS regulations, the 200m distance is measured from the property boundaries, not the centre of the site.
184	Schedule 2	cl.64(3)(c)	Advertising Applications	In-Part	Do not support the local government being required to erect signage, therefore, the applicant must be required to undertake this requirement. It may slow the assessment timeframes whilst signage is being organised, which is not relative to the length of the submission period required. Nor is this aligned to the timeliness objectives of the Planning Reform Agenda. This may need to be reviewed to determine whether it is a feasible approach.
186	Schedule 2	cl.64(2) removed	Removal of a clause - should be retained in the Regulations	Support	This clause has been removed from the draft consultation document - (2) The local government may waive a requirement for an application to be advertised in the circumstances set out in subclause (1)(c) if the local government is satisfied that the departure from the requirements of this Scheme is of a minor nature. It is recommended that this clause be reinstated, as it enables discretion for a local government to not advertise very minor variations to the Scheme.
188	Schedule 2	cl.65A (3)	Local government may request additional information or material	No	Support the broad clause which defines the process for local government to request additional information. However, do not support cl.65A (3), as there should be no limitation on requests for information. Additional information can often alter a proposal to the point that further information is required, or the information provided is insufficient and requires updating or clarification. This may result in more applications being refused, if the information provided does not assist in the assessment of the application, and the Local Government is unable to ask for more information because of this clause.

189	Schedule 2	cl.65B (2)	Applicant may agree to or refuse request for additional information or material. (2) If the applicant does not agree to or refuse the request within the 14-day period referred to in subclause (1), the applicant is taken to have refused the request.	No	cl.65B is a very strange clause, and does not assist in the assessment process. There is no clarity on arbitration, the onus is on the applicant to agree or refuse to agree to providing the additional information. This may result in more applications being refused, if the information provided does not assist in the assessment of the application. It is unclear why such a detailed and overly complicated Deemed provision is being proposed.
189	Schedule 2	cl.65B (3) & cl.65B (4)	Applicant may agree to or refuse request for additional information or material. Timeframe for when the application assessment period starts.	No	This will result in administrative issues for local governments, as internal systems generally will commence recording the period for determination under cl 75(1) upon receipt of the application, not 14 days after the applicant agrees or refuses the information request. It is unclear why this provision has been created as it could result in more applications being refused.
189	Schedule 2	cl.65B (5)	If an applicant refuses the request for more information, the local government <b>must not</b> refuse to determine the application.	No	This provision must have been written by someone who has not worked in a planning department, if the additional information is not provided, a local government may have no option but to refuse the application, or place many more conditions on the development approval to ensure that the information being sought, is provided. This seems a sub-optimal outcome, given that an applicant is required to provide sufficient information to enable assessment of their development proposal. Seems counter intuitive, to provide the applicant with an option to refuse to provide the information.
190	Schedule 2	cl.66	Referral to statutory authorities, clearly stating that a Local Government <b>must</b> consider that the authority has no objections to the application if a response is not received within the the 42 day period.	Support	This change from <b>may</b> to <b>must</b> is supported, as it places the onus on the referral agencies to provide a response within the 42 day time period, rather than the current process where a Local Government has to guess that the referral agency has no objections to the proposal. This is a change that is strongly supported, to ensure that Local Government is able to process the application in a timely manner. The current instrument of delegation from the WAPC should be amended, as applications referred by the local government to a public authority for comment requires recommendations within 30 days, not 42 days.
190	Schedule 2	cl.67	Consideration of applications by Local Government	Support	This clause is supported, as it clearly states that a prohibited development cannot be granted a development approval.
193	Schedule 2	cl.68	Determination of applications	In-Part	In the instance that further information is requested under cl 65A, and then that information is referred to a public authority and the timeframe for the authority to respond is beyond the determination timeframe under cl 75, is the local government able to require information from the public authority within the determination timeframe? (i.e. a lesser timeframe specified under cl 66, but within the timeframes specified under cl75).
195	Schedule 2	cl.71 footnote	Reference to DAP refualtions 16A, the period for a DAP application is 4 years	No-unclear	Assuming that regulation 16A is going to be included in the upcoming DAP regulation changes, as this clause does not exist in the current DAP Regulations. If this is the case, shouldn't the amendments to the DAP regulations then have consequential amendments to these regulations?
197	Schedule 2	cl.77(1)	Amending or cancelling development approval	No	This clause should be amended to remove the ability for applicants to make an application to extent the period within which any development approved must be substantially commenced, where the planning framework has changed (e.g. extension of time applications for pre-Design WA multiple dwellings). Also concerned that the 4 year DAP approval timeframe, when combined wiht the current State of Emergency 2 year extension, provides a 6 year approval period.
198	Schedule 2	cl.77A	Provisions about carparking - Terms Used	In-Part	Local Governments generally support reforms that enable economic recovery and these exemptions should assist in that endeavour by reducing costs for businesses. However, an effect of these reforms will be an increased demand for parking in on-street and off-street public bays in urban centres, particularly through cumulative impacts, and reduced income streams, i.e. cash-in-lieu, to provide alternative forms of parking and transport modes for local communities. WALGA encourages the Planning Reform team to work closely with the Local Government Car Parking Reference Group through phase 2 to ensure some of the fundamental issues associated with car parking regulation through planning systems are comprehensively addressed. Some Local Governments have requested that this section be expanded to include bicycle parking and end-of-trip facilities.
198	Schedule 2	cl.77A	Provisions about carparking - Terms Used	In-Part	The definition of 'minimum on-site parking requirements' must reference provisions of a Local Planning Scheme and Local Planning Policy. The definition of 'parking space shortfall' should be amended to "means the number of bays proposed on-site that is less than the number required under the minimum on-site parking requirements under the Scheme ot relevant Local Planning Policy.'

199	Schedule 2	cl.77B	Provisions about carparking - Part does not apply to residential development	In-Part	These provisions should be clarified to include applications where the R-Codes apply in a mixed use development that would otherwise require car parking under the Scheme.
199	Schedule 2	cl.77C(1)(b)	Provisions about carparking - Exemption from minimum on-site parking requirements	In-Part	Sub-clause (1)(b) requires the local government to be satisfied that those matters in (i) and (ii) are satisfied. There should be an onus on an applicant to provide information addressing these matters as part of a development application, so that the local government can assess them. An additional part should be added requiring an applicant to provide written justification, e.g. a parking demand analysis or the like, addressing sub-clause (1)(b) where the applicant seeks local government support for a lesser number of on-site parking bays based upon this sub-clause.
199	Schedule 2	cl.77C(1)(b)(i)	Provisions about carparking - Exemption from minimum on-site parking requirements	In-Part	Street trees should refer to all trees, to capture trees on private property. Remove "street".
199	Schedule 2	cl. 77C(2)(a)	Provisions about carparking - Exemption from minimum on-site parking requirements	In-Part	This sub-clause states that sub-clause (1)(b) is an exemption – it is not an exemption, it is criteria that a local government needs to be satisfied is met. Re-word to “the development satisfies the minimum on-site parking under subclause (1)(b)”
200	Schedule 2	cl. 77D(3)(c)	Provisions about carparking - Condition requiring payment in lieu of satisfying minimum on-site parking requirement	In-Part	WALGA strongly supports provisions that allow Local Governments to collect cash-in-lieu of parking bay shortfalls. These provisions place a cost on parking provision and provide important funds to construct additional parking bays or invest in alternative transport modes. In some locations, land values will make the cash-in-lieu cost per bay debilitating for development proponents. Local Governments should be granted provision in the Regulations to modify the final cash-in-lieu amount to a lesser amount, to enable development in areas of high land value.
201	Schedule 2	cl. 77E	Provisions about carparking - Payment in lieu of parking plan	In-Part	The approval authority for the payment in lieu of a parking plan should be Local Government. Local Government understand the needs of their communities and the parking plan fits into broader integrated transport strategies. The WAPC as approval authority would add an unnecessary layer of bureaucracy and time delays.
202	Schedule 2	cl. 77F(4) and (5)	Provisions about carparking - Application of money paid in lieu of satisfying minimum on-site parking requirement	No	WALGA opposes these provisions. A ten year period does not allow enough time to raise enough capital to fund multi-storey car parking facilities. These facilities cost \$20 million plus to construct (see WALGA's Car Parking Guideline). A minimum of \$10 million is likely to be required to loan another \$10 million in finance. 10 years is highly unlikely to be sufficient time to raise adequate capital, design and construct these structures. Some flexibility is required. It was discussed during the DA Processes reference group meetings that Local Governments should be given the opportunity to extend the ten year period in particular circumstances, with the approval of the Commission. This issue could be addressed by modifying 77F(5) to include, “unless otherwise approved by the Commission”. Furthermore, it will be extremely difficult to identify and locate parties for refunding payments. These provisions sound good in theory but will fail in practice and need to be removed.
202	Schedule 2	77G	Provisions about carparking - Condition requiring shared parking arrangement	Support	Aligns with policy options outlined in the draft Local Government Car Parking Guideline.
216	Schedule 2	Part 11 cl.86	Forms referred to in this Scheme	Support	A concern that has been raised is the overlap of the application forms for development approval. Currently there are three forms, Development Application for Local Government, Development Assessment form for DAP's and a MRS Form. In some applications, to 'legally' be considered an application all three applications forms may be needed. It seems onerous to have three different forms when the intent of the Planning Reform Agenda is to streamline processes. A recent SAT case also highlighted the validity of DAP applications if only one application form was provided. The forms should be reviewed, and only one form be required to cover all three application processes.
223	Schedule 2	Part 13 cl.88	Transitional provisions	In-part	A new part 88(6) and 88(7) should be included to provide transitional provisions for local planning policies and the heritage list, when a new local planning scheme has been adopted, to ensure these instruments that were adopted under the former Scheme continue to take effect in the new Scheme.