with contributions as noted

Proposed Amendments Planning Appeals System

In accordance with its pre-election direction statement relating to planning appeals, the new WA Labour Government has introduced legislation to revamp the planning appeals system in Western Australia. State Parliament is scheduled to consider the legislation when it returns from its Winter recess.

The existing appeals system enables appeals to either the Town Planning Appeal Tribunal or the Minister for Planning. Currently, of the 700 to 800 planning appeals each year, 90% are lodged with the Minister. Under the proposed appeal system the right of appeal to the Minister will be abolished and all appeals directed to a new Town Planning Appeal Tribunal.

The new Tribunal will retain the jurisdiction of the existing Tribunal but will be expanded to include appeals against the exercise of certain enforcement powers by a local government relating to planning breaches.

Tribunal membership will consist of a president, deputy president, senior and ordinary members. While the president and deputy president are required to be legal practitioners, senior and ordinary members will be drawn from the fields of planning, architecture, engineering, surveying, environmental science, planning law, heritage, public administration and commerce and industry.

It is intended that there be two classes of appeal. Class 1 appeals will relate to development with a value of less than $250,000 or minor subdivisions (2 or 3 lots) or conditions imposed on such developments and subdivisions. Class 1 appeals are to be determined by single ordinary members of the Tribunal, except where the president directs that they be heard by a three member tribunal. Such a direction can be made where a class 1 appeal raises a complex or significant planning issue.

An appellant to a class 1 appeal will generally have a right to elect that no party to the appeal be legally represented. However, representation by an agent will still be possible. The procedure for class 1 appeals will be informal and simplified and the process more inquisitorial than adversarial.

All other appeals will be class 2 appeals and determined by three member tribunals. Class 2 appeals will be determined by formal hearing, as is the case before the present Tribunal.

Parties to both class 1 and class 2 appeals may agree that an appeal be determined solely on the basis of documents filed with the Tribunal. A limited right to have a decision reviewed by the president will exist. However, that right will relate only to directions, terminations or orders of the Tribunal which involve a question of law and which were made by the Tribunal when constituted without a legal practitioner. A right of appeal to the Supreme Court will exist but will be confined to appeals involving questions of law.

The role of the Minister with respect to appeals will be confined to two circumstances. Firstly, where an appeal before the Tribunal may be determined in a way which will have a substantial effect on the planning of an area, the Tribunal may invite submissions from the Minister or the Minister may make submissions without invitation.

Secondly, where an appeal raises an issue of State or regional importance the Minister may either call in and determine the appeal or direct the Tribunal to hear but not determine the appeal but refer it with recommendations to the Minister for determination. If the Minister proposes to call in an appeal that action must be undertaken within 14 days of the appeal being lodged with the Tribunal.

The legislation contains transitional arrangements for the determination of appeals yet to be determined. Appeals lodged after 1 July 2001 may be referred by the Minister to the new Tribunal. Appeals lodged prior to that date will be determined under the existing system.

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Environmental Protection (Abattoirs) Regulations 2001

The Environmental Protection (Abattoirs) Regulations 2001 commenced on 30 March 2001. The Regulations apply to premises with a production or design capacity of between 100 and 1000 tonnes of slaughtered animal per year.

The Regulations prescribe conditions for the construction and operation of abattoirs and create offences punishable with a maximum fine of $5000. Dust creation and waste management are the principal areas of concern. The Regulations place obligations on persons who construct and/or operate abattoirs to ensure:

- No visible dust escapes from the premises;
- Waste water is sent to a treatment facility which is properly contained and managed so as to ensure that an unreasonable odour does not escape from the abattoir;
- Solids, oils and uncontaminated stormwater do not enter the waste water treatment plant;
- Waste from bleeding areas is collected and disposed separately;
- Paunch of slaughtered animals is stored in water tight and vermin proof containers;
- Manure storage areas are impervious and surrounded by bunds;
- Deceased, but not slaughtered animals are taken to a rendering facility, a waste disposal facility or otherwise disposed of in an approved manner within 24 hours of their death; and
- Solid wastes are disposed of at a rendering, compost manufacturing or disposal facility.

Premises with a production or design capacity of over 1000 tonnes of slaughtered animal per year will remain subject to the existing *Environment Protection Act* requirements that apply to the licensing of prescribed premises.

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Proposed Carbon Rights Legislation

The Western Australian government has released a discussion paper outlining its intention to introduce carbon rights legislation. The legislation is to provide for:

- legal recognition of rights arising from carbon storing in forests, vegetation and soils resulting from changes in land use and management;
- registration of those rights through the land titles system;
- administrative procedures for accounting for carbon storage; and
- accreditation of auditors to verify carbon accounting methods and carbon storage measurements and projections.

Domestic trading in carbon rights will be possible under contract between parties. Ownership of carbon rights can be registered against the title of the land on which they are located. In the future Western Australia's carbon rights program may possibly be integrated with the Commonwealth's proposed carbon credits system.

Submissions in relation to the proposed legislative framework as outlined in the discussion paper prepared by WA's Carbon Rights Taskforce , closed 1 August 2001. A copy of the discussion paper can be obtained at: www.environ.wa.gov.au/downloads/Carbon_Rights_in_WA/CARBON_RIGHTS_in_WA.pdf

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State Industrial Buffer – Review in Progress

The Western Australian Planning Commission's (WAPC) *Statement of Planning Policy No. 4 – State Industrial Buffer Policy* (SPP 4) was gazetted on 5 May 1997 to provide a consistent State-wide approach for the protection and long-term security of industrial zones, transport terminals (including ports), other utilities and special uses. It also provides for the safety and amenity of surrounding land uses while having regard for the rights of landowners who may be affected by residual emissions and risk. The policy sets out objectives and principles with respect to the definition and securing of buffer areas and who should pay for them.

The policy contained an express intent that it be reviewed after an initial period of operation and the Department of Planning and Infrastructure, on behalf of the Planning Commission, is undertaking a review of the performance to date of the policy with the intention of revising the policy to improve its effectiveness. A current case study to delineate and implement an appropriate buffer for the existing Fremantle port provided insight into issues relating to potentially competing interests of industries/infrastructure and surrounding land uses; identifying buffer requirements for different types of emissions; special management measures and development controls; and the implementation of the results of technical studies through planning mechanisms, in particular town planning schemes.

There appears to be resounding support for having a Statewide policy for industrial buffers and the current policy was applauded for having promoted awareness of industry needs and a framework within which local government can address these. The policy was viewed as the vehicle to ensure land use compatibility and achieve sustainable outcomes. A "triple bottom line" approach to the resolution of buffer issues – which requires an integrated approach rather than one focusing on environmental considerations alone – was advocated by some participants. Case studies were seen to provide useful benchmarks for future applications and there was considerable discussion regarding specific instances in which the policy had been applied – with varying degrees of success. There were concerns that the policy was complex and difficult to interpret, in turn making implementation problematic.

In terms of future directions, the group considered that there needs to be a change in emphasis from providing buffers *per se* (with a seemingly inherent assumption of land sterilization) to achieving land use compatibility. There is a need for strategic identification of buffer requirements and implementation of these through planning mechanisms. Closer involvement by local government in this process is fundamental to successful implementation. There is a need to enunciate circumstances when compensation applies. Addressing these issues is the challenge faced by the WA Planning Commission in reviewing its policy – a task to be undertaken under the steerage of a cross-sectoral group in close consultation with a broad range of stakeholders. Following peer review, public comment will be sought on a revised policy.

Further information on the policy review can be sought from Ms Kathy Macklin of the WA Department of Planning and Infrastructure, kathy.macklin@planning.wa.gov.au