

Submission

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Draft State Planning Policy 4.1 – Industrial Interface

Submission to the Western Australian Planning Commission

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About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia. CME is funded by its member companies who are responsible for most of the state's mineral and energy production and are major employers of the resources sector workforce in the state.

In 2016-17, the value of Western Australia's mineral and petroleum industry was \$105 billion. Iron ore is currently the state's most valuable commodity, and saw an increase in iron ore sales by almost 31 per cent on the previous financial year to value almost \$64 billion. Petroleum products (including LNG, crude oil and condensate) followed at \$19 billion, with gold third at \$11 billion. These commodities saw an increase in sales of 5 per cent 7 per cent respectively from the previous financial year.

The resources sector is a major contributor to the state and the Australian economy. The estimated value of royalties the state received from the resources sector was \$5.78 billion (Iron Ore - \$4.7 billion) which accounted for around 19 per cent of the State Government's revenue in 2016-17.

Recommendations

The interface between sensitive land uses and strategic industry and infrastructure is one of the most important yet challenging planning issues facing industry in the State of Western Australia today. Providing clear guidelines and greater certainty on these issues assists industry in planning for its future. CME considers there is scope to further refine the draft State Planning Policy 4.1 (SPP4.1) and recommends:

- A clearer definition of 'strategic industrial areas' and 'infrastructure of state significance' should be established to provide greater certainty as to what facilities require statutory buffers. At a minimum, CME recommends the definitions include:
 - Strategic industrial areas as listed by the Department of Jobs, Tourism, Science and Innovation.
 - Ports and proposed ports, as defined by the *Port Authority Act 1999* and the *Shipping and Pilotage Act 1967*.
- SPP4.1 should include a target date of two years to establish a statutory buffer for strategic industrial areas and infrastructure facilities or industries of state significance; in accordance with Clause 5.1.2 of draft SPP4.1.
- The WAPC should provide model provisions for inclusion in local planning schemes, which may comprise objectives and key provisions.
- SPP4.1 should include special considerations for ports, recognising their significant contribution to communities and the economy. Alternatively, a new state planning policy should be prepared which is specific to protecting ports from encroachment.
- Statutory buffers should be required for all Western Australian ports. For ports with an existing interface, a structure plan or improvement plan should be prepared with the long-term intention of incorporating controls into local planning schemes.
- Amend Clauses 5.2.1(f), 5.2.2(a) and 6.4(d) to include a presumption against the intensification of existing sensitive land uses, in addition to new sensitive land uses.
- Amend Clause 6.7 (Subdivision) to refer to the requirements in Clause 5.2.2 (g) of the draft policy, so that subdivision applications are subject to the same considerations as development applications.
- SPP4.1 is amended to better define what circumstances trigger assessment for applications for new sensitive land uses or intensification of existing land uses.

- The definition for precautionary principle is deleted. Instead SPP4.1 should reference the definition in the *Environmental Protection Act 1986*.
- The WAPC should consider the implications of the *43 McGregor Road* decision and if necessary, amend the legislation to give planning authorities the express ability to apply notifications on titles via conditions of development approval.
- Clause 6.9 of the draft SPP4.1 is deleted unless:
 - The WAPC incorporates a call-in power to review local planning policies which seek to deal with industrial interface issues; and/or
 - The WAPC develop a model local planning policy with clear guidance on what can and cannot be included within a local planning policy.
- The draft SPP4.1 should be subject to a review after a pre-determined period, for example two years.
- The draft SPP4.1 is amended in accordance with the recommendations in Attachment 2 to refine the language and definitions within the policy.

Furthermore, CME has identified the following recommendations on the broader planning and environmental framework, which are essential in establishing a policy framework to successfully manage issues of industrial interface:

- The Planning Regulations are modified to require development approval be obtained for all single houses situated within buffers and/or which do not comply with the draft SPP4.1.
- The WAPC, in consultation with other government agencies, prepare a more detailed set of guidelines which accompany the policy, which offer guidance on the following:
 - The types of infrastructure/industry which require statutory buffer (alternately a list of areas or infrastructure);
 - How statutory buffers should be established including technical studies which are required for a range of uses or infrastructure;
 - How buffers should be implemented into the local planning framework, with detailed guidance on the objectives and textual provisions to be included in local and region planning schemes;
 - Providing specific guidance on the reports/details required to assess a development application when the relevant separation distances are not met;
 - Standardised information and formatting for technical reports; and
 - A guide for planning authorities on how discretion would be exercised.
- The State Government should assign responsibility for providing technical advice on statutory buffers to a single agency.
- In areas requiring specific expertise and/or those where existing land use conflicts exist, the establishment of cross government taskforce (such as the Port Hedland Dust Management Taskforce) could be an alternative consideration.
- This policy is supported by an education or training program which provides planners and decision makers with a better understanding of such issues, in particular:
 - Decision makers should be required to undertake training following the policy's release to provide guidance on its intent and practical implementation.
 - WAPC should prepare a set of guidelines which provide guidance on the assessment and decision making protocols for applications which involve impacts from existing or proposed industry.

Context

For a number of years, CME's members have raised concerns regarding the encroachment and intensification of sensitive land uses into industrial areas, and increasingly prohibitive policies which hinder companies from undertaking activities essential to the nature of the industry. There is a clear need for industry and infrastructure providers to ensure the SPP4.1 and guidelines will adequately reflect the ongoing need for industry to be protected from encroachment and/or intensification of sensitive land uses.

In 2015, CME commissioned Planning Solutions to undertake an independent review of the planning framework and how it responds to the protection of industrial buffers and freight corridors. This review identified eight key shortfalls with the existing planning framework, one of which was the need to review and update SPP4.1. Therefore, CME is pleased to see the current review and release of draft SPP4.1.

The findings of the 2015 review were shared at a Planning Institute of Australia (PIA) seminar in August 2015. Since this time, CME has continued to engage with its members to keep up to date with industry's experiences on this important issue. Similarly, CME has met with government representatives and made submissions on various environmental and planning policies and strategies related to this matter.

In considering the content of this submission, CME has consulted extensively with its members. This consultation included a workshop on 2 February 2018 where members discussed their experiences with industrial buffers policy and offered feedback on the draft SPP4.1.

CME considers the draft SPP4.1 to be a considerable improvement to the existing policy and notes the following key improvements:

- Draft SPP4.1 considers buffers and industrial interface at the earliest stages in the planning process. This is critical to ensure addressing key interface issues is not delayed until later planning stages, where it is more challenging to resolve such issues.
- Draft SPP4.1 includes provisions for statutory buffers to be included in local and region planning schemes (for strategic industry and infrastructure facilities of state significance). This offers greater certainty for industry, infrastructure providers and private landowners alike.

General comment on draft SPP4.1 and comparisons with the current SPP4.1

CME acknowledges the draft SPP4.1 is the result of a comprehensive review and rewrite of the existing provisions of SPP4.1. In general, the draft SPP4.1 provides greater clarity on the application of the policy provisions and the desired outcomes. The layout and structure of the draft SPP4.1 is considered more legible and easy to understand.

The draft SPP4.1 also consolidates and simplifies the requirements for statutory buffers while removing non-planning mechanisms which form part of the current SPP4.1. In doing so, it clarifies the primary means by which buffers to industry and infrastructure should be addressed are through planning controls.

In CME's review of the planning framework in 2015, it was identified the most prominent shortfall in the current planning framework was the disconnectedness between strategic planning objectives identified in the State Planning Strategy and the implementation of these objectives into local planning schemes and other statutory planning instruments. A vast number of local planning schemes remain silent on the issue of protecting industry from encroachment and/or are devoid of statutory buffers for strategic industrial facilities. It is therefore pleasing to note the draft SPP4.1 either requires or encourages local and region

planning schemes to incorporate statutory buffers for strategic industrial areas and infrastructure of state significance.

CME is also pleased to note the draft SPP4.1 provides improved guidance on the considerations which are to be made through the various stages of planning ranging from regional and sub-regional strategies, to local planning strategies and schemes, structure plans, development applications and subdivision applications.

Transport Corridors

CME's recent submission to the WAPC on Draft State Planning Policy 5.4 called for local planning schemes to identify and protect freight corridors from encroachment. CME considers the protection of transport corridors (such as railways which service ports, industrial areas and other facilities) is equally important as protecting the node (i.e. the industrial area or infrastructure itself). CME encourages the WAPC to ensure both the nodes and corridors are considered equally. Whilst CME has no objection to two separate planning policies, the two issues should be considered together when implementing protection in local and region planning schemes.

Key Issues and Recommended Modifications on Draft SPP4.1

CME considers there are further improvements which can be made so local planning schemes (and other statutory planning instruments) directly respond to the objectives of the State Planning Strategy to protect key industry and infrastructure from encroachment and to provide greater certainty for industry, infrastructure providers and landowners.

Nine issues have been identified with the draft SPP 4.1, along with recommended solutions to these issues. These are detailed in the following sections.

To support these recommendations, a desktop review of the Queensland planning framework has been undertaken to compare policy content with a focus on ports. Queensland has recently undertaken a major reform of its planning legislation with a new Act being introduced in 2016. The review is summarised in **Attachment 1**.

Issue 1: Relationship with Region and Local Planning Schemes

Both region and local planning schemes have effect as if they were enacted, meaning unlike policies and other instruments, schemes have legislative effect. As such, planning schemes take precedence and have greater weight than policy instruments. For statutory buffers to have the proper force and effect, they must be implemented into region or local planning schemes or alternatively via Improvement Schemes.

CME supports the intent of clause 5.1.1 of draft SPP4.1 which supports statutory buffers being established in planning schemes. This would ensure the intent of draft SPP4.1 is implemented at a local or regional level and with the force and effect of a scheme, rather than a policy.

Whilst the draft SPP4.1 supports the use of buffers in planning schemes, there is no obligation or incentive for local governments or the WAPC to update their planning schemes accordingly. Therefore, the policy would only have limited effect until the WAPC and/or local governments either amend their planning schemes or prepare new planning schemes.

The approach of setting a target date in state planning policy was undertaken in the latest revision to *State Planning Policy 4.2 – Activity Centres for Perth and Peel* (SPP 4.2). Clause 6.4.1(2) of SPP4.2 required activity centre structure plans to be prepared and adopted for 'strategic metropolitan centres' within three years of the policy being finalised. This approach appears to have been moderately successful with seven of the ten strategic metropolitan centres having had activity centre structure plans (now known as activity centre plans) prepared and adopted, either at Council level or WAPC level.

A similar approach should be considered for strategic industrial areas and industrial or infrastructure sites of state significance. In such cases, it is anticipated the infrastructure provider, industrial operator or industry council would liaise extensively with the planning authorities to establish a buffer.

It is acknowledged further consideration would be required to inform which areas require a statutory buffer to be established within the target timeframe. At present, the definitions for strategic industrial areas and infrastructure of state significance are overly broad. It is further noted some areas may be well advanced in buffer definition whilst others may have undertaken little to no work to establish a buffer. In this respect, CME would be pleased to assist the WAPC in determining suitable criteria for which areas require a buffer, as a matter of state urgency.

CME recommends:

- **A clearer definition of ‘strategic industrial areas’ and ‘infrastructure of state significance’ should be established to provide greater certainty as to what facilities require statutory buffers. At a minimum, CME recommends the definitions include:**
 - **Strategic industrial areas as listed by the Department of Jobs, Tourism, Science and Innovation.**
 - **Ports and proposed ports, as defined by the *Port Authority Act 1999* and the *Shipping and Pilotage Act 1967*.**
- **SPP4.1 should include a target date of two years to establish a statutory buffer for strategic industrial areas and infrastructure facilities or industries of state significance; in accordance with Clause 5.1.2 of draft SPP4.1.**
- **The WAPC should provide model provisions for inclusion in local planning schemes, which may comprise objectives and key provisions.**

Issue 2: Planning for Ports

Western Australian ports make significant contributions to both the state and national economy, but are perennially at risk of encroachment from sensitive land uses. With respect to the importance of protecting ports from encroachment, Infrastructure Australia’s National Ports Strategy states:

“Land planning and corridor preservation need to balance the freight requirement against community and traffic amenity. Encroachment is seen by the freight community as among the most important issues the sector faces.”

It is critically important to ensure the planning framework recognises ports and makes provision or allowances for protection measures to be implemented in a timely manner.

The current planning framework for port protection is *ad hoc*. Ports may be protected from encroachment via one or a combination of local planning schemes, region planning schemes, improvement schemes or structure plans. Others will have no dedicated provisions within the planning framework and simply rely on discretion to be exercised via subdivision and development applications.

Draft SPP4.1 makes specific reference to ports on only two occasions. In both instances, these merely identify ports as types of infrastructure requiring protection. The draft SPP4.1 does not go far enough to recognise the importance of ports and does not include any special considerations for ports other than identifying that buffers may comprise of transitional areas providing different levels of development controls.

There is no other policy or strategy at state level which specifically guides planning for existing or proposed port facilities. Other states such as Queensland, New South Wales and Victoria

have specific policies or strategies at state level to guide planning for port facilities and infrastructure.

By comparison, the Perth Airport and the Jandakot Airport each have a state planning policy which specifically applies to their facilities with mapped buffers/separation distances. Port activities can have a similar impact on their buffer areas through noise, emissions, odour and other components which may have an impact on the amenity of nearby sensitive land uses. Whilst CME considers it is unrealistic for a state planning policy to be prepared for each port, it is considered appropriate a single SPP, or section of SPP 4.1 could be dedicated to ports to outline high level processes and guidelines which would be taken at a local or regional level. This would then allow a more consistent approach to port development, and more importantly for proposals for sensitive land uses in proximity to ports.

CME considers it essential ports and their transport corridors, are individually protected by:

- local planning schemes (where impacts are limited to one local government area); or
- region planning schemes (where the port or transport corridor impacts more than one local government area); or
- improvement schemes (in special circumstances).

The protection of ports can only occur through carefully considered and researched buffers. However, as identified in Issue 1 above, there is no trigger or incentive for planning schemes to be prepared or updated accordingly. This means current planning regimes, which overwhelmingly lack protection for ports, can continue for an extensive period of time.

To address this issue, CME recommends:

- **SPP4.1 should include special considerations for ports recognising their significant contribution to communities and the economy. Alternatively, a new state planning policy should be prepared which is specific to protecting ports from encroachment.**
- **Statutory buffers should be required for all Western Australian ports. For ports with an existing interface, a structure plan or improvement plan should be prepared with the long-term intention of incorporating controls into local planning schemes.**

Please refer to the Queensland case study (see **Attachment 1**) for further commentary on planning for ports.

Issue 3: Intensification of sensitive land uses in areas impacted by industry or infrastructure

In a number of instances, draft SPP4.1 refers to 'new sensitive land uses' not being introduced within areas impacted by existing or proposed industrial land. However, the draft policy is silent on the intensification of existing sensitive land uses with the exception of references to the precautionary principle. There does not appear to be a clear presumption against increasing densities within areas which are or may be impacted by current or future industry or infrastructure.

For example, Clause 5.2.1(f) states:

"To ensure a compatible interface is retained, there should be a presumption against zoning proposals that would allow the development of new sensitive land uses on Rural zoned land adjacent to General Industry zones."

This clause does not include a presumption against intensifying the current zoning or density of sensitive land uses adjacent to industrial land – for example, up-coding residential

properties to a higher density. This could potentially lead to a higher density and hence an increased population being subjected to the impacts of industry or infrastructure.

Similarly, Clause 6.7 of the draft SPP 4.1 stipulates subdivision should seek to ‘manage and avoid land use conflict through appropriate subdivision design’. CME does not support the proposed wording as subdivision design and management measures should be secondary to risk prevention.

Where subdivision design is the only means to mitigate the impacts of industry or infrastructure, there is a need for further guidance on best practice subdivision design. This would appropriately be addressed via *Liveable Neighbourhoods* which is understood to be under review as part of the WAPC’s Design WA stage two initiative¹.

To address this issue, CME recommends the following:

- **Amend Clauses 5.2.1(f), 5.2.2(a) and 6.4(d) to include a presumption against the intensification of existing sensitive land uses, in addition to new sensitive land uses.**
- **Amend Clause 6.7 (Subdivision) to refer to the requirements in Clause 5.2.2 (g) of the draft policy, so that subdivision applications are subject to the same considerations as development applications.**

Issue 4: Trigger for SPP4.1 assessment for sensitive land uses

The draft SPP4.1 requires new sensitive land uses should not be considered on land impacted by existing or proposed industrial land uses and/or infrastructure facilities, but does not define when the policy applies in the absence of a statutory buffer (i.e. there is no special control area in a planning scheme).

As the majority of strategic industrial areas and infrastructure facilities do not currently have statutory buffers, this leaves a significant gap in the draft SPP4.1 because it is unclear when an application involving a sensitive land use would trigger assessment under SPP4.1 (including scheme amendments, structure plans, development applications and subdivision applications).

CME recommends draft SPP4.1 is amended to better define what circumstances trigger assessment for applications for new sensitive land uses or intensification of existing sensitive land uses.

Whilst recognising the Environmental Protection Authority (EPA) Guidance Statement No. 3 offers only generic separation distances and is an outdated document, it is perhaps the only practical resource which could be used as a trigger for assessment, until such time as a statutory buffer is in place. In this respect, it would be prudent for local governments and/or the WAPC to map key infrastructure and industrial facilities within their local government areas so the requirements are clear to anyone lodging or contemplating a subdivision or development application.

Issue 5: The Precautionary Principle

CME supports the use of a precautionary approach in assessing planning proposals which have the potential to cause impacts on sensitive land uses. This is reflective of various cases determined by the State Administrative Tribunal (SAT) and other courts where the lack of scientific certainty should cause measures to be taken to avert an anticipated threat of environmental damage. This also reflects the general principles for land use planning and

¹ Liveable Neighbourhoods: <https://www.planning.wa.gov.au/Liveable-neighbourhoods.aspx>

development – ‘Environment’ as set out in section 5 of the WAPC’s State Planning Policy 1 – State Planning Framework (November 2017):

- iv) *adopting a risk-management approach which aims to avoid or minimise environmental degradation and hazards*

Notwithstanding the above, CME does not support the definition under draft SPP4.1. The precautionary principle is already defined under environmental legislation, namely the *Environmental Protection Act 1986* (EP Act), which defines the precautionary principle as follows:

“Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, decisions should be guided by —

- (a) careful evaluation to avoid, where practicable, serious or irreversible damage to the environment; and
- (b) an assessment of the risk-weighted consequences of various options.”²

Draft SPP4.1 and the general application of industrial interface requirements relies on advice from environmental agencies including the EPA and the Department of Water and Environmental Regulation (DWER). As these agencies operate under the EP Act, the inclusion of an alternative definition has the potential to cause confusion if the environmental agencies provide advice on one definition and the planning authority considers a different definition.

CME recommends the definition for precautionary principle is deleted. Instead, the SPP4.1 should reference the EP Act.

Issue 6: Notifications on Title

A recent decision of the SAT³ cast doubt on the ability to impose a section 70A of the *Transfer of Land Act 1983* notification on title as a condition of development approval.

It is recommended the WAPC should consider the implications of the 43 McGregor Road decision and if necessary, amend the legislation to expressly give planning authorities the ability to apply notifications on titles via conditions of development approval.

Notwithstanding, CME’s position is that notifications should only be used as an instrument to notify current or future landowners of the presence of an industry or infrastructure after all pertinent avoidance and mitigation measures have been considered. Title notifications should be seen as an added layer of notification but should not be used as an alternative to avoidance or mitigation measures.

Issue 7: Local Planning Policies

Local planning policies (LPPs) can provide an effective mechanism to assist in clarifying interpretations and accounting for local circumstances. However, LPPs do not usually require approval of the WAPC and the draft SPP4.1 contains limited guidance as to what LPPs can and cannot address. Addressing buffer issues within LPPs has the potential to create

² Section 4A, EP Act.

³ *43 McGregor Road Pty Ltd and Presiding Member of the Metro Central Joint Development Assessment Panel [2017] WASAT 127 at [69-73]*

inconsistencies across local government jurisdictions, potentially making the issue more complex than is presently the case.

Whilst CME considers LPPs could play an appropriate role in industrial interface planning, such circumstances should be controlled and should be accompanied by guidance from the WAPC.

CME recommends clause 6.9 of draft SPP4.1 is deleted unless:

- **The WAPC incorporates a call-in power to review local planning policies which seek to deal with industrial interface issues; and/or**
- **The WAPC develop a model local planning policy with clear guidance on what can and cannot be included within a local planning policy.**

Issue 8: Review Period

With a reasonably substantial change to the current SPP4.1, CME considers it is critical for the WAPC to monitor the effectiveness of this policy.

CME recommends the draft SPP4.1 should be subject to a review after a pre-determined period (for example, two years). This will offer the ability for the policy to be 'tested' and to provide for modifications to be made to respond to any identified shortcomings of SPP4.1 post-implementation.

Issue 9: Modifications to language and definitions to provide improved clarity

With respect to the language and clarity of draft SPP4.1, CME considers it is an improvement to the existing policy. However, there are opportunities to provide better clarity on some provisions and definitions.

CME recommends the draft SPP4.1 is amended in accordance with the recommendations in Attachment 2 to refine the language and definitions within the policy.

Comments and Recommendations on the Broader Application of SPP4.1

The following comments and recommendations relate to industrial buffers and interface issues within the broader planning framework. It is acknowledged the following recommendations may not be addressed via SPP4.1. However, CME strongly encourages the WAPC and other government departments to continue the review of associated legislation, regulations and policy associated with industrial interface, until a more certain and clear framework can be established.

Issue 10: Single House Exemptions

Currently, clause 61(1)(c) of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (Planning Regulations) exempts the erection of a single house on a lot (where capable of approval) from requiring development approval under a local planning scheme, unless a Special Control Area otherwise requires that a single house is not an exempt use.

The exemption of a single house from complying with SPP4.1 is a significant concern, particularly in circumstances where a Special Control Area is yet to be prepared or is not required. Single houses are a sensitive land use and should require assessment where they are or may be subject to amenity impacts from existing or proposed industry or infrastructure.

CME recommends the Planning Regulations are modified to require development approval be obtained for all single houses situated within buffers and/or which do not comply with the draft SPP4.1.

Issue 11: Provide further guidance on establishing statutory buffers

The guidelines in the draft SPP4.1 are a good starting point in offering local governments guidance on zoning controls where a buffer has been established. However, further guidance is required to establish the buffer in the first instance.

It is acknowledged Section 3.3 of the draft SPP4.1 expressly stipulates guidance on appropriate scientific methods for determining the risk and extent of off-site impacts is not the subject of this policy. However, for this policy to be successful, it is considered the WAPC should engage with these decision-makers to incorporate better guidance within the policy, rather than defer responsibility to a host of other agencies.

Defining a buffer can be a challenging prospect, particularly given the range of scientific data required to establish a separation distance. At present, the typical approach is to utilise the Environmental Protection Authority's *Guidance Statement No.3 Separation Distances Between Industrial and Sensitive Land Uses*. However, this document is outdated and in need of review. Furthermore, the separation distances are overly generic and therefore may not be suitable in establishing a statutory buffer as it would not be robust or certain.

On the issue of scientific assessments, DWER's *Guidance Statement – Land Use Planning* (February 2017) indicates there may be some doubt as to the validity of technical assessments for buffers. It states:

“DER considers that technical studies of air pollutants contribute to inform planning decision-making but should not be considered as the sole determining factor for planning decision-making. DER notes that there can be significant uncertainty in the interpretation of scientific assessments.”

In order for statutory buffers implemented under SPP4.1 to be accepted by the community, there needs to be confidence in the process and outcomes of technical investigations. In considering technical investigations, where there is any doubt as to the extent of off-site impacts, a precautionary approach can and should be taken to ensure any statutory buffer is in the public interest and is defensible.

CME recommends the WAPC, in consultation with other government agencies, prepare a more detailed set of guidelines which accompany the policy, providing guidance on the following:

- **The types of infrastructure / industry which require a statutory buffer (alternatively, a list of areas or facilities);**
- **How statutory buffers should be established including the technical studies which are required for a range of uses or facilities;**
- **How buffers should be implemented into the local planning framework, with detailed guidance on the objectives and textual provisions to be included in local and region planning schemes;**
- **Providing specific guidance on the reports/details required to assess a development application when the relevant separation distances are not met;**
- **Standardised information and formatting for technical reports; and**
- **A guide for planning authorities on how discretion would be exercised.**

Notwithstanding the above recommendations, CME does not wish for the WAPC to delay the implementation of SPP4.1 to prepare a detailed set of guidelines. Rather, this is identified as a matter for future consideration.

It is further noted there are some particularly challenging situations in Western Australia where the planning framework may only provide a partial resolution. From time to time, the State Government will be called on to introduce legislation to address significant existing land use conflict issues. This may include the State Government administering voluntary or compulsory acquisition schemes.

Issue 12: Clarify technical advice from government agencies

The draft SPP4.1 proposes planning authorities seek technical advice from a number of different agencies on the nature and extent of potential off-site impacts and the acceptability of any supporting technical studies. These include:

- Department of Water and Environmental Regulation (DWER);
- Environmental Protection Authority (EPA);
- Department of Mines, Industry Regulation and Safety (DMIRS);
- Department of Jobs, Tourism, Science and Industry (JTSI); and
- Department of Health.

CME is concerned the current application of the broader environmental and planning protection framework is placing industry at risk of encroachment by sensitive land uses, and from the imposition of onerous conditions that do not recognise pre-existing land use conflict or inadequate protective buffers resulting from historic planning decisions.

The sheer number of agencies involved in providing advice on industrial interface or separation distances increases the potential for delays in applications and inconsistent advice. Furthermore, the deferral of responsibilities from one agency to another has been a key issue for CME members for some time.

Case Study – Proposed Dwelling, Baldivis

In May 2006, the Minister for the Environment considered an appeal against the EPA's decision not to assess a proposed residential dwelling proposed within the generic separation distance of a livestock holding facility in Baldivis.

The dwelling was proposed to be located less than 1,000m from the livestock holding facility. The EPA's generic separation distance for the relevant holding facility was 1,000m – 2,000m.

The EPA considered that as the proposal dwelling itself did not have a significant impact on the environment, an assessment was not required. This decision was appealed under Section 100(1)(a) of the EP Act and the EPA's decision was upheld by the Minister for the Environment. The appeal decision summary stated:

“While it was considered that the proposal raised issues regarding potential land use conflict, the proposed residential dwelling itself will not have a significant impact on the environment. As such, the EPA considered that the proposal itself does not warrant a formal environmental assessment.”

In relation to the issue of land use conflict, the decision summary noted:

“...the Minister agreed that it is appropriate that the EPA advise the City of Rockingham that careful consideration should be given to approving a residential dwelling in this location given the potential for adverse impacts from the nearby sheep holding facility and consideration be given to placing it elsewhere on the lot.”

Despite the EPA being the agency responsible for advice on separation distances, the interpretation and decision making regarding the appropriate separation distance was deferred to the local government.

This case study would appear to be typical of reported experiences from CME members that decisions regarding separation distances are often left to the planning authority with minimal guidance. However, planning authorities typically have limited in-house capacity and expertise to interpret such issues and fully consider the environmental implications of approval of sensitive land uses within buffer/separation areas.

CME recommends the State Government should assign the responsibility for providing technical advice on statutory buffers to a single agency.

In areas requiring specific expertise and/or those where existing land use conflicts exist, the establishment of a cross government taskforce (such as the Port Hedland Dust Taskforce) could be an alternative consideration.

CME recognises that this issue is not necessarily resolved through SPP4.1 itself, however CME requests these comments and recommendations are noted, recorded and used to inform future governmental policy.

Issue 13: Improve education and training for planners, decision makers and industry.

CME members reported that one of the key issues in dealing with industrial buffer policy is the lack of awareness about the issues and the importance of protecting industry and infrastructure from encroachment. These factors are not well understood and there are limited resources or opportunities to improve one's understanding of the key issues.

CME recommends this policy is supported by an education or training program which provides planners and decision makers with a better understanding of such issues. In particular:

- **Decision makers should be required to undertake training following the policy’s release to provide guidance on its intent and practical implementation.**
- **WAPC should prepare a set of guidelines which provide guidance on the assessment and decision-making protocols for applications which involve impacts from existing or proposed industry.**

Working Group Representation

CME respectfully requests the opportunity to participate as a member of the SPP4.1 working group moving forward.

CME is well positioned to provide input as an industry representative. CME is the peak resources sector representative body in Western Australia with member companies generating 90 per cent of the value of all mineral and energy production and employing 80 per cent of the resources sector workforce in the state. Furthermore, CME has shown a keen and genuine interest in this matter having commissioned an independent review on industrial buffers and freight corridors.


Conclusion

CME welcomes the opportunity to comment on the draft SPP4.1 and considers the draft to be an improvement to the existing SPP4.1. CME therefore supports the intent of the policy, subject to the modifications outlined above.

There is a clear need to remove the disconnectedness between the state planning policy and its implementation at the local level. The recognition of statutory buffers in local and region planning schemes is the most effective way to prohibit or control land uses and provide statutory provisions for mitigation of impacts and the draft SPP4.1 appropriately encourages this. However, CME recommends further measures are put in place to ensure the necessary statutory protection is implemented at the local level in a timely manner.

CME would welcome the opportunity to discuss our submission with the Department of Planning, Lands and Heritage staff and/or the WAPC.

If you have any further queries regarding the above matters, please contact Caroline Cherry on (08) 9220 8514 or c.cherry@cmewa.com.

Authorised by	Position	Date	Signed
Reg Howard-Smith	Chief Executive	20/02/2018	
Document reference	180208-INF-SPP4.1.Industrial Interface Submission		

Appendices

Appendix I – Queensland Ports Case Study

This case study offers an overview of the Queensland State Planning Policy, particularly with respect to recommendations no. 1, 2, 11 and 12 in this submission.

The Queensland Planning System has been in the midst of major planning reform, including major changes to the interaction of legislation and subsidiary planning policies. Specifically, the *Planning Act 2016*, which came into effect mid-2017, has replaced the *Sustainable Planning Act 2009* with consolidated legislation which contain development assessment benchmarks and mechanisms.

Similar to Western Australia, the Queensland government gives guidance to regional and local planning via State Planning Policy. In this respect, Queensland provides a single State Planning Policy (**Queensland SPP**) which addresses a number of different planning issues and topics.

The Queensland SPP is divided into five key themes, as identified in **Figure 1** below. The themes which relate to the issue of industrial interface include ‘Safety and Resilience to Hazards’ and ‘Infrastructure’. Within the infrastructure theme is a chapter entitled ‘Strategic Ports’ which forms the basis of this case study. This directly relates to our recommendations in issue no. 2 above which advocates for ports to have dedicated and bespoke provisions which emphasise their role in the state and national economy and the critical importance of protecting ports from encroachment. We have undertaken a desktop review and comparison of this policy and how it compares to draft SPP4.1.

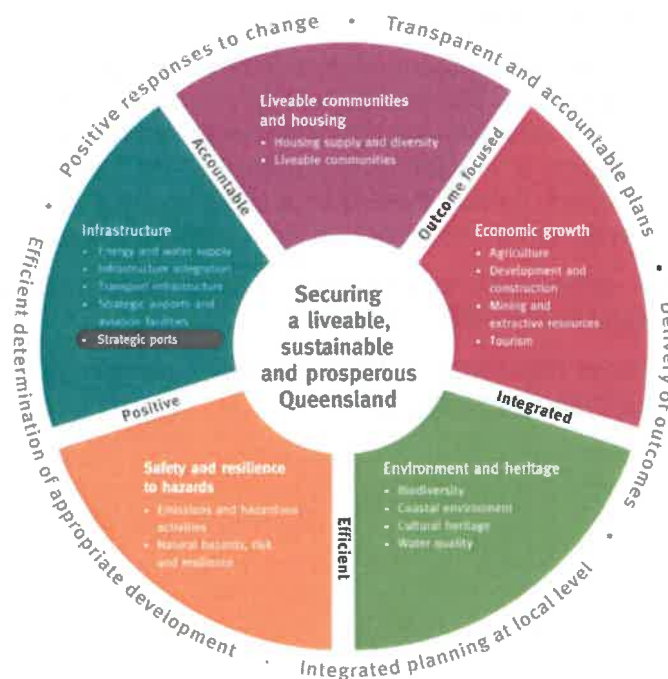


Figure 1 – Queensland State Planning Policy

Source: Department of Infrastructure, Local Government and Planning

Planning for Ports

The Strategic Ports chapter of the Queensland SPP encourages co-location of port and other land uses where there is an economic benefit, stating:

“Local governments should promote the use of land surrounding strategic ports for development that gains economic advantage from being near a strategic port, or supports the role of the strategic port as a critical freight and logistics hub.”

In addition to the above, the Queensland SPP also protects ports in a similar manner to draft SPP4.1 by avoiding and controlling land uses adversely affect the safety, viability or efficiency of current or future port operations.

Translating State Planning Policy into Local Planning Schemes

The Queensland State Planning Policy provides detailed guidance on how to translate the state objectives into local planning schemes. Under each key objective, the Queensland SPP contains a section entitled ‘how to appropriately integrate the policy’. These sections of the policy offer more detailed guidance to local governments on the content of local planning schemes including instructions and model provisions and objectives.

The Queensland *State Interest Guideline – Strategic Ports* provides further policy guidance on port planning (it provides more detailed guidance than the State Planning Policy). A notable inclusion in this document is the inclusion of non-mandatory *Model Port Protection Code* which provides suggested provisions which may be adopted or modified by the local authority and adopted within the scheme as seen appropriate. WA’s *Planning and Development (Local Planning Schemes) Regulations 2015* have the potential to play a similar role via the Model Provisions.

By contrast, there is currently limited guidance in the Western Australian framework as to what provisions local planning schemes should contain. A set of model guidelines which accompany SPP4.1 would be an appropriate addition to guide the WAPC and local governments on the types of provisions which are appropriate in local planning schemes, offering better opportunities for consistency in the manner which SPP4.1 is implemented.

Modelling Buffers

The Queensland Government is currently developing standard methodology for modelling of the area of land affected by environmental emissions of port operations. A modelling approach is an appropriate approach for calculating buffer areas, considering the variation in the scale and range of activities undertaken by ports. It is intended that the calculated buffer area would then be used as an overlay⁴ for inclusion in the local planning scheme.

In theory, CME considers this approach has merit and encouraging the Western Australian State Government to develop its own methodology for establishing buffers.

⁴ An overlay is equivalent to a Special Control Area in the Western Australian Planning Framework – an additional control above the zoning of the land.

Appendix II – Detailed Recommendations on Draft SPP4.1

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>1 CITATION</p>	-	
<p>This is a State Planning Policy prepared under Part 3 of the Planning and Development Act 2005. This policy may be cited as State Planning Policy 4.1 – Industrial Interface.</p>	-	
<p>The purpose of this policy is to protect industry and infrastructure facilities from the encroachment of incompatible land uses and ensure that planning decisions consider the locational constraints of these land uses, the significant investments they represent and their current and future benefits and costs to the community when considering the most appropriate land uses for the surrounding land. The policy also seeks to prevent land use conflict between industry/infrastructure facilities and sensitive land uses.</p>	<p>The purpose of the State Industrial Buffer Policy is 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 will also provide for the safety and amenity of surrounding land uses while having regard to the rights of landowners who may be affected by residual emissions and risk.</p>	
-	<p>The background information draws a number of conclusions which are pertinent to a State Industrial Buffer Policy. These are based on an assessment of the need for buffer areas, an explanation of current practices in WA and elsewhere and a discussion of equity and compensation issues. The policy establishes objectives and principles and how the principles should be applied to define and secure buffer areas and who should pay for them. It is intended that the Western Australian Planning Commission (WAPC) will, after the policy has been in operation for a period of two full years, undertake a review of its effectiveness, and if necessary amend the Policy.</p>	<p>CME recommends the proposed SPP4.1 is subject to a review after a predetermined period (for example, 2 years) to provide for modifications to be made to respond to any identified shortcomings of SPP4.1 post-approval.</p>

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>3 BACKGROUND</p> <p>Industry and infrastructure facilities are critical to local, regional, State and national economies and are significant employment generators. These activities can generate air, noise, odour and other emissions and safety risks, which, if poorly planned and managed, may negatively impact the health and amenity of people.</p>	<p>Industry and infrastructure by their very nature may generate a range of emissions of pollutants including noise, dust, gas, odour, fumes, lighting overspill as well as risk levels which may not be compatible with other land uses. As a result, most industries and infrastructure as well as some other uses need to be separated from residential areas and other sensitive uses with a buffer area (refer to definitions in Appendix 1) to ensure that amenity (environmental quality, health and safety standards) is maintained at acceptable levels.</p> <p>...</p> <p>However, other industries such as hazardous, noxious and resource processing as well as infrastructure such as power generation facilities, effluent treatment plants and ports (including associated road/rail/ pipeline transport routes into these areas) and some specific uses such as motor racing often require extensive buffer areas which may extend off-site on to surrounding properties. Often these industries and infrastructure are a vital component of the economy of Western Australia and are essential for the quality of life that we enjoy. For example, the resource processing sector in 1992-1993 directly employed 6.3 per cent of the State's workforce and contributed 31.8 per cent of the gross state product—equivalent to \$11 billion.</p>	

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>In line with the Environmental Protection Act 1986, the operators of an emitting industry must take all reasonable and practicable measures to prevent or minimise emissions from their premises. While state of the art facilities, best practice processes and modern pollution control equipment should be employed, emissions beyond the boundary of an industrial land use or infrastructure facility's activities are not always avoidable. Furthermore, unintended emissions as a result of equipment failure or other causes sometimes occur. It is therefore necessary to strategically plan and manage the interface between industry/infrastructure facilities and sensitive land uses to prevent adverse impacts on existing and future residents and other sensitive land uses.</p>	<p>Even with good pollution control technology and practice, these industries often have residual emissions of pollutants which cannot practicably be avoided (i.e. gas, odour, dust, noise). In addition, there may be unavoidable risk of injury or death from accidents associated with industrial activity or the storage of dangerous goods.</p>	
<p>This policy provides the foundation for land use planning to prevent land use conflict associated with industry and infrastructure facilities in Western Australia. Importantly, this policy, in conjunction with similar State Planning Policies, builds upon the following key principles outlined in State Planning Policy 1 – State Planning Framework Policy (SPP1):</p> <ul style="list-style-type: none"> (a) preventing environmental problems which might arise as a result of siting incompatible land uses close together; (b) avoiding land use conflicts by separating sensitive and incompatible uses from industry and other economic activities with off-site impacts; (c) protecting key infrastructure, including ports, airports, roads, railways and service corridors, from inappropriate land use and development. 	<p>-</p>	

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p><i>This policy also aligns with the State Planning Strategy 2050 which seeks to identify and secure appropriate buffers to ensure air, dust, noise and odour emissions of industry do not impact on human health, amenity and wellbeing and to protect key strategic sites for industry and infrastructure facilities. The State Planning Strategy 2050 identifies Strategic Industrial Areas as areas of significant economic and strategic importance for the State that require suitable and appropriate integration with surrounding compatible land uses and buffer areas to ensure long-term sustainability.</i></p>	<p>-</p>	
<p><i>The intention of this policy is to prevent land use conflict at higher levels of the planning framework, including planning schemes and strategic planning documents. Consideration of land use conflict should not be deferred solely to the subdivision and/or development planning stages, where mitigation options are more limited and decisions may not adequately consider the protection of State and/or regionally significant industries, and infrastructure facilities.</i></p>	<p>-</p>	

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>3.1 Where this policy applies</p> <p><i>This policy applies to planning decision-making for existing and proposed:</i></p> <ul style="list-style-type: none"> (a) industrial zones in region or local planning schemes; (b) industrial land uses, including land uses that may be permitted on land that is not zoned for industrial purposes; (c) infrastructure facilities; and (d) land that may be impacted by existing and proposed industrial land uses and/or infrastructure facilities. <p><i>This includes land impacted by industrial or related activity exempt from planning approval, such as mining operations.</i></p>	<p>The policy applies to all industry infrastructure and special use categories where on-site and off-site buffer areas are required. It also has regard to associated road/rail/pipeline transport routes servicing these facilities and airports.</p> <p>This policy addresses the buffer requirements of the following industrial categories (existing and new industry)—</p> <ul style="list-style-type: none"> • resource processing industry; • general industry; • hazardous industry; • noxious industry; • extractive industry; • rural industry; • light industry; • service industry; and • technology parks. <p>The policy also addresses the buffer requirements of major infrastructure (existing and new infrastructure) including—</p> <ul style="list-style-type: none"> • ports; • major freight terminals; • waste water treatment plants; • water treatment plants; • power generation facilities; • power distribution terminals and substations; • solid waste disposal sites; • airports; and • gas/petroleum pipelines <p>Also included are those other special uses that may require a buffer area, such as major sporting facilities like speedway racing, football and soccer stadia.</p>	

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>3.2 Policy exemptions</p> <p><i>This policy does not apply to land use conflict associated with the impacts generated by the following, which are specifically addressed in separate planning policies and guidance documents:</i></p> <ul style="list-style-type: none"> (a) rural land uses, including land zoned industry – primary production, or rural; (b) the extraction of basic raw materials; (c) infrastructure corridors such as road and rail; (d) telecommunications infrastructure; and (e) aircraft noise. <p><i>The provisions of this policy do not apply retrospectively to address or remove existing land use conflicts where an existing sensitive land use is impacted by the operations of an existing approved industry and/or infrastructure facility.</i></p>	<p>-</p>	<p>Currently, under clause 61(1)(c) of Schedule 2 of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> the erection of a single house on a lot (where capable of approval) is exempt from requiring development approval under a local planning scheme, unless a Special Control Area otherwise requires that a single house is not an exempt use.</p> <p>The exemption of a single house from complying with SPP4.1 is a significant omission, particularly in circumstances where a Special Control Area is yet to be prepared. It is recommended the Regulations are modified to require that development approval is required to be obtained for all single houses that do not comply with SPP4.1.</p>

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>3.3 When this policy should be applied</p> <p>This policy is to be applied to planning decision-making for:</p> <ul style="list-style-type: none"> (a) The preparation or assessment of planning instruments, including region schemes, improvement schemes, regional strategies or frameworks, sub-regional strategies, local planning strategies and schemes and structure plans, and to any amendments to these instruments, which include industrial land uses or infrastructure facilities or land that may be impacted by such proposals; (b) Subdivision applications for land zoned or otherwise for industrial land uses or infrastructure facilities or land that may be impacted by these land uses; and (c) Development applications for industrial land uses, and infrastructure facilities, or sensitive land uses that may be adversely impacted by existing industrial land uses and infrastructure facilities. 	<p>Section 5AA of the Town Planning and Development Act outlines the criteria for the preparation of a Statement of Planning Policy, and sets down the role for local government as—</p> <p>7 Preparation of schemes</p> <p>(5) Every local authority in preparing or amending a town planning scheme</p> <p>(a) shall have due regard to any approved statement of planning policy prepared under section 5AA which affects its district;</p> <p>This means that whenever a local government amends or reviews a scheme or prepares a new district scheme it must pay due regard to this statement of planning policy. Obviously the WA Planning Commission will be aware of the inclusion or otherwise of buffer areas in new schemes, and will assess them accordingly.</p> <p>...</p> <p>Once a buffer area is defined and accepted by the Western Australian Planning Commission, the local government or the Western Australian Planning Commission will incorporate the buffer within any statutory plans, strategic plans or policies affecting the subject land.</p> <p>Buffer areas should be incorporated into strategic plans and regional and/or local government town planning schemes through appropriate land use designations, zoning and development controls. Where there is potential for land use conflicts to occur, planning authorities may also prepare area-specific policies or strategies to provide strategic land use, subdivision and development control guidance for town planning schemes. Thus, in a rural zone a scheme text could specifically deal with further subdivision or residential development within the buffer area.</p>	

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>Guidance on appropriate scientific methods for determining the risk and extent of off-site impacts from industrial land uses and infrastructure facilities is not the subject of this policy. Planning decision-makers should seek advice from the relevant government agency, as outlined below in this policy, in relation to the appropriateness/acceptability of technical studies provided by proponents in support of planning proposals.</p>	<p>The Department of Environmental Protection is in the course of preparing a Generic Industrial Buffer Distance Review, which will form the primary guide to the need for buffers, along with appendices to this Policy.</p>	<p>Refer to below comments regarding seeking technical advice from the Department of Water and Environmental Regulation Authority.</p>
<p>3.4 Relationship of this policy to environmental, health and safety regulations and guidelines</p>		
<p>Various regulations and guidelines complement and overlap with the planning system, and some proposals require approvals by other decision makers. Proponents should seek appropriate professional advice in this regard. This section outlines factors and approvals related to proposals for industry and infrastructure facilities that may require consideration in planning decision-making. However, compliance with other legislation should not be interpreted as approval by the WAPC under the Planning and Development Act 2005.</p>	<p>-</p>	

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>(a) Environmental Impact Assessment - Environmental Protection Authority</p> <p>The Environmental Protection Authority (EPA) considers the environmental impacts of planning schemes and scheme amendments under Part IV, Division 3 of the Environmental Protection Act 1986. Schemes and scheme amendments must be referred to the EPA prior to being advertised for public comment to determine if the scheme should be assessed or not, or is incapable of being made environmentally acceptable. Development proposals that are likely to have a significant effect on the environment are required to be referred to the EPA under Part IV, section 38.</p> <p>The EPA's Environmental Protection Guidance Statement No.3 Separation Distances Between Industrial and Sensitive Land Uses provides advice on which land uses require separation, and recommends the appropriate separation distances. The guidance outlines the EPA's expectations on the application of separation distances for schemes and scheme amendments in the environmental impacts assessment process. The guidance also supports strategic and statutory land use planning and development decisions by planning authorities where proposed land uses have the potential to adversely impact on human health and amenity.</p>	<p>In addition, the Environmental Protection Authority (EPA) will also be assessing schemes under the most recent planning legislation amendments. This Policy will fit in with the new legislation which has the following key features—</p> <ul style="list-style-type: none"> statutory plans are now subject to formal environmental assessment by the EPA. Acceptable buffer areas in accordance with this Policy will be part of that assessment. agencies responsible for preparing and amending statutory plans now have equivalent status to proponents under the environmental assessment system. A local government will have to notify the EPA about its intention to prepare or amend a scheme, so that the EPA can determine if a formal assessment is needed. preparation of an environmental review of a scheme may be required by the EPA prior to formal advertising. submissions received during formal advertising which contain environmental issues must be referred to the EPA. the EPA may recommend conditions which shall be incorporated in statutory plans before consideration for final approval by the WAPC. <p>The Department of Environmental Protection is in the course of preparing a Generic Industrial Buffer Distance Review, which will form the primary guide to the need for buffers, along with appendices to this Policy.</p>	<p>The reference to the EPA Guidance Statement No. 3 should be amended to clarify the guidance statement applies only generic separation distances and that the formulation of statutory buffers should be premised on scientific assessments.</p>

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>(b) Regulation of Prescribed Premises – Department of Water and Environmental Regulation (DWER)</p> <p>Part V Division 3 of the Environmental Protection Act 1986 makes it an offence to cause an emission or discharge from activities carried out on a Prescribed Premises unless a works approval or licence is held for the premises. Prescribed Premises are listed in Schedule 1 of the Environmental Protection Regulations 1987. It is Department of Water and Environmental Regulation's policy: Guidance Statement: Land Use Planning 2015 to assess applications under Part V Division 3 of the Environmental Protection Act 1986 concurrently with applications for planning approval and to make a determination once relevant planning decisions have been made.</p> <p>Licences and works approvals may be granted subject to conditions to prevent, control, abate or mitigate pollution or environmental harm. Licences may be granted for up to 20 years, depending on the risk to public health and the environment posed by the premises as well as the duration of other statutory approvals, including planning approvals. Any changes to operating Prescribed Premises that may alter emissions must seek a licence amendment.</p>	<p>The monitoring of existing facilities will continue by the Department of Environmental Protection to ensure compliance with licence conditions, industry standards and regulations. As new technology is developed and management practices improved, industry and infrastructure will be expected to progressively improve management practices, where practicable, irrespective of licensing conditions or current industry standards and regulations (as well as standards in environmental protection policies).</p>	<p>Refer to below comments regarding seeking technical advice from the Department of Water and Environmental Regulation.</p>
<p>(c) Industries with emissions not regulated as Prescribed Premises</p> <p>Industrial land uses that are not Prescribed Premises under the Environmental Protection Regulations 1987, though may still generate emissions, do not require a works approval or licence from DWER and therefore require special consideration by planning decision-makers. Examples of such land uses include automotive spray painting, metal fabrication, service stations, transport vehicle depot, panel beating, abrasive blasting and joinery and wood working premises as well as industries below the specified production capacity or design capacity threshold specified in the Environmental Protection Regulations 1987 to be a Prescribed Premise.</p>	<p>-</p>	<p>It is considered SPP4.1 does not set out an adequate means for planning authorities to establish a buffer to industries which are not regulated as prescribed premises. Planning authorities in such circumstances will often rely on the use of the EPA's generic separation distances and authorities often do not have the expertise or knowledge to respond to issues relating to dust, odour, etc.</p> <p>It is considered a single government agency should be responsible for providing technical advice on establishing a suitable buffer for industrial premises that are not regulated as prescribed premises.</p>

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>(d) Off-site risks - Department of Mines, Industry Regulation and Safety</p> <p>Where a new or existing industry involves off-site risks, including cumulative risks, planning decision-makers should seek technical advice from the Department of Mines, Industry Regulation and Safety (DMIRS).</p> <p>Industries involving explosives and other dangerous goods, including major hazard facilities, with potential off-site risks are regulated by the DMIRS under the Dangerous Good Safety Act 2004. Information on the types of goods and the critical qualities which require licensing are listed in the DMIRS's Safety Guidance Note: Dangerous Goods Safety Guidance Note Licensing and exemptions for storage and handling. Minimum separation distances between explosive facilities and various categories of incompatible land uses are provided in Australian Standard AS2187.1:1998 and the DMIRS's Dangerous Goods Safety Guidance Note – Storage of explosives.</p> <p>The potential off-site risks associated with onshore petroleum facilities located on petroleum production licences are also regulated by the DMIRS under the Petroleum and Geothermal Energy Resources Act 1967.</p> <p>The DMIRS recommends that its advice is sought on the potential off-site risks associated with any development proposed within 500 metres of the boundary of an existing petroleum facility.</p>	<p>-</p>	<p>-</p>
<p>(e) Mining Act 1978</p> <p>Where a planning proposal may be negatively impacted by a mining operation carried out under the Mining Act 1978, the planning decision-maker should seek advice from the DMIRS and the DWER regarding the risk and acceptability of potential off-site impacts. While the Minister for Mines, Industry Regulation and Safety, the warden or the mining registrar will take into account planning instruments when considering an application for a mining tenement, a planning instrument cannot operate to prohibit or affect the grant of such tenement.</p>	<p>-</p>	<p>-</p>

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>(f) High-pressure gas pipelines Development of land within a pipeline licence area or the Dampier to Bunbury Natural Gas Pipeline (DBGP) corridor is subject to the restrictions originating with the Petroleum Pipelines Act 1969, the Energy Coordination Act 1994 and the Dampier to Bunbury Pipeline Act 1997. Planning proposals affecting land within the Dampier-Bunbury Natural Gas Pipeline corridor may trigger a need for approval under Section 41 of the Dampier to Bunbury Pipeline Act 1997. Reference should be made to the relevant development control policy relating to the planning for high-pressure gas pipelines. Advice from the Administrator of Section 41 approvals under the Dampier to Bunbury Pipeline Act 1997 should be sought to determine if approval is required. The planning decision-maker should advise the Administrator that it has given in principle support prior to granting approval.</p>	<p>-</p>	
<p>4 POLICY OBJECTIVES</p> <p>The objectives of this policy are to:</p> <p>(a) protect existing and proposed industry, and infrastructure facilities from encroachment by incompatible land uses that would adversely affect efficient operations;</p> <p>(b) avoid land use conflict between existing and proposed industry/ infrastructure facilities and sensitive land uses; and</p> <p>(c) promote compatible land uses in areas impacted by existing and proposed industry and infrastructure facilities.</p>	<p>(1) To provide a consistent Statewide approach for the definition and securing of buffer areas around industry, infrastructure and some special uses.</p> <p>(2) To protect industry, infrastructure and special uses from the encroachment of incompatible land uses.</p> <p>(3) To provide for the safety and amenity of land uses surrounding industry, infrastructure and special uses.</p> <p>(4) To recognise the interests of existing landowners within buffer areas who may be affected by residual emissions and risks, as well as the interests, needs and economic benefits of existing industry and infrastructure which may be affected by encroaching incompatible land uses.</p>	<p>It is recommended the policy objectives could be clarified by reference to the 'agent for change' principle which is used in Victorian State Planning Policy. This means the incoming development or land use would be solely responsible for the protection or mitigation of the impacts of the industry or infrastructure.</p> <p>The agent of change principle should <u>not</u> apply retrospectively to existing land use conflicts.</p>

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>5 POLICY MEASURES</p>		
<p>Key elements in achieving the objectives of this policy are:</p> <p>(a) Statutory buffers should be provided around strategic sites and facilities of State significance with off-site impacts to prevent encroachment by incompatible land uses.</p> <p>(b) Industries which generate off-site impacts should be located in a Strategic or General Industry zones and ensure that off-site impacts can be contained within the industrial land use zone or surrounding compatible land use zones and/or reserves.</p> <p>(c) A compatible interface should be provided between Strategic/General Industry zones and sensitive zones.</p>	<p>Once a buffer area is defined, steps should be taken to ensure that it is effective. A range of mechanisms can be used to manage these buffer areas. These are included in Appendix 2. One or more of these mechanisms should be applied to specific buffer areas by the developer, planning authorities or the State government, depending on the particular circumstances. They can be used either independently or in conjunction with each other. These are—</p> <p>(i) the application of planning mechanisms to prevent incompatible land uses being developed within the buffer area.</p> <p>(ii) the use of mechanisms involving the purchase of land by the developer, whether this is a Government agency or private industry. This could also involve a negotiated purchase of development rights from the land owner. These tools would be applicable where existing zones permitted incompatible uses.</p> <p>(iii) the buffer area can be reserved for a public purpose, and compensation paid to the landowners to secure it or purchase it. In such cases there may be arrangements made between local government, the industry and State government agencies in relation to financial liability.</p>	<p>The removal of non-planning mechanisms for securing a buffer (such as the purchase of land) is supported as it places emphasis on the need to resolve land use compatibility via planning outcomes.</p> <p>To avoid any ambiguity, it is considered SPP4.1 should explicitly define what constitutes 'state significance'. An example of such a definition can be found in Schedule 1 and Schedule 3 of the NSW State Environmental Planning Policy (State and Regional Development) 2011.</p>

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>5.1 Protecting Strategic Industry and Infrastructure facilities of State significance through statutory buffers</p> <p>5.1.1 Where statutory buffers should apply A statutory buffer should be designated for existing and proposed:</p> <p>(a) Strategic Industrial Areas; (b) infrastructure facilities of State significance which generate off-site impacts; (c) individual industrial sites/facilities of State significance which generate off-site impacts; and (d) as determined by Minister for Planning on advice from the Western Australian Planning Commission.</p>	<p>Off-site buffer areas may be required for the following categories of industry, major infrastructure and special uses—</p> <ul style="list-style-type: none"> • hazardous industry; • noxious industry; • resource processing industry; • extractive industry; • rural industry; • medium and general industry; • major sporting venues; and • noisy sports such as speedway or drag racing. <p>Off-site buffer areas should be defined and secured as early as possible in the planning stages for new facilities and the expansion/upgrading of existing facilities to ensure the protection and long-term security of the industry/ infrastructure, including associated road/rail/pipeline transport routes. Off-site buffer areas should also be determined and secured for established industry and infrastructure where there are existing or potential land use conflicts with the facility.</p>	<p>To avoid any ambiguity, it is considered SPP4.1 should explicitly define the infrastructure facilities which are of 'state significance'.</p>
<p>5.1.2 How statutory buffers should be applied Where designated under clause 5.1.1, statutory buffers should take the form of a Special Control Area, or similar, with related scheme provisions in planning schemes. Buffers for Strategic Industrial Areas and infrastructure facilities of State significance, should be identified in any applicable Region Scheme, or other planning instrument.</p>	<p>Town planning schemes may be prepared at the regional level through regional planning schemes by the Western Australian Planning Commission and local level by local governments. At the regional level regional planning schemes can establish broad zones and reservations to secure the general purpose of buffer areas (e.g. industrial or rural). Regional planning schemes may also call-in development that may affect the integrity of the buffer area for determination by the Western Australian Planning Commission. At the local level scheme controls can be used to restrict sensitive uses such as residential dwellings.</p>	

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>5.1.3 How compatible land uses should be promoted in statutory buffers The following principles should be applied in planning decision-making involving land within a statutory buffer:</p>		
<p>(a) The Special Control Area scheme provisions for statutory buffers should identify incompatible land uses within the buffer based on the nature of the impacts affecting the surrounding land. The following land uses should not be considered in statutory buffers:</p> <ul style="list-style-type: none"> i. proposed sensitive land uses; ii. land uses with off-site impacts that may constrain the operations of the existing buffered Strategic Industries/Facility, or the future planned development/expansion of the Strategic Industrial Area and infrastructure facility of State significance; and iii. other land uses considered incompatible with the off-site impacts. 	-	<p>Suggest wording is modified to 'Special Control Area or similar' to align with Section 5.1.2.</p>
<p>(b) Local planning schemes should establish compatible land use zones and/or reserves in buffers, consistent with clause (a) and the strategic planning framework for the area.</p>	<p>Ideally, compatible land uses (e.g. light/service industry) should be used to create tiered or graduated zones which coincide with off-site buffer areas around industry and infrastructure. However, this is limited to locations where there are regional/local opportunities for this type of complementary development, servicing infrastructure is available and where it is compatible with the planning framework for the area (e.g. would not unduly compromise other planning objectives for the locality).</p>	<p>Suggest wording is modified to 'Local Planning Schemes or other applicable planning instruments'.</p>

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>(c) Statutory buffers should not affect non-conforming use rights.</p>	<p>The policy recognises that the imposition of a buffer area could adversely affect existing use rights under town planning schemes and rights to certain permitted development, such as a single residence to support a farming use. Matters such as these need to be adequately dealt with using either planning or economic mechanisms prior to the scheme or scheme amendment being referred to the Western Australian Planning Commission.</p> <p>Prevention of continuance of a legally permitted use by a new town planning scheme incurs a liability to compensation. This Policy seeks to ensure that such instances do not occur without specific equitable attention to such issues.</p>	
<p>(d) A notification on title pursuant to relevant legislation should be required where a subdivision (including strata title) or development is approved within a defined buffer area in order that prospective purchasers and successors in title are made aware of the existence of the buffer area and relevant factors affecting the use of the land.</p>	<p>-</p>	<p>A recent decision of the State Administrative Tribunal⁵ cast doubt on the ability to impose a notification on title as a condition of development approval. It is recommended the WAPC consider the implications of this decision.</p>
<p>(e) For infrastructure facilities of State significance, where the nature and extent of off-site impacts is well known, statutory buffers may comprise a number of transitional areas (identified by separate Special Control Areas) to prescribe different levels of development control depending on the distance from the source of emissions and to promote a transition of compatible land use zones and/or reserves.</p>	<p>Ideally, compatible land uses (e.g. light/service industry) should be used to create tiered or graduated zones which coincide with off-site buffer areas around industry and infrastructure.</p>	<p>Suggest wording is modified to 'Special Control Area or similar' to align with Section 5.1.2.</p>
<p>(f) Where practicable, infrastructure facilities of State significance should be located in precincts where clusters of synergistic and compatible infrastructure and land uses can be facilitated within the buffer.</p>	<p>-</p>	<p>Supported.</p>

⁵ 43 McGregor Road Pty Ltd and Presiding Member of the Metro Central Joint Development Assessment Panel [2017] WASAT 127 at [69-73]

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>-</p>	<p>Where a developer of new proposals for industry infrastructure or special uses (including expansion/upgrading of existing facilities and new activities associated with the growth of trade at ports) incorporates a new or expanded off-site buffer area over privately owned land to satisfy environmental criteria, and it is not possible to apply compatible use zones, then appropriate economic mechanisms should be applied to secure the buffer area. The application of these mechanisms should be applied by the proponent to secure the buffer area, to satisfy the environmental conditions on the environmental approval for the industry or infrastructure.</p>	
<p>5.1.4 How statutory buffers should be determined Where a statutory buffer is required under clause 5.1.1 of this policy, the following approach should be taken to determine the size/extent of the buffer:</p> <p>(a) Potential off-site impacts, including consideration of the following:</p> <ul style="list-style-type: none"> i. Technical environmental reports provided by the proponent on the nature and extent of potential off-site impacts from existing and future proposed industry and/or infrastructure. For Strategic Industrial Areas, the potential cumulative impacts of the fully developed industrial area should be considered where possible. ii. Technical advice from the relevant State Government agency, including the DWER, DMIRS and/or Department of Health, on the nature and extent of potential off-site impacts and the acceptability of any supporting technical studies. 	<p>-</p>	<p>Further guidance should be provided in the form of a more comprehensive set of guidelines which accompany SPP4.1.</p>

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>(b) Strategic planning considerations, including consideration of the following:</p> <ul style="list-style-type: none"> i. Strategic planning for the industrial area/facility in the context of the surrounding area; ii. For Strategic Industrial Areas, the State's strategic objectives and long term planning for the industrial area and any specific requirements of existing or planned strategic industries, on advice from the Department of Jobs, Tourism, Science and Innovation; iii. For infrastructure facilities of State significance, the State's strategic objectives for the infrastructure facility and/or the associated precinct, including the future potential expansion requirements of the facility, based on advice from the relevant State Government Department and the infrastructure operator; and iv. Where the site involves an industry subject to a State Agreement Act, the provisions of the State Agreement must be considered on advice from the Department of Jobs, Tourism, Science and Innovation. 	-	<p>Clause iv indicates the provisions of a State Agreement Act should be considered, implying there is discretion available. It should be noted the provisions of a State Agreement Act are binding.</p>
<p>(c) Proposed amendments to established statutory buffers must consider the matters in both 5.1.4(a) and 5.1.4(b).</p>	-	
<p>5.2 Managing land use conflict and preventing adverse impacts</p>		
<p>5.2.1 Industrial zones</p>		
<p>The co-location of industrial land uses in clusters, or industrial areas, promotes a more efficient use of land by enabling the coordination of design, provision and potential sharing of infrastructure and services, inputs and by-products and ensuring separation from sensitive land uses. The following principles should be applied in planning for industrial zones to prevent land use conflict:</p>		
<p>(a) Sensitive land uses should not be considered in industrial zones in region or local planning Schemes;</p>	-	

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>(b) Land uses permitted in General industry zones, including incidental or ancillary uses, should be consistent with the objectives of the zone outlined in the Planning and Development (Local Planning Schemes) Regulations 2015, subject to clause 5.2.1(b);</p>	-	-
<p>(c) Strategic and General Industry zones should not have a direct interface with sensitive zones in local planning schemes. An interface of compatible land use zones and/or reserves should be identified in local planning schemes (such as Light Industry and Commercial zones and Public Open Space reserves) to ensure a compatible interface is achieved.</p>	-	<p>The wording may invite the rezoning of existing General Industry areas which have a direct interface with residential or other sensitive land use zones. The policy should clearly confirm that this provision does not apply retrospectively.</p>
<p>(d) Where there is an interface between an Industrial zone and an Urban zone in a region scheme, where practicable, the compatible land use zones and/or reserves (in the local planning scheme) should be identified within both the Industrial and Urban zones of the region scheme;</p>	-	-
<p>(e) Rural zoned land located adjacent to Strategic or General Industry zones should be considered compatible with off-site impacts where the impacts do not affect existing or proposed sensitive land uses on the rural land. Consistent with State Planning Policy 2.5 – Rural Planning Policy (2015), single dwellings on rural land are a sensitive land uses; and</p>	-	-
<p>(f) To ensure a compatible interface is retained, there should be a presumption against zoning proposals that would allow the development of new sensitive land uses on Rural zoned land adjacent to General Industry zones.</p>	-	<p>It is recommended the wording is modified to include reference to 'intensification of existing sensitive land uses'.</p>

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>5.2.2 Industrial land uses and infrastructure facilities The following principles should be applied in planning decision-making involving existing and proposed industrial land uses and infrastructure facilities which generate off-site impacts, and sensitive land uses which may be impacted by these.</p>		
<p>(a) New sensitive land uses should not be considered on land impacted by existing or proposed industrial land uses and/or infrastructure facilities;</p>	<p>The Western Australian Planning Commission will consult with the Department of Environmental Protection or the authority responsible for the operation of a facility (e.g. port authority, Water Corporation) when considering any proposals for sensitive uses (including associated subdivision and rezoning proposals) within the vicinity of a facility where a buffer definition study has been commenced.</p> <p>Where the Western Australian Planning Commission receives advice that a proposal for a sensitive use may have an effect upon the operation of an existing facility or be affected by off-site impacts from that facility, it may require the proponent to carry out the necessary studies to determine the extent of the impacts.</p>	<p>This provision does not provide guidance for determining when a proposed sensitive land use might be affected by an existing or proposed industry / infrastructure, where the buffer for that industry / infrastructure has not been defined and/or incorporated into a planning scheme.</p> <p>SPP4.1 should contain a 'trigger' clause providing a greater level of certainty to planning authorities for determining when a proposed sensitive land use might be affected by an undefined buffer.</p>
<p>(b) New industrial land uses in Light Industry zones (or other non-industrial zones) should not generate off-site impacts.</p>	<p>Light and service industry and technology parks should retain all emissions and hazards on-site or at least within the zone or park area.</p>	<p>Not supported. The original wording is preferred. It is considered unreasonable to require light industry to wholly contain impacts (particularly noise) on-site.</p>
<p>(c) New industrial land uses in General Industry zones should contain off-site impacts within the Industrial zone, or within surrounding compatible land use zones and/or reserves where in existence (such as Light Industry and Commercial zones and public Open Space reserves).</p>	<p>Where a Government agency, local government or a private developer as the proponent of new industrial estates, single-site industries and infrastructure or special uses, incorporates an off-site buffer area over privately owned land to satisfy environmental criteria, and it is not possible to apply compatible use zones, then appropriate economic mechanisms shall be considered by the proponent to satisfy the Western Australian Planning Commission requirements for the buffer area.</p>	
<p>(d) New industrial land uses in Strategic Industry zones should contain off-site impacts within the buffer.</p>	<p>-</p>	

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>(e) New infrastructure facilities, including infrastructure facilities of State significance and other/local infrastructure facilities, should contain off-site impacts within the infrastructure reserve, or within surrounding compatible zones and/or reserves where in existence.</p>	<p>Where a developer of new proposals for industry infrastructure or special uses (including expansion/upgrading of existing facilities and new activities associated with the growth of trade at ports) incorporates a new or expanded off-site buffer area over privately owned land to satisfy environmental criteria, and it is not possible to apply compatible use zones, then appropriate economic mechanisms should be applied to secure the buffer area. The application of these mechanisms should be applied by the proponent to secure the buffer area, to satisfy the environmental conditions on the environmental approval for the industry or infrastructure.</p>	
<p>(f) Industrial land uses and infrastructure facilities in Rural zones should contain off-site impacts within the Rural zone, subject to clause 5.2.1(e) of this policy, or within surrounding compatible land use zones and/or reserves where in existence.</p>		

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>(g) The following approach should be taken to determine the extent of off-site impacts and if clauses 5.2.2(a)-(f) can be achieved:</p> <ul style="list-style-type: none"> i. where the new or existing industrial land use/ infrastructure facility is a Prescribed Premises, the planning decision-maker should rely on technical environmental advice from the DWER in relation to the extent of potential off-site impacts; ii. where the new or existing industrial land use/infrastructure facility is not a Prescribed Premises, or technical environmental advice from DWER is not available in relation to the extent of potential off-site impacts, the planning decision-maker should apply the separation distance recommended by the EPA in Environmental Protection Guidance Statement No.3 Separation Distances Between Industrial and Sensitive Land Uses. Where the separation distance is not achieved, the onus is on the proponent to demonstrate to the satisfaction of the planning decision-maker that the development will not generate off-site impacts on sensitive land uses and/or zones; iii. where the new or existing industrial land use/ infrastructure facility involves off-site risks, such as from dangerous goods or on-shore petroleum facilities, the planning decision-maker should seek technical advice from the DMIRS with regard to the extent and acceptability of any off-site risks. iv. To determine whether a planning proposal will have an impact on a high-pressure gas pipeline, the proponent should refer to the WAPC's relevant development control policy for gas pipelines. 	<p>The identification of an off-site buffer area requires the application of both environmental criteria and planning criteria to determine the actual size and boundaries of the buffer area. This will require the boundaries of buffer areas to meet the requirements of the Environmental Protection Authority, the Western Australian Planning Commission and the Department of Minerals and Energy.</p> <p>The Environmental Protection Authority and Department of Environmental Protection (DEP) through the administration of the Environmental Protection Act, will advise on the environmental standards and management of industry/infrastructure/special uses including environmental criteria for both new and established industry, infrastructure and special uses. The DEP Generic Industrial Buffer Distance Review will be a guide to these buffer distances and environmental standards.</p>	<p>It is considered the relationship and roles of planning authorities and the Department of Water and Environmental Regulation (DWER) should be further clarified.</p> <p>While the proposed SPP4.1 placed a heavy reliance on technical advice from DWER, DWER's <i>Guidance Statement – Land Use Planning</i> (February 2017) states:</p> <p><i>DER considers that technical studies of air pollutants contribute to inform planning decision-making but should not be considered as the sole determining factor for planning decision-making. DER notes that there can be significant uncertainty in the interpretation of scientific assessments.</i></p> <p>Further, DWER withdrew a draft guidance statement on separation distances to avoid stakeholder confusion or misunderstanding to its proper use.⁶ This decision leaves some uncertainty on the method by which DWER will assess and provide advice on buffers to industrial land uses.</p> <p>It is considered DWER, planning authorities, industries and the community would benefit from a document that clarifies how a technical assessment of a buffer for a proposed industry or infrastructure facility is to be undertaken.</p>

⁶ Refer DWER's website at <https://www.der.wa.gov.au/our-work/regulatory-framework>

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
	<p>Where land use conflicts (or potential conflicts) arise in defined off-site buffer areas around established industrial estates, single site industry and infrastructure or special uses, as a result of the approval of encroaching sensitive uses (or a proposal for a sensitive use) the industry or infrastructure or special use should not be required to pay compensation. Rather, the State government may investigate the extent or likely extent of the conflicts and if it decides, after careful consideration of the costs/benefits to the community that it is in the interests of the State for that incursion to occur, to either—</p> <ul style="list-style-type: none"> • provide a mechanism and the resources to relocate that industry or infrastructure; or • provide that industry or infrastructure with the resources to meet established emission standards at the boundary of the encroaching sensitive use. <p>Alternatively, where the State government decides that the industry or infrastructure or special use should be able to continue to operate without modifying its emission standards planning authorities may apply planning mechanisms to prevent more intensive development of sensitive uses, perhaps for example, by limiting further subdivision. Unless such mechanisms require the removal of non-conforming land uses then the existing uses will be permitted. It should be noted that such action will inevitably restrict the operations of the industry or infrastructure or special use while those sensitive uses remain.</p> <p>Alternatively the planning authority may consider proposals to redevelop the buffer area land to a more acceptable standard.</p>	

DRAFT SPP4.1 – INDUSTRIAL INTERFACE	CURRENT SPP4.1	CME COMMENTS & RECOMMENDATIONS
<p>5.3 Precautionary principle</p> <p><i>Where a landowner/proponent has not demonstrated, to the satisfaction of the decision-maker, that a planning proposal adequately considers potential land use conflicts and will not expose existing or proposed sensitive land uses and/or zones to adverse impacts, the responsible decision-makers should apply the precautionary principle to all strategic planning proposals, subdivision and development applications.</i></p> <p><i>In relation to strategic planning proposals, subdivisions and development applications, this policy recognises that each site is to be assessed on merit and that the determination of an application may involve the use of discretion in planning decision-making to support innovative solutions to prevent land use conflict.</i></p> <p><i>Where environmental advice is provided to planning decision-makers by the EPA and/or DWER, it should be assumed that the precautionary principle will have been applied by the agency in formulating the advice, in accordance with section 4A(1) of the Environmental Protection Act 1986.</i></p>	<p>-</p>	<p>Reference to the precautionary principle is supported subject to the definition being modified to be consistent with environmental legislation (refer to comments on definitions below).</p>

<p>6 IMPLEMENTATION</p> <p><i>This policy is given effect by the Planning and Development Act 2005. The appropriate planning tools to prevent land use conflict are State and regional strategies, region schemes, local planning strategies, local planning schemes, structure plans, subdivision (including strata title) and development applications.</i></p> <p><i>As a general principle, land use conflict should be considered at each stage of the planning framework, increasing in detail at each level. Strategic planning documents and planning schemes should address land use conflict and not defer its resolution or management to subdivision approval or development assessment stage, where mitigation options are more limited and expectations may have been raised by previous decisions.</i></p>		<p>Suggest the first paragraph also note Improvement Plans and Schemes, as potentially relevant planning instruments, as noted in section 6.3.</p>
<p>6.1 Regional and sub-regional strategic planning strategies</p> <p><i>Regional and sub-regional strategic planning strategies should identify:</i></p> <ul style="list-style-type: none"> <i>(a) sites for State or regionally significant industrial zones;</i> <i>(b) sites for infrastructure facilities of State significance, including suitable locations for the co- location of infrastructure within precincts; and</i> <i>(c) designated buffers for existing and planned Strategic Industrial Areas and infrastructure facilities of State significance.</i> 	<p><i>Region plans can allocate land for particular uses so that there is adequate separation between industries and residential areas prior to development proceeding. These are non-statutory plans that promote a framework for future land use and development. They are the initial guidelines for the future regional development of an area.</i></p> <p><i>...</i></p> <p><i>Once a buffer area is defined and accepted by the Western Australian Planning Commission, the local government or the Western Australian Planning Commission will incorporate the buffer within any statutory plans, strategic plans or policies affecting the subject land.</i></p>	<p>Supported. Identifying buffers at the earliest possible stage of the planning process is essential, which this provision achieves seeks to achieve.</p>

<p>6.2 Region schemes</p>	<p>Region schemes should: (a) identify broad industrial zones; (b) identify sites for infrastructure facilities of State significance; (c) establish statutory buffers for Strategic Industrial Areas and infrastructure facilities of State significance as Special Control Areas, or similar, with appropriate scheme provisions; and (d) Ensure the lifting of urban and/or industrial deferment is subject to demonstrating suitability for its intended purpose and ability to satisfactorily address any off-site impacts. The Urban Deferred zone is not appropriate to manage statutory buffers.</p>	<p>Buffer areas should be incorporated into strategic plans and regional and/or local government town planning schemes through appropriate land use designations, zoning and development controls. Where there is potential for land use conflicts to occur, planning authorities may also prepare area-specific policies or strategies to provide strategic land use, subdivision and development control guidance for town planning schemes. Thus, in a rural zone a scheme text could specifically deal with further subdivision or residential development within the buffer area.</p>	<p>Noted. Establishing buffers within Region Planning Schemes is important for large industrial areas and infrastructure which transcends local government boundaries.</p>
<p>6.3 Improvement schemes</p>	<p>Where an improvement scheme applies the scheme should establish statutory buffers as Special Controls Area or similar, with appropriate scheme provisions.</p>	<p>Improvement plans can facilitate the development of an area for compatible uses. For example, an Improvement Plan (IP 14) has been prepared for the East Rockingham Industrial Area to facilitate the orderly development of land in the area (approximately 1336 ha) for a range of industrial uses and parkland buffer areas.</p>	

<p>6.4 Local planning strategies</p>	<p>Local planning strategies should:</p> <p>(a) identify areas for Strategic, General and Light Industry;</p> <p>(b) identify all existing Prescribed Premises and land uses with off-site risks regulated under the Dangerous Goods Safety Act 2004 and Petroleum and Geothermal Energy Resources Act 1967 to ensure planning decision relating to the surrounding land consider any offsite impacts/risks and are referred to the regulating agency for technical advice;</p> <p>(c) identify designated statutory buffers for existing and proposed Strategic Industrial Areas, infrastructure facilities of State significance and industrial sites of State significance, and the compatible land uses appropriate in the buffer;</p> <p>(d) Where an industrial zone has been identified to transition to a sensitive zone, local planning strategies should identify any existing industrial land uses with offsite impacts in the area and provide a framework for managing the transition over time to avoid land use conflict between existing industries and new sensitive land uses; and</p> <p>(e) Where an area has been identified to transition to an industrial zone, local planning strategies should identify any existing sensitive land uses in the area and provide a framework for managing the transition over time to avoid land use conflict between existing sensitive land uses and new industrial land uses.</p>	<p>Buffer areas should be incorporated into strategic plans and regional and/or local government town planning schemes through appropriate land use designations, zoning and development controls. Where there is potential for land use conflicts to occur, planning authorities may also prepare area-specific policies or strategies to provide strategic land use, subdivision and development control guidance for town planning schemes. Thus, in a rural zone a scheme text could specifically deal with further subdivision or residential development within the buffer area.</p>	<p>Updates supported. Provides more clear guidance on the content of local planning strategies.</p>
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<p>6.5 Local planning schemes</p>	<p>Local planning schemes should:</p> <p>(a) Identify Strategic, General and Light Industrial zones;</p> <p>(b) Identify compatible land use zones and/or reserves to provide a transition between General Industry and sensitive land use zones;</p> <p>(c) establish statutory buffers as Special Control Areas, or similar, with appropriate scheme provisions, for Strategic Industrial areas, strategic infrastructure facilities and industrial sites of State significance, including those located outside region scheme areas;</p> <p>(e) Identify compatible and incompatible land uses within Urban in region schemes, local planning schemes should establish compatible urban zones and/or reserves and land uses; and</p> <p>(f) In contemplating zoning proposals or amendments to local planning schemes, planning decision-makers should:</p> <p>i. ensure zoning proposals identify any areas of land impacted by existing or proposed industrial land uses and infrastructure facilities, including high-pressure gas pipelines and mining operations, and exclude any sensitive land uses and/or zones from the impacted area of land; and</p> <p>ii. ensure zoning proposals within buffers are consistent with the purpose of the buffer and should not constrain existing operations, or the proposed development/ expansion, of the buffered industrial area or infrastructure facility.</p>	<p>At the local level scheme controls can be used to restrict sensitive uses such as residential dwellings.</p> <p>...</p> <p>Buffer areas should be incorporated into strategic plans and regional and/or local government town planning schemes through appropriate land use designations, zoning and development controls. Where there is potential for land use conflicts to occur, planning authorities may also prepare area-specific policies or strategies to provide strategic land use, subdivision and development control guidance for town planning schemes. Thus, in a rural zone a scheme text could specifically deal with further subdivision or residential development within the buffer area.</p>	<p>Updates supported. Provides more clear guidance on the content of local planning schemes.</p>
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<p>6.6 Structure Plans</p> <p>(a) Where an area of land may be impacted by existing or proposed industrial land uses, or infrastructure facilities, and is identified in a scheme as suitable for urban or industrial development, a structure plan should be prepared for the purposes of orderly and proper planning.</p> <p>(b) Structure planning should be undertaken for all new General Industry zones in local planning schemes for the purpose of orderly and proper planning, and, where practicable, should include the area of land surrounding the industrial zone to understand the context of the proposal and enable a compatible interface to be coordinated.</p> <p>(c) Structure planning should address land use conflict, in addition to other standard structure planning requirements, and coordinate the development of compatible land uses in buffers and at the interface between industry/infrastructure facilities and sensitive zones.</p>	<p>Structure plans provide a framework for co-ordinated planning and provision of services, and are the precursor to the statutory region scheme. They ensure that planning for new growth areas is consistent with region plans. They may also identify appropriate sites for infrastructure where off-site buffers are required, and guide subdivision design to minimise the impact of polluting industries and infrastructure and the encroachment of surrounding sensitive land uses.</p> <p>...</p> <p>The Western Australian Planning Commission may require the preparation of a structure plan to indicate how the environmental and planning criteria can be satisfied where there are "trade-offs" between the management practices used and the size of the off-site buffer area (e.g adjacent to gas pipelines).</p> <p>...</p> <p>Where compatible land uses are permitted, the designation of these uses should be guided by a structure plan of the area.</p>	<p>Updates supported. Provides more clear guidance on the content of local planning strategies.</p>
<p>6.7 Subdivision</p> <p>(a) Subdivision (including strata title) should seek to manage and avoid land use conflict through appropriate subdivision design.</p> <p>(b) Refer to Development Control Policy 4.1 Industrial Subdivision.</p> <p>(c) Refer to relevant development control policy relating to the planning for High-Pressure Gas Pipelines.</p>	<p>Restriction of the subdivision of land is one way in which the intensity of occupation (population density) within privately owned buffer areas can be limited. Controls on subdivision may impose appropriate restrictions as this is within the discretion of the Western Australian Planning Commission.</p>	<p>The removal of restrictions on subdivision is not supported. Good subdivision design should be secondary to restricting subdivision (where this is within the power of the WAPC).</p> <p>It is considered all subdivision proposals should be subject to the provisions of clause 5.2.2 of SPP4.1 and should not constrain existing operations or the proposed expansions of industry and infrastructure facilities.</p>

<p>6.8 Development applications</p>	<p><i>In contemplating development proposals, the following shall apply:</i></p> <p>(a) <i>The provisions of clause 5.2.2 of this policy.</i></p> <p>(b) <i>Refer to relevant development control policy relating to the planning for high-pressure gas pipelines.</i></p> <p>(c) <i>Development on land within a buffer should be consistent with the purpose of the buffer and should not constrain the existing operations, or the proposed development/ expansion of the buffered industrial area or infrastructure facility.</i></p> <p>(d) <i>Development applications should include information on the nature and extent of any off-site impacts, and proposed management plans.</i></p> <p>(e) <i>Development applications should identify any approvals required under other legislation, such as works approval and licencing required under Division 3, Part V of the Environmental Protection Act 1986 and safety requirements under the Dangerous Goods Safety Act 2004 and Petroleum and Geothermal Energy Resources Act 1967.</i></p>	<p>-</p>	<p>Supported.</p>
<p>6.9 Local planning policies</p>	<p><i>Local governments may prepare local planning policies to supplement or elaborate on measures associated with the implementation of this policy. Local planning policies should be consistent with the objectives and intent of this policy, as reflected in local planning strategies and schemes.</i></p>	<p>-</p>	<p>Local planning policies can provide an effective mechanism to assist in clarifying interpretations and accounting for local circumstances. However, local planning policies do not usually require approval of the WAPC and do not have appeal rights. It is recommended this provision is reconsidered unless:</p> <ul style="list-style-type: none"> • The WAPC can develop a call-in power to review Local Planning Policies which seek to deal with industrial interface issues; and/or • The WAPC develop a model Local Planning Policy with clear guidance on what can and cannot be included within a Local Planning Policy.

7 DEFINITIONS	
<p>Buffer The designation of land in which sensitive land uses are constrained. A land use planning response, the extent of a buffer comprises the potential off-site impacts of the land use and strategic planning considerations, such as the State's objectives for the site and the continuation and/or expansion of the industry/infrastructure in the context of surrounding land uses. A buffer is measured from activity to activity, and does not necessarily relate to cadastral boundaries.</p>	<p>Buffer Area — is the area within which sensitive uses are either restricted or prohibited.</p>
<p>Compatible land use zone /reserve Zones and reserves which are generally compatible with odour, dust, noise and other emissions from industry, and where sensitive land uses are restricted, such as Light Industry, Service Commercial, Commercial and Rural zones, and Public Open Space, Environmental Conservation, State Forest, Infrastructure Services and Car Park reserves. The range of compatible land use zones/reserves may depend on the nature of emissions and impacts.</p>	
<p>General industry zone To provide for a broad range of industrial, service and storage activities which, by the nature of their operations, should be isolated from residential and other sensitive land uses, as defined in the Planning and Development (Local Planning Schemes) Regulations 2015. Also includes other similar industrial zones in local planning schemes.</p>	
<p>Incompatible land use Includes sensitive land uses, as well as other land uses incompatible with the off-site impacts of a land use. For example, some commercial land which requires high levels of amenity may be incompatible with industrial land uses with amenity impacts. Land uses which attract a large number of people are generally considered incompatible with land uses which involve off-site risks.</p>	

<p>Industrial land use Industrial land use or industry, as defined in the Planning and Development (Local Planning Schemes) Regulations 2015, means premises used for the manufacture, dismantling, processing, assembly, treating, testing, servicing, maintenance or repairing of goods, products, articles, materials or substances and includes facilities on the premises for any of the following purposes: (a) the storage of goods (b) the work of administration or accounting (c) the selling of goods by wholesale or retail (d) the provision of amenities for employees (e) incidental purposes.</p>		
<p>Industry – primary production Industry - primary production means premises used: a) to carry out a primary production business as that term is defined in the Income Tax Assessment Act 1997 (Commonwealth) section 995-1; or (b) for a workshop servicing plant or equipment used in primary production businesses.</p>		
<p>Industrial site/facility of State significance An industrial site/facility that is considered to be of significance to the State of Western Australia by virtue of any or all of the economic, social, cultural or environmental values for that land use, area or issue, as determined by the Western Australian Planning Commission.</p>		<p>To avoid any ambiguity, it is considered SPP4.1 should explicitly define what constitutes 'state significance'. An example of such a definition can be found in Schedule 1 and Schedule 3 of the NSW State Environmental Planning Policy (State and Regional Development) 2011.</p>

<p>Infrastructure facilities Infrastructure sites or nodes, such as major energy generation and transmission facilities, wastewater treatment plants, water treatment plants including desalination and water recycling plants and major waste water pump stations, major waste facilities, major trading ports, intermodal terminals.</p>	<p>Infrastructure includes public installations that provide a service such as—</p> <ul style="list-style-type: none"> • Ports • Major freight terminals • Waste water treatment plants • Water treatment plants • Power generation facilities • Power distribution terminals and substations • Solid waste disposal sites • Airports, and • Gas/petroleum pipelines 	
<p>Infrastructure reserve Any reserve in a planning scheme which provides for infrastructure and where sensitive land uses are restricted.</p>	-	
<p>Light industry zone To provide for a range of industrial uses and service industries generally compatible with urban areas, as defined in the Planning and Development (Local Planning Schemes) Regulations 2015. Also includes other similar industrial zones in local planning schemes.</p>	-	
<p>Off-site impacts Impacts such as odour, noise, spray drift, vibration, dust, groundwater, air pollution or light spill that cannot be contained within a property boundary. These are impacts which remain after mitigation and management to regulatory and/or policy standards.</p>	-	
<p>Rural land Land zoned for agricultural or rural use in a Region or local planning scheme or strategy.</p>	-	
<p>Precautionary principle The presumption against approving further strategic planning proposals, subdivision and development applications or intensification of land uses, where there is a lack of certainty that the potential for significant adverse impacts can be adequately reduced or managed in the opinion of the decision-maker.</p>	-	<p>It is recommended the definition for precautionary principle is deleted and replaced with a reference the EP Act in Section 5.3 of the draft policy. Refer to recommendation no. 5 of this submission.</p>

<p>Prescribed premises Certain industrial premises with the potential to cause emissions and discharges to air, land or water which trigger regulation under the Environmental Protection Act 1986. Prescribed premises categories are outlined in Schedule 1 of the Environmental Protection Regulations 1987.</p>	<p>-</p>	<p>-</p>
<p>Sensitive land use Land uses that are residential or institutional in nature, where people live or regularly spend extended periods of time. These include dwellings, short-stay accommodation, schools, hospitals and childcare centres, and generally excludes commercial or industrial premises.</p>	<p>Sensitive Use — includes residential dwellings, major recreational areas, hospitals, schools and other institutional uses involving accommodation.</p>	<p>-</p>
<p>Sensitive zone An umbrella term that covers land use zones that provides for development of sensitive land uses. These include Urban, Urban Development, Residential, Rural Living and Community Purpose zones, and proposals for the lifting of Urban Deferment.</p>	<p>-</p>	<p>-</p>
<p>Separation distance As defined in Environmental Protection Guidance Statement No.3 Separation Distances Between Industrial and Sensitive Land Uses, a recommended distance necessary to separate a source of emissions (gaseous and particulate emissions, dust, odour and noise) from sensitive land uses in order to avoid impacts to health and amenity.</p>	<p>-</p>	<p>It is recommended this definition is modified to clarify that the separation distances set out in the EPA's Guidance Statement are generic; that is, the distances are prescribed in the absence of any technical investigations or studies that more-precisely define the buffer area.</p>

<p>Special control area <i>Special Control Area means an area identified under a region or local planning scheme map as an area subject to special controls set out in this scheme. Special Control Areas identify areas which are significant for a particular reason and where special provisions in the scheme may need to apply. These provisions would typically target a single issue or related set of issues often overlapping zone and reserve boundaries. Where a Special Control Area is shown on the scheme map, special provisions related to the particular issue would apply in addition to the provisions of the zones and reserves. These provisions would set out the purpose and objectives of the Special Control Area, any specific development requirements, the process for referring applications to relevant agencies and matters to be taken into account in determining development proposals.</i></p>		
<p>Strategic industrial areas <i>Areas zoned or planned for Strategic Industry, identified by the Department of Jobs, Tourism, Science and Innovation. Strategic Industrial Areas are planned industrial sites of significant economic and strategic importance to the State which provide buffered industrial land in strategic locations for the development of resource and export oriented industries, major utilities infrastructure and other strategic industries which may generate off-site impacts. Strategic Industrial Areas are formally recognised in planning schemes where they comprise an industrial core zoned as 'Strategic Industry' or similar and an appropriate statutory buffer.</i></p>		
<p>Strategic industry zone <i>To designate industrial sites of State or regional significance, as identified by the Department of Jobs, Tourism, Science and Innovation. May include Strategic Industrial Areas, as well as individual industrial sites of significance economic and strategic importance to the State, such as those subject to State Agreement Acts.</i></p>		