



# Use and Application of Discretion at decision-making Consultation Outcomes Report

July 2023



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## Acronyms/Abbreviations Used:

**Action Plan** – Action Plan for Planning Reform (2019)

**AIA** – Architectural Institute of Australia

**DAP** – Development Assessment Panel

**Department** – Department of Planning, Lands and Heritage

**Guidance** – Guidelines for the Exercise of Discretion in Planning decision-making **HIA**  
– Housing Industry of Australia

**Law Society** – Law Society of Western Australia

**LGPA** – Local Government Planners Association

**Making Good Planning Decisions** – *Development Assessment Panel: Making Good Planning Decisions Practice Notes 2021 (2021)*

**PCA** – Property Council of Australia

**PIA** – Planning Institute of Australia

**Regulations** – *Planning and Development (Local Planning Schemes) Regulations 2015*

**UDIA** – Urban Development Institute of Australia

**WALGA** – Western Australian Local Government Authority

**WAPC** – Western Australian Planning Commission



## 1. Introduction

The [Action Plan for Planning Reform](#) (**Action Plan**), which was released by the Minister for Planning in 2019, incorporated various actions aimed at improving development assessment processes to make them more streamlined, outcomes focused, consistent and transparent. This includes achieving greater transparency, certainty and clarity in the context of discretionary planning decision-making processes.

Discretion in planning is exercised whenever the decision-maker has the power to make a choice about whether to approve or not approve an application for development, or to approve with conditions. Discretion can be broadly applied, and can be guided by legislation and/or policies. The role of the decision-maker is to make a judgement, having taken into account all relevant information and planning requirements.

Discretionary decision-making is at the very core of good planning practice. Clear and transparent planning decisions protect the integrity of the planning system and the decision-maker.

A more consistent and transparent approach to the manner in which discretion is exercised in the determining of development applications has been identified as a priority to progress implementation of the Action Plan initiatives. In August 2022, the Department of Planning, Lands and Heritage (**Department**) commenced a reform project (**project**) that focussed on reviewing and improving the manner in which discretion is exercised in determining development applications.

This approach has been crystallised into five recommended regulatory changes to the *Planning and Development (Local Planning Schemes) Regulations 2015* (**Regulations**) that relate to discretionary decision-making, along with a guidance document (**Guidance**). The Guidance comprises five key guiding principles to assist decision-makers and practitioners to determine the appropriateness of exercising discretion in relation to specific development applications.

The proposed regulatory changes and the draft Guidance were developed by the Department in collaboration with key stakeholders through preliminary consultation activities, including four Stakeholder Reference Groups comprising various industry and local government representatives, and decision-makers. These groups helped to shape and refine the proposed changes. A six week consultation on the draft proposals was then undertaken to help refine them.

This report provides an overview of the consultation undertaken so far, a summary of the matters raised by stakeholders involved, and the outcomes from this process.



## 2. Background

This section provides background information relevant to the current framework that provides the basis for decision-makers to exercise discretion in relation to development applications assessed under the Regulations, as well as the proposed guidance and regulatory changes.

### 2.1 Discretion in the Planning System

Local planning schemes (**Schemes**) are the primary source for discretionary powers in the context of development assessments and approvals (Department, 2021). The scope of discretionary powers within the Western Australian planning system is broad, and similarly, with 137 local governments, the local planning frameworks that govern decision-making are equally so. In recognition of this, and in an attempt to increase consistency across the State, the Regulations came into effect in October 2015 and introduced Model provisions (Schedule 1) and a set of Deemed provisions (Schedule 2) to be incorporated into all Schemes in Western Australia. The intent was to streamline the preparation of Schemes, whilst leaving capacity for local authorities to develop variations to respond to local context and community needs.

The decision-making process in Western Australia is well articulated in documents like the [Development Assessment Panel: Making Good Planning Decisions Practice Notes 2021](#) (Making Good Planning Decisions), which provides clear expectations and guidance to decision-makers about a proper approach to the assessment of proposals.

In instances where there is power to vary a standard or requirement set out in a Scheme, decision-makers are asked to then exercise their discretion and make an objective judgement call based on the merits of the application, taking into account a range of relevant considerations dependent on the context of the proposal. This moves assessment from quantitative to qualitative; from ‘can it be approved?’ to ‘should it be approved?’ (Department, 2021). The qualitative space is where uncertainty and inconsistencies can manifest, as decision-makers must determine what should inform their discretion, the scope of their discretion, and how that judgment exercise ought to be expressed. However, it is not easy to identify clear and consistent guidance as to how the qualitative side of an assessment should be carried out in a general sense. The qualitative component is often where detailed guidance as to how, when and what discretion should be applied falls away.

### 2.2 Exercise of Discretion and the Action Plan

The [Action Plan for Planning Reform](#) (**Action Plan**) is the overarching document guiding this project. The Action Plan includes various initiatives and actions to achieve the three overarching goals of creating great places for people, making planning easier to understand and navigate, and making the planning system more consistent and efficient.



**Table 1** provides a summary of the initiatives and actions of the Action Plan that are particularly relevant to this project and the exercise of discretion.

**Table 1 – Initiatives/Actions Related to the Application of Discretion in decision-making**

<b>Initiative C7</b>	<i>Development assessment processes are streamlined and outcomes-focussed.</i>
<b>Initiative B5</b>	<i>Clear and concise guidance is readily available.</i>
<b>Actions</b>	<ul style="list-style-type: none"> <li>• <i>Department/Western Australian Planning Commission (WAPC) will prepare and publish contemporary guidance to explain the purpose of various planning instruments, expectations regarding how they are to be prepared and the way they are to be used.</i></li> <li>• <i>Department/WAPC will ensure that the guidance is regularly reviewed and kept up-to-date.</i></li> <li>• <i>Decision-makers will be required to make available a statement of reasons for their planning decisions.</i></li> </ul>

Source: Action Plan for Planning Reform (August 2019)

## 2.3 The Proposed Reforms

The project scope involves the following key components which, cumulatively, will achieve the address the above actions and objectives:

- Recommending provisions for inclusion in Schedule 1 (Model Provisions) and Schedule 2 (Deemed Provisions) of the Regulations to standardise the instances in which discretion may or may not be applied;
- Providing contemporary and concise supporting guidance on the exercise of discretion for planning decision-makers; and
- Recommending an approach and options for implementation.

### Consultation Purpose and Process

The purpose of consultation on this project was to:

- Confirm and understand the opportunities to improve consistency in decision-making.
- Seek feedback from professional planners and affiliated industries on the proposed approach, including key areas of guidance and recommended provisions for inclusion in the Regulations.

Four Stakeholder Reference Groups were formed to consult with on the project. These groups comprised a range of decision-makers, local government planners, representatives from key State Government Departments, and various industry professionals including planning consultants, planning lawyers, architects, urban designers, landscape architects. Representatives from key industry associations were also included in these groups. These stakeholders were targeted to engage with on this project.



**Table 2 – Stakeholder Reference Groups**

Group	Target
1. Local Governments and associated industry associations	<ul style="list-style-type: none"> <li>Various local government representatives, as nominated by the Western Australian Local Government Authority (WALGA) and Local Government Planners Association (LGPA).</li> <li>Representatives of WALGA and LGPA.</li> </ul>
2. Planning and development industry, and associated industry associations	<ul style="list-style-type: none"> <li>Various professionals from planning, development and allied industries, as nominated by the Architectural Institute of Australia (AIA), the Housing Industry of Australia (HIA), the Law Society of Western Australia (Law Society), the Property Council of Australia (PCA), the Planning Institute of Australia (PIA), the Urban Development Institute of Australia (UDIA).</li> <li>Representatives of AIA, HIA, the Law Society, PCA, PIA and UDIA.</li> </ul>
3. Decision-makers	<ul style="list-style-type: none"> <li>Various decision-makers (self-nominated) who determine development applications made under local planning schemes – combination of local Councillors and Development Assessment Panel (DAP) members (Presiding, Deputy Presiding and specialist members).</li> </ul>
4. Western Australian Planning Commission	<ul style="list-style-type: none"> <li>Members of the Western Australian Planning Commission, including the Statutory Planning Committee (as available)</li> </ul>

The consultation process was guided by an Engagement Strategy, and included three key stages as summarised in Table 3 below. This report focuses on Stages 1 and 2.

**Table 3 – Stages of Consultation**

Stage	Detail
1. Preliminary Consultation with Stakeholder Reference Groups	<ul style="list-style-type: none"> <li>Four 2-hour workshops were held in August 2022 with Stakeholder Reference Groups to test, and help shape and inform the proposed changes</li> <li>Stakeholder Reference Groups included representatives from various local governments, various planning and industry professionals &amp; peak industry bodies, DAP and local government decision-makers and the WAPC.</li> </ul>
2. Consultation on Proposed Changes to the Regulations and draft Guidance	<ul style="list-style-type: none"> <li>Broad consultation on the proposed changes undertaken in February – March 2023 (6 weeks).</li> <li>The proposed changes were made publicly available on the website and the general public was able to review and comment.</li> <li>Targeted communications (via email) was undertaken with local governments, key industry associations, key industry consultants and the members of the Stakeholder Reference Groups.</li> <li>A further four workshops with the Stakeholder Reference Groups and decision-makers was held during the advertising period, focused on testing the proposals and identifying any issues and improvements.</li> </ul>
3. Post-Consultation Activities (on-going)	<ul style="list-style-type: none"> <li>Ongoing discussions with key stakeholders, including via the Stakeholder Reference Groups to discuss the final changes and help inform further process improvements to support the changes.</li> </ul>





### 3. Stage 1 – Preliminary Engagement

A series of online workshops were held with the four Stakeholder Reference Groups and other key stakeholders, early in the process, to identify existing challenges, issues and potential solutions relating to the exercise of discretion in determining development applications. The aim was to help inform and refine the proposed changes to be consulted on at a later stage. The following project scope and non-negotiable elements were highlighted during these workshops to ensure that the changes were consistent with the direction set through the Action Plan:

- Suggestions contrary to the Government’s planning reform initiatives will not be considered, however, minor refinements to proposals will be considered where there is clear merit/benefit.
- The removal of discretion from the planning system will not be considered.
- The provision of any universal numerical limit to discretion so as not to unnecessarily constrain decision-makers will not be considered. Any limits on discretion should be devised through a detailed, evidence based planning exercise (i.e. precinct planning).
- The general provisions are not intended to override any specific discretionary provisions (i.e. for areas or certain types of development) which have been developed through a proper, evidence based planning process. The principles in the general discretion guidance may be used to implement such clauses.
- Any outcomes that would potentially nullify existing case law on the use and application of discretion will not be contemplated.
- Proposals to remove or unreasonably constrain or restrict public comment/input will not be contemplated.
- Proposals to amend the *Planning and Development Act 2005* or other legislation is out of scope of the project (e.g., third party appeals).

The following eight (8) key themes emerged from the feedback provided by stakeholders during the preliminary engagement phase:

1. Inconsistent approaches for using and applying discretion across local governments and decision-making authorities.
2. Differing extent of discretion executed across local governments and decision-making authorities, from application to application.
3. The challenge of balancing improving consistency with maintaining flexibility.
4. Lack of community understanding and trust in the planning system and decision-makers.
5. Limitations caused by outdated, opaque or disregarded planning frameworks.
6. Insufficient communications (verbal by decision-makers and written by planning officers), the need for improvements and supporting guidance.
7. Need for improved guidance on discretion and associated matters/topics, including overarching guiding principles.
8. Lack of education and training of decision-makers and planning officers resulting in poor decisions.



The feedback provided through these workshops and discussions was considered in preparing the proposed reforms, and in particular, the draft Guidance.

## 4. Consultation on draft Proposals

Following preliminary consultation, the proposed proposals were refined and consulted on for a 6 week period commencing on 14 February 2023 and concluding on 27 March 2023.

### 4.1 The Draft Proposals

The draft proposals that were subject to public consultation consisted of an explanatory report along with two key documents being:

1. Part A – A schedule of the recommended **regulatory changes** to the Regulations (noting that the actual drafting of the amended provisions did not form part of the advertised proposal).
2. Part B – A **Guidance Document** setting out some key guiding principles for the exercise of discretion in determining planning applications.

**Table 4** provides a brief overview of the proposals.

**Table 4 – Summary of the Proposals**

Part	Detail
Part A Regulatory Changes	<p>Five key proposals, being:</p> <ul style="list-style-type: none"> <li>• <b>Proposal No. 1</b> – Explore ways to provide greater clarity of the meaning of ‘due regard’.</li> <li>• <b>Proposal No. 2</b> – Provide a clear statement for when discretion can be or ought to be applied.</li> <li>• <b>Proposal No. 3</b> – Consolidate fragmented references to variations (to development standards) and relevant considerations throughout the Regulations, to ensure they are consistent across local planning frameworks.</li> <li>• <b>Proposal No. 4</b> – Provide for the localised limitation of discretionary powers in specific scenarios or locations through the inclusion of appendices/schedules in the Model Provisions.</li> <li>• <b>Proposal No. 5</b> – Review prescribed forms for decision-making and create a universal set to be relied upon by all forms of planning decision-makers for improved transparency.</li> </ul>
Part B Guidance Document	<p>Provides five key principles to guide decision-making when considering a development application. These principles were derived from a number of sources including <a href="#">Making Good Planning Decisions</a> (Department 2021), the <a href="#">Guidelines on decision-making</a> (Ombudsman WA 2021), and the Supreme Court’s decision of Marshall v Metropolitan Redevelopment Authority [2015] <a href="#">WASC 226</a>.</p>





Part	Detail
	<ul style="list-style-type: none"> <li>• <b>Principle No. 1 – <i>There should be a properly constructed planning framework</i></b> <ul style="list-style-type: none"> <li>- Is there a properly constructed planning framework in place?</li> <li>- If there is not, will the planning decision prejudice a future planning framework?</li> </ul> </li> <li>• <b>Principle No. 2 – <i>Look for guidance within the framework</i></b> <ul style="list-style-type: none"> <li>- Is there guidance or established parameters within the planning framework to inform the nature / extent of the departure from the base line provision being varied?</li> <li>- Can guidance be taken from other areas outside of the planning framework (e.g. previous planning decision)?</li> </ul> </li> <li>• <b>Principle No. 3 – <i>There must be clear and logical (cogent) reasons to depart from the standard</i></b> <ul style="list-style-type: none"> <li>- What is the base line development control trying to achieve and are there clear and logical reasons to depart from that control?</li> </ul> </li> <li>• <b>Principle No. 4 – <i>Public / community input has a legitimate role in the planning process</i></b> <ul style="list-style-type: none"> <li>- Are any public submissions duly considered and addressed?</li> </ul> </li> <li>• <b>Principle No. 5 – <i>Genuine and proper consideration</i></b> <ul style="list-style-type: none"> <li>- Has the decision-maker been objective in their assessment?</li> <li>- Has the decision-maker shown their workings and has the decision been clearly communicated?</li> </ul> </li> </ul>

## 4.2 Method of Consultation and Communication

The public consultation period was communicated via a range of methods, with a focus on targeting communications to the following stakeholder groups – all local governments, peak industry bodies and associations, members of the Stakeholder Reference Groups, and relevant State Government Departments. Communications included email correspondence, the Department's website and the Consultation Hub portal.

Various collateral was prepared to assist stakeholders to develop an understanding of the proposed changes, and provide guidance on how to prepare a submission with the aim of facilitating useful, informed and effective feedback. This included:

- A **summary document** providing an overview of the proposed changes and answers to frequently asked questions.
- A **Feedback Form** with targeted questions. These questions and associated answer options were as follows:
  - *Do you support the proposed regulatory changes – Proposal No. 1 to No. 5? (Support, do not support, conditional support, or no position).*



- *Do you think this guidance has a statutory role in the decision-making process, other than as a guide? (Yes, or no, it should remain as a guide).*
- *Do you support the proposed principles contained within the Draft Guidelines – Principle No. 1 to No. 5? (Support, do not support, conditional support, or no position).*
- *Do you support the inclusion of an assessment template? (Support, do not support, conditional support, or no position).*
- *Do you support the inclusion of a standardised form for decision-makers to utilise when communicating a decision? (Support, do not support, conditional support, or no position).*

These documents were made publicly available on the Department's website and Consultation Hub, and were distributed widely via emails to the key stakeholders, abovementioned. A copy of the feedback form is included in **Appendix 1**.

During the consultation period, the Department also hosted a series of online information sessions, available for anyone to attend. This session included a presentation on the proposals, followed by questions from the audience. These sessions were attended by over 80 people.

The Department also hosted a second series of four stakeholder workshops comprising the same Stakeholder Reference Groups that were consulted prior to formulation of the draft proposals. The focus for these workshops was to explore the draft proposals, identify issues (and possible solutions), and identify opportunities to further enhance the proposals.

The Department's Reform Delivery team also undertook various internal briefings with planners in statutory decision-making roles within the Department.

## 5. Consultation Outcomes

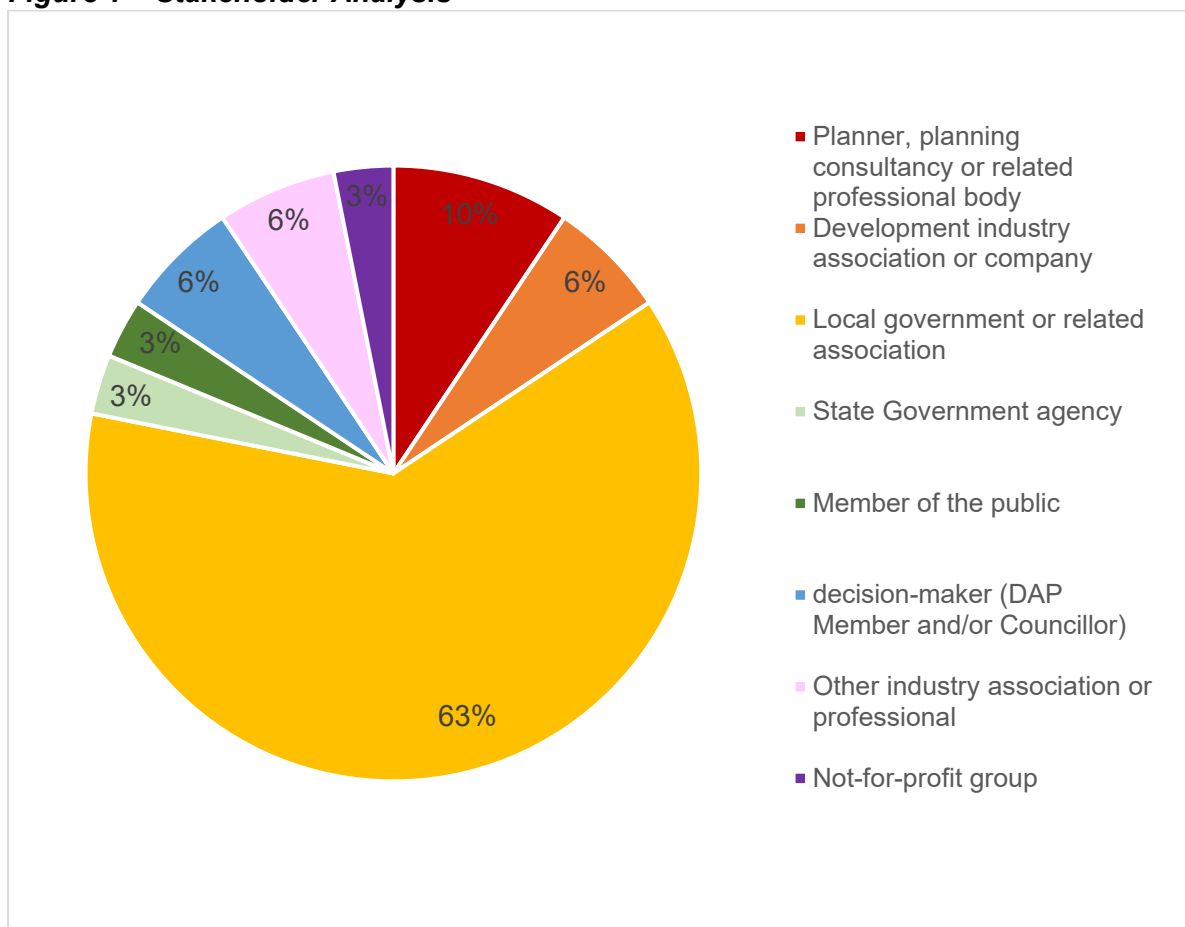
A total of 32 submissions were received from a range of stakeholder groups. These submissions were reviewed and analysed in detail to help identify refinements to be made to the proposals.

### 5.1 Stakeholder Analysis

A breakdown of submitters by sector is provided in **Figure 1** below. This illustrates that whilst feedback was received from a broad range of stakeholder groups involved, not surprisingly the majority of the feedback (63%) came from local government groups. Of the eighteen local government groups that made submissions, five were regional local governments, indicating the universal application of the proposed reforms across the State.



**Figure 1 – Stakeholder Analysis**





## 5.2 Key Findings

Table 5 provides a brief summary of the key findings arising from the consultation process. A detailed summary of submissions is included in **Appendix 2**.

**Table 5 – Summary of Key Findings**

Question from Survey	Key Findings
<b>Part A – Regulatory Changes</b>	
<i>Do you support the proposed regulatory changes – Proposal No. 1 to No. 5?</i>	<p>From the submissions received, there was strong support across stakeholder groups for the proposed regulatory changes, with 24 of the 32 submitters indicating support for the overall proposal and a further 8 submitters providing conditional support. No stakeholders indicated that they did not support the proposals.</p> <p>The majority of the comments and tentative / conditional support received related to Proposals 4 (being the limitation of discretionary powers via a new schedule in the model provisions) and 5 (being a review of the prescribed forms and schedules to provide greater transparency in decision-making). Note that the bulk of the comments were requesting further detail as to the specific wording of the proposals, and a large number of submissions requested further guidance from the Department and / or WAPC as to which matters would be supported for inclusion in the proposed schedule that limits discretion (e.g. building height, plot ratio, setbacks etc).</p>
<b>Part B – Guidance Document</b>	
<i>Do you think this guidance has a statutory role in the decision-making process, other than as a guide?</i>	<p>The large majority of submitters (26) expressed the view that the guidance document should remain as a guiding tool for planning decision-makers, as opposed to having any formal role to play in the decision-making process.</p>
<i>Do you support the proposed principles contained within the Draft Guidelines – Principle No. 1 to No. 5?</i>	<p>27 of the 32 submitters expressed support or conditional support for the five principles. None of the submitters indicated that they did not support this principle. A number of the submitters suggested areas of clarification and / or expansion which are summarised further below.</p> <ul style="list-style-type: none"> <li>• Several submitters requested further clarification as to what constitutes a “properly constructed planning framework”.</li> <li>• Several submitters requested that the guidelines include a definition and / or further guidance around draft planning instruments that might be considered ‘seriously entertained’.</li> <li>• One submitter recommended the inclusion of the “valid planning condition” test as an appendix to the Guidance document.</li> <li>• Some submitters requested the development of a summary template or checklist to be used as a means of ensuring that the correct process has been followed when exercising discretion.</li> <li>• Several submitters suggested changes to the definition of ‘due regard’.</li> <li>• Some submissions recommended the removal of ‘planning jargon’ and an overall simplification of the language used.</li> </ul>



Question from Survey	Key Findings
	<ul style="list-style-type: none"> <li>A submitter noted that SPP7.3 does not have a 'baseline' control (as it is a performance based policy) and suggested clarification in the Guidance document as to how this should be addressed.</li> </ul>
<i>Do you support the inclusion of an assessment template?</i>	<p>This question related to the inclusion of a standardised assessment / reporting template designed to clearly articulate those considerations which require discretion to be exercised, and how the recommendation / decision has been reached.</p> <p>Whilst the principle of these templates was broadly supported, a number of submitters expressed the view that the templates must be scalable and fit-for-purpose so that a DA assessment for a modest residential extension does not require the same level of reporting as an 18 storey apartment building (for example).</p>
<i>Do you support the inclusion of a standardised form for decision-makers to utilise when communicating a decision? (Support, do not support, conditional support, or no position).</i>	<p>Once again, submitters were supportive of improved communication of decisions (and the reasons for the exercise of discretion). A number of submitters noted that the need for clear communication and transparency needs to be balanced against the limited resources available to decision-making bodies, and the fact that often JDAP and Council decision-makers may not always have time to fully document and articulate the reasoning behind the exercise of discretion. Requests for a tiered approach to the level of explanation / justification that is needed depending on the scale of the proposal and the nature / extent of the discretion.</p>

Several submitters raised matters that were related to, but outside of the scope of the project. These matters included:

- **Ongoing education/training opportunities** for decision-makers to ensure there is a clear understanding on how to navigate the assessment/exercising of discretion and weighing of considerations, particularly for newer members.
- Provision of additional guidance on how to correctly apply **seriously entertained** planning proposals in the decision-making process.
- Provision of additional guidance on the inclusion of **community benefits** (in exchange for increased building envelope) in the discretionary decision-making process.
- Greater **guidance from the Department** as to what matters might be able to be included in the proposed schedule to the Scheme where development standards are fixed rather than discretionary.
- Some submitters suggested that the Guidance document should not be limited to the determination of development applications, but should also apply to subdivisions and other discretionary planning decisions.

Whilst none of these matters form part of this project, they are all valid matters that would benefit from further input and attention as part of a separate and more detailed review. It is noted that some of these matters, such as what development standards are appropriate to 'fix'



and include in a schedule to the Scheme, will be addressed during the preparation of the Local Planning Scheme guidance (separate but associated work).

More detail of the matters raised in the submissions can be found in **Appendix 2**. This document focusses on the key themes that resulted in changes to the proposals and does not include proposals that had a broad level of support from stakeholders where no change from what was advertised is proposed.

## 6. Final Documents

The detail outlined in **Section 6** and **Appendix 2** of this report was considered when determining how to proceed post-advertising. Overall, given the high level nature of the proposed regulatory changes and the fact that they are yet to be drafted, no further changes are recommended to the advertised proposals. Any remaining issues or anomalies will likely be resolved at the drafting stage. The Regulatory changes once drafted will be subject to further consultation. These changes will be done as part of broader changes to the *Planning and Development (Local Planning Scheme) Regulations, 2015*.

In relation to the Guidance document, the following key changes have been included in the final version that will be presented to decision-makers for endorsement:

- Inclusion of a preamble clarifying the role of the Guidance document as *Guidelines* in accordance with the State Planning Framework set out in State Planning Policy 1 – State Planning Framework.
- Expansion of the criteria and questions under Principles 1-4 to provide improved guidance to decision-makers.
- Inclusion of a summary table/ checklist as Appendix 1 to the Guidance to assist decision-makers in ensuring discretion has been applied correctly; and
- Inclusion of a summary of the established ‘test’ for planning conditions (taken and adapted from the WAPC Model Subdivision Conditions).

As outlined in **Table 2**, discussions are intended to continue with key stakeholders in an ongoing nature as the regulatory changes are drafted and the Guidance is implemented to ensure that they are well understood, remain current and achieve the intended purpose of clarifying the exercise of discretion in determining planning applications.

For further information, contact the Department’s Reform Delivery team on 6551 9935 or at [planningreform@dplh.wa.gov.au](mailto:planningreform@dplh.wa.gov.au).





# Planning Reform

Proposed Amendments - Planning & Development (Development Assessment Panel) Regulations 2011

## Use and Application of Discretion on Development Applications – Consultation

### SUBMISSION

### Appendix 1 - Consultation Feedback Form

The Department of Planning, Lands and Heritage requests your comment on the proposed regulatory changes and guidance associated with a reform project about the use and application of discretion when assessing and determining development applications under Local Planning Schemes.

These proposals are open for comment until midnight, **27 March 2023**. The following form is provided to guide a submission.

This feedback form has been prepared in three (3) parts. Please include your feedback about the proposed regulatory changes in Part A, the associated guidance proposed in Part B, and any other feedback in Part C.

Please email a completed feedback form to [planningreform@dplh.wa.gov.au](mailto:planningreform@dplh.wa.gov.au).

### Submitters Details:

<b>Submitter's name</b>	Insert Name
<b>Email address</b>	Insert Email
<b>Are you submitting on behalf of an organisation?</b>	
Choose an item	
<b>Organisation name (if applicable)</b>	
Insert Org Name	
<b>Submitter/Organisation type</b>	
Choose an item.	
<b>Submissions may be published as part of the consultation process. Do you give permission for your name and your company's name (if applicable) to be published?</b>	Choose an item.





# Planning Reform

Proposed Amendments - Planning & Development (Development Assessment Panel) Regulations 2011

## Overview:

As part of the implementation of the State Government's planning reform agenda, work to develop a more consistent approach to the use and application of discretion under Local Planning Schemes has been progressed. The intent of this project is to provide greater consistency for general discretionary clauses across all Local Planning Schemes and more clear and consistent guidance for the use and application of discretion.

This is proposed to be achieved via enhancements to development assessment processes to increase understanding, deliver good practice and increase consistency across local governments. The proposed approach includes:

- Proposed changes to the *Planning and Development (Local Planning Schemes) Regulations 2015 (Regulations)* to provide greater consistency of general discretionary clauses.
- Improved guidance for assessing officers and decision-makers.

## Comments:

### PART A – PROPOSED REGULATORY CHANGES

(REFER TO APPENDIX A OF THE RECOMMENDATION REPORT)

Changes are proposed to the LPS Regulations, specifically to Schedule 1 – Model Provisions for Local Planning Schemes (**Schedule 1**) and Schedule 2 – Deemed Provisions for Local Planning Schemes (**Schedule 2**). The changes are summarised below:

- Proposal No. 1 – Explore ways to provide greater clarity of the meaning of 'due regard'.  
This could involve the inclusion of a definition in the LPS Regulations which aligns to the established case law position (see *City of South Perth v ALH Group Property Holdings Pty Ltd* [2016] WASC 141 at [46]).
- Proposal No. 2 – Provide a clear statement for when discretion can be or ought to be applied.  
This could be based on the 'clear and cogent' test reference (see *Marshall v Metropolitan Redevelopment Authority* [2015] WASC 226 at [182]) and could be inserted into the preamble of a provision like clause 67(2) within Schedule 2.
- Proposal No. 3 – Consolidate fragmented references to variations (to development standards) and relevant considerations throughout the Regulations, to ensure they are consistent across local planning frameworks.  
This could include relocating clause 34 within Schedule 1 to clause 67 within Schedule 2, in some capacity. This would also ensure that all Local Planning Schemes reflect the need to give regard to the same set of relevant considerations, noting of course that not every consideration will be relevant in every circumstance.
- Proposal No. 4 – Provide for the localised limitation of discretionary powers in specific scenarios or locations through the inclusion of appendices/schedules in the Model Provisions.





# Planning Reform

Proposed Amendments - Planning & Development (Development Assessment Panel) Regulations 2011

This intention is to provide a clear and consistent mechanism for local authorities to create specific exclusions or limits to the exercise of discretion in localised, strategic areas or circumstances to respond to site specific or issue based planning. It is not intended that this mechanism would remove discretion from frameworks entirely. As with any site specific or issue based planning issue, limitations must be informed by a proper evidence based planning process with supporting justification and rationale.

- Proposal No. 5 – Review prescribed forms for decision-making and create a universal set to be relied upon by all forms of planning decision-makers for improved transparency.

The intention of revision of the current prescribed forms would be to provide greater direction on how best to communicate decision-making processes both at determination meetings and in written decisions. This would include direction on explaining what variations to the standards were granted and why.

**Do you support the proposed regulatory changes? Please select a position for each proposal from the drop down lists below.**

• Proposal No. 1	Choose an item.
• Proposal No. 2	Choose an item.
• Proposal No. 3	Choose an item.
• Proposal No. 4	Choose an item.
• Proposal No. 5	Choose an item.

**Please outline any suggested improvements or comments relating to the proposals below. Please include a reference to the proposal/s that you are providing your feedback on (e.g. Proposal No. 1).**

Insert improvements or comments here

**Please outline any additional regulatory changes below that you believe result in development assessment processes being more streamlined, outcomes focused, consistent and transparent, as per the goals and initiatives of the [Action Plan for Planning Reform \(2019\)](#).**

Insert comments here



# Planning Reform

Proposed Amendments - Planning & Development (Development Assessment Panel) Regulations 2011

## PART B – DRAFT GUIDANCE

(REFER TO APPENDIX B OF THE RECOMMENDATION REPORT)

Draft Guidelines have been prepared to support the regulatory changes associated with this reform project. These guidelines are intended to be applied or referred to in the course of assessment or act of decision-making within a discretionary context. They should be read by assessors and decision-makers during these processes, together with the LPS Regulations and any other applicable planning instrument that applies to a particular development application. The guidelines are not intended to codify or prescribe discretion, or attempt to instruct on how to weight competing planning considerations.

**Do you think this guidance has a statutory role in the decision-making process, other than as a guide?**

Choose an item.

**If you answered yes, where do you think the Draft Guidelines should 'sit' in the planning framework?**

Insert comments here

## Guiding Principles for the Exercise of Discretion

The Draft Guidelines provides five key principles to guide decision-making when considering a development application, as outlined below. These principles have been derived from a number of sources including [Making Good Planning Decisions](#) (DPLH 2021), the [Guidelines on decision-making](#) (Ombudsman WA 2021), and the Supreme Court's decision of Marshall v Metropolitan Redevelopment Authority [2015] [WASC 226](#).

- Principle No. 1 – There should be a properly constructed planning framework
  - Is there a properly constructed planning framework in place?
  - If there is not, will the planning decision prejudice a future planning framework?
- Principle No. 2 – Look for guidance within the framework
  - Is there guidance or established parameters within the planning framework to inform the nature / extent of the departure from the base line provision being varied?
  - Can guidance be taken from other areas outside of the planning framework (e.g. previous planning decision)?
- Principle No. 3 – There must be clear and logical (cogent) reasons to depart from the standard
  - What is the base line development control trying to achieve and are there clear and logical reasons to depart from that control?





# Planning Reform

Proposed Amendments - Planning & Development (Development Assessment Panel) Regulations 2011

- Principle No. 4 – Public / community input has a legitimate role in the planning process
  - Are any public submissions duly considered and addressed?
- Principle No. 5 – Genuine and proper consideration
  - Has the decision-maker been objective in their assessment?
  - Has the decision-maker shown their workings and has the decision been clearly communicated?

For more detail on these principles, refer to Draft Guidelines contained at *Appendix B of the Recommendations Report*.

**Do you support the proposed principles contained within the Draft Guidelines? Please select a position for each principle from the drop down lists below.**

• Principle No. 1	Choose an item.
• Principle No. 2	Choose an item.
• Principle No. 3	Choose an item.
• Principle No. 4	Choose an item.
• Principle No. 5	Choose an item.

**Please outline any suggested improvements relating to the proposed principles within the Draft Guidelines. Please include a reference to the principle/s you are providing feedback on (e.g. Principle No. 1).**

Insert comments here

**Please outline any additional principles you think should be included in the Draft Guidelines below.**

Insert comments here

**Do you think this guidance is applicable beyond development applications, assessed and determined under Local Planning Schemes?**

Insert comments here



# Planning Reform

Proposed Amendments - Planning & Development (Development Assessment Panel) Regulations 2011

Please outline any additional areas of guidance that you believe result in development assessment processes being more streamlined, outcomes focused, consistent and transparent, as per the goals and initiatives of the [Action Plan for Planning Reform \(2019\)](#).

Insert comments here

## Glossary of Terms Used

A glossary of terms is included in the Draft Guidelines and explains what a 'casual observer', 'due regard' and 'proper planning consideration' means.

Do you have any feedback on the explanations of the abovementioned terms? If so, please provide this below.

Insert comments here

Are there any other terms used in the Draft Guidelines that require explanation?

Insert comments here

## Assessment Template and Standardised Reporting for Decisions

It is recommended that an assessment template and standardised form for communicating discretionary decisions would be included as appendices to the final version of the Guidance.

Do you support the inclusion of an assessment template?

Choose an item.

Do you support the inclusion of a standardised form for decision-makers to utilise when communicating a decision?

Choose an item.

Do you have any comments about the form of an assessment template and/or standardised form for the communication of a decision?

Insert comments here







# Planning Reform

Proposed Amendments - Planning & Development (Development Assessment Panel) Regulations 2011

## PART C – FURTHER COMMENTS OR SUGGESTIONS

**Do you have any further comments? Please outline any other suggested improvements or comments below, and include section/clause references where relevant:**

Insert suggested improvements or comments here

### THANK YOU FOR YOUR FEEDBACK.

Please email a completed feedback form to [planningreform@dplh.wa.gov.au](mailto:planningreform@dplh.wa.gov.au).

Exercise of Discretion in Planning decision-making in Western Australia

Schedule of Submissions with DPLH Response

Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
1	Urban Plan	
	Supportive of both regulatory changes and proposed Guidance document.	No Change. Noted.
2	Susan Pearce	
	Supportive of both regulatory changes and proposed Guidance document.	No Change. Noted.
	Concerned about State Government control of planning decisions and that this reform is focused on metropolitan planning.	No Change. Noted. This reform initiative is intended to improve discretionary decision-making for development applications across
3	Town of Mosman Park	
	Generally supportive of both regulatory changes and proposed Guidance document.	No Change. Noted.
	Proposal 1: The definition of due regard could be expanded through an explanation of how much weight a decision-maker gives to a document or policy, which should be based on principles in Planning Guidance rather than mandated through LPS Regulations.	Action: Review definition of due regard. The weighing of matters to be considered is at the very core of good discretionary decision-making and the amount of weighting to be provided to each consideration will differ depending on the individual circumstances. It may not be appropriate to legislate the amount of weight that a decision-maker should give one consideration over another.
	Proposal 1: Assessment of 'weighting matters to be considered' requires further exploration and guidance, to aid report authors and assessors in formulating their recommendations and communicating them appropriately to decision-makers.	No Change. The Guidelines refer to Making Good Planning Decisions, Guidelines on decision-making and Marshall v Metropolitan Redevelopment Authority for further guidance on weighing matters to be considered. The weighing of matters to be considered is at the very core of good discretionary decision-making and the amount of weighting to be provided to each consideration will differ depending on the individual circumstances.
	Proposal 2: A prescribed standard or example statements for assessment reports relating to providing clear and cogent reasons to depart from development standards would be useful.	Noted. The Department is currently considering updating the current notice of determination form for reporting on discretionary planning decisions as part of a second tranche of work.
	Proposal 3: A standardised and templated model provisions schedule or similar outlining clauses where discretion can apply would be useful, as well as a schedule for state planning policies.	Noted. Proposal 3 is intended to standardise the manner in which provisions or standards contained within planning schemes can be varied. It is not appropriate for this to also call-in State planning policies which, by their very nature, are discretionary due regard planning instruments and are not binding on the decision-maker.
	Proposal 3: Design Review Panels should be embedded into Clause 67(2) provisions, as this is intrinsically linked to discretionary decisions made in relation to R-Code Volume 2 Assessments.	No Change. The operation and input of Design Review Panels derives its head of power from SPP7.0 and various local planning policies that have been prepared to guide and inform DRPs. It is not considered necessary to 'embed' DRPs into clause 67(2) as their input is already a matter to be given due regard by virtue of SPP7.0 and any applicable local planning policies dealing with design review.
	Proposal 4: Local Governments require more guidance regarding the evidence required for Local Governments to obtain support from the Minister or WAPC to limit discretion and areas where the State will not allow discretion to be limited. Local Governments will be unlikely to pursue scheme amendments to fix specific built form elements where no discretion can be applied due to financial constraints. In this regard a clear and consistent methodology should be applied across the State and could take the form of a position statement.	Noted. Not within scope of this review.
	Proposal 5: Recommends taking a similar approach to the SPP 7.0 principles by requiring a Discretion Principles Evaluation in the format of a 5 Principles test for decision-makers to evaluate whether discretion should be applied. The form and format of this principles evaluation should remain consistent and apply at all levels of decision-making, forming part of reporting templates as a required assessment. In particular, the two questions posed in Principle 1 should be included in this tool.	No Change. This is already provided for in the Guidance document. Reporting templates are not within the scope of this review.

Exercise of Discretion in Planning decision-making in Western Australia

Schedule of Submissions with DPLH Response

Submission	DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
The community is used to certainty with regard to planning controls, and the exercise of discretion creates a level of uncertainty, especially without a clear metric or upper limit. The DPLH should focus on education and awareness of the rights of developers and the powers of decision-makers, particularly where a decision-maker is making a decision against an RAR or Council recommendation.	<b>No Change.</b> Noted. Education of the community, while not within the scope of this review, is an important consideration.
The guidelines should be a position statement with a table for officers to use as an assessment tool to enable the decision-maker to explain whether they agree or not agree and rationalise why.	<b>Action: Consider including a summary table template that includes the five key principles, and space for the assessing planner to comment against each principle in their assessment.</b>
Principle 2: Recommends re-wording to ‘What guidance is within the existing planning framework to inform the application of discretion’.	<b>No Change.</b> The suggested change does not add any value to the information already included.
Principle 3: Queries how to determine the standard to be departed from, and notes that clear and consistent language should be used in this section to relate to a multitude of planning instruments, such as primary controls, deemed to comply provisions or acceptable outcomes.	<b>Action: Review guidelines and other written outputs to ensure consistent terminology.</b> It is the role of the reporting officer and decision-maker to clearly articulate and determine the standard to be departed from. Should the standard be unclear, it may be that the planning framework is not properly constructed, in which case Principle 1 should be considered.
Principle 4: This principle should include how public submissions have been balanced against other competing or complementary factors in the context of what the planning framework reasonably contemplates.	<b>No Change.</b> The guidelines address this matter as follows: “Where submissions from the public raise substantive planning matter(s), these matters should generally be given greater weight in the decision-making process than those submissions which raise issues outside of the realm of planning.”
Principle 4: Queries if a follow-up question could be asked covering whether the community engagement process adequately and appropriately provided genuine engagement methodology.	<b>Action: Review principle 4 to include presumption that engagement extent and methodology is appropriate for the proposal.</b> Noted.
Principle 4: The weight to which public submissions have been given or whether they have influenced the decision to use or not use discretion should be made public following a decision.	<b>No Change.</b> This is intended to form part of Proposal 5.
Principle 5: Queries how a decision-maker can demonstrate their objectivity, and how they communicate their workings. Requests that a guidance template be prepared with examples.	<b>No Change.</b> An assessment is objective if it considers the merits of the proposal against the applicable planning framework and any discretion available, and weights relevant considerations based on guidance within the planning framework. This is as opposed to allowing personal values, or the influence of others impact on the nature of the decision and whether or not to exercise discretion. A decision that is based in an objective assessment will be clear through inclusion of the decision-maker’s workings will be communicated on standardised forms (refer proposal 5).
Suggests an additional principle: Does the local planning framework accord with the current state planning framework? If not has the Local Government received the approval of the WAPC to amend / augment or create local planning controls that are contrary to the state planning framework?	<b>Action: Review principle 1 to clarify that a properly constructed local planning framework accords with the state planning framework unless otherwise approved by the WAPC.</b> Noted.
States that if there are provisions introduced into the deemed provisions, there would not be a need to embed any into Local Planning Schemes. Supplementary Provisions may be useful so that when decisions are made, reference to this guidance document or the new deemed provision is captured as a matter to be considered in decision-making.	<b>No Change.</b> Noted. The guidance is not intended to be included in supplementary provisions, given its role is limited to guidance.
There is a need for a position statement regarding the use of discretion and linkage to the development of Community Benefits for development incentives frameworks. A uniform process and requirement for Community Needs Assessment to form part of the local planning framework should be considered to provide further guidance on significant departure from Primary Controls within PSPs and Structure Plans, whilst delivering tangible and definable community benefits for a precinct.	<b>No Change.</b> Review of matters to which due regard should be given by decision-makers when making a discretionary decision is outside the scope of this planning reform project.
The discretion assessment templates should be co-designed with Local Governments to ensure appropriate functionality for the assessment of each application type.	<b>No Change.</b>

Exercise of Discretion in Planning decision-making in Western Australia

Schedule of Submissions with DPLH Response

Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
		It is the Department's intention to update the current notice of determination form, and undertake targeted consultation with affected stakeholders.
	A communications plan and strategy are required by the DPLH to engage more specifically with local community, to educate and to explain these concepts in plain English once the discretion framework is refined to gain buy-in from the community.	<b>No Change.</b> Not within the scope of this review.
4	City of Cockburn	
	Generally supportive of both regulatory changes and proposed Guidance document, subject to further clarification of finer details of how each proposal and principle would be implemented.	<b>No Change.</b> Noted.
	Proposal 3: Requests that the Department holds further feedback sessions to determine if blanket consolidation of variation provisions would limit the ability of Local Governments to respond to unique issues.	<b>No Change.</b> This matter will be considered as part of the drafting work associated with Proposal 3. There is no intention for consolidation of variation provisions to limit the ability of Local Governments to respond to unique issues by limiting discretion in appropriate situations. It will remain open to Local Governments to include specific / unique planning standards or provisions in the local planning scheme to limit discretion where appropriate.
	Proposal 4: Requests further clarification regarding the types of scenarios or locations where discretionary powers could be limited, and whether this could in turn limit Local Government ability to amend Schemes to reflect changing trends.	<b>No Change.</b> Noted. Not within scope of this review
	Proposal 5: Requests clarification on the format and presentation of decision-making forms used to communicate variations to development standards. Concerned publication of rationales for variations could lead to an influx of proponents seeking to use the same justification.	<b>No Change.</b> It is the Department's intention to update the current notice of determination form to include this proposal, and undertake targeted consultation with affected stakeholders. Publication of justification ensures a transparent planning process, and is intended to confirm that each application has been assessed on its individual merits. Any justification submitted for an application that is similar to justification that others have used previously should be considered in the context of the current proposal.
	Principle 1: Requests guidance be provided regarding what constitutes a properly constructed planning framework, the considerations to be made when exercising discretion and at what point exercising discretion is appropriate.	<b>Action: Update guidance document to clarify how to determine if a planning framework is properly constructed.</b>
	Principle 2: Suggests providing guidance referencing how previous decisions can assist the exercise of discretion, including case law.	<b>No Change.</b> The onus is on the decision-maker to have a good understanding of the implications of any previous decisions and / or case law that may assist to guide the exercise of discretion.
	Principle 4: Requests that the DPLH provides guidance on whether the public should be informed if a discretionary decision is made, for example through Local Government websites.	<b>No Change.</b> This is intended to form part of Proposal 5.
	Principle 5: States that the objectivity of an assessment should be defined.	<b>Action: Consider including guidance to clarify objectivity in a planning assessment.</b> An assessment is objective if it considers the merits of the proposal against the applicable planning framework and any discretion available, and weights relevant considerations based on guidance within the planning framework. This is as opposed to allowing personal values, or the influence of others impact on the nature of the decision and whether or not to exercise discretion. A decision that is based in an objective assessment will be clear through inclusion of the decision-maker's workings on the standardised forms (refer proposal 5).
	Recommends an additional principle covering the risk of a precedent being established, and consideration of the outcome resulting from whether a variation was sought multiple times.	<b>Action: Investigate opportunities to include reference to precedent in the Guidance document.</b> Whilst each proposal needs to be assessed on its individual merits, risk of precedent is not supported as a stand-alone principle, however the risk of the planning framework being undermined by a discretionary decision is an important consideration and should be addressed in the guidance document.
	The guidance could also apply to development applications with regional reserves and subdivision applications.	<b>No Change.</b> Whilst the guidelines do provide some guidance for all discretionary planning decisions, they are targeted at the determination of applications for development (planning) approval under local planning schemes.

Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
5	City of Canning	
	Generally supportive of both regulatory changes and proposed Guidance document.	<b>No Change.</b> Noted.
	Proposal 4: Structure plans do not have the same legal weight as local planning schemes, therefore structure plans should be incorporated into local planning schemes	<b>No Change.</b> Normalisation of structure plans into local planning schemes is beyond the scope of this planning reform project.
	Proposal 5: More clarity is sought regarding where the forms would be made available and if they are internal use only (and available via an FOI process). Notes that Local Governments already document decisions made under delegation and recommendations, however where the Local Government is not the decision-maker there is far less documentation. Requests flexibility in utilisation of prescribed forms for Local Governments so that minor matters are not overly cumbersome to document.	<b>Action: Update the current notice of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> It is intended that decisions where minutes are made publicly available will include communication of what variations were granted and why.
	Notes that reasons for approval are already available via the Freedom of Information Act.	<b>No Change.</b> Noted. The intent of this review is to ensure that the reasons themselves are articulated appropriately. This project does not intend to change the level of information that will be made available to the public, which is already provided for under separate legislation.
	Further clarity that is provided in the Regulations through this planning reform should also be provided in the DAP regulations to ensure that the two align.	<b>No Change.</b> Supported. Changes to the DAP Regulations are not within the scope of this review.
	Principle 1: Notes that the Minister of Planning has the power to intervene in the local planning process by calling in planning schemes for review. Suggests that the WAPC utilises their resources in this regard to update Schemes that are out of date or do not align with the WAPC’s planning framework goals.	<b>No Change</b> Beyond the scope of this review.
	Principle 5: Objectivity requires training which the WAPC should provide to decision-makers.	<b>No Change.</b> An assessment is objective it considers the merits of the proposal against the applicable planning framework and any available discretion, and weights relevant considerations based on guidance within the planning framework. This is as opposed to allowing personal values, or the influence of others impact on the nature of the decision and whether or not to exercise discretion. A decision that is based in an objective assessment will be clear through inclusion of the decision-maker’s workings will be communicated on the standardised forms (refer proposal 5).
	Recommends applying the same principles to all decisions made by the WAPC and DPLH under delegation, including subdivision applications.	<b>No Change.</b> Whilst the guidelines do provide some guidance for all discretionary planning decisions, they are targeted at the determination of applications for development (planning) approval under local planning schemes.
	Recommends broadening the planning reform to include the Local Government Act to change the delegation requirements of Local Governments such that 95% of development applications are required to be determined by officer delegation. This would reduce the need for DAPs, which duplicate resources.	<b>No Change.</b> This is outside the scope of this planning reform project.
	Casual observer definition: this term needs more context.	<b>Action: Review this definition based on stakeholder feedback.</b>
	Due regard definition: the proposed definition is not supported. It should refer to Principles 1 - 5.	<b>No Change.</b> The definition is derived from established case law and the introduction of an alternative definition would be contrary to previous court decisions on the application of due regard.
	Requests more clarity on who the decision-maker is communicating a decision to (i.e. Elected members or an applicant).	<b>No Change.</b> This planning reform project proposes to ensure that a <i>casual observer</i> is able to understand what variations were granted and why when a decision is made.
	Suggests that the decision notice could include a preamble at the beginning detailing why a variation was approved, justified against the 5 principles.	<b>Action: Update the existing notice of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> Noted.

Exercise of Discretion in Planning decision-making in Western Australia

Schedule of Submissions with DPLH Response

Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
	Decision notices should be prepared and finalised wholly digitally and be flexible enough to reflect the scale of the matter being decided upon.	<b>Action: Update the existing notice of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> Noted. Forms are intended to be digital which can then be printed and posted if required.
	Suggests that there should be more focus on applicants providing justification for why a decision-maker should be exercising discretion in making a decision. This should be a requirement for when development applications which include a variation to the planning framework are lodged.	<b>No Change.</b> Planning application submission requirements are outside the scope of this reform project. This is captured by clauses 63, 63A and 65A of the Deemed Provisions for development applications.
6	Town of Bassendean	
	Partially supportive of some regulatory changes and supports proposed Guidance document. Does not support proposals 3 and 4.	<b>No Change.</b> Noted.
	Proposal 2: Inclusion of when discretion can and/ or ought to be applied within cl. 67(2) of Schedule 2 should not limit the ability for local governments to use discretion in circumstances not otherwise defined.	<b>No Change.</b> Supported. It is not intended that this planning reform project will fetter the ability for decision makers to exercise discretion in scenarios where discretion is able to be exercised. Clause 67(2) (zb) will remain and allows the decision-maker to consider <i>any other planning consideration the local government considers appropriate</i> .
	Proposal 3: Do not support relocation of clause 34 as the use of discretion should be embedded in the model provisions for local planning schemes for all future schemes. Reference to discretion can also be included in Cl 67(2).	<b>No Change.</b> A modified version of clause 34 is intended to be included in the Deemed Provisions to ensure that it applies in all Local Government areas. It should be noted that at present clause 34 only allows the local government to vary the 'additional requirements' set out in clauses 32 and 33, and may not capture all 'standards / provisions' within the applicable local planning scheme.
	Proposal 4: There should be no limit on the discretion available to local governments. Consider including appendices/ schedules prescribing circumstances where discretion must be used.	<b>No Change.</b> The current proposal suggests that discretion should only be limited by exception. As such, if a local government does not want its discretion to be limited, then no further action is required. There may be instances where a standard should not be able to be varied, in which case this will need to be inserted into a schedule of the scheme via the scheme amendment process.
	Proposal 5: Free text must be included in any prescribed form in addition to any pro-forma reasons for the use of discretion.	<b>Action: Update the existing notice of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> Noted.
	Principle 1: Guidance should be able to be derived from seriously entertained as well as constructed planning frameworks.	<b>Action: Review principle 1 and consider opportunities for reference to seriously entertained proposals.</b> Noted.
	Principle 4: The requirement for proper consideration of submissions must also translate to the SDAU and DAPs. To ensure this occurs, these decision-making panels must include a schedule of submissions including comments as to whether the submission is upheld or not, with comments where required.	<b>No Change.</b> The guidance document is not introducing any new requirements. Rather it is clarifying how to apply discretion as a best-practice model. JDAPs and the SDAU / WAPC should be assessing and addressing public submissions in their reporting as a matter of good practice.
	Principle 5: Decision makers should only need to convey how relevant planning considerations have been considered, not weighing up all potential competing objectives (i.e. only require assessment and justification against applicable matters under cl 67).	<b>No Change.</b> Supported. This will be taken into consideration through implementation of Proposal 5.
	The Model provisions should clearly outline that property values are not a matter to be considered.	<b>No Change.</b> Review of matters to which due regard should not be given by decision makers when making a discretionary decision is outside the scope of this planning reform project.
	Clause 23(3) of the model text on page 26 of the draft document needs to refer to adjacent zones where a change of use is proposed on a site abutting a different zone.	<b>No Change.</b> Noted. The clause and page referred to forms part of the background report and is outside the scope of this planning reform project.



Exercise of Discretion in Planning decision-making in Western Australia

Schedule of Submissions with DPLH Response

Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
	The ‘Proper planning consideration’ definition needs to refer to any other matters that may impact the proposal as determined by the decision-maker, and not be restricted to those matters outlined in cl 67(2). Alternatively, expand the definition to refer to case law and previous decisions.	<b>No Change.</b> These matters can already be considered by virtue of clause 67(2)(zb).
	Additional regulatory change proposal 1: Various modifications to Part 2 of the Planning and Development Act 2005 related to the Western Australian Planning Commission to ensure consistency between local government and State government decision-making. For example, WAPC meetings should be open to the public and live-streamed, and a number of documents relating to accountability and the WAPC members should be on the WAPC website.	<b>No Change.</b> Noted. This is outside the scope of this planning reform project. Planning Reform Initiative C9 is currently being implemented through the <i>Planning and Development Amendment Bill 2023</i> which has considered these matters.
	Additional regulatory change proposal 2: Subdivision applications for freehold and survey strata lots of no more than five lots should be delegated to local governments, consistent with built strata subdivisions. Should the previous reform proposal to create one portal for referrals to government agencies be adopted, local governments could still process applications with the necessary referrals to service agencies in a reduced timeframe. Subdivision clearances should also be processed by local governments for these applications.	<b>No Change.</b> Noted. This is outside the scope of this planning reform project.
	Additional regulatory change proposal 3: Clause 29(1) of the MRS should be deleted. Any application meeting the criteria of this clause (i.e. on reserved land, within the Swan development control area, subject to a notice under Clause 32) should be submitted directly to the WAPC as the determining body. The current process results in confusion from applicants and unnecessary delays. s6(3) of the Planning and Development Act 2005 should be amended in this respect.	<b>No Change.</b> Noted. This is outside the scope of this planning reform project.
	Additional regulatory change proposal 4: Clause 30(1) of the MRS should be amended to exempt the requirement for development approval where the works are either exempt under the Regulations or are so minor they do not warrant approval under the MRS (de Minimis principle). This would ensure development applications are not required for minor works that would otherwise be exempt under zoned land, yet require a DA where abutting reserved land.	<b>No Change.</b> Noted. This is outside the scope of this planning reform project.
	Additional regulatory change proposal 5: Provision 4(b) of the instrument of delegation needs to be amended to enable local governments to determine applications on zoned land where the recommendation by a public authority specified in the delegation notice is not acceptable to the local government. The current requirement to refer the application and advice to the WAPC results in confusion from applicants and unnecessary delays. In many instances, advice received from agencies is either vague or general in nature, does not provide a recommendation in support or against a proposal, or objects to the proposal without planning grounds. Public authorities should be acting as an advice agency in the decision-making process.	<b>No Change.</b> Noted. This is outside the scope of this planning reform project.
	Uniform development application forms should be provided across all local governments (or use of the MRS Form 1 as the development application form).	<b>No Change.</b> The application form needs to have the Local Government’s name and Scheme on it, so there could not be one form for the whole State. Development application forms are already required to be consistent with the forms set out in <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> , Schedule 2, Part 11, with the only variations being the formatting (such as fonts and inclusion of a logo).
7	Shire of Serpentine-Jarrahdale	
	Partially supportive of some regulatory changes and supports proposed Guidance document. Does not support proposal 4.	<b>No Change.</b> Noted.
	Proposal 2: Recommends amending Clause 63 of the Deemed Provisions to set out that any application seeking variations to development standards should be accompanied with justification, in particular for large scale developments. Whilst there is already the ability to request such information, having this clearly expressed would require applicants to provide full and detailed reasoning for assessment up front.	<b>No Change.</b> Planning application submission requirements are outside the scope of this reform project. This is captured by clauses 63, 63A and 65A of the Deemed Provisions for development applications.
	Proposal 4: This can already be achieved through special control areas and a further schedule is not required.	<b>No Change.</b>

Exercise of Discretion in Planning decision-making in Western Australia

Schedule of Submissions with DPLH Response

Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
		Supported. Given the broad nature of the use of Special Control Areas across local planning schemes in Western Australia, it is considered more succinct and appropriate to have a separate schedule that specifically deals with development standards only.
	Additional regulatory change proposal: Allow Local Governments to exercise discretion in relation to the placement of a sign advertising a development application (Clause 64) without the requirement to refer to WAPC. The mechanism could be through a consultation LPP.	<b>No Change.</b> Noted. This is outside the scope of this planning reform project.
	Principle 5: Queries if the wording of this principle could enable applicants and other interested parties to question the assessment, given delegated decisions are not public. It would be important to set out that the Guidance is for use for decision-makers only and not a tool for other parties to reflect on how a decision has been reached.	<b>No Change.</b> A good planning decision should be able to withstand questioning of the assessment as it relates to planning matters by interested parties.
	The Guidance Document could be expanded to include the principles (tests) for valid planning conditions.	<b>Action: Consider including the valid planning condition tests as an appendix to the Guidance document and update guidelines to address the role of conditions in application of discretion.</b> This will be considered as part of the above action.
	Additional guidance proposal: Consolidated state wide referral criteria for Government Agencies available in one place.	<b>No Change.</b> Noted. This is outside the scope of this planning reform project.
	‘Proper planning consideration’ definition: Could refer to matters of or ‘relating’ to those set out in Clause 67(2). Often submissions do not necessarily contain matters expressly listed in Clause 67 (2) but are related to the listed matters.	<b>No Change.</b> These matters can already be considered by virtue of clause 67(2)(zb).
	‘Due regard’ definition: Amend to say ‘mere consideration’ in lieu of ‘mere regard’. Defining a term using the same term can be misleading and result in further investigation as to the definition of ‘regard’.	<b>Action: Review definition of due regard based on stakeholder feedback and seek appropriate legal advice .</b>
	Whilst an assessment template would be useful as a guideline it is not appropriate to make it mandatory. Different development types require different levels of detail and one standard assessment template may not fit all assessments.	<b>No Change.</b> References to assessment templates were intended to refer to updated notice of determination form to be included in decisions to communicate what variations were granted and why. There is no intention to develop standardised planning assessment templates.
8	<b>Australian Institute of Architects</b>	
	Generally supportive of both regulatory changes and proposed Guidance document.	<b>No Change.</b> Noted.
	Proposal 1: “Due regard” should not mean that each matter taken into consideration has to be applied to the decision, but that it has to have been considered. Due regard should include demonstrated respect for the views of relevant affected parties and the implications for them. The explanation could also define what “due regard” does not include.	<b>No Change.</b> These comments relate more to how due regard ought to be applied, rather than how it is defined.
	Proposal 1: It will be important to provide guidance material and sector education sessions to effectively address the current broad range of interpretations and understandings of ‘due regard’.	<b>No Change.</b> Noted. This is the very reason why it is proposed to include a standard definition in the Deemed Provisions.
	Proposal 2: A statement for when discretion can or ought to be applied could be accompanied by a flow chart, and some examples to aid clarity and understanding for the general public and the design/development community.	<b>No Change.</b> It is not clear as to how a flow chart could or would be used in instances where discretion can be applied (recognising that discretion is applied in almost every single planning decision).
	Proposal 3: If Clause 34 is relocated to Schedule 2 it would be important for Clauses 32 and 33 to be amended to ensure that they reference Schedule 2 Clause 67 and are properly interpreted with regard to the matters currently set out in Clause 34. Similarly, the relocated Clause 34 provisions would still need to retain subclause 34(1) which set out the meaning of “additional site and development requirements” as per Clauses 32 and 33 in Schedule 1.	<b>No Change.</b> Noted. This matter will be considered as part of the drafting work associated with Proposal 3.
	Proposal 4: Limitation of discretionary powers itself will require a definition or set of terms. The limits of discretion need to be clearly defined and expressed to ensure consistency and transparency and gain confidence of the	<b>No Change.</b> Limitation of discretion will be assessed by the WAPC on a case by case basis through the Scheme amendment process, and will need to be adequately demonstrated using evidence-based justification.

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	community and the development sector. Offers to provide support to define these exclusions or limits through future engagement, research and/or stakeholder opportunities.	
	Proposal 5: The forms will be helpful in future audits undertaken by the DPLH and the DLGSC monitors under the Local Government Act reforms. This will improve legibility and consistency across all jurisdictions, in particular councils with limited resources.	<b>No Change.</b> Noted.
	Principle 1: There is a need to ensure that there is consistency of decision-making and considered assignment of weighting where planning frameworks are properly constructed. There is varying due regard for local planning policies to the extent that at times they may appear to be applied more as guidelines than specified settings.	<b>No Change.</b> The five principles have been drafted with a view to improving the consistency of decision-making by providing a framework to apply to discretionary decision-making.
	Principle 2: This principle’s successful implementation is subject to guidance being available in the framework.	<b>No Change.</b> Supported. If guidance is not available in the planning framework then it may not be properly constructed. In that case Principle 1 would be relevant to apply.
	Principle 2: Good outcomes should be actively pursued through discretionary frameworks.	<b>No Change.</b> Noted.
	Principle 2: It is important that structure plans are progressive over time and are based on tested assumptions about variables such as population. The risk otherwise is over-development leading to vacant premises, and not achieving the desired level of social and economic vibrancy.	<b>No Change.</b> Not relevant to this review.
	Principle 3: If a standard no longer aligns with a development outcome, then it makes good sense to review that standard through a process of local engagement and collaboration so that desired outcomes, capable of being applied locally are achieved in relation to the vision of higher order documents.	<b>No Change.</b> Supported.
	Principle 3: Concerned that reliance on previous decisions in the same locality or context that have been granted the same or similar discretion is highly dependent on the assumption that the previous decisions were the most appropriate decisions and resulted in desired outcomes.	<b>No Change.</b> The Guidance document is not suggesting a reliance on previous decisions (i.e. precedent). Rather, it is saying that previous decisions may help to inform the exercise of discretion.
	Principle 3: Despite the note about ‘community benefit’ not equating to the greater good, it is preferable in the longer term that engagement/collaboration across jurisdictions enables “greater good” and “community benefit” to be well aligned.	<b>No Change.</b> Noted.
	Principle 3: Language needs to be considered carefully in communicating decisions and their reasons. Terms such as “deviated from the standard” might have connotations for some stakeholders that the development application is somehow doing the wrong thing or the rules are being bent or gamed. More neutral terms such as “varies” or “differs” could be preferable.	<b>Action: Review guidelines and other written outputs to ensure consistent terminology.</b> Noted.
	Principle 4: Consultation should focus on the needs of the community and those community members most likely to be impacted, in preference to external interests. Notwithstanding, community consultation submissions must be appropriately weighted against other factors.	<b>No Change.</b> Review of the extent and methodology of consultation undertaken in assessment of development applications, and how that is weighted by decision-makers, is outside the scope of this planning reform project.
	Principle 4: People who may use a development seeking discretion should also have their views actively sought.	<b>No Change.</b> Review of the extent and methodology of consultation undertaken in assessment of development applications is outside the scope of this planning reform project.
	Principle 5: If an application has been referred to a DAP or a design review panel, the composition of the panel including specialists from disciplines such as architecture, urban design, engineering, landscape design, environment and local councillors should be considered as a means to ensure genuine and proper consideration.	<b>No Change.</b> Review of the composition of decision-making bodies is outside the scope of this planning reform project, however reforms to the DAP system and the WAPC are being progressed simultaneously. This project instead seeks to provide clear guidance to assist all decision-makers to make good decisions.
	Principle 5: Councillors should be removed from the ability to be decision-makers when it comes to application of discretion. Councillors already have an important role to represent the interests of their constituent communities	<b>No Change.</b> Review of the composition of decision-making bodies is outside the scope of this planning reform project. This project instead seeks to provide clear guidance to assist all decision-makers to make good decisions.

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	and to ensure that genuine and proper consideration has been given as a matter of good governance. However making the decision requires a breadth or expertise from multiple disciplines.	
	Additional principle: Timeliness, which helps to improve certainty which is sought by both communities and development proponents. More timely decisions can also bring forward the timely delivery of development.	<b>No Change.</b> Whilst timeliness is an important consideration, this is outside the scope of this planning reform project and is captured by applicable statutory timeframes.
	Additional principle: Ensuring confidence in the planning system, with the objects of this principle to include both the development sector and the general public.	<b>No Change.</b> This project, and the reform agenda more broadly, seeks to boost confidence in the planning system through clear and consistent guidance to inform decision-making. A desired outcome of this reform project would not be appropriate to include as a principle to guide decision-making.
	Suggests a staged approach to reform and application of discretion to planning decisions beyond development applications based on performance evaluation.	<b>No Change.</b> Noted.
	The glossary should be expanded to include terms such as “local planning policies”, “structure plans” and “local development plans”.	<b>No Change.</b> The glossary is aimed at decision-makers and practitioners, rather than members of the public. These terms are defined elsewhere in the planning framework.
	Education sessions should be set up for local councils and design/development professionals in relation to limitations of ‘discretion’.	<b>No Change.</b> Noted.
<b>9</b>	<b>Cancer Council of WA</b>	
	Recommends amending clause 67(2) of the Deemed Provisions to ensure that local government is to have due regard to the public health impacts of the development.	<b>No Change.</b> Review of matters to which due regard should be given by decision-makers when making a discretionary decision is outside the scope of this planning reform project.
	Notes that Part 7 of the <i>Public Health Act 2016</i> , once it comes into operation, will allow for public health assessments of assessable proposals. Considers that the envisaged scope of the public health assessments is too narrow to affect the majority of development applications.	<b>No Change.</b> Noted. This is outside the scope of this planning reform project.
<b>10</b>	<b>Shire of Collie</b>	
	Supportive of both regulatory changes and proposed Guidance document.	<b>No Change.</b> Noted.
	The principles could be applied to all discretionary decisions related to planning.	<b>No Change.</b> Whilst the guidelines do provide some guidance for all discretionary planning decisions, they are targeted at the determination of applications for development (planning) approval under local planning schemes.
	Education and training should be provided in relation to the Guidance.	<b>No Change.</b> Noted.
	Would like to see case law incorporated into the planning system to guide relevant decisions, such as those made using discretion.	<b>No Change.</b> Noted. Planning reform projects and new schemes and policies should consider case law where relevant.
	Communication of a decision should focus on elements that require justification only, and not where a proposal has conformed.	<b>No Change.</b> Supported.
<b>11</b>	<b>Property Council of Australia</b>	
	Generally supportive of most regulatory changes. No comments provided on proposed Guidance document.	<b>No Change.</b> Noted.
	The consultation frequently refers to occasions when discretion should not be applied, as opposed to emphasis on situations where discretion should be used by planning practitioners. Recommends that LPS Regulations and	<b>No Change.</b>

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	guidance documents should focus on situations where it is appropriate for discretion to be used, whilst also being clear that any examples do not represent an exhaustive list.	The focus of this project is to provide guidance to decision-makers to exercise discretion appropriately and effectively to make good planning decisions. Notwithstanding this, it is open to local authorities to limit discretion in contexts or locations where proposals with specific features or of a specific type may definitely or definitely not be appropriate. The Scheme amendment process provides sufficient checks and balances where a planning authority seeks to limit discretion.
	Does not support proposal 3 as providing a pathway for local governments to limit discretion will create inconsistency and reduce transparency within the planning process. Concerned that localised limitations could create a two-tier system if it is the intention of the new permanent pathway for development applications of State and regional significance to permit greater discretionary power.	<b>No Change.</b> The ability to limit discretion is a fundamental tool required by planning regulators to ensure that proposals of a type that are definitely consistent or definitely inconsistent with orderly and proper planning of a specific locality are either expressly permitted or not permitted. This approach underpins the land use table used by Local Governments, for example. The ability for discretion to be limited will be retained in the planning system, however it is noted that the intent of recommendation 4 is for limitation of discretion to be 'by exception' through the Scheme amendment process, which provides for a number of checks and balances including broad consultation and Ministerial approval.
	Generally supportive of proposal 5, however seeks assurance that the actions required will not result in delays to the issuing of approvals or planning decisions.	<b>Action: Update the existing notice of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> Thresholds for forms will be considered by the Department to ensure that communication of what variations were granted and why is commensurate to the magnitude of any variations and public interest associated with any discretionary decision.
	Recommends expanding the review to include a mandate for referral agencies to support development where discretionary powers have been exercised to approve a planning proposal.	<b>No Change.</b> This reform project is focused on the use and application of discretion by decision-makers in determining development applications, and on this basis the function of referral agencies (as non-decision-making entities) is outside the scope of this planning reform project.
12	City of Vincent	
	Cites support for another submission which is conditionally supportive of both regulatory changes and proposed Guidance document, but is not supportive of proposal 2.	<b>No Change.</b> Noted.
	Proposal 3: Consistency in the triggers, scope and extent of discretionary powers may be difficult to achieve within individual local planning schemes, however the inclusion of guidance within the deemed provisions would not be able to respond to the nuances of individual planning schemes. Formalisation of CI 34 in the deemed provisions provides guidance on how to vary provisions, but would not address the issue of providing clarity in whether provisions can be varied in the first instance. To rectify these issues, the Model Provisions should be reviewed to provide clear and consistent wording for which clauses can and cannot be varied.	<b>No Change.</b> It is proposed that the inclusion of a 'general variation' clause such as clause 34 in the Deemed Provisions would be supplemented by a Schedule in the local planning scheme (which would be included in the Schedule 1 Model Provisions) that excludes specific standards or provisions from the general variation.
	Proposal 5: Minutes templates for decisions made by Council and JDAP should also include thorough reasons for decisions, particularly where these are against the officer recommendation.	<b>No Change.</b> Supported in principle. Council decisions are governed by the Local Government Act 1995 and therefore out of the scope of this reform. The <i>Development Assessment Panel Regulations 2011</i> already require reasons for decision to be included.
	Proposal 5: The prescribed forms and the Guidance document should be scalable depending on types of decisions and level of discretion applied for by the decision-maker.	<b>Action: Update the existing notice of determination with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> Thresholds for forms will be considered by the Department to ensure that communication of what variations were granted and why is commensurate to the magnitude of any variations and public interest associated with any discretionary decision.
	Principle 4: Greater transparency should be provided on the weight that is given to public submissions as part of a determination.	<b>No Change.</b> Supported. This is the intention of Principle 4 and Proposal 5.
	The five principles (particularly Principle 5) provide a useful summation of considerations for discretion, but lack a further explanation of how a decision-maker should weigh these. Concerned that some members of DAP or Council struggle to apply weight to the relevant matters and that these are not all viewed equally. More examples of locational and contextual matters should be provided in the guidelines regarding the weighting that is given to separate considerations.	<b>No Change.</b> The decision on how to weigh often-competing considerations is at the heart of discretionary decision-making and will vary on a case by case basis. It would not be appropriate for the Guidance documents to instruct a decision-maker on how to weigh different considerations.

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	The Guidance document is very technical and would do well to be streamlined and made clearer for lay people to understand.	<b>Action:</b> Review the Guidance document to simplify terminology and remove ‘jargon’ where appropriate, recognising that this is intended as a tool for planning practitioners and not the general public.
	Recommend that the scope of consultation on the Guidelines includes community members, practitioners and decision-makers so that they can be further developed to address the needs of each.	<b>No Change.</b> Community members have provided input into the Guidelines, however the Guidelines are intended as a tool for planning practitioners and not the general public.
	Recommends that ongoing education/training opportunities include decision-makers to ensure there is a clear understanding on how to navigate the assessment/exercising of discretion and weighing of considerations, particularly for newer members. Suggests the following education/training opportunities: a. creating a circular of case law updates affecting the exercise of discretion and other relevant planning matters; b. ensuring tertiary courses include a fulsome exploration of planning systems and decision-making processes in practice; c. working with the Planning Institute Australia and other industry bodies to ensure continuing professional development occurs across the sector, and with a potential to include mandatory areas of study in crucial areas; and/or d. development of training modules available universally for the profession in crucial areas.	<b>No Change.</b> Noted.
	<b>13 Local Government Planners Association</b>	
	Generally supportive of both regulatory changes and proposed Guidance document.	<b>No Change.</b> Noted.
	Proposal 1: The definition of due regard could be expanded through an explanation of how much weight a decision-maker gives to a document or policy, which should be based on principles in Planning Guidance rather than mandated through LPS Regulations.	<b>Action: Review definition of due regard.</b> The weighing of matters to be considered is at the very core of good discretionary decision-making and the amount of weighting to be provided to each consideration will differ depending on the individual circumstances. It may not be appropriate to legislate the amount of weight that a decision-maker should give one consideration over another.
	Proposal 1: Assessment of ‘weighting matters to be considered’ requires further exploration and guidance, to aid report authors and assessors in formulating their recommendations and communicating them appropriately to decision-makers.	<b>No Change.</b> The Guidelines refer to Making Good Planning Decisions, Guidelines on decision-making and Marshall v Metropolitan Redevelopment Authority for further guidance on weighing matters to be considered. The weighing of matters to be considered is at the very core of good discretionary decision-making and the amount of weighting to be provided to each consideration will differ depending on the individual circumstances.
	Proposal 3: A standardised and templated model provisions schedule or similar outlining clauses where discretion can apply would be useful, as well as a schedule for state planning policies.	<b>No Change.</b> Noted. Proposal 3 is intended to standardise the manner in which provisions or standards contained within planning schemes can be varied. It is not appropriate for this to also call-in State planning policies which, by their very nature, are discretionary due regard planning instruments and are not binding on the decision-maker. Guidance on how to apply discretion with regard to specific planning framework documents would effectively codify discretion and is not supported. Should a planning framework document be unclear, the most appropriate solution is to amend the document such that it becomes clear.
	Proposal 3: Design Review Panels should be embedded into Clause 67(2) provisions, as this is intrinsically linked to discretionary decisions made in relation to R-Code Volume 2 Assessments.	<b>No Change.</b> The operation and input of Design Review Panels derives its head of power from SPP7.0 and various local planning policies that have been prepared to guide and inform DRPs. It is not considered necessary to ‘embed’ DRPs into clause 67(2) as their input is already a matter to be given due regard by virtue of SPP7.0 and any applicable local planning policies dealing with design review.
	Proposal 3: Other development types should be considered in addition to Clause 34 of the Model Provisions, such as non-conforming uses and Uses Not Listed.	<b>No Change.</b> References to variations in relation to all development types are intended to be consolidated.



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	Proposal 4: Local Governments require more guidance regarding the evidence required for Local Governments to obtain support from the Minister or WAPC to limit discretion and areas where the State will not allow discretion to be limited. Local Governments will be unlikely to pursue scheme amendments to fix specific built form elements where no discretion can be applied due to financial constraints. In this regard a clear and consistent methodology should be applied across the State and could take the form of a position statement.	<b>No Change.</b> Noted. Not within scope of this review.
	Proposal 4: Notes that there are existing mechanisms to control discretionary decision-making in certain circumstances (e.g heritage areas) and any amendment to the LPS Regulations should complement these.	<b>No Change.</b> It is intended that these mechanisms will be captured as part of the work undertaken to implement Proposal 3.
	Proposal 5: Notes that currently Local Governments prepare reports and assessments in their own way. A prescribed standard or example statements for assessment reports would be useful but should not be mandated. Suggests that prescribed forms are not necessary, but a prescribed assessment format rather than form would be beneficial. Suggests a discretionary assessment table which allows the report author and/or decision-maker to clearly evaluate the weighting of matters and provide statements to explain their workings and reasoning.	<b>Action: Update the current notice of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> References to assessment templates were intended to refer to standardised (templated) forms to be included in decisions to communicate what variations were granted and why. There is no intention to develop standardised planning assessment templates.
	Principle 1: The need for an assessment to be undertaken to evaluate and rationalise the two questions posed in this principle should be included in a Discretion Principles Assessment Matrix/template used by all decision-making bodies and report authors.	<b>Action: Consider including a summary table template that includes the five key principles, and space for the assessing planner to comment against each principle in their assessment.</b>
	Principle 2: Recommends re-wording to ‘What guidance is within the existing planning framework to inform the application of discretion’.	<b>No Change.</b> The suggested change does not add any value to the information already included.
	Principle 2: In the draft guidelines the explanation on undertaking a site visit is excessive, noting that the other areas of guidance are equally important.	<b>Action: Review guidelines to clarify appropriateness of site visits depending on the nature of a proposal.</b> Noted.
	Principle 3: Queries how to determine the standard to be departed from, and notes that clear and consistent language should be used in this section to relate to a multitude of planning instruments, such as primary controls, deemed to comply provisions or acceptable outcomes.	<b>Action: Review guidelines and other written outputs to ensure consistent terminology.</b> It is the role of the reporting officer and decision-maker to clearly articulate and determine the standard to be departed from. Should the standard be unclear, it may be that the planning framework is not properly constructed, in which case Principle 1 should be considered.
	Principle 3: The term “baseline” appears to be unnecessary and could be more clearly articulated by stating “The development controls in the planning framework should not be varied without clear and strong planning reasons to do so.”	<b>Action: Review guidelines and other written outputs to ensure consistent terminology and add a definition for ‘baseline control’ and capture performance-based planning controls.</b> Noted.
	Principle 4: States that this principle should include how public submissions have been balanced against other competing or complementary factors in the context of what the planning framework reasonably contemplates.	<b>No Change.</b> The guidelines address this matter as follows: “Where submissions from the public raise substantive planning matter(s), these matters should generally be given greater weight in the decision-making process than those submissions which raise issues outside of the realm of planning.”
	Principle 4: Queries if a follow-up question could be asked covering whether the community engagement process adequately and appropriately provided genuine engagement methodology.	<b>Action: Review principle 4 to include presumption that engagement extent and methodology is appropriate for the proposal.</b> Noted.
	Principle 5: Queries how a decision-maker can demonstrate their objectivity, and how they communicate their workings. Requests that a guidance template be prepared with examples.	<b>No Change.</b> An assessment is objective if it considers the merits of the proposal against the applicable planning framework and any available discretion, and weights relevant considerations based on guidance within the planning framework. This is as opposed to allowing personal values, or the influence of others impact on the nature of the decision and whether or not to exercise discretion. A decision that is based in an objective assessment will be clear through inclusion of the decision-maker’s workings will be communicated on the standardised forms (refer proposal 5).
	Principle 5: This section would benefit from including a reference to decision-makers not having a conflict of interest, financial or impartiality.	<b>No Change.</b>

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		There are already processes in place to ensure that decision-makers do not have a conflict of interest, or where it is appropriate, to manage a conflict of interest. As no decision-maker should have an unmanaged or undeclared conflict of interest, any confirmation to this effect would be redundant.
	Suggests an additional principle: Does the local planning framework accord with the current state planning framework? If not has the Local Government received the approval of the WAPC to amend / augment or create local planning controls that are contrary to the State Planning Framework?	<b>Action: Review principle 1 to clarify that a properly constructed local planning framework accords with the state planning framework unless otherwise approved by the WAPC.</b> Noted.
	There is a need for a position statement regarding the use of discretion and linkage to the development of Community Benefits for development incentives frameworks. A uniform process and requirement for Community Needs Assessment to form part of the local planning framework should be considered to provide further guidance on significant departure from Primary Controls within PSPs and Structure Plans, whilst delivering tangible and definable community benefits for a precinct.	<b>No Change.</b> Review of matters to which due regard should be given by decision-makers when making a discretionary decision is outside the scope of this planning reform project.
	A communications plan and strategy are required by the DPLH to engage more specifically with local community, to educate and to explain these concepts in plain English once the discretion framework is refined to gain buy-in from the community.	<b>No Change.</b> Noted.
	The discretion assessment templates should be co-designed with Local Governments to ensure appropriate functionality for the assessment of each application type.	<b>No Change.</b> It is the Department's intention to update the current notice of determination form, and undertake targeted consultation with affected stakeholders.
14	Urban Development Institute of Australia	
	Generally supportive of both regulatory changes and proposed Guidance document.	<b>No Change.</b> Noted.
	Proposal 3: It is unclear whether there is a need to consolidate references to variations, and this may be challenging to achieve. Supports retention of Clauses 34 and 36 of the Model Provisions separate from Clause 67 of the Deemed Provisions as they provide area-specific standards.	<b>No Change.</b> Not supported. The standardisation of how standards or provisions in local planning schemes are varied is a desirable outcome for consistency in decision-making. It is possible that applications seeking discretion to be applied could be proposed anywhere in Western Australia. On this basis, it is appropriate to include clause 34 in the Deemed Provisions to apply in all Local Government areas.
	Proposal 4: A model provision standardising the approach to provide for localised limitation of discretion makes sense, but this may not warrant a full schedule.	<b>Action: Consider best method to prescribe development standards that cannot be varied in the Model Provisions.</b> Noted.
	Proposal 5: Notes that the content of the guidelines and how the prescribed forms present is particularly important for effective implementation.	<b>No Change.</b> Noted.
	Better defining subjective terms that often arise, such as 'seriously entertained' and 'significantly progressed', may provide better service and more clearly define the scope of appropriate use of discretion in decision-making.	<b>Action.</b> Include reference to 'seriously entertained'. Note that the definition of 'seriously entertained' is based on case law and is complex. DPLH could investigate providing industry with separate guidance on 'seriously entertained' proposals as part of a separate exercise if the WAPC considers it is warranted.
15	Charmeine Duri	
	Generally supportive of most regulatory changes and the proposed Guidance document.	<b>No Change.</b> Noted.
	Does not support proposal 3. No reasoning provided.	<b>No Change.</b> Noted.
	The proposed principles could be applied to all types of planning applications, not just development applications.	<b>No Change.</b>

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16	Planning Institute of Australia	
	Generally supportive of both regulatory changes and proposed Guidance document.	<b>No Change.</b> Noted.
	Proposal 1: Concerned that existing legislative references to the fact that a decision-maker is not bound by a ‘due regard’ document has the potential to undermine these planning instruments by inviting departure from their provisions. Recommends that the manner in which ‘due regard’ documents are referenced within the LPS Regulations is reviewed to address this, and all references to due regard are reviewed to ensure that they do not undermine the new definition.	<b>No Change.</b> This matter will be considered as part of Proposals 1 and 3.
	Proposal 3: Supports the inclusion of a ‘general variation’ clause within the deemed provisions and the consolidation of interrelated provisions, provided the intent of clauses 34 and 67(2) (the ability to exercise discretion vs matters to be considered when exercising discretion) remain clear.	<b>No Change.</b> Noted.
	Proposal 5: Recommends that standardisation should also extend to the officer reports used to inform decision-makers by clearly identifying the various elements of the planning framework where the decision-maker is required to exercise discretion.	<b>Action: Consider updating the Responsible Authority Report template for DAP and prepare an equivalent for Council to ensure consistent and clear reporting on matters for discretion.</b> There would be some benefit in standardising Council / JDAP reporting to ensure a consistent approach to the manner in which the discretion is considered.
	Proposal 5: The need for clear communication and transparency needs to be balanced against the limited resources available to decision-making bodies, noting that JDAP members will not have time to fully document and articulate the reasoning behind the exercise of discretion. To minimise the extent of reporting and therefore the resources required, the extent of discussion would need to be commensurate with the extent of the variation and associated impact. Recommends that a tiered approach be implemented regarding the extent to which discretion needs to be documented. For ‘minor variations’, minimal explanation on the exercise of discretion may be reasonable however, for ‘major variations’ a more detailed discussion should be warranted.	<b>Action: Update the current notice of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> Thresholds for forms will be considered by the Department to ensure that communication of what variations were granted and why is commensurate to the magnitude of any variations and public interest associated with any discretionary decision.
	Principle 1: Established planning principles hold that a draft planning instrument should only be relied upon as a ‘seriously entertained’ document where it addresses a shortcoming or ‘gap’ in the existing planning framework, however the implementation of draft ‘seriously entertained’ planning instruments over operative instruments is becoming more prevalent. Considers that this practice is contradictory to Principle 1 and recommends that the guidance on this principle make clear that ‘seriously entertained’ planning instruments should only inform the exercise of discretion where the subject matter is not addressed by an existing, ‘properly constructed’ planning framework. That is, where a draft planning instrument is inconsistent with an adopted / approved instrument, the approved version prevails to the extent of the inconsistency. This is an example of where the Guidance can extend beyond the development application process.	<b>No Change.</b> A definition or criteria outline what ‘seriously entertained’ means would be complex and is outside the scope of this planning reform project, however it is agreed that some further guidance on this matter would be useful to decision-makers. Suggest that the DPLH consider providing industry with separate guidance on ‘seriously entertained’ proposals as part of a separate exercise.
	Principle 3: Although the term ‘baseline provision’ makes sense to a practitioner, the introduction of new/different terminology makes it challenging for the community to understand or follow. It is recommended that terminology used throughout all documentation is consistent.	<b>Action: Review guidelines and other written outputs to ensure consistent terminology and add a definition for ‘baseline control’ and capture performance-based planning controls.</b> Noted.
	Principle 5: Information upon which decisions are based must embody the principles that underpin discretion. Decision-makers cannot be expected to make informed, balanced decisions if they are presented with inaccurate or unbalanced technical reports / assessments and the Guidance should extend to this stage of the process.	<b>No Change.</b> The Guidelines are intended for use by decision-makers and practitioners. Standardisation of the way in which reports are prepared will go some way towards addressing this.
	A clear understanding of ‘due regard’ and how much weight should be applied to ‘due regard’ documents is also relevant in the preparation and amendment of ‘due regard’ documents such as structure plans, LDP and LPPs. If it is widely understood and accepted that standards within a ‘due regard’ document should not be departed from unless a cogent reason exists, stakeholders may be more willing to rely on these planning instruments as enforceable.	<b>No Change.</b> Noted. This is intended to be captured by Proposal 1.

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	Supports better education of the planning framework, contemporary planning issues and competing objectives. Recommends that decision-makers are Registered Planners under the Planning Institute of Australia framework, which demonstrates a planner's competency and ability.	<b>Action: Consider options to inform all decision-makers of guidance to be implemented upon completion of this planning reform project.</b> The investigation of options to ensure that decision-makers are accredited will be undertaken as a separate planning reform project.
	Recommends a specifically tailored education campaign for the community to help them understand the use of discretion in planning. This ongoing campaign will assist in reducing tension when planning decisions are made which rely on the use of discretion.	<b>No Change.</b> Noted. Not within scope of this review.
<b>17</b>	<b>City of South Perth</b>	
	Conditionally supportive of both regulatory changes and proposed Guidance document, dependent on the final wording.	<b>No Change.</b> Noted.
	The development assessment process will become more streamlined as a result of this project provided no new legislation/policy/guidance is introduced which delays the assessment process and allows for performance based assessments reliant on professionally qualified urban planners.	<b>No Change.</b> Noted.
	The Guidelines are very basic and should remain as a guideline only, below Position Statements. Assessing officers should not be using this document, although it may be helpful to Councillors and members of the public in understanding the decision-making process.	<b>No Change.</b> Noted.
	The guidelines appear to be less thorough than the 'Making good planning decisions' document, so it would be appropriate to re-brand that document for general use.	<b>No Change.</b> 'Making Good Planning Decisions' is intended to be retained to provide general educational support to decision-makers and officers preparing recommendations with the Guidelines providing a complementary function.
	The definition of 'proper planning decisions' refers to those set out in Clause 67(2) of the Deemed Provisions. A simple explanation of 'a matter that should be taken into account in deciding a development application' would suffice to avoid an interested party (or casual observer) having to access the regulations.	<b>No Change.</b> The Guidelines are intended for use by decision-makers and practitioners in order to improve the consistency of application of discretion, all of whom should be familiar with Clause 67(2) of the Deemed Provisions.
	If the Guidelines are aimed at members of the public/councillors, the following may require definitions: "properly constructed planning framework"; "planning instrument"; "orderly and proper"; "baseline control".	<b>Action: Review the use of the term 'baseline control' and capture performance-based planning controls.</b> 'Planning instrument' is not considered to require a definition and a definition of 'orderly and proper planning' is outside the scope of this planning reform project.
	A standardised template or form is not supported, however it is suggested that reasons for conditions could be provided (which may be themselves standardised).	<b>Action: Update the current notification of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> Standardised forms will be pursued to ensure consistent communication of what variations were granted and why.
<b>18</b>	<b>Element</b>	
	Generally supportive of both regulatory changes and proposed Guidance document, except for Principle 1.	<b>No Change.</b> Noted.
	Proposal 4: Limitation of discretion should only occur through planning schemes rather than local planning policies to ensure review and endorsement by the WAPC, as this is an essential part in ensuring that due process and assessment has been undertaken to justify any limitations.	<b>No Change.</b> Noted. Review of the function of Local Planning Policies is outside the scope of this planning reform project. It may be appropriate, and is indeed quite common, in some instances for a local planning policy to determine the extent of discretion that may be applied in a planning decision.
	Concerned that an assessment template may be inappropriately utilised as a 'tick box exercise' without a careful analysis of where discretion can appropriately be provided. Notes that any proposed assessment template or standardised form for the communication of a decision should be published for industry and Local Government comment and review prior to finalisation.	<b>No Change.</b> References to assessment templates were intended to refer to the notice of determination forms to be included in decisions to communicate what variations were granted and why. There is no intention to develop standardised planning assessment templates.
	Proposes following addition to Principle 1:	<b>Action: Consider the matters raised in this response in the review of Principle 1.</b>

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Schedule of Submissions with DPLH Response

Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
	“In considering whether the planning framework is up to date and contemporary and relevant to the exercise of discretion, it will be necessary to consider if there has been a shift in the planning intent for the land or locality. Has other approved development resulted in a change in the locality which departs from that articulated in the relevant planning instrument, does the development represent a form of development that is unique and/or is not anticipated by the relevant planning instrument, is there an economic or community need for the development that is not anticipated by the relevant planning instrument, are assumptions made in the planning framework that have been outdated or superseded.”	Noted.
	Strongly objects to the section of Principle 1 that states that if strategic planning is incomplete, the default position for a major development application ought to be one of refusal. Considers that the statement that the default position ought to be one of refusal cuts across the premise of consideration of an application on its merits. Notes that in circumstances where higher order planning is several years from completion, landowners may be prevented from developing land. Suggests that there should be the opportunity for an applicant to prepare evidence to demonstrate that the development will not prejudice future planning and is orderly and proper in accordance with the guidance set out at Principle 1.	<b>No Change.</b> Ad hoc decision-making in the absence of a solid strategic planning framework undermines the planning system and should be discouraged.  Applicants have the opportunity to prepare evidence that a development will not prejudice future planning and is orderly and proper as part of preparation of a development application submission.
19	Department of Primary Industries and Regional Development	
	Generally supportive of both regulatory changes and proposed Guidance document.	<b>No Change.</b> Noted.
	Proposal 5: Suggests that a mechanism is established to enable the public to request, when appropriate, additional detail be added to planning decision documentation.	<b>No Change.</b> This suggestion is not supported due to the potential for Local Government resources to be consumed by vexatious or repeated requests for additional detail by a third party. It would also likely require amendments to the <i>Local Government Act 1995</i> which would be outside the scope of this project.
	Principle 1: More content is needed in the guidelines to assist in determining the appropriateness of development applications if the planning framework has not been updated, and how proponents or developers can obtain information about plans that are not yet in the public domain to avoid planning projects in what could become inappropriate places.	<b>Action: Review Principle 1 to provide further guidance regarding the appropriateness of approval of proposals ahead of strategic planning being completed.</b> Proponents and developers can obtain information about plans by contacting the relevant decision-making authority and undertaking pre-lodgement consultation.
	Principle 4: The time given to the public / community to assess and provide input to a development application needs to reflect the size and complexity of the development documents.	<b>No Change</b> Advertising timeframes are established via the Deemed Provisions and are not within the scope of this review.
	Principle 5: decision-maker responses to public and community input needs to be communicated back to those providing input in a meaningful way. Too often the term ‘Noted’ is used by planning practitioners without addressing the core issue(s) raised by the public or community. This diminishes public and community faith in the consultation process.	<b>No Change.</b> The decision-maker’s consideration of public submissions should be articulated in the decision where public submissions raise valid planning considerations.
	The guidance could include a discussion of how decision-makers use discretion for land uses and development which are listed as D or A class uses in Local Planning Schemes.	<b>No Change.</b> Guidance on exercising discretion is intended to be limited to principles that can be applied by all decision-makers to discretionary decisions rather than the assessment of specific land use or development scenarios, as this may risk codifying discretion. The consideration of discretionary land uses ought to be guided by local planning policies that recognise the differing needs and attributes of the area.
	A list of supporting materials for each consideration in Clause 67(2) of the Deemed Provisions would assist decision-makers to ensure all relevant issues have been given due regard when applying discretionary powers.	<b>No Change.</b> It is unclear as to what the “supporting materials” would comprise of or how they would differ from the justification provided in the planning report.
	Depending on the intended audience, recommends adding common planning terms to the Glossary, such as ‘JDAP’ or ‘Deemed Provisions’.	<b>No Change.</b> The guidance is targeted towards planning practitioners and decision-makers.

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Schedule of Submissions with DPLH Response

Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
	The template or standardised form should include prompts to assist the user completing the form, and should work effectively with the Microsoft Word track changes feature.	<b>Action: Update the current notice of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> Noted. This will be considered when developing the forms and templates.
	Suggest a review period should be set to determine the effectiveness of the Guidelines, and assess if any statements in the Guidelines need revising to improve clarity.	<b>No Change.</b> Noted.
20	City of Karratha	
	Generally supportive of both regulatory changes and proposed Guidance document, except for Proposal 5.	<b>No Change.</b> Noted.
	Proposal 1: Recommends that the ‘due regard’ definition be explained further through the proposed guidelines.	<b>No Change.</b> The due regard definition is already contained in the Glossary section of the Guidelines.
	Proposal 2: Introducing ‘boundaries’ in the deemed provisions as to when discretion may be used could limit the decision-maker’s ability to apply discretion in certain circumstances, given Clause 67 currently effectively allows a decision-maker to consider any and all relevant matters. Recommends that further guidance be limited to when discretion can be applied, not when discretion ought to be applied.	<b>No Change.</b> It is already open to local governments to remove discretion in their local planning schemes, and this proposal will simply standardise the manner in which this is set out in local planning schemes. This planning reform project does not intend to fetter the ability of decision-makers to consider any matter contained within Clause 67, including 67(2)(zb).
	Proposal 3: It may be more appropriate for Clause 34 of the model provisions to become a new deemed provision, rather than being incorporated into the current Clause 67. For example, a new Clause ‘67A’ could be created to insert such provisions.	<b>No Change.</b> Noted. This matter will be considered as part of the drafting work associated with Proposal 3.
	Proposal 4: Limiting of discretion should be based on sound planning reasons with supporting justification/rationale. Notes that localised limitation of the use of discretion in specific scenarios or locations can already be applied through existing mechanisms of the model provisions, particularly Part 5 pertaining to Special Control Areas. Further guidance/advice as to the sort of matters for which Local Governments could limit the use of discretion would be helpful.	<b>No Change</b> Noted. Not within scope of this review.
	Proposal 5: Determinations of development applications that are not controversial should not be required to have an additional form setting out justification for the use of discretion. This would add a substantial amount of additional work to the assessment and decision-making process and would not provide any real benefit, given Local Governments already have processes in place to document discretion. It would be helpful for the Guidelines to instead emphasise the need for proper processes and record keeping of discretionary decisions on key issues.	<b>Action: Update the current notice of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> Thresholds for forms will be considered by the Department to ensure that communication of what variations were granted and why is commensurate to the magnitude of any variations and public interest associated with any discretionary decision.
	Principle 2: This principle could refer to other non-planning legislation or guidance that may have influence on decision-making. This could encompass ‘other planning considerations’ referred to in Clause 67(2)(zb) of the deemed provisions.	<b>No Change.</b> Clause 67(2)(zb) is considered to be sufficient to achieve this suggestion.
	Principle 3: At times it can be unclear what a planning control is trying to achieve, so ascertaining its meaning could involve the use of discretion as well. This statement may require further consideration to address this issue.	<b>No Change.</b> If it is difficult to ascertain what a planning control is trying to achieve then it is likely that the planning framework is not properly constructed. In that case Principle 1 would be relevant to apply.
	Principle 3: The term and discussion on the ‘greater good’ are ambiguous and should be further considered to better tie back to the principle of ‘clear and logical reasons to depart from a standard’. Suggests that the wording should be revised to reference a more ‘balanced’ outcome taking into consideration all aspects of the development and its outcomes.	<b>Action: Review use of ‘greater good’ terminology.</b> Supported.
	Principle 3: The principle states that there is a ‘baseline’ standard for decision-makers to refer to, however much of the planning framework is performance based and has no baseline standard. Recommends clarifying that an assessment may be required to determine the development’s level of acceptability from a set of objectives or vision.	<b>Action: Review guidelines to capture performance-based planning controls where no baseline is included.</b> Noted.

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Schedule of Submissions with DPLH Response

Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
	Principle 4: This principle could be expanded upon so that the appropriate expectations are set on the weight of public submissions and their impact on a planning decision.	<b>No Change.</b> The guidelines address this matter as follows: “Where submissions from the public raise substantive planning matter(s), these matters should generally be given greater weight in the decision-making process than those submissions which raise issues outside of the realm of planning.”
	Principle 5: This principle states how “personal views and values should not be a basis for exercising discretion unless supported by the planning framework”. The wording of this statement implies that personal views forming a basis in a planning decision may be acceptable in certain instances, when it shouldn’t form the basis of planning decision-making at all.	<b>Action: Amend “should not” to “are not to”.</b> Supported.
	Additional and specific principles/discussion may be needed to guide a decision-maker that is not an assessing officer or planner (such as a Council or a JDAP) in making proper and balanced discretionary planning decisions.	<b>No Change.</b> The Guidance Statement is intended for all planning decision-makers.
	Consideration of outcomes that local development plans aim to achieve also involve some discretion to be made by a local government, and therefore the Guidelines may be useful for that. However, the Guidelines may not be useful for planning authorities in considering higher-level strategic planning documents.	<b>No Change.</b> Noted. Review of Local Development Plans is outside the scope of this planning reform project.
	The Guidelines should balance streamlining of the planning process with the need to provide transparency and consistency. The Guidelines overly focus on ensuring that transparent and consistent decisions are made, however delivering on this should not compromise limited resources available to a decision-maker or the time it takes for a decision to be issued.	<b>Action: Update the current notification of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> Thresholds for forms will be considered by the Department to ensure that communication of what variations were granted and why is commensurate to the magnitude of any variations and public interest associated with any discretionary decision.
	The term ‘third party’ in the ‘casual observer’ definition is confusing, as a decision made should also be clear to others within the planning authority that were not involved in the decision (e.g., a Councillor).	<b>Action: Review this definition based on stakeholder feedback.</b> Noted.
	Reconsider the use of the term ‘proper planning consideration’. This term is only used once in the Guideline and is not used in Clause 67(2) of the deemed provisions. ‘Relevant planning considerations’ may be a more acceptable term to use. The definition itself should commence with “those <b>relevant</b> matters...” as not all the matters set out in Clause 67(2) may be relevant in the assessment of a development application.	<b>Action: Review guidelines and other written outputs to ensure consistent terminology.</b> These matters can already be considered by virtue of clause 67(2)(zb).
	The term ‘cogent’ is not commonly used, and therefore a definition within the Guidelines would be useful. The term could alternatively be replaced with ‘logical’.	<b>No Change.</b> As ‘cogent’ is an operative term in the guidelines, the wording needs to be chosen carefully. ‘Cogent’ is preferred as it best describes the prerequisite for a reason to exercise discretion.
	A definition of ‘baseline’ may be required as the planning framework does not always have a hard baseline to begin with.	<b>Action: Review guidelines to add a definition for ‘baseline control’ and capture performance-based planning controls.</b> Noted.
	The term ‘development application’ is used in the Guidelines, which is different to ‘application for development approval’ as used in the deemed provisions. Clarification may need to be considered to confirm that the terms are one and the same.	<b>Action: Review guidelines and other written outputs to ensure consistent terminology.</b> Noted.
	Support a generic assessment template as all Local Governments utilise the same legislation to assess an application, and this will reduce the inconsistencies and nuances within each Local Government’s templates. Each Local Government will likely modify the template to suit each development being assessed, so may not utilise all aspects of the assessment template. Does not support a standardised form for decision-makers when communicating a decision as they already exist.	<b>Action: Update the current notification of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> Thresholds for forms will be considered by the Department to ensure that communication of what variations were granted and why is commensurate to the magnitude of any variations and public interest associated with any discretionary decision. References to assessment templates were intended to refer to the notification of determination forms to be included in decisions to communicate what variations were granted and why. There is no intention to develop standardised planning assessment templates.
	The application of discretion can also be a matter of law; and therefore, the State Solicitor’s office should be involved in providing its own comment and feedback on the matters subject to this consultation exercise.	<b>No Change.</b> Noted.
	The guidelines could be expanded upon to include provisions or guidance specific to council members or DAP members.	<b>No Change.</b> The Guidelines are intended to inform all planning decision-makers.



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Schedule of Submissions with DPLH Response

Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
21	City of Swan	
	Has no position on regulatory changes and proposed Guidance document, as without seeing the precise changes the matter cannot be properly commented on or evaluated. Generally supports the direction being taken by the Department.	<b>No Change.</b> Noted.
	Recommends including discretion to approve and condition a development application or subdivision in advance of Development Contribution Plan in the scope of this reform. Requests that the WAPC adds sections to regulation 73 and Deemed Provision 69 to enable Local Governments to approve applications in areas without Development Contribution Plans subject to conditions requiring an agreement for payment to be made once a Development Contribution Plan is in place for the relevant area.	<b>No Change.</b> Review of matters to which due regard should be given by decision-makers when making a discretionary decision is outside the scope of this planning reform project.
	Welcomes the guidelines as an unbinding resource to build confidence, common understanding and capacity of decision-makers in using their discretion. Disagree with any potential requests/motion to make this a statutory requirement as this would effectively codify discretion.	<b>No Change.</b> Noted. It is not intended for the guidelines to be given statutory weight.
22	City of Stirling	
	Generally supportive of both regulatory changes and proposed Guidance document.	<b>No Change.</b> Noted.
	Does not support inclusion of clause 34 of the Model Provisions in the Deemed Provisions as many Local Planning Schemes already contain this clause.	<b>No Change.</b> Not supported. Some Local Planning Schemes include clause 34, some include modified text versions and some do not include clause 34 at all. It is possible that applications seeking discretion to be applied could be proposed anywhere in Western Australia. On this basis, it is appropriate to include clause 34 in the Deemed Provisions to apply in all Local Government areas.
	Suggests that the outcome of proposal 1 could be included as a 'Note' within clause 67 of the Deemed Provisions.	<b>No Change.</b> Noted. This will be reviewed when amendments to the Regulations are drafted.
	Proposal 5: Communication of reasoning for discretionary decisions will vary dependant on the type of proposal being considered, and the delegation level at which it is determined. Considers it necessary for proposals with more significant or major variations, or for major applications. Any template or forms should be scaled based on complexity and language should be easy to understand for all. Applications determined by officers already include written justification, however justification for applications determined by Council or JDAP is provided verbally. Guidance should be provided to Council and JDAP members to ensure that explanations for decisions are consistent, however this is not necessary for written decisions made under delegation as Local Governments are best placed to communicate this with their residents.	<b>Action: Update the current notification of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> Thresholds for forms will be considered by the Department to ensure that communication of what variations were granted and why is commensurate to the magnitude of any variations and public interest associated with any discretionary decision. It is intended that decisions where minutes are made publicly available will include communication of what variations were granted and why.
	Does not recommend changes to delegation based on discretionary decision-making.	<b>No Change.</b> This is outside the scope of this reform project.
	Principle 1: Recommends including SAT guidance about seriously entertained planning instruments in the final guidance document.	<b>Action: Reference to SAT case law to be included as part of the new Appendix 2.</b>
	Principle 3: Notes that the introduction of new terminology ("baseline provision") may be confusing and difficult for the community to understand, and a consistent approach to terminology should be employed.	<b>Action: Review guidelines and other written outputs to ensure consistent terminology and add a definition for 'baseline control' and capture performance-based planning controls.</b> Noted.
	Principle 3: The guidance documentation should make it clear that in order for a decision-maker to consider the use of discretion, appropriate justification should be submitted by the applicant in the first instance.	<b>No Change.</b> Planning application submission requirements are outside the scope of this reform project. This is captured by clauses 63, 63A and 65A of the Deemed Provisions for development applications.
	Requests that the Department takes a proactive role in educating the public around planning matters of state relevance. Suggests an ongoing campaign by the Department to assist the community in understanding how the planning system works.	<b>No Change.</b> Noted. Not within scope of this review.

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Schedule of Submissions with DPLH Response

Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
	Requests an additional principle capturing the need for all stakeholders in the development industry to work collaboratively to successfully deliver planning reform and outcomes. Notes that Local Governments, the Department and the industry itself have roles to play in achieving the objectives of this planning reform project.	<b>No Change.</b> It is the intention of the Department to work collaboratively with all relevant stakeholders to ensure that all planning reform projects achieve their intended purpose.
	A consistent approach to discretion should apply to all development applications – not just those determined under a Local Planning Scheme.	<b>No Change.</b> Noted.
	The assessment template and standardised form for communicating discretionary decisions should be included as appendices to the final version of the guidance.	<b>Action: Consider options to inform all decision-makers of guidance to be implemented upon completion of this planning reform project.</b> References to assessment templates were intended to refer to the notification of determination forms to be included in decisions to communicate what variations were granted and why. There is no intention to develop standardised planning assessment templates.
23	Shire of Northam	
	Generally supportive of both regulatory changes and proposed Guidance document, except for proposal 4.	<b>No Change.</b> Noted.
	Concerned about the proposal to introduce provisions for the localised limitation of discretionary powers through appendices/schedules in the Model Provisions. This ability is already applied by Council through delegated authority.	<b>No Change.</b> This matter will be considered as part of the drafting work associated with Proposal 3. There is no intention for consolidation of variation provisions to limit the ability of Local Governments and / or delegated officers to respond to unique issues by limiting discretion in appropriate situations. It will remain open to Local Governments to include specific / unique planning standards or provisions in the local planning scheme to limit discretion where appropriate.
	There needs to be Councillor and public education regarding the weight of submissions and the level of expectation that if they object, then the development will be refused.	<b>No Change.</b> Noted. Not within scope of this review.
	The guidelines should provide guidance on the weight of the matters of consideration in relation to decision-making.	<b>No Change.</b> Not supported. This would effectively codify discretion and is not proposed as part of this planning reform project.
	Recommends clarifying State Planning Policies further and making them more applicable to regional areas, which would reduce the number of individual LPPs and achieve greater consistency in decision-making between Local Governments.	<b>No Change.</b> The Commission is currently reviewing, or has recently reviewed a range of State Planning Policies and these matters are best addressed through those reviews.
	Principle 2: Queries if there has been consideration of developing Planning Principles similar to those in NSW established by the Land & Environment Court, to provide the latest examples of decision-making at SAT.	<b>Action: Review relevance of principles established by NSW Land &amp; Environment Court.</b> <b>Action: Review potential implications of inclusion of past decisions in principle 2.</b> This will be considered.
	Principle 4: The weight of the matters of consideration need to be clearly communicated to not only Planners but Councillors and the community.	<b>No Change.</b> This is the intent of Principle 5.
	The five principles should also be applied by WAPC in their decision-making.	<b>No Change.</b> Whilst the guidelines do provide some guidance for all discretionary planning decisions, they are targeted at the determination of applications for development (planning) approval under local planning schemes.
	Suggests simplifying and connecting the legislative framework that relates to development, such as the Planning & Development Act and Building Act.	<b>No Change.</b> This is outside the scope of this planning reform project.
	Suggests improving interpretation and application of R-Code requirements and enabling regional variations R-Codes to cater for out-of-metro needs.	<b>No Change.</b> The R-Codes is currently being reviewed. Regional considerations have formed part of that review.
	Using the term ‘third party’ in the definition of casual observer may be confusing, taking into account that WA does not have third party appeals. Recommends replacing with ‘unrelated person’.	<b>Action: Review this definition based on stakeholder feedback.</b> Noted.
	A template would provide greater consistency for assessing applications and would assist junior planners. The form would need to be adjustable depending on the complexity of the application.	<b>No Change.</b>

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Schedule of Submissions with DPLH Response

Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
		References to assessment templates were intended to refer to the notification of determination forms to be included in decisions to communicate what variations were granted and why. There is no intention to develop standardised planning assessment templates.
	Requests clarification regarding a standardised form given the Regulations already include a Determination Notice.	<b>Action: Update the current notification of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> It is intended that the above action will include consideration of the role the existing Determination Notices to prevent duplication.
24	Shire of Exmouth	
	Generally supportive of both regulatory changes and proposed Guidance document.	<b>No Change.</b> Noted.
	The proposed changes/recommendations/guidelines should apply to all planning decision-making for consistency across the industry.	<b>No Change.</b> Whilst the guidelines do provide some guidance for all discretionary planning decisions, they are targeted at the determination of applications for development (planning) approval under local planning schemes.
25	Exurban Rural & Regional Planning	
	Generally supportive of both regulatory changes and proposed Guidance document.	<b>No Change.</b> Noted.
	A lot of rural and regional local government authorities do not have the expertise, resources or finances to amend their local planning schemes to align with the amended regulations. Many local governments are operating with outdated schemes and avoid or delay scheme reviews and amendments for this reason. The Department may wish to consider funding or technical assistance for rural and regional Local Governments to amend their planning frameworks to respond to these reforms.	<b>No Change.</b> Noted.
	Proposal 5: Rural and regional Local Governments with limited resources and technical expertise will find it difficult to report properly to ensure discretionary decisions are soundly based, clear and transparent.	<b>Action: Update the current notification of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> Thresholds for forms will be considered by the Department to ensure that communication of what variations were granted and why is commensurate to the magnitude of any variations and public interest associated with any discretionary decision.
	Notes that applicants commonly do not provide justification for proposed variations which causes delays and disputes. Suggests amending clause 63(1) of the Deemed Provisions to state that applicants must identify all proposed variations and provide suitable written justification. States that if greater onus is going to be placed on Local Government to justify and document the use of discretion when making decisions, this requirement is reasonable. Guidance should be provided for applicants to ensure they provide sufficient information.	<b>No Change.</b> Planning application submission requirements are outside the scope of this reform project. This is sufficiently captured by clauses 63, 63A and 65A of the Deemed Provisions for development applications.
	There may be merit in applying the guidelines more broadly than development applications in terms of decision-making at a local level, however more information and guidance is required in this regard.	<b>No Change.</b> Whilst the guidelines do provide some guidance for all discretionary planning decisions, they are targeted at the determination of applications for development (planning) approval under local planning schemes.
	The definition provided for the term 'due regard' seems to be limited when considering how important the term is in the context of discretionary decision-making.	<b>Action: Review definition of due regard based on stakeholder feedback and seek advice from SSO and Parliamentary draftsperson.</b> Noted.
	Lists the following terms to add to the glossary: Planning Framework/ Planning Instrument/ Seriously Entertained/ decision-maker/ Discretionary Decision Baseline Control / Standard/ Higher Order Documents/ Greater Good/ Community Benefit Substantive Planning Matter/ Proper Planning Consideration/	<b>Action: Review guidelines and other written outputs to ensure consistent terminology and add a definition for 'baseline control' and capture performance-based planning controls.</b> <b>Action: Consider options to inform all decision-makers of guidance to be implemented upon completion of this planning reform project.</b> <b>Action: Review use of 'greater good' terminology.</b> A definition of 'seriously entertained' is outside the scope of this planning reform project however further guidance may be included in the Guidelines. The remaining definitions are not considered necessary to define as part of this planning reform project.

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Schedule of Submissions with DPLH Response

Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
	Supports a planning assessment template and forms subject to them being clear and easy to use, and supported by some guidance and/or examples on how best to complete them.	<b>No Change.</b> It is intended that guidance on how to use forms would be provided at the implementation stage of this project. References to assessment templates were intended to refer to the notification of determination forms to be included in decisions to communicate what variations were granted and why. There is no intention to develop standardised planning assessment templates.
26	City of Joondalup	
	Generally supportive of both regulatory changes and proposed Guidance document.	<b>No Change.</b> Noted.
	Proposal 3: Notes that in addition to clause 34, there are also considerations for other development types (e.g. non-conforming uses and Uses Not Listed).	<b>No Change.</b> References to variations in relation to all development types are intended to be consolidated.
	Proposal 4: There are existing mechanisms to control discretionary decision-making in certain circumstances (e.g. heritage areas) and any amendment to the LPS Regulations should complement these.	<b>No Change.</b> It is intended that these mechanisms will be captured as part of the work undertaken to implement Proposal 3.
	Proposal 5: The changes to the prescribed forms are not clear. Local Governments have assessment sheets and templates that are designed for local circumstances. Requiring a prescribed form to be used may impact the ability for local governments to progress applications in an efficient manner. It also would not be appropriate to require a complex form to be completed for smaller scale proposals.	<b>Action: Update the current notification of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> Thresholds for forms will be considered by the Department to ensure that communication of what variations were granted and why is commensurate to the magnitude of any variations and public interest associated with any discretionary decision. References to assessment templates were intended to refer to standardised (templated) forms to be included in decisions to communicate what variations were granted and why. There is no intention to develop standardised planning assessment templates.
	Proposal 5: Prescribed forms should not include Council Reports, as any prescribed form would not be consistent with this, leading to confusion. Rather than prescribing a form, it may be beneficial for guidance to be provided on what a form should include to demonstrate the decision-making process. Any templates for assessment or decision-making should not be mandated.	<b>Action: Update the current notification of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> It is intended that decisions where minutes are made publicly available will include communication of what variations were granted and why. It is intended that forms will be able to be inserted into Council Reports to avoid duplication.
	Principle 2: In the draft Guidelines the explanation on undertaking a site visit is excessive, noting that the other areas of guidance are equally important.	<b>Action: Review guidelines to clarify appropriateness of site visits depending on the nature of a proposal.</b> Noted.
	Principle 3: The commentary regarding development controls is poorly explained. The term ‘baseline’ appears to be an unnecessary new term introduced to explain development controls. This could be more clearly articulated by stating “The development controls in the planning framework should not be varied without strong planning reasons to do so.”	<b>Action: Review guidelines to add a definition for ‘baseline control’ and capture performance-based planning controls.</b> Noted.
	Principle 3: This principle should include the requirement for the applicant to demonstrate why they feel a departure from the development control is warranted.	<b>No Change.</b> Planning application submission requirements are outside the scope of this reform project. This is sufficiently captured by clauses 63, 63A and 65A of the Deemed Provisions for development applications.
	Principle 4: The explanation of this principle is over-complicated and confusing for the community to understand how submissions need to be balanced. Including examples will assist in understanding this.	<b>Action: Review principle 4 to identify opportunities to simplify wording.</b> Note that the Guidelines are intended for use by decision-makers and practitioners and not the community.
	Principle 4: The draft Guidelines should make clear that non-planning matters cannot be considered.	<b>No Change.</b> The guidelines address this matter as follows: “Where submissions from the public raise substantive planning matter(s), these matters should generally be given greater weight in the decision-making process than those submissions which raise issues outside of the realm of planning.”
	Principle 5: This section would benefit from including reference to decision-makers not having a conflict of interest.	<b>No Change.</b> There are already processes in place via other legislation to ensure that decision-makers do not have a conflict of interest, or where it is appropriate, to manage a conflict of interest. As no decision-maker should have an unmanaged or undeclared conflict of interest, any confirmation to this effect would be redundant.

Exercise of Discretion in Planning decision-making in Western Australia

Schedule of Submissions with DPLH Response

Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
	Principle 5: Further guidance is needed on how a decision-maker (e.g. Council or Development Assessment Panel) should demonstrate their working when the decision is not consistent with the technical report and recommendation.	<b>No Change.</b> This is intended to be provided as part of Proposal 5.
	The guidance could be applicable to all development applications, not just those determined under a Local Planning Scheme. Any discretionary planning decision should apply the same amount of rigour as part of the decision-making process.	<b>No Change.</b>
	The documents being produced need to be in a manner that is easily understood by the general public. The draft guidance document does not achieve this. While the whole document should be reviewed and simplified, it is recommended that a public facing document is also provided to assist in the community understanding how planning decisions are made.	<b>No Change.</b> The Guidelines are intended for use by decision-makers and practitioners and are fit-for-purpose.
	Providing regular training as outlined in the recommendations report is important and supported. While the recommendations report has identified this as being out of scope of this project, it is fundamental to ensuring discretion is being applied appropriately.	<b>No Change.</b> Noted.
	The Guidelines would benefit from an R-Codes specific explanation as it is still commonly misunderstood that a development meeting a design principle is a ‘variation’ from the deemed-to-comply standards. Concerned that the Guidelines could lead deemed-to-comply requirements to be considered as a ‘baseline control’, which would require a clear and cogent reason for approval under the design principle pathway.	<b>Action: Add a definition for ‘baseline control’ and capture performance-based planning controls.</b> The use of deemed to comply criteria as a baseline control is an important issue and warrants further review given this is not the intent of the R-Codes structure.
27	<b>City of Belmont</b>	
	Supportive of both regulatory changes and proposed Guidance document.	<b>No Change.</b> Noted.
	It is important to ensure that the initiative is effective and understood by all stakeholders, including community members, elected officials, and JDAP members. Recommends that the document be simplified or have a simplified version available similar to SPP 7.0. Concerned that a complicated document may result in the initiative being ineffective or ignored.	<b>Action: Consider options to simplify the guidance document where appropriate,</b> recognising that it is intended for use by qualified decision-makers and practitioners and not the general public.
	Recommends that the Department undertakes significant advertising of this initiative to the broader community. Concerned that the current extent of advertising means it will only be known by those regularly involved in the process and not understood by the general public. It is important that the benefits and intent to improve decision-making are clearly articulated and publicised.	<b>No Change.</b> It is open to the State Government to communicate these reforms to the broader community at an appropriate time. Note that the Guidelines are intended for use by decision-makers and practitioners, and not the general public.
	Recommend adding a ‘clear and cogent’ reference to clause 67(2) of the deemed provisions and measures to increase transparency in decision-making.	<b>No Change.</b> Noted. This will be reviewed when amendments to the Regulations are drafted.
	Notes that it appears that reasons or commentary for decisions made at JDAP meetings are paraphrased and may be somewhat inaccurate or not sufficiently comprehensive, and this issue should be addressed to ensure greater accuracy and transparency. These changes can be addressed through the concurrent JDAP reforms.	<b>No Change.</b> Noted. This will be addressed as part of Proposal 5 and the DAP reforms.
	The WAPC should embrace the recommended measures to build confidence in the decision-making process, as it regularly determines development proposals and other important matters.	<b>No Change.</b> The guidance applies to the determination of all development applications made under local planning schemes.
	If upon implementation of the guidelines it is found that decision-makers are not making decisions in accordance with the guidance, the Department should consider making it statutory. A review period would be beneficial for this.	<b>No Change.</b> Noted.
	Principle 2: It should be clarified that the following consideration “Can guidance be taken from other areas outside of the planning framework (e.g. previous planning decision)?” is only one aspect of consideration, and consideration needs to be given to whether the previous decision itself was proper and orderly.	<b>Action: Review potential implications of inclusion of past decisions in this principle.</b> Supported.

Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
28	Joanne Taggart	
	Generally supportive of both regulatory changes and proposed Guidance document.	<b>No Change.</b> Noted.
	Proposal 1 and 2: DAPs would benefit greatly from a member with expertise in decision-making and documenting decisions in the judiciary.	<b>No Change.</b> Review of the composition of decision-making bodies is outside the scope of this planning reform project, noting that the DAP system is currently undergoing review. This project instead seeks to provide clear guidance to assist decision-makers to make good decisions.
	Proposal 4: This is critical for precincts with social and cultural significance and those with State and nationally listed heritage sites. Concerned that there is currently little public confidence that decision-makers give social or cultural heritage due regard, and considers that this proposal will permit Local Governments to reflect community wishes.	<b>No Change.</b> Noted. Review of matters to which due regard should be given by decision-makers when making a discretionary decision is outside the scope of this planning reform project.
	Discretion is exercised at pre-lodgement stage when developers discuss proposals with Local Governments while undertaking due diligence to ensure reasonable prospects of approval and to maximise/ensure return on their investment. Therefore presuming discretion is only a matter for the final decision-maker doesn't address the realities of the planning process.	<b>No Change.</b> Discretionary decision-making is based on the merits of a submitted development application and not pre-lodgement advice. Pre-lodgement advice is typically provided by Local Governments on a without prejudice basis, and officers providing advice at that stage are not typically the final decision-makers – particularly for high-value proposals.
	Suggests that where approval of a development application requires, there should be an additional opportunity for public participation before an application is considered by a DAP. The regulations should require front-end community engagement with the public by the developer and Local Government, mediated by an independent facilitator that is not employed by the developer. Provides a rationale for this proposal covering perceived deficiencies in the current development application process.	<b>No Change.</b> Amendment to stages of the development application process or advertising requirements is outside the scope of this reform project.
	Principle 1: Concerned that DAPs commonly consider proposals seeking discretion where a scheme amendment would have been required previously. Considers that if a properly constructed planning framework does not exist an application should be deferred until one does exist. The community should not be disadvantaged because the Local Government has not updated its planning framework.	<b>No Change.</b> The Guidelines adequately cover this scenario already. <i>Where the need for a structure plan / precinct structure plan (activity centre plan) or similar is foreshadowed by virtue of the zoning of the land, or through the strategic planning framework and such a plan has not yet been prepared, the default position for any major development application ought to be one of refusal.</i>
	Principle 2: Considers that the wording relating to 'looking for guidance outside the planning framework' is too loose. Recommends including wording related to the consideration of the cumulative and consequential effects of discretions and incentives particularly where multiple variations are required for approval to be granted.	<b>Action: Review potential implications of inclusion of past decisions in this principle.</b> <b>Action: Review Principle 3 to refer to consideration of the cumulative effect of variations.</b> Supported.
	Principle 5: Suggests replacing "objective" with "adequate consideration of the quantitative and qualitative aspects of the submissions". Considers that objective is far too limiting, as some elements of planning frameworks are hardly objective.	<b>No Change.</b> An assessment is objective it considers the merits of the proposal against the applicable planning framework and any available discretion, and weights relevant considerations based on guidance within the planning framework. This is as opposed to allowing personal values, or the influence of others impact on the nature of the decision and whether or not to exercise discretion. A decision that is based in an objective assessment will be clear through inclusion of the decision-maker's workings will be communicated on the standardised forms (refer proposal 5).
	Include the principle of subsidiarity.	<b>No Change.</b> Review of delegation of decision-making powers is outside the scope of this planning reform project.
	Considers that the guidance should apply to all decision-makers. Concerned that the SDAU is not making appropriate discretionary decisions consistent with other decision-makers and exacerbates disempowerment and alienation of the public.	<b>No Change.</b> The guidance is limited to development applications made under Local Planning Schemes.
	Requests that the Department provides guidance to the community about how to prepare a submission to DAPs, given it is unrealistic to expect the public to have the necessary expertise or resources to prepare a professional submission or to read and interpret the wide range of documents on the DAP website within typical advertising	<b>No Change.</b> This is outside the scope of this planning reform project..

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Schedule of Submissions with DPLH Response

Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
	periods. Requests this on the basis that it is increasingly difficult to engage quality consultants to present to a DAP on behalf of the public for an affordable price.	
	Suggests that it would be beneficial for elected members in Local Government to be allowed to engage with the local community regarding DAP matters for the purpose of providing local knowledge, rather than being prevented from doing this because of their 'quasi-judicial role'. The Planning and Development Act and Local Government Act should be amended to resolve this issue.	<b>No Change.</b> This is outside the scope of this planning reform project as it would require amendments to the <i>Local Government Act 1995</i> .
29	Mike Moore Architect	
	Generally supportive of both regulatory changes and proposed Guidance document.	<b>No Change.</b> Noted.
	Proposal 4: Concerned that limitation of discretionary powers may be misused to provide protections in areas where the privileged live, while discretion is more freely applied in other areas to approve more development. All are entitled to a good quality urban environment, not just those who are well off and/or influential.	<b>No Change.</b> It is intended that proposals to limit discretion will be considered by the WAPC and the Minister (through the scheme amendment process) with regard given to whether there is a genuine planning need to limit discretion in any particular instance. It should be noted that the ability to restrict (but not remove) discretion already exists via local planning policies.
	Claims that SPP 7 does not mandate good design as development applications are not rigorously assessed against the ten design principles. States that good design takes work and SPP 7's ten principles need to be given significant consideration in the approval process.	<b>No Change.</b> Review of the weight of matters to which due regard should be given by decision-makers when making a discretionary decision is outside the scope of this planning reform project.
	The public perceives that the principle of discretion prioritises the applicant's requirements to obtain approval for their development project.	<b>No Change.</b> This project seeks to boost public perception of the planning system through clear and consistent guidance to inform discretionary decision-making.
	Claims that the community is frustrated that visually pleasing streetscapes are prioritised by the planning process over the quality of the indoor and outdoor spaces that are created behind them.	<b>No Change.</b> Review of matters to which due regard should be given by decision-makers when making a discretionary decision is outside the scope of this planning reform project.
	Principle 4: States that community input needs to be responded to in an impartial way, and the response should not be influenced by the degree of influence that members of the community have with elected members and / or the planning community.	<b>No Change.</b> Methodology of responding to public submissions is outside the scope of this planning reform project.
	States that if bias can be proven in the making of a discretionary decision, there needs to be a provision to cancel a development approval.	<b>No Change.</b> This is outside the scope of this reform project.
	Various templates and forms will be needed for different types of projects and / or sizes.	<b>Action: Update the current notification of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> Thresholds for forms will be considered by the Department to ensure that communication of what variations were granted and why is commensurate to the magnitude of any variations and public interest associated with any discretionary decision.
	The community seeks consistency and equity across planning decisions.	<b>No Change.</b> Noted.
	Concerned that discretion is often given to larger players in the development industry and not smaller players.	<b>No Change.</b> This project seeks to boost public perception of the planning system through clear and consistent guidance to inform discretionary decision-making.
	Planning decision-makers should be held accountable through formal registration, training, CPD and audits, and should be required to inspect constructed approved developments to understand the actual quality of what is approved and thereby become better decision-makers. Decisions should also be audited at random to ensure that correct decision-making is occurring.	<b>No Change.</b> This is outside the scope of this planning reform project. The investigation of options to ensure that decision-makers are accredited will be undertaken as a separate planning reform project.
	Concerned that in relation to the R-Codes, the deemed to comply requirements have become the starting point for negotiating concessions on the acceptable minimum standard, which drives the quality of the outcome down.	<b>No Change.</b>



## Schedule of Submissions with DPLH Response

OFFICIAL

Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
		Review of matters to which due regard should or should not be given by decision-makers when making a discretionary decision is outside the scope of this planning reform project.
	Disagrees with justification such as 'better built form outcome' and 'community benefit' being used to justify proposals, as this justification is not quantified or adequately justified and to the community appears to be jargon used to justify discretions.	<b>No Change.</b> Review of matters to which due regard should or should not be given by decision-makers when making a discretionary decision is outside the scope of this planning reform project.
	Concerned that discretion is currently exercised to approve proposals departing from minimum standards without providing better results in other aspects of the development, and claims that the community would like to see discretions only given for genuine better built form outcomes and genuine community benefits.	<b>No Change.</b> Review of previous discretionary decisions is outside the scope of this planning reform project.
	States that the residents of communities are the primary and most important stakeholders in the planning system because they are the ones who have to live with the outcomes. Concerned that developers are treated as the primary and most important stakeholders in the planning system.	<b>No Change.</b> Noted.
<b>30</b>	<b>Town of Cambridge</b>	
	Generally supportive of both regulatory changes and proposed Guidance document.	<b>No Change.</b> Noted.
	Proposal 4: Limitation of discretionary powers should be subject to that limitation being supported by a local planning instrument where thorough assessment and process has occurred to support the specific development requirements. Requests guidance from the Department for acceptable controls would be beneficial to ensure local government can progress with confidence.	<b>No Change.</b> Noted. Not within scope of this review.
	Recommend the DPLH actively consult and engage with local government on the development and finalisation of these prescribed forms.	<b>No Change.</b> Noted.
	Local Government should remain free to develop Local Planning Policies to address local issues.	<b>No Change.</b> Review of the function of Local Planning Policies is outside the scope of this planning reform project.
	'Casual observer' definition: Recommend this definition could also include someone with no 'connection' to the decision i.e. not a neighbour or resident of the Local Government.	<b>Action: Review this definition based on stakeholder feedback.</b> Noted.
	'Due regard' definition: Current wording is more aligned to the process of due regard and not the definition of the term. Suggest replacing 'and requires' with 'where a decision-maker gives....'.	<b>Action: Review definition of due regard based on stakeholder feedback and seek advice from SSO.</b> Noted.
	'Proper planning consideration' definition: Suggest DPLH consider the frequency and extent of the word 'proper/properly' where used in the Draft Guidelines – perhaps it doesn't need to be referred to as proper given the relevant considerations to planning are/will be listed and rationalised in the Deemed Provisions.	<b>Action: Review guidelines and other written outputs to ensure consistent terminology.</b> Noted.
<b>31</b>	<b>Western Australian Local Government Association</b>	
	Conditionally supportive of both regulatory changes and proposed Guidance document. Not supportive of proposal 2.	<b>No Change.</b> Noted.
	Proposal 1: Recommends making modifications to the Regulations and the Guidelines to further supplement the definition of 'due regard' and to clarify how to give 'proper, genuine, and realistic consideration' to a matter.	<b>Action: Review definition of due regard based on stakeholder feedback and seek advice from SSO.</b> Noted.
	Proposal 2: The Regulations should contain clear standards and provisions rather than subjective statements. A statement on when discretion could or ought to be applied is not as simple as referring to the 'clear and cogent' test reference, and it is better placed in a policy or guidance document.	<b>No Change.</b> This will be reviewed when amendments to the Regulations are drafted. Any subjective statements, including when discretion could or ought to be applied, are intended to be incorporated in the Guidelines to assist decision-makers in making decisions.
	Proposals 3 and 4: There should be the ability to retain existing discretionary clauses and circumstances where discretion should not be applied within Schemes without the need to go through a scheme amendment process.	<b>No Change.</b> There is no intention to require all Local Governments to justify existing provisions that limit discretion. However, these provisions will be assessed as part of any relevant Scheme amendment proposal or new Scheme in the future.

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Schedule of Submissions with DPLH Response

Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
	Proposal 4: It is unclear how the proposed annexures or schedules would be substantially different to Part 5 Special Control Areas, or if these would include a revision of this section.	<b>No Change.</b> This proposal relates to instances where discretion can be limited with regard to matters that relate to elements or types of developments. Whilst Special Control Areas could serve this purpose, they are often used to perform a much broader function in the planning framework including the control of subdivision and environmental protection. The proposed schedules would be expressly limited to standards or provisions that cannot be varied.
	Proposal 5: Any prescribed forms must be appropriate to the scale of the application and the extent of discretion being applied to avoid creating an additional workload burden on Local Governments. Minor applications determined under delegation should not be subject to the same level of justification as complex proposals where broad discretion is applied. Does not support an assessment template being mandatory. Suggests that any prescribed form to communicate decisions should specifically require Council or DAP decisions that are contrary to the officers' recommendation to address each reason for the decision. The current Responsible Authority Report DAP template is comprehensive and could be updated to provide greater direction to officers and decision-makers.	<b>Action: Update the current notification of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> Thresholds for forms will be considered by the Department to ensure that communication of what variations were granted and why is commensurate to the magnitude of any variations and public interest associated with any discretionary decision. It is intended that the above action will include consideration of the role of the existing Determination Notices and report templates (such as RARs or Council reports) to prevent duplication. References to assessment templates were intended to refer to the notification of determination forms to be included in decisions to communicate what variations were granted and why. There is no intention to develop standardised planning assessment templates.
	Principle 1: It is unclear whether 'prescribed standards or development controls' in planning instrument/s refer to site and development standards in Schemes or includes other requirements in due regard documents. A different process and weight is given to these standards. Baseline standards can be specific or non-prescriptive/ subjective/ performance-based, and as such this principle needs to provide an initial overview of the planning framework and specifically outline the difference between development standards contained within Schemes and other due regard provisions.	<b>Action: Review guidelines to add a definition for 'baseline control' and capture performance-based planning controls.</b> 'Prescribed standards and development controls' refers to any relevant requirement in an applicable due regard planning framework document, including but not limited to Schemes.
	Principle 2: This principle should initially acknowledge if there are provisions within a Scheme that allow for development standards to be varied and the process and considerations for this to occur (ie model provision 34).	<b>Action: Review Principle 2 to address this comment.</b> Supported.
	Principle 2: Some of the considerations included in this section are matters that should be considered as part of, and not outside, the planning framework and have been referred to in Principle 3. Specifically, public submissions are required to be considered as per model provision 34 (or similar) or deemed provision 67(2)(y).	<b>Action: Review Principle 2 to address this comment.</b> Noted.
	Principle 2: The principle notes that exercising discretion without a site visit is 'rarely appropriate'. This should reference complex applications as Local Governments regularly determine minor applications that may not require a site visit. The expectation that a site visit should occur for any proposal where discretion is exercised would place an unreasonable burden on Local Government resources and is not supported.	<b>No Change.</b> Whilst resourcing issues are acknowledged, best practice planning decision-making includes a physical inspection of the site and surrounds. This is not binding on the local government or decision-maker, and the planner should use their own discretion in this regard.
	Principle 3: Ascertaining what a planning control is trying to achieve is difficult in some cases when development standards are not supported by clear objectives and there is no guidance in the applicable planning instrument, such as LDPs. Determining the overall intent of a specific development standard can form part of the exercise of discretion if there is a clear and logical reason to depart from the standard.	<b>No Change.</b> If it is difficult to ascertain what a planning control is trying to achieve then it is likely that the planning framework is not properly constructed. In that case Principle 1 would be relevant to apply.
	Principle 3: This principle seems to take a narrow approach to 'planning principles' as identifying them as hard baseline standards rather than acknowledging there could be non-prescriptive standards or a broader range of matters that need to be given due regard as mentioned above.	<b>Action: Review guidelines to add a definition for 'baseline control' and capture performance-based planning controls.</b> Noted.
	Principle 3: In many cases there are multiple elements of an application that require discretion. Decisions should take into account all competing elements and the cumulative impact of all variations, and be supported if on balance it is appropriate in its locational context. Commentary on the 'greater good' acknowledges this to some extent but it could be further explored to explain how to balance these competing variations and how to consider the locational context of a proposal.	<b>Action: Review use of 'greater good' terminology and expand as appropriate.</b> Noted.
	Principle 4: There should be greater transparency on the weight that can be given to public submissions in the context of the planning framework, depending on their relevance to planning matters and whether an aspect of the	<b>No Change.</b> Review of the weighting of matters to which due regard should be given by decision-makers when making a discretionary decision is outside the scope of this planning reform project, except for the weight given to planning and non-planning matters. The guidelines

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Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
	development that is supported or objected to is compliant or seeks discretion. Providing examples may assist in explaining the balance between community submissions and planning instrument requirements.	address this matter as follows: “Where submissions from the public raise substantive planning matter(s), these matters should generally be given greater weight in the decision-making process than those submissions which raise issues outside of the realm of planning.”
	Principle 4: Early engagement with the public should be encouraged and the guidelines should include advice on how to communicate variations to development standards to the public. Local Governments engage with the public to differing degrees and a consistent approach for development applications would be helpful.	<b>No Change</b> The process and nature of any consultation / engagement is outside the scope of this project. Development of guidance to determine the extent and methodology of engagement is outside the scope of this planning reform project, however it is acknowledged that good discretionary decisions should be made based on an appropriate extent and methodology of consultation.
	Principle 5: This principle could be expanded upon to provide greater guidance on how to consider due regard matters, specifically those listed in Clause 67(2), or subjective and nonprescriptive development standards.	<b>No Change.</b> Review of the weighting of matters to which due regard should be given by decision-makers when making a discretionary decision is outside the scope of this planning reform project.
	Principle 5: Examples similar to that used for weighing up different due regard aspects of an application could be used throughout the document.	<b>Action: Review guidelines to identify further opportunities to include examples.</b> Noted.
	To some extent the principles of the guidelines could be applicable to all statutory decisions.	<b>No Change.</b> Supported, however these guidelines are limited to development applications made under Local Planning Schemes.
	The document is very complex and technical and may be difficult for the community to understand, which is not consistent with the Action Plan for Planning Reform. Consider simplifying the document or providing a plain English version that is easier to understand and navigate by the public. The Guidelines would benefit from being more user-friendly and restrict introducing new planning terms.	<b>Action: Review guidelines and other written outputs to ensure consistent terminology.</b> The Guidelines are intended for use by decision-makers and practitioners.
	Define ‘Baseline’ standard or controls, and clarify if these are specifically site and development standards including in LPS or other standards, which could be non-prescriptive, including standards in other due regard documents.	<b>Action: Add a definition for ‘baseline control’ and capture performance-based planning controls.</b> ‘Prescribed standards’ and ‘development controls’ refer to any relevant requirement in an applicable due regard planning framework document, including but not limited to Local Planning Schemes.
	Define ‘seriously entertained’ as it is referred to in Principle 1.	<b>No Change.</b> A definition of ‘seriously entertained’ is outside the scope of this planning reform project.
	Education and training for decision-makers (specifically Council and DAP members) is critical to good decisions being made.	<b>No Change.</b> Noted. Not within scope of this review.
	The Guidelines refer to the importance of having current and contemporary local planning frameworks. Fees and charges associated with Local Government planning functions have not been amended or reviewed since 2013. This has resulted in significant revenue leakage from Local Government planning functions. Consequently, many Local Governments may not be adequately resourced to review and update their planning framework. Requests that fees and charges set under the <i>Planning and Development Regulations 2009</i> are reviewed and increased.	<b>No Change.</b> This is outside the scope of this planning reform project.
32	City of Wanneroo	
	Conditionally supportive of both regulatory changes and proposed Guidance document. Not supportive of proposals 4 and 5.	<b>No Change.</b> Noted.
	Proposal 1: Recommends explaining the definition of ‘due regard’ further through the Guidelines.	<b>Action: Review definition of due regard based on stakeholder feedback and seek advice from SSO.</b> Noted.
	Proposal 2: Introducing ‘boundaries’ in the deemed provisions as to when discretion may be used could limit the decision-maker’s ability to apply discretion in certain circumstances, given Clause 67 currently effectively allows a decision-maker to consider any and all relevant matters. Further guidance on when discretion should be applied should only be included in the Guidelines for this reason.	<b>No Change</b> This planning reform project does not intend to fetter the ability of decision-makers to consider any matter contained within Clause 67, including 67(2)(zb).

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Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
	Proposal 3: It may be more appropriate if Clause 34 of the model provisions became a new deemed provision, rather than being integrated with the current Clause 67. For example, a new Clause ‘67A’ could be created to insert such provisions.	<b>No Change.</b> Noted. This matter will be considered as part of the drafting work associated with Proposal 3.
	Proposal 4: The localised limitation of discretionary powers in specific scenarios or locations could already be applied through existing mechanisms of the model provisions. Given such provision already exists in the model provisions, further provisions as suggested in Proposal 4 may add little value. It may be the case that minor revisions to Part 5 pertaining to Special Control Areas be considered instead to achieve the intended purpose of Proposal 4.	<b>No Change.</b> Noted. Whilst Special Control Areas could serve this purpose, they are often used to perform a much broader function in the planning framework including the control of subdivision and environmental protection. The proposed schedules would be expressly limited to standards or provisions that cannot be varied.
	Proposal 5: Determinations of development applications that are not controversial should not be required to have an additional form setting out justification for the use of discretion. This would add a substantial amount of additional work to the assessment and decision-making process and would not provide any real benefit, given Local Governments already have processes in place to document discretion to meet the requirements of the Local Government Act. Instead, the need for proper processes and record keeping of discretionary decisions could be discussed further in the Guidelines. This is unnecessary duplication, which goes against the Action Plan for Planning Reform aims to streamline the planning process.	<b>Action: Update the current notification of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> It is intended that decisions where minutes are made publicly available will include communication of what variations were granted and why. It is intended that forms will be able to be inserted into Council Reports to avoid duplication. Thresholds for forms will be considered by the Department to ensure that communication of what variations were granted and why is commensurate to the magnitude of any variations and public interest associated with any discretionary decision.
	Proposal 5: DAP or Council items of higher significance are thoroughly justified in the reporting and communicated to all stakeholders. Council or JDAP decisions that are contrary to an officer recommendation could be expanded upon through clear and transparent officer reporting of discretionary matters and provided to any objectors, interested parties or applicants directly by Council or JDAP.	<b>Action: Update the current notification of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> It is intended that decisions where minutes are made publicly available will include communication of what variations were granted and why. It is intended that forms will be able to be inserted into RARs and Council Reports to avoid duplication, and will therefore be publicly available.
	Principle 1: What constitutes a ‘properly constructed’ planning framework document is not clearly explained in the draft guidelines, and should be expanded upon.	<b>Action: Update guidance document to clarify how to determine if a planning framework is properly constructed.</b>
	Principle 2: This principle could also refer to other non-planning legislation or guidance that may have influence on planning assessment and decision-making in the appropriate instances. This could encompass ‘other planning considerations’ referred to in Clause 67(2)(zb) of the deemed provisions.	<b>No Change.</b> Clause 67(2)(zb) is considered to be sufficient to achieve this suggestion.
	Principle 3: Notes that at times it can be unclear what a planning control is trying to achieve, so ascertaining its meaning could involve the use of discretion as well. This statement may require further consideration.	<b>No Change.</b> If it is difficult to ascertain what a planning control is trying to achieve then it is likely that the planning framework is not properly constructed. In that case Principle 1 would be relevant to apply.
	Principle 3: The term and discussion on the ‘greater good’ are ambiguous and should be further considered to better tie back to the principle of ‘clear and logical reasons to depart from a standard’. The wording should be revised to reference a more ‘balanced’ outcome taking into consideration all aspects of the development and its outcomes.	<b>Action: Review use of ‘greater good’ terminology.</b> Supported.
	Principle 3: The principle states that there is a ‘baseline’ standard for decision-makers to refer to, however much of the planning framework is performance based and has no baseline standard. Recommends clarifying that an assessment may be required to determine the development’s level of acceptability from a set of objectives or vision such as the provisions contained within clause 67(2).	<b>Action: Review guidelines to add a definition for ‘baseline control’ and capture performance-based planning controls.</b> Noted.
	Principle 4: This principle could be expanded upon so that the appropriate expectations are set on the weight of public submissions and their impact on a planning decision.	<b>No Change.</b> The guidelines address this matter as follows: “Where submissions from the public raise substantive planning matter(s), these matters should generally be given greater weight in the decision-making process than those submissions which raise issues outside of the realm of planning.”
	Principle 4: The DPLH may wish to review a SAT decision between Stillmark Holdings Pty Ltd v City of Wanneroo ([2022] WASAT 60, DR173 of 2021) discussing the weight of submissions that local landowners (and non-experts) provide compared to the weight given to professional opinions of others. This should be explained further in the Guidelines.	<b>Action: Review Principle 4 to ensure that it captures/reflects the SAT decision referred to in this comment.</b> Noted.

Exercise of Discretion in Planning decision-making in Western Australia

Schedule of Submissions with DPLH Response

Submission		DPLH Response (Draft Modified   No Change   Monitor Implementation   Future Consideration)
	Principle 5: This principle states how “personal views and values should not be a basis for exercising discretion unless supported by the planning framework”. The wording of this statement implies that personal views forming a basis in a planning decision may be acceptable in certain instances, when it shouldn’t form the basis of planning decision-making at all.	<b>Action: Amend “should not” to “are not to”.</b> Supported.
	Additional and specific principles/discussion may be needed to guide a decision-maker that is not an assessing officer or planner (such as a Council or a JDAP) in making proper and balanced discretionary planning decisions.	<b>No Change.</b> The Guidance Statement is intended for all planning decision-makers
	Consideration of outcomes that local development plans aim to achieve also involve some discretion to be made by a local government, and therefore the Guidelines may be useful for that. However, the Guidelines may not be useful for planning authorities in considering other proposed higher-level strategic planning documents.	<b>No Change.</b> The Guidelines are intended to inform the determination of development applications under local planning schemes, and not the determination of LDP proposals or similar, although the principles may be broadly applicable. Where an LDP is a consideration for a development application, it should be afforded due regard in the decision-making process in accordance with the Deemed Provisions.
	The Guidelines should balance streamlining of the planning process with the need to provide transparency and consistency. The Guidelines overly focus on ensuring that transparent and consistent decisions are made, however delivering on this should not compromise limited resources available to a decision-maker or the time it takes for a decision to be issued.	<b>Action: Update the current notification of determination form with tiers based on the complexity, delegation, value and/or significance of discretion sought.</b> Thresholds for forms will be considered by the Department to ensure that communication of what variations were granted and why is commensurate to the magnitude of any variations and public interest associated with any discretionary decision.
	The term ‘third party’ in the ‘casual observer’ definition is confusing, as a decision made should also be clear to others within the planning authority that were not involved in the decision (e.g., a Councillor).	<b>Action: Review this definition based on stakeholder feedback.</b> Noted.
	Reconsider the use of the term ‘proper planning consideration’. This term is only used once in the Guideline and is not a term used in Clause 67(2) of the deemed provisions. ‘Relevant planning considerations’ may be a more acceptable term to use. The definition itself should commence with “those <b>relevant</b> matters...” as not all the matters set out in Clause 67(2) may be relevant in the assessment of a development application.	<b>Action: Review guidelines and other written outputs to ensure consistent terminology.</b> These matters can already be considered by virtue of clause 67(2)(zb).
	The term ‘cogent’ is not a commonly used in plain English, and therefore a definition within the Guidelines would be useful. The term could alternatively be replaced with ‘logical’.	<b>No Change.</b> As ‘cogent’ is an operative term in the guidelines, the wording needs to be chosen carefully. ‘Cogent’ is preferred as it best describes the prerequisite for a reason to exercise discretion.
	A definition of ‘baseline’ may be required as the planning framework does not always have a hard baseline to begin with.	<b>Action: Review guidelines to add a definition for ‘baseline control’ and capture performance-based planning controls.</b> Noted.
	The term ‘development application’ is used in the Guidelines, which is different to ‘application for development approval’ as used in the deemed provisions. Clarification may need to be considered to confirm that the terms are one and the same.	<b>Action: Review guidelines and other written outputs to ensure consistent terminology.</b> Noted.
	The application of discretion can also be a matter of law; and therefore, the State Solicitor’s office should be involved in providing its own comment and feedback on the matters subject to this consultation exercise.	<b>No Change.</b> Noted.
	The guidelines could be expanded upon to include provisions or guidance specific to council members or DAP members.	<b>No Change.</b> Whilst the guidelines do provide some guidance for all discretionary planning decisions, they are targeted at the determination of applications for development (planning) approval under local planning schemes.