



Land Use Planning

Part V, Environmental Protection Act

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Accessibility

This document is available in alternative formats and languages on request.

Objective

To provide guidance on the Department of Environment Regulation's (DER) interaction with strategic and statutory land use planning processes, with particular reference to roles and responsibilities under Part V of the Environmental Protection Act 1986 (EP Act) and its subsidiary legislation

Background

DER undertakes environment regulation functions under the EP Act of licensing, approvals, compliance and enforcement in relation to:

- emissions and discharges;
- waste;
- noise; and
- clearing of native vegetation.

DER recognises the importance of planning in the context of the delivery of appropriate public health and environmental outcomes. DER's statutory roles and functions under the EP Act may intersect with the land use planning functions of State and Local Government in this regard and often approvals for environmental and planning issues are required at similar times. DER has a role in providing advice to the land use planning system in these instances.

DER has a statutory role in the land use planning system by the Chief Executive Officer being a member of the Western Australian Planning Commission.

DER has a responsibility to ensure its regulatory decisions are efficient and effective in the context of the land use planning system. This will minimise the risk of conflicting outcomes from the different approvals processes for industry.

Legislation

The *Guidance Statement: Land Use Planning* (GS LUP) is principally related to DER's regulatory functions under Division 3, Part V of the EP Act and its subsidiary legislation¹, and the *Planning and Development Act 2005*.

The significant interaction between the *Contaminated Sites Act 2003* and the land use planning system is not the subject of this guidance statement.

¹ The regulation of emissions and discharges through works approvals and licences under Division 3, Part V of the EP Act, and regulation of noise under the *Environmental Protection (Noise) Regulations 1997* (noting the delegation of the noise regulations' powers to local government) are particularly relevant to this guidance statement

Guidance Statement

1. **DER will support the establishment and maintenance of buffer areas by planning authorities as a key measure to minimise and manage the risk of harm to public health or the environment arising from the matters DER regulates.**
2. **DER will consider separation distances from sensitive receptors in performing its regulatory functions.**
3. **DER acknowledges the timing priority of planning decisions over DER's subsequent regulatory determinations. This means that it is appropriate for planning decisions to be made first as they are relevant matters for DER's consideration in performing its regulatory functions.**
4. **DER will:**
 - (a) **consider current zoning when considering impacts on potential sensitive receptors when determining Division 3, Part V applications;**
 - (b) **assess applications under Division 3, Part V of the EP Act concurrently with applications for planning approval,**
 - (c) **make DER's formal determination after the relevant planning decisions have been made;**
 - (d) **decline to make a regulatory determination on a matter where a planning decision prevents implementation of the application; and**
 - (e) **take the duration of planning approvals into account when determining the duration of works approvals, licences or permits granted under the EP Act, consistent with DER's *Guidance Statement: Licence duration*.**
5. **On the request of State and Local Government planning authorities, DER will provide technical environmental advice regarding planning proposals in relation to matters DER regulates.**
6. **DER will provide environmental advice on strategic and statutory planning proposals, not subject to Division 3, Part V EP Act regulation where required specialist or technical expertise is held by DER and is requested by State and Local Government planning authorities.**

Implementation

The GS LUP will guide DER's regulatory functions and the provision of advice to the land use planning system.

DER supports planning buffers between industries and sensitive receptors being determined at the local structure plan or higher stages of planning, rather than at the subdivision or development planning level.

The Standing Committee on Environment and Public Affairs in its report on Petition No. 136 (2012) stated: “...the location of buffers cannot be established solely on the basis of scientific assessment of all current and potential future impacts of current and future industry. Any scientific assessment can only provide guidance. It is also easier and preferable to make planning buffers with a view to avoiding conflict than to try and manage conflict once it occurs.”

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

DER will endeavour to make draft decisions or advice on the intention to grant or refuse applications under Division 3, Part V the EP Act, available to applicants for use in planning approvals processes. Availability will be dependent upon the status of DER’s assessment at the time planning approval processes are occurring.

Commencement

The GS LUP is to take effect from 22 October 2015.

Review

This guidance statement is to be reviewed no later than as soon as practicable following the fifth year of its commencement.