INDUSTRIAL PLANNING – AGENCY ASSESSMENT AND LEGISLATIVE REQUIREMENTS

This fact sheet has been prepared to assist in the implementation of State Planning Policy 4.1 Industrial Interface and Operational Policy 4.1 Industrial Planning. It outlines the specific agency assessment and legislative requirements relevant to the establishment, expansion or modification of industrial land uses in Western Australia.

AGENCY ASSESSMENT FOR INDUSTRIAL PLANNING

Industrial proposals associated with substantial emissions and risks require approvals, permits or licences from government agencies. These agencies have an integral role in the assessment of industrial emissions, safety risks and the demarcation of impact areas, in accordance with relevant guidelines and legislation. This fact sheet outlines key factors and approvals related to proposals for industry and infrastructure facilities that may require consideration in planning decision-making.

Various regulations and guidelines complement and overlap with the planning system, and some proposals require additional approvals by other decision-makers beyond those listed below. Proponents should seek appropriate professional advice in this regard. Compliance with other legislation should not be interpreted as approval by planning decision-makers under the *Planning and Development Act 2005*.

ENVIRONMENTAL IMPACT ASSESSMENT – Environmental Protection Authority (EPA)

The EPA considers the environmental impacts of planning schemes and scheme amendments under Part IV, Division 3 of the *Environmental Protection Act 1986*. Schemes and scheme amendments must be referred to the EPA prior to being advertised for public comment, to determine whether it is environmentally acceptable.

Development proposals that are likely to have a significant effect on the environment are required to be referred to the EPA under Part IV, section 38 of the *Environmental Protection Act 1986*.

The EPA Guidance Statement No.3 - Separation Distances Between Industrial and Sensitive Land Uses (2005) provides advice on which land uses require separation, and recommends generic separation distances. The guidance statement outlines EPA expectations on the application of separation distances for schemes, scheme amendments and proposals in the environmental impact assessment process. The guidance statement supports strategic and statutory land use planning and development decisions by relevant planning authorities, where proposed land uses have the potential to adversely impact on human amenity and health.

For example, waste water treatment plants are commonly protected through the use of Special Control Areas in regional and local planning schemes to ensure incompatible land uses are protected from impacts and the infrastructure has operational certainty.

REGULATION OF PRESCRIBED PREMISES – Department of Water and Environmental Regulation (DWER)

It is an offence under Part V Division 3 of the *Environmental Protection Act 1986* to cause an emission or discharge from activities carried out on prescribed premises unless a works approval, licence or registration is held for the premises. Prescribed premises are industries with the potential to cause emissions and discharges into air, land and water that trigger regulation under the *Environmental Protection Act 1986*. Prescribed premises are listed in Schedule 1 of the Environmental Protection Regulations 1987. DWER Guideline: Industry Regulation Guide to Licensing (Section 15) provides for assessment of applications under Part V Division 3 of the *Environmental Protection Act 1986* to take place concurrently with applications for planning approval.

Works approvals and licences may be granted subject to conditions to prevent, control, abate or mitigate pollution or environmental harm. Licences may be granted for up to 20 years, depending on the risk to public health and environment posed by the premises, as well as the duration of other statutory approvals, including planning approvals.

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EMITTING INDUSTRIES NOT REGULATED AS PRESCRIBED PREMISES – Department of Water and Environmental Regulation (DWER)

Industrial land uses that are not prescribed premises may still generate emissions but do not require a works approval, licence or registration from DWER under the Environmental Protection Regulations 1987. Therefore, special consideration is required by planning decision-makers. Examples of such land uses include automotive spray painting, metal fabrication, service stations, transport vehicle depots, panel beating, abrasive blasting, and joinery and wood-working premises, small-scale infrastructure such as beverage container refund points, as well as industries below the specified production capacity or design capacity threshold for a prescribed premises as specified in the Environmental Protection Regulations 1987.

OFF-SITE RISKS – Department of Mines, Industry Regulation and Safety (DMIRS)

Where a new or existing industry involves off-site risks, including cumulative risks, planning decision-makers should seek technical advice from DMIRS. Industries involving explosives and other dangerous goods with potential off-site risks, including major hazard facilities, are regulated by DMIRS under the *Dangerous Goods Safety Act 2004*.

Information on the types of goods and the critical quantities which require licensing can be found in DMIRS Dangerous Goods Safety Guidance Note: Licensing and exemptions for storage and handling (2015). Minimum separation distances between explosive facilities and various categories of incompatible land uses are provided in Australian Standard AS2187.1:1998 and the DMIRS Dangerous Goods Safety Guidance Note: Storage of explosives (2018).

The potential off-site risks associated with onshore petroleum facilities located on petroleum production licences are also regulated by DMIRS under the *Petroleum and Geothermal Energy Resources Act 1967*. It is recommended that DMIRS advice is sought on the potential off-site risks associated with any development proposed within 500 metres of the boundary of an existing petroleum facility.

Mining Act 1978 – Department of Mines, Industry Regulation and Safety (DMIRS)

Where a planning proposal may be negatively impacted by a mining operation carried out under the *Mining Act 1978*, the relevant planning authority should seek advice from DMIRS and DWER regarding the risk and acceptability of potential off-site impacts. While the Minister for Mines, Industry Regulation and Safety, the warden or the mining registrar will take into account planning instruments when considering an application for a mining tenement, a planning instrument cannot operate to prohibit or affect the grant of such tenement.

Aboriginal Cultural Heritage Act 2021 and Aboriginal Heritage Act 1972 – Department of Planning, Lands and Heritage

The *Aboriginal Cultural Heritage Act 2021* (ACH Act) provides a modern framework for the recognition, protection, conservation and preservation of Aboriginal cultural heritage while recognising the fundamental importance of Aboriginal cultural heritage to Aboriginal people. The ACH Act is currently in a transitional period, as regulations, statutory guidelines and operational policies are developed to ensure the ACH Act will have its intended effects.

During the transitional period, the *Aboriginal Heritage Act 1972* remains in force to allow proponents to continue to seek section 18 consent for any activity that will impact Aboriginal sites. A proposal will require consent under Section 18 of the *Aboriginal Heritage Act 1972* where there is likely going to be an impact to an Aboriginal site. When a landowner gives notice of an intended land use to the Aboriginal Cultural Material Committee (ACMC), the ACMC needs to determine whether there are any Aboriginal sites on the land, evaluate the importance and significance of any such sites, and make a recommendation to the Minister for Aboriginal Affairs as to whether or not consent should be given for the proposal. In making their decision, the Minister needs to give regard to the ACMC's recommendation and the general interest of the community.

Native Title Act 1993 – Department of the Premier and Cabinet/National Native Title Tribunal

Where planning for a future industrial area or land use is being undertaken, particularly in the regions, consideration should be given to native title rights and interests under the *Native Title Act 1993*.

CO-LOCATION OF COMPATIBLE AND COMPLEMENTARY LAND USES

SPP 4.1 supports the co-location of compatible and complementary land uses and infrastructure. Co-location and clustering of industrial uses can often provide opportunities for industrial symbiosis, by locating beneficial land uses together where wastes or by-products of an industry or industrial process become the raw materials for another.

For example, wastewater treatment plants are increasingly becoming recognised as secure sources of alternative water. Further, excess heat from other processes (such as data centres) can be utilised in biological treatment systems. Facilitating beneficial and synergistic land uses in and around treatment plants will improve the efficient use of land, water and other resources.