



Government of **Western Australia**
Department of **Planning**

13 NOV 2012

Your ref: Petition 136
Our ref: DP/11/00295
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Ms Susan O'Brien
Advisory Officer
Environment and Public Affairs Committee
Legislative Council
Parliament House
PERTH
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Dear Ms O'Brien

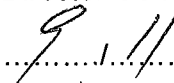
Environment and Public Affairs Committee: Petitions 136 and 150 - Kwinana Air Quality Buffer

I refer to the letter dated 17 October 2012 from the Hon Brian Ellis MLC, Chair: Standing Committee on Environment and Public Affairs, requesting that I provide written answers to questions by Monday 29 October 2012, and to the extension of time granted to Monday 5 November 2012.

A large number of questions have been asked of me, and enclosed is a schedule containing the questions as posed in the letter of 17 October, and my responses.

Yours sincerely

Eric Lumsden PSM
Director General

 / 2012

PUBLIC

STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS QUESTIONS AND ANSWERS

**PETITION NUMBER 136 – KWINANA AIR QUALITY BUFFER ZONE EXTENSION (MANDOGALUP) AND
PETITION NUMBER 150 – KWINANA INDUSTRY AIR BUFFER ZONE EXTENSION – MUNSTER**

Questions: Petition number 136 – Kwinana Air Quality Buffer Zone Extension (Mandogalup)

When RDA Buffer Decision was made and came into effect

Paragraph Number	Question	Answer
2.1	WAPC documents provided by DoP to the Committee state that WAPC's September 2010 decision to extend the Kwinana Air Quality Buffer to the north and east of Alcoa's Residue Drying/Disposal/Storage area in Kwinana (RDA Buffer decision) was "reaffirmed" in May 2011	⊗
2.1.1	When was the September 2010 decision affirmed?	The decision was taken 21 September 2010 and was affirmed on 24 May 2011.
2.1.2	What were the factors that led to the RDA Buffer decision being reconsidered?	The 21 September 2010 decision was based on a recommendation received from the Kwinana Buffer Review Committee (KBRC) which reflected advice provided by the Department of Health (DoH) and Department of Environment and Conservation (DEC); incorporated the strategic interests of both the Kwinana Industrial Area (KIA) and adjacent lands; protected the safety and amenity of residents; aligned with policy and criteria set by the WAPC; and did not quarantine the land adjacent to the KIA from future non-sensitive land use and development.
2.1.3	When did the RDA Buffer decision come into effect for	21 September 2010

Paragraph Number	Question	Answer
	planning purposes?	
2.5	Why did WAPC decide to update and release a 'Review of the Kwinana Air Quality Buffer Position Paper (2008)' reflecting the new buffer alignment?	The Review of the Kwinana Air Quality Buffer Position Paper (2008) outlined a series of actions relating to the review of the Kwinana Air Quality Buffer. One of the actions was to review the area surrounding the Alcoa Residue Disposal Area (RDA) once Alcoa had completed and provided their monitoring and modelling studies.
2.5.1	Was this decision implemented?	The decision was partially implemented, and the extension of the buffer as per the 21 September 2010 decision is reflected in a plan.
2.5.2	If not: 1. Why not? (In answering this question advise who made the decision not to release the report immediately on WAPC's decision that it be released and the statutory authority for that decision)	A plan was made available, but an updated Position Paper was not produced.
2.5.2	If not: 2. Explain why the WAPC made a decision that could not be implemented.	The lack of an updated position paper does not invalidate the commission's decision to amend the buffer as reflected on the plan.
2.5.3	If so: 1. When did that occur?	NA
2.5.3	If so: 2. to which stakeholders was it released?	NA
2.5.3	If so: 3. If the stakeholder to whom it was released did not include	NA

Paragraph Number	Question	Answer
	<p>affected landowners, advise why they were not considered stakeholders (Having regard to State Planning Policy 4.1 – State Industrial Buffer Policy (SPP 4.1), which provides that an objective of that policy is to recognise the interests of existing landowners)</p>	
2.5.3	<p>If so 4. Explain any period of time elapsing between 21 September 2010 and the date the revised Position Paper was released.</p>	NA
2.6	<p>Why did the WAPC decide in May 2011 to release the September 2010 WAPC report to stakeholders?</p>	Affected landowners requested the WAPC to release the report.
2.7	<p>Why did WAPC make separate decisions in respect of release of the September 2010 WAPC report and Alcoa's report?</p>	Evidence of separate decisions has not been found in the WAPC files. The documentation shows that on 24 May 2011 the WAPC decided to release both reports.
2.8	<p>Was WAPC's May 2011 decision to release the September 2010 WAPC report to stakeholders implemented?</p>	Yes
2.8.1	<p>If not: 1. Why not? (In answering this question advise who made the decision not to release the report immediately on WAPC's decision that it be released and the statutory authority for that decision)</p>	NA

Paragraph Number	Question	Answer
2.8.1	If not: 2. Explain why the WAPC made a decision that could not be implemented.	NA
2.8.2	If so: 1. When did that occur?	Distribution of the WAPC report occurred in response to requests that were received by the WAPC after 4 October 2011.
2.8.2	If so: 2. To which stakeholders was it released?	The WAPC report was released to whoever made a request for it.
2.8.2	If so: 3. Have the petitioners been provided with a copy? And if so, when did this occur? If not, why not?	The WAPC report was released to whoever made a request for it.
2.8.2	If so: 4. Explain any period of time elapsing between May 2011 and the date of the September 2010 WAPC report was released to the petitioners.	Following the May 2011 decision, the preparation commenced of an information letter with a "Frequently Asked Questions" attachment, in consultation with DoH and DEC, and relevant Local Governments, resulting in a letter dated 4 October 2011 from the Chairman of the WAPC to landowners notifying them of the extension of the buffer. The attachment provided a list of contact names should landowners require additional information.
2.9	Is there any:	⊗
2.9.1	Legislative requirement for publication of a decision by WAPC to make a buffer within a set period of time of that decision having been made? If so, identify that provision.	No.

Paragraph Number	Question	Answer
2.9.2	Legislative or practical restriction on publication of interim buffer decisions when they are made? If so identify that restriction.	No.
2.10	To the extent that delay in releasing either of the revised Position Paper or the September 2010 WAPC report was based on discussion with SSO and Alcoa concerning release of Alcoa's report:	⊗
2.10.1	Why wasn't the (1) revised Position Paper and (2) September 2010 WAPC report released independently of Alcoa's report?	(1) As discussed above there has been no revised position paper (2) The reasons for not releasing the WAPC's September 2010 report independently of the Alcoa report are not documented in the WAPC's decisions.
2.10.2	Which entity or entities raised issues with releasing Alcoa's report? Identify issue/s raised by each entity.	Alcoa raised issues of commercial confidentiality. The SSO was of the view that the release of the Alcoa report in conjunction with planning advice was unlikely to breach legal duties of confidentiality, but the nature of Alcoa's interest created a risk of litigation. If the benefits of releasing the Alcoa report are important enough to outweigh the possible legal risks then the SSO was of the view that the WAPC should give Alcoa notice of its intentions before any release occurred.
2.10.3	In the event an issue was Alcoa's desire for confidentiality, what is the rationale for preservation of business confidentiality at the expense of providing landholders information on decisions affecting their land?	In making its decisions, the WAPC takes into account the full spectrum of issues and considerations before it, and is not fettered by business confidentiality concerns, subject to taking the advice of the SSO. In this instance the WAPC decided to release both the WAPC September 2010 report and the Alcoa report in the interests of providing stakeholders the opportunity to review the evidence

Paragraph Number	Question	Answer
		behind the decision, and in the interests of transparent planning and decision making.
2.10.4	In the event an issue was copyright in the report:	⊗
2.10.4	1. Who owned the copyright?	Alcoa
2.10.4	2. Could permission have been given to release the report and, if so, was permission sought and what was the response?	The WAPC engaged with Alcoa regarding the release of the report. Although Alcoa was opposed to having the full report released, after consideration of the matter the WAPC resolved to release the full report to stakeholders, in conjunction with planning advice, with conditions on its use and circulation.
2.10.4	<p>What is the rationale for a buffer-making process that results in the scientific studies considered by the WAPC in making decisions being withheld from affected landowners/the general public?</p> <p>(In answering this question, advise whether the WAPC considered any other scientific studies in making the RDA Buffer decision and, if so, identify them)</p>	<p>In this instance the buffer was determined on the basis of technical advice received from the DEC and DoH, which was subsequently considered by the Kwinana Buffer Review Committee and recommended to the WAPC.</p> <p>There were no other scientific studies, other than the Alcoa report. Alcoa expressed its desire for confidentiality.</p>
2.11	To the extent delay in release of the revised Position Paper resulted from the review date for the RDA Buffer decision not being settled until May 2011, how did this prevent:	⊗
2.11.1	Public notification of the RDA Buffer decision with a statement that a review date would be determined?	No revised position paper was released.
2.11.2	Release of a revised "Review of the Kwinana Air Quality Buffer Position Paper (2008)" reflecting the new buffer	No revised position paper was released.

Paragraph Number	Question	Answer
	alignment and advice that a review date would be determined?	
2.12	To the extent delay in release of a revised Position Paper of the September 2010 WAPC report was due to preparation of a Frequently Asked Questions document, why did it take so long to prepare this document?	Due to liaising with DoH, DEC, and Local Governments the preparation and release of the Frequently Asked Questions document was delayed. As stated, there is no revised position paper.
2.13	In their petition, the petitioners seek copies of documents relating to the RDA Buffer decision.	⊗
2.13.1	Have the petitioners now been provided with a copy of the September 2010 WAPC report?	See question 2.8.2
2.13.2	If so, when did this occur?	See question 2.8.2
2.13.3	If not, why not?	NA
2.13.4	Have the petitioners now been provided with a copy of Alcoa's report?	The Alcoa report was released to persons who requested it after the letter of 4th October 2011.
2.13.5	If so, when did this occur?	The Alcoa report was released to persons who requested it after the letter of 4th October 2011.
2.13.6	If not, why not?	NA
2.19	Why weren't the petitioners considered key stakeholders and afforded the same consultation opportunities as other stakeholders? (answer in respect of both the KBRC and	The issues were of a highly technical and scientific nature and consultation was therefore restricted to relevant Government agencies that had an interest in the

Paragraph Number	Question	Answer
	WAPC process)	Kwinana Air Quality Buffer.
2.20	Explain how lack of consultation with affected landowners on the final recommendation put to the WAPC, the RDA Buffer decision and WAPC's May 2011 decision is consistent with the following:	⊗
2.20	1. WAPC's annual report 2010/11 identification of community groups and individual landowners as stakeholders, as well as developers	The issues were of a highly technical and scientific nature and consultation was therefore restricted to relevant Government agencies. The advice from the DEC and DoH was not considered to be of a nature subject to potential modification by public consultation.
2.20	<p>2. SPP 4.1's statement that the final combination of management practices/off-site buffer areas "often" involve negotiation with adjacent landowners (4.4, p7), SPP 4.1's Objective:</p> <p>To recognise the interests of existing landowners within buffer areas who may be affected by residual emissions and risks, as well as the interests, needs and economic benefits of existing industry and infrastructure which may be affected by encroaching incompatible land uses.</p>	Although the lack of consultation is not compatible with these objectives, it should be noted that the issues were of a highly technical and scientific nature and consultation was therefore restricted to relevant Government agencies.
2.20	3. WAPC's annual report 2010/11 advice that the WAPC is working to improve planning processes through with the community can participate (p13).	The issues were of a highly technical and scientific nature and consultation was therefore restricted to relevant Government agencies. The advice from the DEC and DoH was not considered to be of a nature subject to potential modification by public consultation.

Paragraph Number	Question	Answer
2.21	How does the ability of the affected landowners in Mandogalup to provide meaningful input into the decision on the RDA Buffer differ from that of:	⊗
2.21.1	The developers who were consulted in the review process?	In the review process landowners, land developers and the public were not consulted.
2.21.2	Members of the public who may comment on technical reports supporting a development application?	In the review process landowners, land developers and the public were not consulted.
2.22	Explain why the affected landowners views are irrelevant to a decision based on amenity of land uses, particularly where the September 2010 WAPC report notes there are no technical standards for amenity.	Affected landowners views are not irrelevant, but the issues were of a highly technical and scientific nature and consultation was therefore restricted to relevant Government agencies.
2.23	What is WAPC's response to the petitioner's claim that: "A comprehensive interim report should have been issued between the vague 2008 consultation and the Sept 2010 decision. This report should have included data, maps, modelling (sic), real seasonal impact footprints, detailed closure strategy for Area F including agreed timeframe and detailed advisory comments from DEC and DOH"	There is merit in the petitioners claim.
2.24	The petitioners complain at lack of certainty in the uses that will/will not be permitted in the outer 0.5km of the RDA Buffer area. They query major planning decisions being taken without due regard to implementation	⊗

Paragraph Number	Question	Answer
2.24.1	What is WAPC's response to this complaint?	<p>Question 10 from the Frequently Asked Questions document explains this:</p> <p><i>What does this mean for my land and property?</i></p> <p><i>Existing uses can continue to operate as they are. For example, if you already have a house and are living within the buffer areas the expansion of the buffer will not change this.</i></p> <p><i>However, any new uses and / or developments would need to comply with the Western Australian Planning Commission's decision to expand the buffer. For example, approvals for additional residences, subdivision applications, or the development of sensitive uses (i.e. day care centre) would need to consider the Western Australian Planning Commission's decision and comply with the allowed uses within the buffer area.</i></p> <p><i>The Department of Planning will continue to work in collaboration with the Town of Kwinana, City of Cockburn, as well as Department of Health and Department of Environment and Conservation to further define exactly what uses will and will not be appropriate within this expanded buffer area.</i></p>
2.24.2	Have the uses that will and will not be permitted in the RDA Buffer area been determined?	No.
2.24.3	If so, have the petitioners been advised of those uses? When were they advised?	NA
2.24.4	If not, why not?	This is explained in question 2.24.1

Paragraph Number	Question	Answer
2.25	The petitioners assert that the RDA Buffer has been developed without local community consultation and almost exclusively to meet industry needs. They consider Alcoa should be more stringently regulated to control dust and emissions. Where a buffer decision involves choosing between restricting land use and imposing stricter controls on industry:	<p>The buffer was not developed to meet exclusively industry needs.</p> <p>The statement that Alcoa needs to be more stringently regulated is a matter for DEC.</p>
2.25.1	What is the primary purpose in making an industrial buffer and whose are the primary interests protected?	<p>The purpose of State Planning Policy (SPP) 4.1 State Industrial Buffer Policy is to provide a consistent state wide approach for the protection and long term security of buffer areas. SPP4.1 gives generic guidance for buffer distances based on the EPA's guidance statement number 3 - Separation distances between Industrial and Sensitive Land uses (GS3). The policy objectives are to:</p> <ul style="list-style-type: none"> • avoid conflict between industry and/or essential infrastructure and sensitive land uses; • protect industry and/or essential infrastructure from encroachment by those land uses that would be sensitive to impacts and adversely impact the efficient operations; • provide for the development of industry and/or the provision of essential infrastructure in a way that maximises amenity, minimises environmental and health impacts and takes account of risk to nearby sensitive land uses; and • promote compatible uses in areas affected by off-site impacts of industry and/or essential infrastructure. <p>The policy has been designed with a dual purpose – to protect industry from land</p>

Paragraph Number	Question	Answer
		<p>uses that restrict or adversely impact their operations, and to protect sensitive land uses (i.e. residential etc.) from locating nearby to industry where there is a real risk to health and amenity.</p> <p>The primary purpose of any buffer is the protection of both industry and sensitive land uses. The WAPC considers both of these as equally important and balances their decision making with this in mind.</p>
2.25.2	<p>To what extent is health risk management a factor? Does this take priority over maximising potential land uses in areas surrounding industrial sites?</p>	<p>A health risk assessment would normally be undertaken as part of the technical analysis.</p> <p>The WAPC is guided by advice from DEC and DoH. Where the risk to public health is considered too great, land uses within buffer areas should be restricted for the protection of public health, safety, and amenity.</p>
2.25.3	<p>What is DoP's response to the City of Cockburn's view that the Kwinana EPP addresses environmental issues with:</p> <p><i>A town planning buffer, on the other hand, is, or should be directed at avoiding use conflict.</i></p>	<p>Buffers can be effectively administered through the local planning scheme, and this can assist in reducing and managing land use conflict.</p>
2.25.4	<p>Would greater consultation with affected landowners lead to a better understanding of the purpose of an industrial buffer?</p>	<p>Possibly.</p>
2.26	<p>SPP 4.1 states "While there are criteria for individual risk assessment, there are presently no criteria in Western Australia for societal risk". SPP 4.1 makes a number of statements similar to "Societal risk criteria for industry, infrastructure and special uses will be established by the</p>	<p>⊗</p>

Paragraph Number	Question	Answer
	EPA...." (p7):	
2.26.1	Explain what is meant by "individual risk" and "societal risk"?	Societal risk could be viewed as the probability of a number of people suffering from a specified risk event or hazard, while individual risk could be viewed as the probability of an individual experiencing adverse effects from a specified risk event or hazard.
2.26.2	Explain the statement in SPP 4.1 that there are criteria for individual risk assessment in light of the departmental advice in the September 2010 WAPC report that current standards do not permit definition of a dust buffer for amenity, health or environmental impacts due to a gap in scientific knowledge in respect of these matters.	Where there is an absence of sufficient or adequate scientific information to ensure a buffer will provide for the protection of human and environmental health, the precautionary principle is applied.
2.26.3	From a practical perspective, in trying to implement it and manage stakeholder expectations, is SPP 4.1 too aspirational? Does SPP 4.1 put too much emphasis on environmental criteria that have not been developed?	<p>In accordance with the draft SPP4.1 buffers are determined on the basis of a scientific approach where a technical analysis is required. The EPA's guidance statement number 3 - Separation distances between Industrial and Sensitive Land uses (GS3) - is for guidance only. The draft 2009 SPP 4.1 and the EPA's guidance statement state that buffers should be determined by means of a technical analysis that takes into account a range of factors including location, topography, wind, seasonality, etc. The WAPC relies on the advice of the DEC and DoH when determining an appropriate buffer.</p> <p>Where there is an absence of sufficient or adequate scientific information to ensure a buffer will provide for the protection of human and environmental health, the precautionary principle is applied.</p>

Paragraph Number	Question	Answer
2.27	What uses are made of an industrial buffer?	<p>One of the objectives of the 2009 draft SPP4.1 is to promote compatible uses in areas affected by off-site impacts of industry and/or essential infrastructure. A compatible land use is defined as a use that when located in a buffer will tolerate exposure to off-site emissions without impairment to its own operation.</p> <p>Each proposal is assessed on its own merit and how it fits into any higher strategic plans and strategies. The local planning scheme determines what may be an appropriate land use.</p> <p>SPP4.1 (draft 2009) provides guidance as to what is not acceptable.</p> <p>Matters that are considered when determining an appropriate land use can include:</p> <ul style="list-style-type: none"> • The number of people likely to frequent the development; • The length of time they are likely to stay; • Potential for expansion and attraction of additional people.
2.27.1	In its Cockburn cement inquiry, the committee was advised that a buffer is a "planning overlay" not a statutory instrument. What is the significance of this?	<ul style="list-style-type: none"> • The local planning scheme is a statutory instrument, and if a buffer is included in a local planning scheme as an overlay then it follows that it has statutory status. • Local planning schemes are statutory instruments that have legislative weight. • Industrial buffers can be incorporated into local planning schemes through Special Control Areas (SCA's) or zoning, coupled with land use controls.

Paragraph Number	Question	Answer
2.27.2	What is meant by the DoP's advice, given during the Committee's Cockburn Cement inquiry that the Kwinana Air Quality Buffer "needs to be taken into account in any rezoning"? Can planning buffers be disregarded? If not, why not?	The buffer is a planning consideration in concluding on the merits of any rezoning request. Yes.
2.28	Were formal planning instruments such as the Metropolitan Region Scheme, local planning schemes or strategies altered to reflect the September 2010 RDA Buffer decision?	The MRS and the local planning scheme have not been altered to reflect the September 2010 decision.
2.28.1	If so, identify the instruments?	The City of Cockburn's non-statutory Southern Suburbs District Structure Plan Stage 3 Hammond Park/Wattleup has recently been altered to reflect the buffer decision.
2.28.2	If not, why not?	The MRS does not have specific provision for buffer zones or special control areas. There is no legislative requirement for a local government to amend its local planning scheme. However, one of the principles of the 1997 SPP4.1 is that once a buffer is defined, then it needs to be recognised in a town planning scheme.
2.28.3	If no formal planning instruments are altered, how is an industrial buffer given effect?	The 2009 draft SPP4.1 section 6 details how buffers are to be statutorily incorporated into local planning schemes. This is usually by means of special control areas. The WAPC and local governments will have regard to an industrial buffer when determining statutory proposals such as local structure plans, subdivision and development applications.
2.29	If buffers are made in the process of making or amending local planning schemes (via the process set out in SPP 4.1, page 3), do affected land owners have greater access	⊗

Paragraph Number	Question	Answer
	(under the provisions of Planning and Development Act 2005 relating to local planning schemes) to the following than when buffers are made directly by the WAPC:	
2.29.1	Consultation on the buffer proposal?	Yes.
2.29.2	Reasons for the decision to make a buffer?	Yes.
2.29.3	Avenue of appeal against the decision to make a buffer?	No.
2.29.4	A statutory avenue to make a claim for compensation for any injuries affection arising from the making of a buffer?	No.
2.29.5	If the answer to any of the above is yes, explain the rationale for the distinction.	It is not clear what the reference to "distinction" is.
2.29.6	If the answer to any of the above is no, explain how the two process for making a buffer equate in listed matters.	It is uncertain which two processes are being referred to and it is unclear what the references to "listed matters" are.
2.30	What is the current status of the RDA buffer?	The buffer was made by WAPC resolution on 21 September 2010 and has not been rescinded or altered. The State Administrative Tribunal (SAT) decision of 10 October 2011 cited the need to undertake further air quality monitoring and assessment over at least a twelve month period, to determine the extent and nature of the health and amenity impacts of dust, in order to conclude whether the one kilometre RDA buffer and 0.5 kilometre non-residential transition zone should be confirmed or varied.
2.30.1	Is there any intent to reflect the RDA buffer in the statutory planning framework under the auspice of the WAPC?	The WAPC has not formed a view at this time on the specific need for the RDA buffer to be acknowledged in statutory planning instruments. However, at its meeting of 17 th July 2012, the Western Trade Coast Industries Committee

Paragraph Number	Question	Answer
		(WTCIC) Land Use Planning Working Group (LUPWG) considered a discussion paper on a range of mechanisms that could potentially be used to protect the Kwinana Air Quality Buffer and agreed that a number of actions need to be pursued in order to finalise the buffer. These include: the preparation of a Structure Plan for the Western Trade Coast area which will promote consistency and alignment of Local Government town planning schemes and the Latitude 32 Masterplan; finalisation of the review of SPP 4.1 State Industrial Policy; additional research to be undertaken by the proposed Western Trade Coast Research Alliance (WTCRA) which will provide the necessary scientific analysis required to conclude a final buffer; and the possibility of establishing a Special Control Area (SCA).
2.30.2	If so, when will this occur?	The work of the WTCIC has commenced and is ongoing.
2.30.3	If so, is this required by any legislation or is it purely an administrative decision?	It is not required by any legislation nor is it purely an "administrative decision".
2.30.4	If not, why not?	Following the abolition of the Kwinana Buffer Review Committee, the WTCIC was established to carry out a number of functions including the resolution of buffer issues.
2.31	The committee has been advised by various bodies that implementing the RDA buffer is on hold pending the Wattelup developer study to be performed at a development site in the City of Cockburn as a result of the State Administrative Tribunal (SAT) decision in 2011.	⊗
2.31.1	What is the relevance of this study to the RDA Buffer as it	It provides further scientific monitoring and results to conclude on the extent and nature of the impact of dust emissions on properties in Hammond Park/Wattelup.

Paragraph Number	Question	Answer
	applies in Mandogalup?	Please note the Wattleup study may not have direct relevance to the situation in Mandogalup.
2.31.2	Is there any obligation on the developer to produce that study? Within a stipulated time frame?	No.
2.31.3	Has this study commenced?	Yes.
2.32	What will occur with the RDA Buffer if the Wattleup developer does not pursue the relevant development application?	The work of the WTCIC will continue. (Please note that there is no development application; it is a subdivision application)
2.33	What power does WAPC, DoP or DEC have to compel individual developers or industry to undertake studies required to determine appropriate buffer areas in the Kwinana Industrial area?	Under the 2009 draft SPP 4.1 a technical analysis is required if a proponent seeks to reduce the buffer from those specified in EPA guidance statement 3 and in circumstances where industry seeks to expand their operations or where cumulative impacts may occur. Industries or operations that pose potential risk to amenity or health, and are not addressed in EPA guidance statement 3 may also require technical analysis.
2.33.1	What power does WAPC, DoP or DEC have to compel the Wattleup developer to undertake the study recommended by SAT?	None, but please refer to 2.33.
2.33.2	In WAPC or DoP's experience, have developers had problems in obtaining from industry the technical information necessary to provide reports on the impact of particulates, chemical emissions, odour, noise or light spillage at development sites?	This question needs to be posed to developers.

Paragraph Number	Question	Answer
2.34	Will there be public consultation when the RDA Buffer decision is reviewed?	That matter will be considered by the WAPC at the appropriate time.
2.34.1	Can any assurances be provided that the petitioners will be consulted during this review?	No – that matter will be considered by the WAPC at the appropriate time.
2.35	The Town of Kwinana advises that it's local planning scheme and district structure plan will be amended to reflect the RDA Buffer and these instruments will be subject to public consultation	⊗
2.35.1	Does this consultation process have potential to alter the WAPC RDA Buffer area as it will be reflected in those documents?	No.
2.35.2	If so, what is the practical effect of the local government planning documents showing a different area?	NA
2.35.3	If not, why not?	Because the WAPC resolution has not been rescinded or altered.
2.36	Does the broad ambit of land uses captured by "urban/urban deferred" zonings and lack of distinction in those zonings between residential and non-residential use pose issues in depicting planning buffers in planning instruments with legal effect?	No – please note that there is no lack of distinction between residential and non-residential use.
2.36.1	Does this broad ambit pose issues for DoP in explaining to land owners the impact of a buffer decision?	No.

Paragraph Number	Question	Answer
2.36.2	Would it be useful for buffer purposes to have categories that distinguish between sensitive and non-sensitive (1) urban or (2) residential usages?	Local Planning Schemes already have the capacity to distinguish between sensitive and non-sensitive uses within zones and between zones. The 1997 SPP 4.1 on buffers defines sensitive land use as including residential dwellings, major recreational areas, hospitals, schools and other institutional uses involving accommodation. The 2009 draft SPP4.1 further expands this definition to include other uses.
2.36.3	If not, why not?	NA
2.37	When will the review of the Kwinana Air Quality Buffer be finalised?	The work of the WTCIC is ongoing.
2.37.1	Given that entities such as Alcoa and the Wattleup developer in the SAT case are focused on providing reports that ascertain their own emissions or the impact of cumulative emissions at a particular site, would there be merit in any of the WAPC, DoP or DEC undertaking a less piecemeal study to finalise that review?	Please see question 2.37.
2.38	What is the current status of the 2009 Draft State Industrial Buffer?	The 2009 SPP 4.1 document is still in draft format. Both the 1997 gazetted SPP 4.1 and the 2009 draft are used by the WAPC in decision making. The 2009 draft SPP 4.1 has been amended following the public comment period. The intention is for a revised SPP 4.1 to be released in 2013.
2.39	In the Cockburn Cement inquiry, the Kwinana Industry Council said that the Kwinana Air Quality Buffer: "lacks the	⊗

Paragraph Number	Question	Answer
	<p>statutory strength it needs to effectively ward off applications to rezone rural or industrial zoned land to other zonings that allow residential development. This simply has to be fixed.”</p> <p>The KBRC also observed that once the WAPC finalised the buffer review:</p> <p>“it will need to be implemented through the planning system. Consideration may be given to the drafting of a State Planning Policy or amendment to State Planning Policy 4.1 to reflect the buffer and restrict further residential uses in the area where required.”</p>	
2.39.1	What is DoP’s response to these views?	<p>The WTCIC’s Land Use Planning Working Group has been established to inform the WTCIC on land use planning for the Western Trade Coast (WTC) area. Present tasks that are being progressed by this group are to develop a land use structure plan for the WTC area and as a corollary action consider and recommend on the preferred mechanism(s) to strengthen the buffer from sensitive land use and development.</p>
2.39.2	Is consideration being given to drafting a State Planning Policy to give effect to the buffers in and surrounding the Kwinana Industrial Area?	It is not intended to have a Kwinana Industrial Area specific SPP. However, please see question 2.39.1.
2.39.3	If not, Why not?	Please see question 2.39.1.
2.39.4	What is the rationale for setting out the buffer-making process in a State Planning Policy, rather than the Planning and Development Act 2005, and for buffers to have no direct	The Planning and Development Act 2005 is the legislative instrument which governs planning law and processes in the state. It provides for the preparation of State Planning Policies which can address land use planning issues such as

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	legal effect?	<p>those articulated in SPP 4.1.</p> <p>It is not correct to say that buffers have no direct legal effect in all cases. Buffers can be secured through additional statutory instruments such as regional and local planning schemes. The SPP provides the policy framework under which these decisions are made.</p>

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Paragraph Number	Question	Answer
3.1	Has DoP had a chance to consider the latest odour studies of the Plant by:	Please note that the DoP and WAPC do not independently assess technical studies. The DoP and WAPC consider the advice of relevant Government agencies (DEC and DoH) relative to the studies and related matters.
3.1	1. The Water Corporation's consultants, Air Assessments (November 2011); and	No.
3.1	2. PAE Holmes, consultants commissioned by the principal petitioner, Mrs Robyn O'Brien and another resident (also November 2011)?	No.
3.1.2	If so, how will DoP reconcile the differences in scientific opinion on where the Odour Buffer should sit, particularly east of the plant?	Please see question 3.1.
3.1.3	If not, how does DoP reconcile differences in scientific opinion of this nature when determining buffers?	Please see question 3.1.
3.2	The Odour Buffer already has planning effect as it is reflected in the City of Cockburn's planning documents. However please confirm the status of the Odour Buffer. For example is it an interim buffer?	The DoP and WAPC will consider the advice of the DEC and DoH on the Water Corporation's technical odour study, as well as the study submitted by a landowner, to inform future decisions on the buffer.
3.2.1	If the Odour Buffer is an interim buffer, when will a decision be made to finalise it?	The work of the WTCIC is ongoing.