

Legislation: *Planning and Development Act 2005 (s16)*

Title: *DEL 2008/12 Powers of local governments (PRS)*

Resolution Date: 16/12/2008

Gazettal Date: 19/12/2008

File: 970-1-1-3

Revokes: *Delegation to local governments gazetted 28/03/2003*

Planning and Development Act 2005

INSTRUMENT OF DELEGATION

DEL 2008/12 POWERS OF LOCAL GOVERNMENTS (PRS)

Notice of delegation to local governments of certain powers and functions of the Western Australian Planning Commission relating to the Peel Region Scheme

Preamble

Under clause 18 of the Peel Region Scheme (PRS), and subject to the exemptions stated in clauses 19 and 20, development on reserved land requires planning approval. On zoned land, development requires planning approval if it is of a kind or class set out in a resolution of the Western Australian Planning Commission (the WAPC) under clause 21 of the PRS. Parts 7 and 8 of the PRS set out the requirements, procedures and functions of the WAPC in relation to the determination of applications for planning approval.

Under section 16 of the *Planning and Development Act 2005* (the Act) the WAPC may, by resolution published in the *Government Gazette*, delegate any function to a local government, a committee established under the *Local Government Act 1995* or an employee of a local government.

In accordance with section 16(4) of the Act, a reference in this instrument to a function or a power of the WAPC includes and extends to, without limitation or restriction, any of the powers, privileges, authorities, discretions, duties and responsibilities vested in or conferred upon the WAPC by the Act or any other written law as the case requires.

Resolution under section 16 of the Act (delegation)

On 16 December 2008, pursuant to section 16 of the Act, the WAPC RESOLVED—

- A TO DELEGATE to local governments, and to members and officers of those local governments, its powers and functions in respect of the determination, in accordance with Parts 7 and 8 of the Peel Region Scheme, of applications for approval to commence and carry out development specified in Schedules 1 and 2, within their respective districts, subject to the terms set out in schedule 3;
- B TO REVOKE its delegation of powers and functions to local governments as detailed in a notice published in the *Government Gazette* of 28 March 2003 (pages 993-994).

WAYNE WINCHESTER, Secretary,
Western Australian Planning Commission.

PLANNING AND DEVELOPMENT ACT 2005

Instrument of Delegation

SCHEDULE 1—Development on reserved land delegated to local governments

1. Development on land in a regional road reservation where the local government accepts the advice and/or recommendation of the advice agency.
2. Development of private jetties and associated facilities located in an artificial waterway in the waterways reservation.

SCHEDULE 2—Development on zoned land delegated to local governments

Applications for development on zoned land, except in respect of public works undertaken by public authorities—

1. On land abutting regional open space reservations, development which requires planning approval under the PRS and for which the local government decides to refuse approval under the PRS.
2. On land abutting a primary regional roads reservation, development which requires planning approval under the PRS and which is of one or more of the following kinds—
 - (a) Development where the local government accepts the advice and/or recommendation of Main Roads Western Australia.
 - (b) Development for which the local government decides to refuse approval under the PRS.

3. On land abutting an other regional roads reservation, development which requires planning approval under the PRS and which is of one or more of the following kinds—
 - (a) Development where the local government accepts the advice and/or recommendation of the Department for Planning and Infrastructure.
 - (b) Development which—
 - (i) complies with an approved access policy pertaining to other regional roads reservations, or a specified section of the other regional roads reservation, submitted by the local government and endorsed by the WAPC, and
 - (ii) is approved subject to conditions requiring compliance with that policy.
 - (c) Development for which the local government decides to refuse approval under the PRS.
4. On land in the water catchments special control area (SCA No. 1), development which requires planning approval under the PRS and which is of one or more of the following kinds—
 - (a) Development where the local government accepts the advice and/or recommendation of the Department of Water and/or the Water Corporation, as the case may be.
 - (b) Development for which the local government decides to refuse approval under the PRS.
5. Development of the following kinds which is for shopping purposes and which requires planning approval under the PRS—
 - (a) Development which—
 - (i) is consistent with an approved centre plan, local commercial strategy or local planning strategy endorsed by the WAPC not more than five years prior to the application for planning approval being lodged, and
 - (ii) is approved subject to conditions requiring compliance with that plan or strategy.
 - (b) Development for which the local government decides to refuse approval under the PRS.
6. Development in the rural zone, other than for a poultry farm, which requires planning approval under the PRS and for which the local government decides to refuse approval under the PRS.
7. Development for a new poultry farm or for any extension or addition in excess of 100 m² to the improvements of an existing poultry farm, for which the local government decides to refuse approval under the PRS.

SCHEDULE 3—Terms of delegations to determine development on reserved and zoned land

1. Under clause 30 of the PRS, an application for planning approval is to be submitted to the local government, which, if the application is to be determined by the WAPC, shall forward it to the WAPC within seven days and may (within 42 days, or such longer period as the WAPC allows) make recommendations to the WAPC.
2. An application for development in or abutting a primary regional roads reservation is to be referred within seven days to Main Roads Western Australia for advice and recommendation before being considered by the local government.
3. An application for development in or abutting another regional roads reservation is to be referred within seven days to the Department for Planning and Infrastructure for advice and recommendation before being considered by the local government.
4. An application for development within the water catchments special control area (SCA No. 1) is to be referred within seven days to the Department of Water and/or the Water Corporation for advice and recommendation before being considered by the local government.
5. Where an application is referred to an advice agency for advice and recommendation the agency is to be advised that if no advice or recommendation has been received within thirty days of receipt of the application by the advice agency the application may be determined on the available information; and the WAPC, or a local government acting under delegated power, may determine the application on that basis.
6. Following referral of any application referred to in Schedule 2 for advice and recommendation and where the local government does not accept the advice and/or recommendation of the advice agency, an application which is consequently to be determined by the WAPC is to be forwarded as soon as practicable to the WAPC with the advice and recommendations provided by all advice agencies consulted together with the advice and recommendation of the local government. These should be accompanied by the reasons why the recommendation of the advice agency is not acceptable to the local government.
7. Each local government shall report to the WAPC, in the form and manner required by the WAPC, all decisions made under this instrument of delegation.
8. The powers delegated to members and officers of a local government may only be exercised by a member or officer who has been delegated power from the local government to consider and determine applications for approval to commence and carry out development in the local government district under the local planning scheme.

SCHEDULE 4—Definitions

In this instrument of delegation, words have the meanings given to them in the Act and the PRS. Unless the context otherwise requires—

- ‘**Abutting**’ reserved land means the zoned land shares a common boundary with reserved land.
- ‘**Access**’ means entry or exit (or both) from either a road or abutting development by a vehicle.
- ‘**Advice agency**’ means a department, public authority or body which is requested to provide advice and recommendations on applications for planning approval under the PRS as an agency responsible for reserved land or to which local governments refer applications under the terms of schedule 3.
- ‘**Centre plan**’, ‘**local commercial strategy**’ and ‘**local planning strategy**’, for the purposes of paragraph 5(a) of schedule 2, mean a strategic planning document, submitted to and endorsed by the WAPC, specifying the planned future character and scale of the commercial centre or shopping centre where development is proposed, with limits for such components as uses, floorspace, lettable area, etc.
- ‘**Forward to the WAPC**’ and similar expressions mean convey by mail, by hand or electronically to the Peel region office of the Department for Planning and Infrastructure.
- ‘**Not acceptable**’ means that the local government wishes the application to be determined in a manner that is inconsistent with the advice and/or recommendation received from the advice agency which the local government was required to consult.
- ‘**Planning approval**’ and ‘**planning approval under the PRS**’ mean the planning approval of the WAPC as required under the PRS and by resolution of the WAPC under clause 21 of the PRS, whether granted by the WAPC or by delegates of the WAPC including committees, officers, local governments and members and officers of local governments.
- ‘**Shopping purposes**’ means use for any of the purposes defined in Appendix 4 of the proposed *Metropolitan Centres Policy Statement for the Perth Metropolitan Region* (WAPC) but excluding hotels, taverns, night clubs, and function and reception centres.

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