

Development control policy 1.2

development control - general principles

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Background notes

- 1 This policy deals with the general principles and policies used by the Western Australian Planning Commission (WAPC) in its determination of applications for approval to commence development. The WAPC is the responsible authority for those classes of application listed in section 1.7 of the policy.
- 2 The context for this policy is provided by *Statement of Planning Policy No.1 State Planning Framework*, the *State Planning Strategy* and other principles for sustainable settlement contained in the state government's *State Sustainability Strategy*, released in September 2003.
- 3 This policy states in plain terms the development approval requirements in respect of land the subject of metropolitan and other region schemes. While the WAPC has taken due care and consideration in preparing this policy, persons should not rely on the accuracy of the policy in determining development approval requirements but should refer to the primary development control instruments, such as the *Metropolitan Region Scheme*, *Peel Region Scheme*, *Swan River Trust Act 1988* and the relevant Notice of Delegation of the WAPC's functions. These instruments may be amended from time to time and such amendments may not be reflected in this policy.
- 4 The policy was originally adopted by the WAPC in 1988. The policy was reconsidered and updated by the WAPC in May 1998 and further in August 2004, to reflect refinements and revisions to other WAPC policies.

I Introduction

- 1.1 This policy applies to areas covered by the Metropolitan Region Scheme (MRS) and the Peel Region Scheme (PRS). It reflects the principles for development established through the *Statement of Planning Policy No. 1 State Planning Framework* and the *State Sustainability Strategy*.
- 1.2 The MRS requires that approval to commence development is obtained for all development except for:
- the erection of a boundary fence on land reserved by the scheme;
 - the use of reserved land owned by or vested in a public authority for the purpose for which the land is reserved, for which it has lawfully been used before the coming into effect of the scheme, or for any other purpose for which the land may lawfully be used by the public authority;
 - on land zoned by the scheme, the erection of a single dwelling house on a lot or the carrying out of works in, on, over, or under a street or road by a public authority pursuant to the provisions of any Act, provided the land is not the subject of a notice under clause 32 of the MRS and not included in a planning control area; and
 - permitted development¹ that does not involve the clearing of regionally significant vegetation on a site specified as a Bush Forever site in the *Bush Forever* final report published by the WAPC in December 2000; or
 - expressly authorised under an Act to be commenced or carried out without the approval of the WAPC.
- 1.3 Approval to commence development for public works by public authorities is required in respect of land both zoned and reserved under the MRS. Clause 16 of the MRS exempts certain public works as outlined above.
- 1.4 The PRS requires all development on reserved land or development of a kind or class specified in a resolution made by the WAPC under clause 21 of the respective region scheme, to have the planning approval of the WAPC, excepting in circumstances similar to those referred to above. The circumstances in which development is permitted without approval of the WAPC are set out in clauses 19 and 20 of the PRS.
- 1.5 For the purpose of the PRS, the term 'development' has the same meaning given to it by the relevant legislation, which is:
- the development or use of any land including any demolition, erection, construction, alteration of or addition to any building or structure on the land and the carrying out on the land of any excavation or other works and as in the case of a place to which a conservation order made under section 59 of the *Heritage of Western Australia Act 1990* applies, also includes any act or thing that:
- is likely to change the character of that place or the external appearance of any building; or
 - would constitute an irreversible alteration of the fabric of any building.
- 1.6 The Act, the MRS, resolutions made under clause 32 of the MRS, resolutions made under clause 21 of the PRS and delegations made under the WAPC's own Act, all combine to assign responsibility for the determination of applications for approval to commence

¹ 'permitted development' means-

- works on land reserved for primary regional roads or other regional roads for the purpose of or in connection with a road within the meaning of the *Main Roads Act 1930*,
- works on land reserved for port installations for the purpose of or in connection with a port,
- works on land reserved for railways for the purpose of or in connection with the supply of water, electricity or gas, or the drainage or treatment of waste, water or sewerage;
- works on land reserved for railways for the purpose of or in connection with a railway, but this does not include the construction or alteration of a railway station or any related car parks, public transport interchange facilities, or associated means of pedestrian or vehicular access;
- works on land reserved for regional open space where the works are in accordance with a management plan endorsed by the WAPC;
- works on land for public purposes- high school for the purpose of or incidental to a high school; and
- operational works on land reserved for state forests for the purpose of or incidental to a state forest.

- development made under the scheme. The responsible authority for that determination is either the WAPC or the relevant local government.
- 1.7 The WAPC is the responsible authority for all applications which are
- a) on land reserved, or partly reserved, by the MRS or PRS for any purpose other than regional road purposes (except private jetties and associated facilities with an artificial waterway);
 - b) by its resolution gazetted on 20 September 2002 concerning development on or abutting regional reserves;
 - c) the subject of a resolution made under clause 32 of the MRS;
 - d) the subject of a resolution made under clause 21 of the PRS, but with the exception of development of land abutting a regional road reservation where determination has been delegated to local governments;
 - e) on land within, or partly within, a planning control area declared under section 35C of the *Metropolitan Region Town Planning Scheme Act 1959*; and
 - f) partly within the management area of the Swan River Trust.
- 1.8 Approval is not required under a local government town planning scheme for public works providing the public works accord with the intent of the scheme and the relevant local government has been consulted.
- 1.9 Applications for approval to commence development wholly within the Swan River Trust management area are determined in accordance with the *Swan River Trust Act 1988*.
- 1.10 Special arrangements apply in respect of the Swan River Trust management area. The minister responsible for the *Swan River Trust Act 1988* determines applications wholly within the management area. Applications partly within or abutting the waters of the management area are determined by the WAPC in accordance with the advice of the minister responsible for the *Swan River Trust Act 1988*. Applications which abut the management area or which are likely to affect the waters of the management area are determined by local government under delegated powers from the WAPC following consultation with the Swan River Trust.

- 1.11 All other development applications are to be determined by the relevant local government.
- 1.12 The purpose of this policy is to set out general principles that will be applied by the WAPC in its determination of applications for which it is the responsible authority. It should be noted that for land that is zoned under the MRS or PRS, the separate approval of the relevant local government may also be required under the provisions of its own town planning scheme.

2 Policy objectives

The objectives of the WAPC in exercising development control are:

- To control the development of land within the framework of the relevant legislation.
- To protect the integrity and purpose of reservations made under the MRS and PRS.
- To ensure development is consistent with the provisions of the relevant local government scheme.
- To preserve planning options in areas subject to planning study or review.
- To ensure development is in accordance with sound planning principles.
- To promote development that is sustainable and achieves appropriate community standards of health, safety and amenity.
- To ensure development is site-responsive, enhances local identity and character and is well-connected to the adjacent neighbourhood.
- To facilitate land uses that support daily needs, local employment and provide choice and variety.
- To ensure that conditions, where applicable, improve the quality and consistency of development approvals.
- To promote efficiency in the planning and development assessment process.

3 Relevant considerations

3.1 The WAPC will have regard to the following relevant planning considerations in making decisions on development applications:

- compatibility with relevant planning policies, strategies and development control criteria;
- integration of development into the site and its surroundings;
- transport and traffic impacts;
- vehicular and non vehicular access, circulation and car parking;
- relevant environmental, economic and social factors;
- relevant factors of amenity² and sustainability³.

Applications to commence development should be supported by plans and information set out in appendix 2 and any other material which the WAPC may reasonably require.

3.2 To ensure orderly and proper planning, the WAPC may impose conditions on development approvals, which will ensure a proper standard of development.

3.3 The WAPC does not have the power to approve a variation to a development approval. Therefore in situations where substantive variation is required to the development approval, a new development approval must be sought.

3.4 The WAPC will have regard to the following general principles in imposing conditions as part of a development approval:

- have a relevant planning purpose;
- have relevance to the development to be approved; and
- be fair, reasonable and practicable.

² amenity as defined in the *Model Scheme Text* meaning 'all those factors which combine to form the character of an area and include the present and likely future amenity'.

³ sustainability as defined in the *State Sustainability Strategy* meaning 'meeting the needs of current and future generations through an integration of environmental protection, social advancement and economic prosperity'.

4 Policy measures

4.1 Metropolitan Region Scheme and Peel Region Scheme reservations

4.1.1 Appendix 1 sets out the purposes for which land may be reserved under the MRS or PRS. In its determination of applications for approval to commence development on land reserved under the MRS, the WAPC is bound to have regard to the purpose for which the land is reserved and, without limiting the generality of the clause, may include conditions limiting the period of its approval and relating to the types of building that may be built on the land, or the removal of buildings. In its determination of applications for planning approval under the PRS, the WAPC must have regard to a range of matters, including the purpose for which land is reserved and may impose conditions of approval under the scheme.

4.1.2 A principal objective in this regard is to ensure that the use of reserved land, its acquisition or any development for its intended purpose is not prejudiced by the development application. The WAPC's decision may be influenced not only by the scale and purpose of the proposal, but also by other matters including its cost, the period of time it is likely to remain and impact upon the reservation.

4.1.3 The determination of certain classes of application on land abutting regional reservations has been delegated to the relevant local governments with Main Roads WA (MRWA) and the Department for Planning and Infrastructure (DPI) having a consultation role. With such applications, the WAPC becomes the responsible authority only where the recommendation provided by MRWA or the DPI, as applicable, is not acceptable to the relevant local government.

4.1.4 In determining applications on land abutting reservations, local governments should ensure the reservation is not prejudiced by a development, having regard for the purpose of the reservation and the detail of the proposal. With proposals abutting land reserved for regional road purposes, for example, local governments should have regard for the arrangements made, if any, for vehicular access to the regional road. Likewise, development proposals abutting land reserved for parks and recreation and regional open space should be considered in relation to

matters such as, visual domination or intrusion of the development upon the reservation, the implications of any increase in utilisation of the reservation and any physical effects it may have on the reservation.

4.2 Effect on WAPC policies

The WAPC will use its statutory powers to allow it to determine those classes of application which may have an impact upon its own policy and planning proposals. For example, under the MRS, certain classes of application in the urban and central city area zone, must be referred to the WAPC for determination, so that the effect of those proposals upon the metropolitan centres policy can be assessed in relation to the objective of maintaining a hierarchy of centres promoted by *Metropolitan* and *Network City*.

4.3 Protection of planning options

Where planning studies or other regional planning exercises are being undertaken by the WAPC it will require development applications to be referred for its determination to ensure that planning options can be maintained. Where necessary, the provisions of clause 32 of the MRS and clause 21 of the PRS or the declaration of planning control areas, will be used for this purpose.

5 Implementation of policy

5.1 Statutory provisions

The MRS provides that the WAPC will, in exercising its development control powers, have regard for the purpose for which land is zoned or reserved, the orderly and proper planning of the locality, and the preservation of the amenities of the locality. Equivalent provisions exist under the PRS.

5.2 Procedures

5.2.1 All applications for approval to commence development are to be submitted to the local government in whose district the land is situated. Appendix 2 outlines the supporting information to be included. The local government is required to forward relevant applications to the WAPC for its determination. Where the power to make determinations has been delegated by the WAPC, the local government will determine the application.

5.2.2 In considering an application the WAPC or the local government with delegated power, may consult with any authority it thinks appropriate. This may include utility and community service providers for roads, rail, health, education, water and sewerage, telecommunications and power. The WAPC, or relevant local government, will make its determination in the light of any comments and recommendations received and the general principles outlined in this policy. Where an application is to be determined by the WAPC, the local government may make recommendations regarding the application within 42 days, or such period as the WAPC allows.

5.2.3 The WAPC has 60 days from the date of its receipt of an application to issue its decision. If additional information is required, the 60 day period begins when that information is received. In addition, the applicant may agree to an extension of the period. If a decision is not issued within that period, then the application is deemed to be refused and a right of appeal is created.

5.2.4 The WAPC's approval will remain valid for the period indicated in its decision, generally a period of two years. In the case of applications for excavations or quarry workings, the period may be extended to five years which may be renewable on application.

5.2.5 An approval to commence development runs with the land, and any conditions of that approval are enforceable against persons other than those to whom the approval was first granted, including successors in title.

5.2.6 In certain circumstances, the WAPC may give its approval to an application on a temporary basis, subject to the removal of any development at the end of the period and the reinstatement of the land where appropriate. In such cases, the WAPC will have regard for the nature, cost, and expected life of the development.

Appendix I

Purposes for which land may be reserved

The purposes for which land may be reserved by the Metropolitan Region Scheme or other region scheme are as follows:

- Parks and recreation*
- Regional open space[#]
- Primary regional roads
- Other regional roads
- Railways
- Waterways
- Port installations*
- State forests
- Water catchments*
- Civic and cultural*
- Public purposes*
- Other public purposes[#]

* Metropolitan Region Scheme only

[#] Peel Region Scheme only

Appendix 2

Application to commence development

All applications for planning approval under the MRS and PRS should be submitted on Form 1 of the relevant scheme and must be accompanied by such plans and context information as the responsible authority may reasonably require:

- 1 Plans at a scale not less than 1:500 showing:-
 - (i) the location of the site including street names, lot number(s), north point and the dimensions of the site;
 - (ii) the existing and proposed ground and floor levels over the whole of the land that is the subject of the application, including details of proposed cut and fill and retaining walls;
 - (iii) the location, metric dimensions, materials, finishes and type of all existing and proposed structures, including services, on the land that is the subject of the application and all existing structures and vegetation proposed to be removed;
 - (iv) the existing and proposed use of the site, including proposed hours of operation and buildings to be erected on the site;
 - (v) the existing and proposed means of access and egress for pedestrians and vehicles to and from the site;
 - (vi) the location, number, dimensions and layout of all car parking spaces intended to be provided, including provision for the disabled;
 - (vii) the location and dimensions of any area proposed to be provided for the loading and unloading of vehicles carrying goods or commodities to and from the site and the means of access to and from those areas;
 - (viii) the location, dimensions and design of any open storage or trade display area and particulars of the manner in which it is proposed to develop those areas;
 - (ix) the nature and extent of any open space and landscaping proposed for the site; and
 - (x) proposed external lighting and signage.
- 2 Plans, elevations and sections, as appropriate, of any building or structure proposed to be erected or altered and of any building or structure it is intended to retain;
- 3 Any specialist studies that the responsible authority may require the applicant to undertake in support of the application such as traffic, heritage, environmental, engineering or urban design studies;
- 4 Any management plans the responsible authority may require to support or implement the application; and
- 5 Any other plan or information that the responsible authority may require to enable the application to be determined. This may include scale models or information in digital formats.