



# Planning laws

## ***An Introduction to Planning laws***

*Most new developments require approval under the Western Australian planning laws. The Planning and Development Act 2005 (WA) (the Act) is the main legislation that governs planning in Western Australia.*

*This Fact Sheet examines Western Australia's planning law framework – explaining what the planning laws are as well as discussing local planning schemes, regional planning schemes, subdivision of land and other planning controls. For information on the process for approving particular developments, see [Fact Sheet 4: Development controls](#).*

## **What are planning laws?**

Planning laws control the use and development of land within a particular district or region. 'Development' is defined to include erection, demolition or alterations to any building or other structure as well as excavation or other works affecting the land itself. A 'use' of land in this context means use for a particular purpose, such as a dwelling house, car yard or caravan park.

The most obvious planning laws are local planning schemes (formerly known as town planning schemes under the *Town Planning and Development Act 1928 (WA)*) administered by local councils. Other important planning laws include region planning schemes (which apply to the Perth and Peel regions), controls on subdivision, and special redevelopment or planning legislation (for areas such as Midland, Subiaco, Armadale, East Perth, Hope Valley-Wattelup and the Swan Valley).

## **Who administers planning laws?**

Most planning decisions in Western Australia are made by local governments under their relevant local planning schemes. The Western Australian Planning Commission (the WAPC) is the other major planning decision-maker in Western Australia. It has authority over subdivision approvals and some development proposals within areas subject to local planning schemes.

Specific planning authorities have been set up for areas such as Midland, Armadale, and East Perth. The authority of these bodies is derived from a particular statute creating them, and usually provides for exclusive planning control over the redevelopment area. Local planning schemes cease to apply to land in these areas.

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## What are local planning schemes?

Local planning schemes are administered by local governments. These schemes provide a basic template for the development of land in a local area by controlling what types of development can occur where, and imposing other restrictions on development such as height and density controls. However, sometimes the provisions of a local planning scheme may be overridden by a region planning scheme or interim development order (see below).

A local planning scheme may regulate a wide variety of land uses and developments in the district (e.g. streets and roads; parks and open spaces; and places and objects of cultural heritage significance). A local council must have due regard to any State planning policies that may affect its district when drafting local planning schemes. Local planning schemes must also be consistent with region planning schemes.

## How do local planning schemes control developments?

Most local planning schemes use a zoning system to classify different classes of land. The zoning determines the development controls applying to each parcel of land. For example, the scheme may provide that in a rural zone agricultural enterprise can be carried out without local council approval. Certain uses however, such as quarries or caravan parks, will require approval before they can proceed. Other uses, such as residential flat buildings, may be totally prohibited.

Government departments and local councils undertaking public works are not required to obtain approval under a local planning scheme, although the works should conform with the scheme where possible, and the local authority must be consulted before the work is undertaken.

A person contravening a local planning scheme commits an offence. In addition to being ordered to remove any illegal development, the person may also be subject to fines. For more information on development approvals, see [Fact Sheet 4: Development controls](#).

## What environmental controls can be included in a local planning scheme?

Special control areas can be created to address issues such as landscape values, airport environs, bushfire prone land, flood prone land, industry buffers and special character areas where particular provisions apply. Local planning schemes can also include special conservation reserves.

## How are local planning schemes created or amended?

A local planning scheme or an amendment to a scheme may be made by a local government at any time. Local governments within the Perth metropolitan area and the Peel region must have a local planning scheme that is consistent with the Metropolitan Region Scheme or Peel Region Scheme respectively. The Minister for Planning (the Minister) may order a local council to prepare or adopt a local planning scheme if the Minister is satisfied that a local planning scheme ought to be prepared for the area and the Council has not done so. The Minister may also order a local council to amend their local planning scheme where it is inconsistent with a region planning scheme.

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## Local Council Resolution

The first step in creating or amending a local planning scheme is for the local council to pass a resolution to that effect. This resolution must be referred to the WAPC, which is responsible for providing advice to the Minister on the schemes or proposed amendment to the scheme.

## Referral of proposal to the Environmental Protection Authority

The proposal to create or amend a local planning scheme must be referred to the Environmental Protection Authority (the EPA) to allow it the opportunity to decide whether or not to assess the environmental implications of the scheme. The EPA may also decide that the scheme is incapable of being made environmentally acceptable.

If it determines that the scheme is incapable of being made environmentally acceptable, the EPA must inform both the Minister for Environment and the local government. The Minister for Environment may direct the EPA to assess the scheme notwithstanding the findings of the EPA. Alternatively, the Minister for Environment may consult the Minister for Planning and advise the EPA and the local government that the scheme is not able to be approved.

If assessment of the scheme is required, the local government may be required to undertake an environmental review of the scheme and provide a contaminated sites auditor's report. The EPA may also independently investigate the scheme and consider existing information on the scheme or the area surrounding the scheme. If a report on the scheme is compiled, the EPA may require the local council to publish the report for public review (discussed below). For further information, see [Fact Sheet 5: Environmental impact assessment in Western Australia](#).

## Advertising and public submissions

Before submitting a local planning scheme or amendment to the Minister, a local council must make reasonable endeavours to consult with persons likely to be affected by the local planning scheme or amendment.

Once the local council has referred the scheme or amendment to the EPA and an environmental review has been conducted and reviewed by the EPA, the local council is required to advertise that the proposed scheme or amendment is available for public inspection.

Any person may make a written submission on the proposed scheme. All submissions that deal with environmental issues must be provided to the EPA along with the local council's views on and response to the issues identified. The local council must take into account any submissions received before compiling a report and recommending to the Minister that the proposed scheme be approved.

The Minister then decides whether or not to approve the scheme or amendment. In making this decision, the Minister is required to take into account the opinion of the EPA. A local planning scheme cannot be approved unless the Minister is satisfied that any conditions required by the EPA have been incorporated into the scheme. The Minister may require further amendments to the local planning scheme text and maps which the Minister may, or may not, require to be readvertised. These further amendments are not required to reflect public concerns. The scheme has full force and effect once it is published in the Government Gazette.

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## Non-Conforming Uses

A local government may be liable to pay compensation to a land owner where a local planning scheme prohibits, wholly or partially, continuing any non-conforming use of that land or where no development (other than development for public purposes) is permitted. A non-conforming use is a use of land which, while lawful if carried out immediately prior to the coming into operation of a planning scheme, is not permissible under the new scheme.

## Local interim development orders (outside the metropolitan area)

Where a local planning scheme is proposed for a district outside the metropolitan area the Minister may make local interim development orders (LIDOs). LIDOs can be also be made where there is an existing local scheme, if the Minister considers that it is necessary in the public interest. LIDOs treat all proposed developments, in a specified area, as developments at the discretion of the local government. LIDOs must be advertised, and will cease to have effect when revoked, when a local planning scheme comes into force or after a period of three years. Failure to comply with a LIDO is an offence under the Act, and is subject to the same penalties applicable to a breach of a local planning scheme.

## What is a region planning scheme?

A region planning scheme is a planning scheme that applies to a particular region due to particular development pressure. There are currently nine designated planning regions in Western Australia. However, not all of these are presently subject to region planning schemes.

## Creating or amending a region planning scheme

Region planning schemes are prepared by the WAPC and approved by the Minister. The WAPC or the Minister may prepare or amend a region planning scheme for the effective planning and coordination of land use and development of any part of the State. Proposed region planning schemes and amendments are to be referred to the EPA. The WAPC must also complete an environmental review when required by the EPA and consider public submissions. The WAPC is to make reasonable endeavours to consult with those public authorities and persons likely to be affected by the scheme or amendment. Each submission relating to environmental issues is to be provided to the EPA, along with WAPC's response to the issues raised.

In the case of schemes or amendments applying to land in the Swan Valley, the WAPC must refer the scheme or amendment to the Swan Valley Planning Committee.

## What matters can be the subject of a region planning scheme?

A region planning scheme can deal with the same matters that can be dealt with under a local planning scheme. This may include planning controls for the whole or any part of the particular region. The WAPC can also prepare a region planning scheme to deal specifically with a matter of State or regional importance. The WAPC must prepare a statement setting out the purpose and planning objectives of a region scheme or amendment and ensure that it is made publicly available.

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## How do region planning schemes control developments?

A local planning scheme is not to be approved by the Minister unless the provisions of the local planning scheme are consistent with each relevant region planning scheme. Where a local planning scheme is inconsistent with a region scheme:

- The region scheme is to prevail over the local government scheme to the extent of that inconsistency; and
- The local government must (within 90 days of the region scheme coming into effect) resolve to prepare a new, or amend its existing local planning scheme, to make it consistent with the region planning scheme.

If the local government does not amend the local planning scheme as required, the Minister has the power to create amendments to the scheme, approve of the scheme and cause it to be published in the Government Gazette as if it was adopted by the local government. A person who contravenes a region planning scheme commits an offence.

## Regional interim development orders

Where the WAPC has resolved to prepare a region planning scheme for an area, it may (with the approval of the Minister) issue a regional interim development order, as necessary, to regulate, restrict or prohibit a development that might prejudicially affect preparation of the scheme. Such an order will last until it is revoked or until the region scheme comes into operation or after the expiration of three years (whichever is sooner). Contravention of a regional interim order is an offence.

## Planning control areas

If land subject to a region planning scheme is required for a certain purpose or use (e.g. a hospital, car park, railway, school), the WAPC may declare that land as a planning control area for a period of up to five years. The Peel Region Scheme, for example introduces a planning control area to protect water catchments within the Peel region.

Developments may still be approved in a planning control area, subject to the approval of the WAPC. A person who wishes to commence or carry out development in a planning control area may apply to the relevant local government who will then refer the matter to the WAPC for determination. The WAPC may refuse consent or give conditional approval to a development. If the development is not carried out in accordance with the specified conditions, the WAPC may revoke that approval.

If a person commences, continues or carries out development in a planning control area except with the prior approval of that development; and in a manner which is in conformity with the approval, they will commit an offence.

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## What is subdivision?

Subdivision of land occurs where a single lot is divided into two or more smaller freehold lots or where a lot is amalgamated with another lot. Subdivision may include the provision of amenities such as roads, reserves and public services. Subdivision frequently occurs where rural, agricultural or industrial land is no longer used for that purpose and is rezoned for residential purposes. Generally the state government does not need approval under the Act to subdivide Crown land, however approval is required for Crown land to be subdivided into freehold lots.

## What controls apply to subdivisions?

Subdivision of land requires the approval of the WAPC. Local governments do not have approval powers with respect to subdivision. The WAPC may approve or refuse the subdivision or may approve the subdivision with conditions. There is a two part approval process:

1. The proponent lodges a plan of subdivision with the WAPC. The WAPC may refer the plan to a local government or public authority for objections and recommendations.
2. If the plan is approved, the proponent has three years (or four years in the case of a subdivision creating more than 5 lots) to meet any conditions placed on the approval before seeking final endorsement from the WAPC. This will allow the land to be divided into separate titles by the Titles Office, subject to certain preconditions. The process must be recommenced if the final plan is not submitted within five years (for a plan approved by the WAPC prior to 2005) or 24 months (for a plan approved by the WAPC after 2005).

A person who commences, continues or carries out works for the purpose of enabling the subdivision of land, otherwise than as shown on a plan of subdivision approved by the WAPC; or as required by the WAPC to be carried out as a condition of approval of the plan of subdivision, commits an offence.

## Is the WAPC required to consult other persons or bodies when considering a subdivision application?

Where the WAPC believes that a subdivision proposal may affect the powers or functions of a local government or other authority, they must refer the proposal to those bodies and invite their comment. These bodies must respond within 42 days with a written memorandum containing any objections or recommendations; and in the case of local government, advise of any relevant environmental condition(s) to which the assessed scheme is subject.

The WAPC is not bound by the submissions made by these authorities. Additionally, there is no general requirement for public participation in the subdivision approval process. However, if the proposal is assessed by the EPA, there are opportunities for input into that process. See [Fact Sheet 5: Environmental impact assessment in WA](#).

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## Swan Valley planning area

The WAPC must refer proposals affecting the Swan Valley planning area to the Swan Valley Planning Committee. The Swan Valley Planning Committee must respond within 42 days of receiving the proposals with written advice on how the application should be determined, including any conditions to which any approval should be made subject. The WAPC is bound by the advice of the Committee unless it obtains the approval of the Minister.

## State Register of Heritage Places

The WAPC must wait for advice from the Heritage Council of Western Australia before approving a subdivision which may affect Land to which section 78 of the *Heritage of Western Australia Act 1990* applies.

## What things must be taken into account before granting approval?

When considering a subdivision application, the WAPC must have regard to all relevant matters. This includes things such as the provision of services to each lot, drainage of the land, the amount of public open space to be provided and any relevant local planning schemes, planning regulations or local laws. While the WAPC is required to take into account the terms of a local planning scheme, the WAPC may approve a subdivision that is inconsistent with the local planning scheme in certain situations, including where the local government has not made an objection to the subdivision. A subdivision must however comply with any environmental conditions in the relevant local planning scheme.

Subdivision proposals are also exempt from the clearing permit system under the *Environmental Protection Act 1986* (WA). Clearing of native vegetation consistent with a subdivision approval will not require approval of the Department of Environment and Conservation. The WAPC is not required to take into account the clearing principles that apply to other clearing proposals. For further information on the clearing laws, see [Fact Sheet 7: Clearing native vegetation](#).

## What conditions can be placed on subdivisions?

The WAPC has a broad discretion to impose conditions on subdivision approvals. For example, the WAPC may make it a condition of a subdivision approval that parts of the land be vested in the Crown for the conservation or protection of the environment. It may also require that parts of the land be set aside for recreation, roads and waterways or that required works be carried out. The owner of the land may be required to pay an amount to the local government in lieu of a portion of the land being set aside for these purposes.

When the WAPC is satisfied that the proponent has met all conditions imposed on the approval, it may endorse the proposal. Once the proposal is endorsed, the proponent may apply to Landgate to issue certificates of title for the new lots. The Registrar cannot create or register a certificate of title for a new subdivision unless a diagram or plan of survey of the subdivision has been endorsed with the approval of the WAPC.

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## Development control

Development will require approval if specified under a local planning scheme or region planning scheme. The scheme will specify the approval authority which could be local government, the WAPC or the Minister for environment. In addition, local governments and the WAPC have discretion to approve a development that has already commenced or been carried out. For more information see [Fact Sheet 4: Development Controls](#).

## Redevelopment legislation

Specific redevelopment legislation may exist to areas that are being redeveloped by the State Government (i.e. Subiaco, East Perth, Midland, Armadale and Hope Valley). The legislation generally places the area under the control of a redevelopment authority, and requires that all the development proposals within the area are subject to the approval of that authority. It is common for local planning schemes and the Metropolitan Region Scheme not to apply to the redevelopment area.

## Non-binding policy statements

In addition to providing a mechanism for the creation of binding local and region planning schemes, the planning legislation permits the making of policy instruments. These instruments do not have legal force, but are required to be taken into account when local and region planning schemes are being developed and when planning decisions are being made. The policies include:

- State Planning Policies (SPP) - created by the WAPC to provide for any matter which may be the subject of a local planning scheme. The primary focus of SPPs is on broad issues of planning and facilitating the coordination of planning throughout the State. The WAPC is required to have regard to conservation of natural resources for social, economic, environmental, ecological and scientific purposes as well as other factors. In preparing or amending the local planning scheme, a local government must have regard to all relevant SPPs. Submissions can be made regarding proposed SPPs as the WAPC is required to make reasonable endeavours to consult those public authorities and persons likely to be affected by the SPP.
- Region scheme planning objective statements - a written statement setting out the purpose and planning objectives of a region scheme or amendment (prepared by the WAPC). Local governments must give due regard to these statements when amending a local planning scheme.
- Local planning policies – created by local governments under their local planning schemes to guide decision making in relation to the applications for development approval.

## Applications for review – the State Administrative Tribunal

An applicant for development approval who has been refused approval or is unhappy with the conditions of approval may apply to the State Administrative Tribunal (SAT) for review of the decision. Review is possible where a law or planning scheme expressly gives the SAT jurisdiction over the matter; and where the planning scheme confers a right to appeal against a decision and the matter involves the exercise of a discretionary power by the particular authority.

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The Minister may 'call in' and determine an application currently before the SAT, where the application concerns issues of State or regional importance. The Minister can take public interest concerns into account, as well as planning considerations. The Minister's decision is final.

Objectors to development have no right of appeal to the SAT. Additionally, there are no rights to be joined as a party to an appeal lodged by someone else. On public interest issues, intervener status may be obtained on application to the SAT. It is also possible to make an application to be heard as a submitter where SAT is of the opinion that the person has a sufficient interest in the matter. A submitter is not a party and is not involved in mediations (unless the parties agree).

## How can you become involved?

Planning instruments play a significant role in controlling developments that may impact on the environment. Therefore, it is important that members of the public provide input into the development of these laws. This can be done in the following ways:

1. Monitor local government agendas, gazettes and local newspapers for details about new town planning scheme proposals and make submissions on the proposals;
2. Contact councillors of your local government if you believe your local town planning scheme is inadequate and requires reform;
3. If a new scheme is proposed, or subdivision is likely to have a significant impact on the environment, it can be referred to the EPA for an environmental impact assessment (see [Fact Sheet 5: Environmental impact assessment in WA](#));
4. Monitor development approvals and make sure they conform to the relevant local or regional planning scheme; and
5. Refer potentially illegal developments to the relevant local government for investigation (see [Fact Sheet 4: Development controls](#)).

## Contacts and further information

Western Australian Planning Commission [www.wapc.wa.gov.au/](http://www.wapc.wa.gov.au/) Tel: (08) 9264 7777

Department of Planning [www.planning.wa.gov.au/](http://www.planning.wa.gov.au/) Tel: (08) 9264 7777

Department of Environment & Conservation [www.dec.wa.gov.au/](http://www.dec.wa.gov.au/) Tel: (08) 6467 5000

Environmental Protection Authority [www.epa.wa.gov.au/](http://www.epa.wa.gov.au/) Tel: (08) 6467 5000

For copies of legislation considered in this fact sheet visit:

State Law Publisher (WA Legislation) [www.slp.wa.gov.au](http://www.slp.wa.gov.au)

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## The Environmental Defender's Office WA (Inc)

The Environmental Defender's Office WA (EDO) is a community legal centre specialising in public interest environmental law.

The objects of the EDO include:

- to provide community groups and individuals with legal advice and representation to help protect the environment;
- to promote law reform that improves environmental protection; and
- to provide community education about environmental law.

The EDO is a non-profit, non-government organisation. The EDO receives its principal funding from the Federal and State Attorney-General's Departments.

However, these funds are limited and donations from the public provide a vital source of funds for many of our activities. Donations over \$2 are fully tax deductible. The EDO also welcomes people with a commitment to the environment to join as members.

If you require legal advice on an environmental issue or wish to find out more about the EDO, please contact us at the following address:

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