



## 3. Planning laws

Most new development requires approval under the State's planning laws. This makes the content and administration of planning laws vitally important to the protection of environmental values, such as landscape, amenity and biodiversity. Local communities can significantly influence the manner in which developments are carried out if they understand the way planning laws work, and what opportunities there are for making changes.

This Fact Sheet examines Western Australia's planning law framework – describing the types of planning laws that exist, how they are made and who is responsible for their administration. For information on the process for approving particular developments, see **Fact Sheet 4: Development controls**.



### What are “planning laws”?

Planning laws are laws that control the use and development of land within a particular district or region. “Development” usually includes things like erection of buildings, changing the use of buildings or land, and carrying out earthworks on land.

The most obvious planning laws are “town planning schemes” administered by local government. Other important planning laws include regional planning schemes (applying in the Perth and Peel regions), controls on subdivisions, and special redevelopment or planning legislation such as Midland, East Perth and the Swan Valley.



### Who administers planning laws?

Most planning decisions in Western Australia are made by local governments under their relevant town planning schemes. The Western Australian Planning Commission (“the Planning Commission”) is the other major planning decision-maker. It has authority over subdivision approvals and some development proposals within areas subject to regional planning schemes. The Planning Commission is also responsible for developing various planning policies and providing advice to local government and the Minister for Planning on the preparation and amendment of town planning schemes.

Specific planning authorities have been set up in respect to areas such as Midland, Armadale, East Perth and Subiaco. The authority of these bodies derives from the particular statute creating them, and usually provides for exclusive planning control over the redevelopment area for a certain period of time.



### Town planning schemes

#### What are “town planning schemes”?

Town planning schemes are planning laws created by local government. Despite their name, town planning schemes can apply to any land within a local government district – whether town, rural or industrial. More than one town planning scheme can apply over the same area.

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

A town planning scheme can regulate a wide variety of land uses and developments within an area. Some of things which can be included in a scheme include making provision for streets and roads, parks and open spaces, classification or zoning of land for (among other things) agricultural or rural use or for protection of the environment.

#### Important disclaimer:

This Fact Sheet is for general information purposes. Important legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your specific circumstances you should contact the Environmental Defender's Office WA (Inc) or your solicitor. The EDO takes no responsibility for any loss or damage resulting from any error in this Fact Sheet.

## How do town planning schemes control developments?

Most town planning schemes use a zoning system to classify different classes of land. The type of control that applies to particular developments is largely determined by the classification of the land in the zoning table. For example, the scheme may provide that “agricultural enterprise” is a permitted use in a “rural zone”, and does not require local government approval.

Town planning schemes generally also include “reserved land”. This is land which has been set aside for a community or other beneficial public use. Approval is generally required to undertake any form of development on reserved land, although the conditions will vary between different town planning schemes.

Government departments and local governments undertaking public works are not required to obtain approval for that work under a town planning scheme, although the works should conform with the scheme where possible, and the local authority must be consulted before the work is undertaken. Approval may be required for public works under the *Perth Metropolitan Region Scheme*.

A person contravening a town planning scheme commits an offence. In addition to being ordered to remove any illegal development, the person may also be subject to a maximum fine of \$50,000. For more information on development approvals, see [Fact Sheet 4: Development controls](#).

## What environmental controls can be included in a town 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 are to apply. This could include protecting environmental values.

Town planning schemes can also include special conservation reserves. For example, the Shire of Serpentine-Jarrahdale has a conservation zone for important areas of native vegetation. In return for agreeing to restrictions on the way they can use the land, land owners receive a 50% reduction in their local government rates.

## How are town planning schemes created or amended?

A town 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 town planning scheme that is consistent with the *Metropolitan Region Scheme* or *Peel Region Scheme* respectively. The Minister for Planning may also order a local government to prepare a town planning scheme where there is no satisfactory town planning scheme in place.

A local government may be liable to pay compensation to a land owner where a town 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* “means a use of land which, though lawful immediately prior to the coming into operation of a town planning scheme, is not in conformity with any provision of [the new] scheme.”

The content of new or amended town planning schemes must be consistent with the terms of the *Model Scheme Text* (“MST”). Under the MST, a scheme may include provision for *special control areas*. These areas set out particular provisions which may apply in addition to the zone requirements.

## What is the process for creating or amending a town planning scheme?

### Local government resolution

The first step in creating or amending a town planning scheme is for the local government to pass a resolution to that effect. This resolution must be referred to the Planning Commission for comment within 28 days. The Commission then considers the proposal, and provides its comments to the local government.

### Referral of proposal to Environmental Protection Authority

The proposal to create or amend a town planning scheme must be referred to the Environmental Protection Authority (EPA) to allow the EPA the opportunity to assess the environmental implications of the scheme. The EPA may advise the local government:

- that the scheme need not be assessed, and may give advice and make recommendations to the local government on the environmental issues raised by the scheme;

- that the scheme be assessed; or
- that the scheme is incapable of being made environmentally acceptable.

For further information, see [Fact Sheet 5: Environmental impact assessment in Western Australia](#).

### Approval to advertise scheme

Once the local government has prepared the necessary documents and the EPA has either advised that it is not assessing the scheme, or that the scheme has been assessed, the local government may seek approval for the proposal to be advertised. This is done by referring the documents to the Planning Commission, and the Planning Commission making a recommendation to the Minister for Planning as to whether the proposal should be advertised.

### Advertising and public submissions

If the Minister for Planning grants approval for the scheme to be advertised, the local government must place an advertisement in a newspaper circulating in the district. The advertisement must describe the purpose of the scheme, state the times and places where it may be inspected, and specify a date by which submissions can be made (at least three months).

Any person may make a written submission on the proposed scheme. The local government must take into account any submissions received before compiling a report and recommending to the Minister for Planning that the proposed scheme be approved.

The Minister is not obliged to support the recommendations of a local government. Occasionally, the Minister may require further amendments to the town planning scheme text and maps which the Minister may or may not require to be readvertised, and which may or may not reflect public concerns. The scheme takes effect once it is published in the *Government Gazette*.

### What happens where there is no town planning scheme in place?

If there is no town planning scheme applicable to land that is sought to be developed, Interim Development Orders (IDOs) may be made. IDOs treat all proposed developments in a specified area as development at the discretion of the local government in its capacity as a planning authority. IDOs must be advertised, and will cease to have effect either when revoked, or when a town planning scheme comes into force. Failure to comply with an IDO is an offence, and is subject to the same penalties applicable to a breach of a town planning scheme.



## Region planning schemes

### 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 presently two region planning schemes in operation in Western Australia. One covers the Perth metropolitan area and the other has recently been established in the Peel Region (that is the City of Mandurah and the Shires of Murray and Waroona).

### How is a region planning scheme created?

Under the *Western Australian Planning Commission Act 1985*, the Planning Commission may prepare a region planning scheme for the effective planning and coordination of land use and development for any part of the State outside the metropolitan region. The *Metropolitan Region Scheme* is a special region scheme that is created under the *Metropolitan Region Town Planning Scheme Act 1959*.

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

Region planning schemes deal with the same matters that can be dealt with under a town planning scheme. This includes the power to provide for planning, replanning or reconstructing the whole or any part of the particular region.

### How do region planning schemes control developments?

Once approved, region planning schemes are legally binding. Where a local government's town 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 town planning scheme to make it consistent with the region scheme.

### Who is responsible for preparing a region planning scheme?

Region planning schemes are prepared by the Planning Commission and approved by the Minister for Planning.

### Regional planning control areas

If land subject to a region planning scheme is required for a certain purpose or use (for example, for parks and recreation or water catchments), the Planning Commission may seek the approval of the Minister declare that land to be a “regional planning control area”. A regional planning control area can apply for a period of up to five years. The *Peel Region Scheme* introduces a control area to protect for water catchments within the Peel region.

A person must not commence or carry out development in a regional planning control area without the approval of the Commission. Penalty for failing to obtain approval is a maximum fine of \$50,000 with a maximum daily penalty of \$5,000.

### Regional interim development orders

Where the Planning Commission has resolved to prepare a region scheme for an area, it may (with the approval of the Minister for Planning) issue a “regional interim development order” to control developments that might prejudicially effect the preparation of the scheme. Such an order will last until it is either revoked, the region scheme comes into operation or after the expiration of three years. Non-compliance with a regional interim development order is an offence, and carries a maximum fine of \$50,000.



## Subdivision of land

### What is “subdivision”?

A subdivision of land occurs where a single lot (freehold land) is divided into two or more smaller lots, associated roads, reserves and public services. Subdivision most often occurs where rural, agricultural or industrial land is no longer used for that purpose and becomes residential land.

Subdivision of land can have significant environmental implications, particularly in relation to biodiversity protection and land degradation.

### What controls apply to subdivisions?

Subdivision of land requires the approval of the Planning Commission. There is a two part approval process:

- first, the proponent lodges a plan of subdivision with the Commission; and
- if the plan is approved, the proponent has three years to meet any conditions placed on the approval before seeking final endorsement from the Commission. This will allow the land to be divided into separate titles by the Titles Office. If the final plan is not submitted within three years the process must be recommenced.

It is an offence to subdivide land without approval, and carries a maximum fine of \$50,000.

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

Where the Commission believes that a subdivision proposal may affect the powers or functions of a local government or other authority, the Commission must refer the proposal to those bodies and invite their comment. However, the Commission is not bound by the submissions made by these authorities, and nor is there is no general requirement for public participation in the subdivision approval process. However, if the proposal is assessed by the EPA, then there are opportunities for input into that process. See [Fact Sheet 5: Environmental impact assessment in WA](#).

### Swan Valley planning area

The Commission must refer proposals affecting the Swan Valley planning area to the Swan Valley Planning Committee. The Commission is bound by the advice of the Committee unless it obtains the approval of the Minister for Planning.

## Heritage places

The Planning Commission must wait for advice from the Heritage Council of Western Australia before approving a subdivision which may affect land entered on the State Register of Heritage Places.

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

When considering a subdivision application, the Planning Commission 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 town planning schemes, planning regulations or local laws. Note that while the Commission is required to take into account the terms of a town planning scheme, it is not bound by the scheme. An exception to this is where the scheme has been assessed and the Minister for the Environment has imposed environmental conditions.

Subdivision proposals are also exempt from the clearing permit system under proposed changes to the *Environmental Protection Act 1986*. This will mean that clearing native vegetation consistent with a subdivision approval will not require approval of the Department of Environmental Protection (DEP). Furthermore, the Commission is not required to take into account the clearing principles that the DEP is required to 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 Planning Commission has a broad discretion to impose conditions on subdivision approvals, including that part of the land be set aside for conservation, recreation, roads and waterways or that required works be carried out. Where works are carried out as part of implementing a subdivision approval (for example, the construction of roads), separate development approval is not usually required.

When the Commission is satisfied that the proponent has met any conditions imposed on the approval, the Commission may endorse the proposal. Once the proposal is endorsed, the proponent may apply to the Department of Land Information to issue certificates of title for the new lots.

Non-compliance with a condition in a subdivision approval is an offence. The maximum penalty is a fine of \$50,000 and a daily penalty of \$5,000.



## Other planning controls

### Redevelopment legislation

Areas being redeveloped by the State Government may be subject to specific legislation. Examples include Subiaco, East Perth, Midland, Armadale and Hope Valley. These Acts generally place the area under the control of a redevelopment authority, and require that all development proposals within the area are subject to the approval of the redevelopment authority. It is usual also for the legislation also to state that local town planning schemes and the MRS cease to have effect.

### Non-binding policy statements

In addition to providing a mechanism for the creation of binding town and regional planning schemes, the planning legislation also permits the making of non-binding policy instruments. These instruments do not have legal force, but they are required to be taken into account when town and regional planning schemes are being developed.

The policies include:

- *Statements of planning policy* – a statement of planning policy (SPP) may make provision for any matter which may be the subject of a town planning scheme, although the primary focus will be on broad issues of planning and facilitating the coordination of planning throughout the State. In preparing or amending a town planning scheme, a local government must “have regard” to a statement of planning policy.
- *State planning strategy* – the State planning strategy is intended as the basis for coordinating and promoting regional land use planning and land development and for guiding Government departments, instrumentalities and local governments on those matters. Local government are not bound by the strategy.
- *Other policies and guidelines* – the Commission issues a number of general policies and guidelines on a range of planning matters. Local governments can prepare policies on planning issues under a town planning scheme.

These policies are available from the [Western Australian Planning Commission](#) website.

## 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 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, encourage the EPA to assess the scheme;
4. if a 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**);
5. monitor development approvals and make sure they conform to the relevant local or regional planning scheme; and
6. 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, Perth  
 Department for Planning and Infrastructure, Perth  
 Department of Environmental Protection, Perth  
 Environmental Protection Authority, Perth

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 Tel: (08) 9222 7000  
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For copies of legislation considered in this fact sheet visit:

State Law Publisher (WA legislation)  
 Australian Legal Information Institute (Commonwealth legislation)

Tel: (08) 9321 7688

## 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 Attorney-General's Department. 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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