

A Private Member's Bill by Giz Watson MLC
Draft for Public Comment

Perth Hills Planning Bill 2007

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Western Australia

Perth Hills Planning Bill 2007

A Bill for

An Act to establish a committee to advise on land use planning and land development in the area known as the Perth Hills, and to prescribe planning and development objectives for that area.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This Act may be cited as the *Perth Hills Planning Act 2007*.

2. Commencement

This Act comes into effect on Royal Assent.

3. Interpretation

In this Act, unless the contrary intention appears —

“**appointed member**” means a member other than an *ex officio* member;

“**Commission**” means the Western Australian Planning Commission established under the *Planning and Development Act 2005*;

“**Committee**” means the Perth Hills Planning Committee;

“**development**” means the development or use of any land, including—

(a) 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

(b) in the case of a place to which a Conservation Order made under section 59 of the *Heritage of Western Australia Act 1990* applies, any act or thing that —

(i) is likely to change the character of that place or the external appearance of any building; or

(ii) would constitute an irreversible alteration of the fabric of any building;

“**ex officio member**” means a member referred to in section 6(2)(b) or (c);

“**land**” includes waters and land covered by water whether continuously or otherwise;

“**local planning scheme**” means the local planning scheme for the time being in force under the *Planning and Development Act 2005* for the local government districts of Chittering, Swan, Mundaring, Kalamunda, Gosnells, Armadale and Serpentine-Jarrahdale;

“**member**” means a member of the Committee;

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“Metropolitan Region Scheme” has the meaning given to that term in the *Planning and Development Act 2005* section 4.

“Perth Hills Zone” means the area described in section 5.

“Perth Hills Planning Committee Committee” means the Committee established by section 6(1).

“Perth Hills local government” means the local governments for the districts of Chittering, Swan, Mundaring, Kalamunda, Gosnells, Armadale and Serpentine-Jarrahdale.

Part 2 — The Perth Hills Zone

4. Delineation of Perth Hills Zone

(1) The Perth Hills Zone comprises all of the land in the area shown on the plan of the Perth Hills Zone held at the office of the Commission, that plan being certified by the Minister as being the plan prepared to define that area for the purposes of this Act.

(2) For guidance, the Perth Hills Zone is described in the following representation of the plan referred to in subsection (1).



Part 3 — Planning objectives for the Perth Hills Zone

5. Planning objectives

The planning objectives for the Perth Hills Zone are:

1. The preservation and enhancement of the area as a clean water catchment for Perth and as a source of water for major rivers.
2. The preservation of the flora and fauna of the area as part of the unique biodiversity of South West Australia.
3. The preservation and restoration of the natural character of the area including the natural topography, native vegetation and colours normally associated with the natural landscape.
4. The preservation and enhancement of the area as a highly accessible and visible natural and rural backdrop to the coastal plain.
5. The protection of agricultural and horticultural land for its economic, landscape, tourism and social values.
6. The recognition and protection of Aboriginal, cultural and historical areas of significance.
7. The promotion of recreation, tourism and cultural activities that do not conflict with the other planning objectives of the area.
8. The limiting of residential, commercial and industrial development to areas and types of development that do not detract from the conservation values or character of the Perth Hills Zone.

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Part 4 — Perth Hills Planning Committee

Division 1 — Committee established, and functions

6. Perth Hills Planning Committee

- (1) There is established a committee called the Perth Hills Planning Committee.
- (2) The Committee consists of —
 - (a) an independent person with appropriate qualifications and experience appointed by the Minister to be the chairperson;
 - (b) the chairperson or acting chairperson for the time being of the Commission, *ex officio*, or his or her nominee;
 - (c) the president or acting president of each of the Perth Hills local governments, *ex officio*, or their nominees;
 - (d) 7 other persons appointed by the Minister who as far as practicable comprise persons who between them have knowledge of, and experience in, the fields of conservation, natural resource management, recreation, tourism, planning, development and matters of interest to the Perth Hills community including the Nyungah community.

7. Expressions of interest

- (1) Before appointing a member under section 6(2)(d) the Minister must publish in a newspaper circulating throughout the State a notice calling for expressions of interest in appointment to the Committee.
- (2) The Minister must consider expressions of interest lodged in accordance with the notice but may appoint a person as a member of the board whether or not the person has lodged an expression of interest.

8. Functions

- (1) The functions of the Committee are:
 - (a) to provide advice in accordance with —
 - (i) section 10(2);

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(ii) sections 40A, 47A, 78A and 134 of the *Planning and Development Act 2005*; and

(iii) clause 30C of the Metropolitan Region Scheme as defined in the *Planning and Development Act 2005*;

(b) to advise the Minister on the coordination and promotion of the preservation, sustainable use and sensitive development of land in the Perth Hills Zone;

(c) to provide advice and assistance to any other body or person in relation to the preservation, sustainable use and sensitive development of land in the Perth Hills Zone.

9. Objectives

In providing the advice referred to in section 8(1)(a) in respect of any planning or development proposal the Committee is to seek to ensure that the proposal is consistent with the objectives set out in section 5 that apply to that proposal.

10. Referral of development applications

(1) Where an application is made to a Perth Hills local government under the local planning scheme for development approval relating to land in the Perth Hills Zone the Perth Hills local government, unless subsection (5) applies, is to give full particulars of the application to the Perth Hills Planning Committee.

(2) The Committee, within 42 days after the day on which it receives particulars of an application or within such longer period as the local government, is to give the local government its advice in writing on how the application should be determined, including any conditions to which any approval should be made subject.

(3) If the Committee fails to give its advice within the time allowed under subsection (2), it shall be taken to have no advice to give on the application.

(4) The local government is to have due regard to the advice of the Committee but may determine the application otherwise than in accordance with that advice.

(5) The Committee may determine that any particular class or description of applications for development approval need not be referred to the Committee for advice under this section and is to notify the Perth Hills local governments of any such determination.

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(6) This section has effect despite anything in the local planning scheme.

(7) Subsection (1) does not apply to any application for development approval made before the commencement of this section.

11. Evidence of advice or submission

(1) A statement setting out the advice of the Committee or a submission made by the Committee is sufficient evidence of that advice or that submission if it is signed on behalf of the Committee —

(a) by the chairperson; or

(b) by some other person authorised by the Committee to sign the statement.

(2) A statement purporting to be signed by the chairperson or a person referred to in subsection (1)(b) is to be presumed to be duly signed until the contrary is shown.

12. Staff and facilities

(1) The Committee may, by arrangement made between it and the Department, on such terms and conditions as are agreed, make use either full-time or part-time of the services of any officer or employee of the Department and of any facilities of the Commission.

(2) In subsection (1) “**Department**” means the department principally assisting the Minister in the administration of the *Planning and Development Act 2005*.

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Division 2 — Provisions relating to Committee and its members¹

13. Constitution and proceedings

The provisions of Schedule 1 have effect with respect to the constitution and proceedings of the Committee.

14. Protection of members

A member is not personally liable for any act done or omitted to be done in good faith by the Committee in the performance of any function under this Act.

15. Particular duties of members

(1) A member must at all times act honestly and diligently in performing his or her functions under this Act.

(2) If a matter is before a meeting for consideration and a member present at the meeting has a direct or indirect pecuniary interest in the matter, the member must disclose to the other members present at the meeting, as soon as possible after the relevant facts have come to his or her knowledge, that he or she has an interest, and —

(a) the disclosure is to be recorded in the minutes of the meeting; and

(b) the member must not subsequently be present during any consideration or discussion of, and is not to vote on any determination of, the matter.

(3) A member must not disclose any information acquired by virtue of the performance of any function under this Act unless —

(a) the disclosure is made in connection with the carrying out of this Act or under a legal duty; or

(b) that information is otherwise available to the public under section 17.

(4) A member must not make use of any information acquired by virtue of the performance of his or her functions to gain, directly or indirectly, an improper advantage for himself or herself or to cause detriment to any person.

(5) A member who commits a breach of any provision of this section —

(a) is liable to the Crown for any profit made by him or her as a result of the breach of that provision; and

(b) commits an offence and is liable to a fine of \$10 000.

¹ This division does not provide for remuneration of members, because this cannot be done in a Bill originating in the Legislative Council. An amendment could be introduced in the Legislative Assembly to address this.

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(6) This section is in addition to and not in derogation of any other law relating to the duty or liability of the holder of a public office.

Part 5 — General

16. Minister may require local governments to prepare guidelines

(1) Perth Hills local governments are to ensure that any aspects of the local planning scheme, and any policies made under that scheme, that relate to —

- (a) the subdivision of land;
- (b) the provision of infrastructure; and
- (c) the carrying out of development generally,

in the Perth Hills Zone are consistent with the objectives set out in section 5.

(2) Perth Hills local governments are to ensure that any policies made under their schemes, where relevant, reflect the planning objectives in section 5.

(3) For the purposes of ensuring that subsection (1) is complied with the Minister may exercise the powers in section 212 of the *Planning and Development Act 2005* as if —

- (a) subsection (1) of this section were the relevant provision referred to in section 212(1) of that Act; and
- (b) references to a local planning scheme were references to an amendment to the local planning scheme referred to in subsection (1) of this section,

and section 213 of the *Planning and Development Act 2005* applies accordingly.²

17. Advice and reports to be open for inspection

(1) The Committee is to cause a separate record to be kept of any advice given or report made by it in the performance of its functions.

(2) The record referred to in subsection (1) is to be available for inspection by members of the public during normal office hours on payment of the prescribed fee.

18. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.

² These sections of the *Planning and Development Act 2005* would give the Minister for Planning the power to change local planning schemes and policies to conform with Perth Hills Zone planning objectives.

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19. Review of Act

(1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from its commencement, and in the course of that review the Minister is to consider and have regard to —

(a) the effectiveness of the operations of the Committee;

(b) the need for the continuation of the functions of the Committee; and

(c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.

(2) The Minister is to prepare a report based on the review made under subsection (1) and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

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Part 6 – *Planning and Development Act 2005* amended

20. *Planning and Development Act 2005* amended

The amendments in this Part are to the *Planning and Development Act 2005*.

21. Section 40A inserted ³

After section 40, the following section is inserted –

“40A. Referrals to Perth Hills Planning Committee before public submissions

(1) The Commission, before submitting to the Minister under section 42 a scheme or amendment that would apply to land in the Perth Hills Zone, is to refer the scheme or amendment to the Perth Hills Planning Committee.

(2) The Committee, within 42 days after the day on which it receives the referral, or within such longer period as the Commission allows, is to give to the Commission its written advice on the scheme or amendment including any modifications it thinks should be made.

(3) If the Committee fails to give its advice within the time allowed under subsection (2), it is to be taken to have no advice to give on the scheme or amendment.

(4) The Minister may, at the request of the Commission, approve of the Commission disregarding the Committee’s advice in whole or in part in preparing the scheme or amendment.

(5) Subject to any approval under subsection (4), the Commission is to prepare the scheme or amendment in accordance with any advice given by the Committee under this section.”

22. Section 47A inserted

After section 47, the following section is inserted –

“47A. Referrals to Perth Hills Planning Committee after public submissions

(1) Where as required by section 40A(5), a scheme or amendment has

³ This section and the following section relate to the making or amendment of region planning schemes such as the Metropolitan Region Scheme.

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been prepared in accordance with advice given by the Perth Hills Planning Committee and after considering public submissions on the scheme or amendment the Commission has modified the scheme or amendment in a way which is not in accordance with that advice, the Commission is to, before submitting that scheme or amendment to the Minister under section 48, refer the scheme or amendment, with the other documents referred to in that section, back to the Committee for its comments and advice.

(2) Where the Perth Hills Planning Committee has any comment to make, or advice to give, on a scheme or amendment or the other documents referred to it under subsection (1) it is to give a written report to the Commission and that report is to be submitted to the Minister along with the other documents referred to in section 48.

(3) If the Perth Hills Planning Committee does not report to the Commission within 42 days of the referral under subsection (2) it is to be taken to have no comment to make or advice to give.”

23. Section 78A inserted ⁴

After section 78, the following section is inserted –

“78A. Schemes and amendments applicable to the Perth Hills

(1) If a Perth Hills local government resolves to prepare or adopt a local planning scheme, or an amendment to a local planning scheme, that would apply to land in the Perth Hills Zone, that local government, before the scheme or the amendment is advertised for public inspection under the regulations, is to refer the proposed scheme or amendment to the Perth Hills Planning Committee.

(2) The Perth Hills Planning Committee, within 42 days after the day on which it receives the referral, or within such longer period as the local government allows, is to give to the local government its written advice on the proposed scheme or amendment, including any modifications it thinks should be made.

(3) If the Perth Hills Planning Committee fails to give its advice within the time allowed under subsection (2), it is to be taken to have no advice to give on the proposed scheme or amendment.

(4) The Commission may, at the request of the local government, approve of the City disregarding the Committee’s advice in whole or in part in preparing the scheme or amendment.

(5) Subject to any approval under subsection (4), the local government is to prepare the local planning scheme or the amendment in accordance with any advice given by the Perth Hills Planning Committee under this section.”

⁴ This section relates to the making or amendment of local planning schemes.

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24. Section 134 amended ⁵

After section 134(8), the following subsections are inserted –

(9) Where an application is made to the Commission for approval under section 135 or 136 in relation to land in the Perth Hills Zone, unless subsection (14) applies, the Commission is to give full particulars of the application to the Perth Hills Planning Committee.

(10) The Perth Hills Planning Committee, within 42 days after the day on which it receives particulars of an application or within such longer period as the Commission allows, is to give to the Commission its advice in writing on how the application should be determined, including any conditions to which any approval should be made subject.

(11) If the Perth Hills Planning Committee fails to give its advice within the time allowed under subsection (10), it is to be taken to have no advice to give on the application.

(12) The Minister may, at the request of the Commission, approve of the Commission disregarding the Committee's advice in whole or in part in determining the application.

(13) Subject to any approval under subsection (12), the Commission is to determine the application after having due regard to the advice of the Committee, but may determine that application otherwise than in accordance with that advice.

(14) The Perth Hills Planning Committee may determine that any particular class or description of applications under section 135 or 136 need not be referred to the Committee for advice under this section and is to notify the Commission of any such determination.

⁵ This section relates to decisions by the WA Planning Commission on subdivision applications.

Part 7 – Metropolitan Region Scheme amended

25. Metropolitan Region Scheme amended

After section 30C of the Metropolitan Region Scheme, the following section is inserted -

“30C (1) Without limiting clause 30 of this Scheme where an application for approval relates to a development of land in the Perth Hills Zone the responsible authority shall, unless subclause (6) applies to the application, give full particulars of the application to the Perth Hills Planning Committee.

(2) The Committee shall, within 42 days after the day on which it receives particulars of an application, or within such longer period as the responsible authority allows, give to the responsible authority its advice in writing on how the application should be determined, including any conditions to which any approval should be made subject.

(3) If the Committee fails to give its advice within the time allowed under subclause (2), it shall be taken to have no advice to give on the application.

(4) Where the responsible authority is the Commission, the Minister may, at the request of the Commission, approve of the Commission disregarding the advice of the Committee in whole or in part, but in the absence of such an approval the Commission shall determine the application in accordance with the advice of the Committee.

(5) Where the responsible authority is the council of a Perth Hills local government, the council is to have due regard to the advice of the Committee but may determine the application otherwise than in accordance with that advice.

(6) The Committee may determine that any particular class or description of applications for approval need not be referred to the Committee for advice under this section and is to notify the Commission and the council of the local government of any such determination.

(7) In this clause "**Perth Hills Zone**", "**Perth Hills Planning Committee**" and "**Committee**" have the same meanings as they have in the *Perth Hills Planning Act 2007*.”

**Provisions as to constitution and proceedings of
the Committee**

1. Term of office

(1) Except as otherwise provided by this Act, an appointed member holds office for the term, not exceeding 3 years, that is specified in the instrument of his or her appointment, but may from time to time be re-appointed.

(2) Unless his or her office becomes vacant under clause 2, an appointed member continues in office until his or her successor comes into office, despite the fact that the term for which the member was appointed has expired.

2. Resignation, termination, etc.

(1) The office of an appointed member becomes vacant if —

(a) he or she resigns the office by written notice addressed to the Minister;

(b) he or she is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy; or

(c) his or her appointment is terminated by the Minister.

(2) The Minister may at his or her discretion terminate the appointment of an appointed member at any time.

3. Temporary members

(1) If an appointed member other than the chairperson is unable to act by reason of sickness, absence or other cause, the Minister may appoint another person to act temporarily in his or her place and, while so acting according to the tenor of his or her appointment, that other person is deemed to be a member.

(2) If an appointed member is the deputy chairperson and is performing the functions of the chairperson, the Minister may, under subclause (1), appoint another person to act in his or her place as member.

(3) No act or omission of a person acting in place of another under this clause is to be questioned on the ground that the occasion for his or her appointment or acting had not arisen or had ceased.

(4) The appointment of a person as a temporary member may be terminated at any time by the Minister.

4. Deputy chairperson

(1) The Minister is to appoint a member to be the deputy chairperson of the Committee.

(2) The office of deputy chairperson becomes vacant if —

(a) the person holding the office resigns the office by notice in writing to the Minister;

(b) the person holding the office ceases to be a member; or

(c) the Minister declares the office to be vacant.

(3) During any vacancy in the office of chairperson, or while he or she is unable to act by reason of sickness, absence or other cause, the deputy chairperson is to perform the functions of the chairperson.

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(4) No act or omission of the deputy chairperson acting as the chairperson is to be questioned on the ground that the occasion for his or her so acting had not arisen or had ceased.

5. Meetings

(1) The first meeting of the Committee is to be convened by the chairperson and subsequently, subject to subclause (2), meetings are to be held at the times and places that the Committee determines.

(2) A special meeting of the Committee may at any time be convened by the chairperson.

(3) The chairperson is to preside at all meetings of the Committee at which he or she is present.

(4) If both the chairperson and the deputy chairperson are absent from a meeting the members present are to appoint one of their number to preside.

(5) A quorum for a meeting of the Committee is 9 members.

(6) At any meeting of the Committee the chairperson, deputy chairperson or other person presiding is to have a deliberative vote and, in the case of an equality of votes, is also to have a casting vote.

(7) The Committee is to cause accurate minutes to be kept of the proceedings at its meetings.

6. Sub-committees

The Committee may from time to time appoint sub-committees of members, or members and other persons, as it thinks fit, and may discharge or alter any sub-committee so appointed.

7. Telephone and video meetings

Despite anything in this Schedule, a communication between members constituting a quorum under clause 5(5) by telephone or audiovisual means is a valid meeting of members, but only if each participating member is capable of communicating with every other participating member instantaneously at all times during the proceedings and the subject matter under consideration is not being considered for the first time.

8 Resolution may be passed without meeting

(1) If —

(a) a document containing a statement to the effect that an act, matter or thing has been done or a resolution has been passed is sent or given to all members; and

(b) the document is assented to by all members,
that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the Committee.

(2) For the purposes of subclause (1) —

(a) the meeting is to be taken as having been held —

(i) if the members assented to the document on the same day — on the day on which the document was assented to and at the time at which the document was last assented to by a member; or

(ii) if the members assented to the document on different days — on the day on which, and at the time at which, the document was last assented to by a member;

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(b) 2 or more separate documents in identical terms each of which is assented to by one or more members are to be taken to constitute one document; and

(c) a member may signify assent to a document —

(i) by signing the document; or

(ii) by notifying the chairperson of the member's assent in person or by post, facsimile transmission, telephone, email or other method of written, electronic, audio or audiovisual communication.

(3) Where a member signifies assent to a document otherwise than by signing the document, the member must by way of confirmation sign the document at the next meeting of the board attended by the member, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.

(4) Where a document is assented to in accordance with subclause (1), the document is to be taken as a minute of a meeting of the Committee.

8. Leave of absence

The Committee may grant leave of absence to a member on the terms and conditions that the Committee thinks fit.

9. Committee to determine own procedures

Subject to this Act, the Committee is to determine its own procedures.