

**PERTH HILLS PLANNING BILL 2007
(DRAFT FOR PUBLIC COMMENT)**

A PRIVATE MEMBER'S BILL PROPOSED BY GIZ WATSON MLC

EXPLANATORY MEMORANDUM

Overview

The purpose of the Bill is to promote more sustainable, appropriate and integrated land use planning and development in the Perth Hills area.

To this end, the Bill:

- Identifies the boundary for a 'Perth Hills Zone';
- Identifies planning objectives for that Zone;
- Establishes a Perth Hills Planning Committee including state and local government representatives, community representatives and independent experts;
- Gives the Planning Committee various functions, including:
 - o Providing advice on important development applications, in accordance with the planning objectives for the Perth Hills Zone; and
 - o Advising the Minister for Planning on the coordination and promotion of sustainable use and development of land in the Perth Hills Zone.

The Bill is modelled on the *Swan Valley Planning Act 1995*, which has operated successfully for more than a decade with bipartisan support.

The Bill does not override existing planning schemes or development control powers. Rather, it seeks to encourage greater cooperation and consistency in land use planning and development decisions in line with agreed planning principles.

The Perth Hills Planning Committee also provides a forum for the development of initiatives that cross local government boundaries. An example of such an initiative would be the development of a recreation and nature conservation buffer along the escarpment of the Perth Hills.

Clause notes

Clause 1

This clause contains the title of the Bill.

Clause 2

This clause provides that the Act comes into effect on Royal Assent. Royal Assent is the time at which a Bill becomes an Act by the Governor, representing the Queen, formally assenting to this occurring.

Clause 3

This clause contains definitions of terms used in the Act.

Clause 4

This clause defines the 'Perth Hills Zone' by reference to a detailed map to be held at the office of the WA Planning Commission. The clause also includes a map that gives some guidance as to the area covered by the Perth Hills Zone.

Clause 5

This clause sets out the planning objectives for the Perth Hills Zone.

Clause 6

This clause establishes the Perth Hills Planning Committee. The intent of the clause is to provide for a Committee that includes an independent chair, representatives of the main government bodies affected by the Bill and a good range of people with expertise in matters relevant to the preservation and enhancement of the Perth Hills.

The Committee is to have 15 people comprising:

- An independent Chair appointed by the responsible Minister.¹
- The Chair of the WA Planning Commission, or his or her nominee;
- The President of each of the Perth Hills Local Governments (Chittering, Swan, Mundaring, Kalamunda, Armadale, Gosnells and Serpentine-Jarrahdale); and
- 7 other persons chosen by the responsible 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.

¹ It would be up to the Government to decide which Minister would be given responsibility for administering the Act, but it would probably be the Minister for Planning and Infrastructure.

Clause 7

This clause requires the Minister to call for expressions of interest in appointment to the Committee.

Clause 8

This clause sets out the functions of the Committee, which can be summarised as follows:

Advice on development applications

- to provide advice to local governments on relevant development applications under a local planning scheme;²
- to provide advice to the WA Planning Commission on relevant development applications under the Metropolitan Region Scheme;³

Advice on planning schemes

- to provide advice to local governments on proposals for local planning schemes, or amendments to local planning schemes, that would apply to land in the Perth Hills Zone;
- to provide advice to the WA Planning Commission on amendments to the Metropolitan Region Scheme that would apply to land in the Perth Hills Zone;

Other advice

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

² As noted below, clause 10 provides that the Perth Hills Planning Committee the starting point is that the Committee has a say on all development applications in the Perth Hills, but it can decide that there are certain classes of application that it does not want to have referred to it.

³ As noted below, clause 25 also provides that the Committee can decide that there are certain classes of application that it does not want to have referred to it.

Clause 9

This clause provides that in providing its advice on a planning or development proposal, the Committee is to seek to ensure that the proposal is consistent with the planning objectives in clause 5 that are relevant to that proposal.

Clause 10

This clause requires local governments in the Perth Hills to give full information to the Perth Hills Planning Committee concerning new development applications in the Perth Hills, and requires the Committee to provide advice on that application within 42 days. The local government must give due regard to that advice but is not bound by it.

Clause 10(5) provides that the Committee may determine that any particular class or description of applications for development approval need not be referred to the Committee for advice. This allows the Committee to exclude minor development applications from being referred to it for advice.

Clause 11

This clause is a technical provision which makes clear that a statement purporting to be signed by the Chair of the Perth Hills Planning Committee, or some other person authorised by the Committee to sign the statement, is presumed to be duly signed until the contrary is shown.

Clause 12

This clause allows the Perth Hills Planning Committee to make arrangements to use the staff of the Department for Planning and Infrastructure and the facilities of the WA Planning Commission. This clause could be used, for example, to enter into an arrangement for staff to provide administrative support to the Committee.

Clause 13

This clause provides that a Schedule 1 to the Bill has effect with respect to the constitution and proceedings of the Committee.

Clause 14

This clause provides that a member of the Perth Hills Planning Committee is not personally liable for the Committee's acts or omissions done in good faith by the Committee in the performance of its functions. This is a common clause in legislation that establishes decision-making bodies. Without such a clause, people may be discouraged from joining the Committee by concerns that they could be personally sued.

Clause 15

This clause sets out the duties of members of the Perth Hills Planning Committee, including duties as to the disclosure of pecuniary interests and as to the use of information obtained through their membership of the Committee. This clause is identical to the corresponding section in the *Swan Valley Planning Act 1995*.

Clause 16

Paragraphs (1) and (2) of this clause require local governments in the Perth Hills to ensure that planning schemes and related policies concerning the subdivision of land, the provision of infrastructure and the carrying out of development in the Perth Hills are consistent with the objectives in clause 5 of the Bill.

The clause also gives the Minister the powers to enforce the requirement for consistency with the Bill's planning objectives. These are the same as existing powers under the *Planning and Development Act 2005* which the Minister can use where a local government fails to comply with specified laws (e.g. requirements in regulations as to the procedure for adopting a town planning scheme).

Clause 17

This clause provides that the Committee must keep a record of its advice and reports, and make them open for inspection by members of the public. The corresponding provision in the *Swan Valley Planning Act 1995* provides for a fee to be charged for access to such information, but that is not reproduced in this clause.

Clause 18

This is a standard provision allowing regulations to be made under the Act. It is not anticipated that any regulations would be required. The only regulations that have been made under the *Swan Valley Planning Act 1995* impose a \$10 fee for public access to records, and as noted above it is not proposed to impose such a fee under this Bill.

Clause 19

This clause provides for a 5-year review of the operation and effectiveness of the Act.

Clause 20

Provides that the amendments in Part 6 are to the *Planning and Development Act 2005*.

Clause 21

This clause requires the WAPC to refer relevant region schemes or region scheme amendments to the Perth Hills Planning Committee for comment. The Committee is to give its advice on that scheme or scheme amendment within 42 days, and the WAPC must implement that advice unless the Minister rules otherwise.

Clause 22

This clause provides that where the WAPC has prepared a scheme or amendment in accordance with the Committee's advice but later, after considering public submissions, modifies the scheme or amendment in a way that it not in accordance with that advice, the WAPC must obtain the Committee's comment and advice and provide it to the Minister. The Minister then makes a final decision on the scheme or amendment.

Clause 23

This clause requires local governments in the Perth Hills to refer local planning schemes or amendments to the Perth Hills Planning Committee for comment. The Committee is required to give its advice within 42 days or such longer period as the local government allows. The local government must follow that advice unless the WAPC, at the request of the local government, decides otherwise.

Clause 24

This clause provides that where an application is made to the WAPC for subdivision approval, the Perth Hills Planning Committee must be given an opportunity to comment on that application. As with applications for development approvals, the Committee can determine that particular classes or descriptions of applications need not be referred to it. Once the Committee's advice has been provided the WAPC must have due regard to it but is not bound by the advice.

Clause 25

This clause relates to application for development approval under the Metropolitan Region Scheme. In some cases, these applications are decided by the WAPC and in other cases a local government decides them. As with applications for development approvals under local schemes the Committee is given an opportunity to provide advice. Where that advice goes to a local government, that local government must have due regard to the advice but is not bound by it. Where the advice goes to the WAPC, the WAPC must follow that advice unless it has approval from the Minister to disregard the advice in whole or in part.

Schedule 1

This Schedule sets out the details regarding the Perth Hills Planning Committee. It provides, amongst other things, that members have terms of up to 3 years and that members may take part in meetings through telephone or audiovisual means. These provisions are the same as those applying to the Swan Valley Planning Committee.