

PERTH HILLS PLANNING BILL 2010

A PRIVATE MEMBER'S BILL PROPOSED BY HON. ALISON XAMON MLC

EXPLANATORY MEMORANDUM

Overview of the Bill

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

To this end, the Bill:

- Outlines the process for identifying the boundary for a 'Perth Hills Zone';
- Establishes a 'Perth Hills Planning Committee' ('Committee'), which will include a representative from both State and local government, community representatives and independent experts;
- Gives the Committee the following functions:
 - o Developing a 'Perth Hills Plan' to provide a vision, guidance and planning principles for the Perth Hills Zone to 2050;
 - o Providing advice to Perth Hills local governments and the WA Planning Commission on development applications, local planning schemes and scheme amendments, as to their consistency with the Perth Hills Plan;
 - o Advising the Minister for Planning and other bodies on matters relating to the preservation, sustainable use and sensitive development of land in the Perth Hills Zone; and
 - o Providing advice to utility service providers on any matter relating to capital works proposed for the Perth Hills Zone.

The Bill does not seek to alter the bodies that make final planning scheme or development control decisions. Rather, it seeks to encourage greater cooperation and consistency in land use planning and development decisions in line with the community's vision for the Perth Hills Zone.

The Bill is in many respects modelled on the *Swan Valley Planning Act 1995*, which has operated successfully for more than a decade with cross-party support. However the Bill also differs substantially from the *Swan Valley Planning Act 1995* in many respects. This proposed Plan was included at the request of broad consultation with the Perth Hills community, who saw a need for a long term vision for planning and development for the Perth Hills area.

The process of developing the Perth Hills Plan also provides the potential for the development of initiatives that cross local government boundaries. An example of such an initiative would be the development of a recreational and nature conservation buffer along the escarpment of the Perth Hills.

Part 1 - Preliminary

Clause 1

This clause contains the title of the Bill.

Clause 2

This clause provides that after this Bill is passed it will come into effect on Royal Assent.

Clause 3

This clause provides the object of the Bill.

Clause 4

This clause contains definitions of terms used in the Bill.

Clause 5

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 Committee is required to develop draft boundaries for the Perth Hills Zone per sub-clause 17(3), as part of the draft Perth Hills Plan. The map of the Perth Hills Zone is to be certified by the responsible Minister¹ having regard to draft boundaries developed by the Committee, and public submissions received in response to those draft boundaries.

This clause also clarifies that the Perth Hills Zone shall not overlap, but may abut, the area of the Swan Valley as defined in the *Swan Valley Planning Act 1995*. This Bill is therefore not intended to affect the operation of the *Swan Valley Planning Act 1995*.

Part 2 – Perth Hills Planning Committee

Division 1 – Committee established, and functions

Clause 6

This clause establishes the Committee. The intent of the clause is to provide for a Committee that includes an independent Chair, a representative from both State and local government and a representative range of people, including residents, with

¹ The Government will decide which Minister would be given responsibility for administering the Act, but it would most likely be the Minister for Planning.

expertise in matters relevant to the preservation and enhancement of the Perth Hills area.

The Committee is to have 10 members, being:

- An independent Chair appointed by the responsible Minister;
- The Chair of the WA Planning Commission, or his or her nominee;
- The President of the WA Local Government Association, or his or her nominee (note however this Committee member is *ex officio* i.e. does not have a vote);
- At least one person who in the opinion of the Minister is suitable to represent Aboriginal interests in that area; and
- Up to 6 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, other environmental expertise, recreation, tourism, planning, development, and matters of interest to the Perth Hills community.

The Bill also provides that the Minister shall ensure, as far as practicable, that the Committee members have knowledge and experience concerning the Perth Hills area. A related requirement is that the Minister shall ensure, as far as practicable, that at least three members are residents of the Perth Hills area.

Clause 7

This clause requires the Minister to call for expressions of interest in appointment to the Committee and the mechanisms by which this must occur.

The Minister may also appoint persons who have not lodged an expression of interest, but only after considering the expressions of interest received.

Clause 8

This clause sets out the functions of the Committee, which are as follows:

Development of the Perth Hills Plan

- to consult with the Perth Hills communities to prepare and develop a long term vision for the Perth Hills Zone, including planning principles and land use guidance;

Advice on applications for development approval

- to provide advice to local governments on relevant applications under a local planning scheme;²

² As noted below, clause 10 starts from the assumption that the Committee has a say on all developments in the Perth Hills Zone, but allows the Committee to decide that there are certain classes of application that it does not want to have referred to it.

- to provide advice to the WA Planning Commission on relevant applications under the Metropolitan Region Scheme;³
- to provide advice to the WA Planning Commission on relevant applications under sections 135 (subdivision) or 136 (other specific transactions) of the *Planning and Development Act 2005*;⁴

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 proposals for region planning schemes, or amendments to region planning schemes (including 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; and
- to provide advice to a utility services provider on any matter relating to capital works those service providers propose for part or all of the Perth Hills Zone.

The concept of ‘utility services’ is defined in clause 4 for the purposes of this clause.

Clause 9

This clause states that in providing its advice in sub-clause 8(1)(b), the Committee is to seek to ensure that the application, scheme or scheme amendment is consistent with the Perth Hills Plan.

Clause 10

The intention of this clause is to encourage new developments in the Perth Hills Zone to be consistent with the Perth Hills Plan.

This clause requires Perth Hills local governments to give full information to the Committee concerning new applications under local planning schemes in the Perth

³ As noted below, clause 34 also provides that the Committee can decide that there are certain classes of application that it does not want to have referred to it.

⁴ As noted below, clause 33 also provides that the Committee can decide that there are certain classes of application that it does not want to have referred to it.

Hills Zone, and requires the Committee to provide advice on that application within 42 days. The local government must have due regard to that advice but is not bound by it. If the Committee does not provide advice within that time, the Committee is taken to have no advice to give on the application.

Sub-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, and we anticipate the Committee would make such a determination; the intention of the Bill is that the Committee focuses on matters of strategic and relatively large-scale significance.

Clause 11

This clause is a technical provision which makes clear that a statement purporting to be signed by the Chair of the Committee, or some other person authorised by the Committee to sign the statement, is sufficient evidence of the advice or submission in that statement. The statement is presumed to be duly signed unless the contrary is shown.

Clause 12

This clause allows the Committee to make arrangements to use the staff, resources and facilities of the relevant Department⁵. This clause could be used, for example, to enter into an arrangement for staff to provide administrative support to the Committee.

Division 2 – Provisions relating to the Committee and its members

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 mirrors section 19 of the *Swan Valley Planning Act 1995*, and provides that members of the Committee are to be paid such remuneration and travelling and other allowances, subject to determination by the Minister.

Clause 15

This clause provides that a member of the Committee is not personally liable for the 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.

⁵ The Department principally assisting the Minister in the administration of the *Planning and Development Act 2005*, as defined by clause 4.

Clause 16

This clause sets out the duties of members of the Committee, including duties as to the disclosure of pecuniary interests and as to the use of information obtained through their membership of the Committee.

Part 3 – Perth Hills Plan

Clause 17

This clause outlines the first function of the Committee in further detail – the preparation and development of the Perth Hills Plan.

The Perth Hills Plan should cover the matters set out in sub-clause 17(2) and may also make provision for any matter which may be covered by a local planning scheme. The purpose of the Plan is to promote sustainable, appropriate and integrated planning for the Perth Hills area.

The draft Perth Hills Plan shall include draft boundaries for the Perth Hills Zone for the purposes of sub-clause 5(2)(a).

The Perth Hills Plan will form the reference point for any advice provided under sub-clause 8(1)(b). The Plan can also be enforced by the Minister, upon recommendation of the Committee or otherwise, under clause 23; see further below.

Clause 18

This clause sets out the process for consultation that should take place during the preparation of the draft Perth Hills Plan, and once the draft is available for public comment. The intent of this clause is to ensure a broad and representative consultation of residents, community groups and other stakeholders in the Perth Hills area at all stages of the development of the Perth Hills Plan. The Perth Hills Plan should accurately represent the Perth Hills community's vision.

Clause 19

This clause outlines the planning principles which must, as a minimum, be incorporated into the Perth Hills Plan. This clause does not intend to limit the number or scope of other planning principles in the Perth Hills Plan.

Clause 20

Sub-clause (1) is intended to limit the amount and substance of modifications permitted by the Minister and Governor, in order to keep the Perth Hills Plan as representative of the Perth Hills community's views as possible.

Sub-clause (2) provides for approval by the Governor before the Perth Hills Plan is published in the Gazette.

Clause 21

This clause outlines where the Perth Hills Plan should be published and deposited after the Governor has approved it. The intent of this section is to have the Plan available in as much of the area covered by the Perth Hills local governments as possible.

Clause 22

This clause allows for the amendment of the Perth Hills Plan. The intention of this clause is for minor amendments to be able to be made by the Governor after a recommendation of the Committee, but more substantial amendments to the Plan must go through the processes outlined in clauses 17 to 21. In making recommendations for an amendment, the Committee is to have due regard to the planning principles set out in clause 19. This is to ensure that the Plan remains representative of the community input to the Committee.

This clause also provides for the review of the Plan every 10 years. This is to ensure that the Plan remains relevant to the interests of the Perth Hills community as they change over time.

Clause 23

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 Zone are consistent with the Perth Hills Plan.

The clause also gives the Minister the powers to enforce local government consistency with the Perth Hills Plan. These are the same as existing powers under Part 13 of 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). Where a local government's planning scheme or application under that scheme is not consistent with the Perth Hills Plan but subsequently approved by the local government, this clause allows the Minister to order the local government to achieve consistency with the Perth Hills Plan by one of the following actions::

- a) amending a local planning scheme; or
- b) preparing a local planning scheme including such modification or conditions as required to achieve consistency; or
- c) preparing a consolidated local planning scheme.

This clause also provides that the Committee can recommend that the Minister use these powers. The Minister can act under this clause either upon recommendation of the Committee, or at the Minister's own instigation.

Clause 24

This clause allows the Committee to opt to treat the Perth Hills Plan or an amendment to the Plan as either a local planning scheme or amendment to a local planning

scheme for the purposes of sections 81, 82, 84, 85 and 86 of the *Planning and Development Act 2005*, and refer it to the EPA for possible environmental impact assessment.

Part 4 - Miscellaneous

Clause 25

This clause aims to increase the transparency of decisions made and the performance of functions under this Act.

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.

Paragraph (3) of this clause provides that decision making bodies under this Act are required to make public their reasons for making a decision or determining a matter otherwise than in accordance with the advice of the Committee. This sub-clause is intended to apply to the Governor and other public authorities, particularly the Minister, the Perth Hills local governments and the Commission.

For example, where a Perth Hills local government makes a determination otherwise than in accordance with the advice of the Committee under sub-clause 10(4), the local government will be required to make public in writing their reasons for doing so.

Clause 26

This is a standard provision allowing regulations to be made. It is not anticipated that any regulations would be required.

Clause 27

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

Part 5 – *Planning and Development Act 2005* amended

Clause 28

This clause provides that the amendments in Part 6 are to the *Planning and Development Act 2005*.

Clause 29

This clause inserts new definitions into the *Planning and Development Act 2005*, as will be required when this Bill becomes an Act.

Clause 30

This clause requires the WA Planning Commission to refer relevant region schemes or region scheme amendments to the Committee for comment. The Committee is to give its advice on that scheme or scheme amendment within 42 days, and the WA

Planning Commission must follow that advice unless the Minister approves otherwise.

Clause 31

This clause provides that where the WA Planning Commission 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 is not in accordance with that advice, the WA Planning Commission 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 32

This clause requires local governments in the Perth Hills to refer local planning schemes or amendments to the 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 have due regard to that advice unless the Minister, at the request of the local government, approves otherwise.

Clause 33

This clause provides that where an application is made to the WA Planning Commission for subdivision approval, or for approval of a specific transaction under section 136 of the *Planning and Development Act 2005*, the 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 WA Planning Commission must have due regard to the advice, unless the Minister approves otherwise.

Part 6 – Miscellaneous amendments

Clause 34

This clause relates to application for development approval under the Metropolitan Region Scheme. In some cases, these applications are decided by the WA Planning Commission and in other cases a local government has authority to decide 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 if that local government does not accept the advice, the local government is to refer the application, together with any recommendations provided by all bodies consulted, and the reasons why the advice of the Committee was not accepted by the local government, to the Commission for determination. This sub-clause is based upon the amendments made to the Metropolitan Region Scheme in the *Swan Valley Planning Legislation Amendment Act 2006*, following the 2004 review of the *Swan Valley Planning Act 1995*.

Where the advice goes to the WA Planning Commission, the WA Planning Commission must follow that advice unless the Minister approves otherwise.

As with applications for development approvals discussed above, the Committee can determine that particular classes or descriptions of applications need not be referred to it.

Schedule 1

This Schedule sets out the details regarding the Committee. It provides, amongst other things, that members have terms of up to 3 years (with the possibility of further terms each 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.