

# Metropolitan Region Scheme (MRS) and draft Clause 28 Notice of Resolution

## WALGA Response

### 1. Introduction

The Western Australian Local Government Association (WALGA) is an independent, member-based, not for profit organisation representing and supporting the WA Local Government sector. Our membership includes all 139 Local Governments in the State.

WALGA uses its influence, support and expertise to deliver better outcomes for WA Local Governments and their communities. We do this through effective advocacy to all levels of Government on behalf of our members, and by the provision of expert advice, services and support to Local Governments.

WALGA's vision is for **agile and inclusive Local Governments enhancing community wellbeing and enabling economic prosperity**.

WALGA acknowledges the *Planning and Development Amendment (Metropolitan Region Scheme) Bill 2024 (MRS Bill)* passed through State Parliament on the 24 October 2024 and modernises the MRS in line with the more contemporary Peel and Greater Bunbury Region schemes (GBRS).

The updated MRS will streamline the development application process and is supported by Draft Clause 28 Notice of Resolution that stipulates the type of development that will require development approval on zoned land and outlines the decision-making process for these developments.

Department of Planning, Lands and Heritage (DPLH) are seeking comments on the Draft Notice and WALGA's response is informed by direct engagement with Local Governments, previously planning reform submissions and the following WALGA [advocacy position](#):

#### **6.1 Planning Principles and Reform**

1. *The Local Government sector supports an efficient and effective planning system guided by legislation, policy, and processes that:*
  - a) *facilitates the creation of sustainable and liveable communities and places;*
  - b) *has a focus on strategic planning that delivers on long-term objectives and outcomes that balance social, environmental, cultural, and economic interests;*
  - c) *is easy to understand, accessible and transparent;*
  - d) *recognises the diversity of Western Australia and ensures that local environment, context, communities and character are appropriately reflected in planning frameworks and decision making;*
  - e) *ensures decisions are made by the level of government closest to and most impacted by a planning proposal; and*
  - f) *establishes consistent planning frameworks and streamlines planning processes where there is a demonstrated benefit in doing so.*

2. Reforms to the planning system should:

- a) be guided by the above principles;
- b) deliver community benefit;
- c) promote system efficiency, including through the use of technology;
- d) be evidence-based and informed by robust, transparent data;
- e) proceed at an appropriate pace to enable effective implementation;
- f) be informed by engagement with the community; and
- g) be amended only with WALGA involvement and consultation/involvement with Local Government.

## 2. Comments

The MRS was originally gazetted in 1963, was outdated and did not align with the other contemporary region schemes.

WALGA has been advocating for the MRS to be reviewed for several years, with [WALGA's 2025 State Election Priorities](#) requesting the review be expedited to address concerns relating to development approval exemptions and delegation protocols.

WALGA welcomes the comprehensive review and update to the MRS and acknowledges the engagement and consultation DPLH has had with the sector on many of the key elements in the MRS Bill.

### Updated MRS

Comments on some of the key elements of the updated MRS are listed below:

#### *Development Application Requirements*

Most developments within the MRS required dual approval under both the local planning scheme and the MRS, with the majority of decision-making delegated to Local Government.

As the State Administrative Tribunal (SAT) decision in the matter *Shalom Group Inc. and City of Joondalup [2003] WASAT 63*, highlighted where development approval is exempt under the relevant local planning scheme, a separate approval may still be required under the MRS.

The requirement to process dual applications and determine exemptions under the MRS is inefficient and has potential legal risks for Local Governments. This contradicts recent efforts to streamline planning processes and simplify the planning system.

The changes will significantly reduce the number of developments requiring MRS approval on zoned land by reversing this requirement and exempting all development from requiring approval unless otherwise specified through a Western Australian Planning Commission (WAPC) Notice of Resolution.

The requirement for development approval on reserve land is predominately unchanged but the new clauses, modelled on the GBRS, sets out several minor activities that will not require approval.

The requirement for one development application form for applications under the MRS and the local planning scheme is a practical and logical improvement.

These changes will reduce regulatory burdens on Local Governments and create a more efficient and transparent planning process that meets the needs of both stakeholders and the broader community.

#### *Development Application Process*

Part 9 of the MRS sets out the requirements and process for development applications determined by the WAPC, such as development on regional reserve land. The modernised clauses have been modelled on the *Planning and Development (Local Planning Scheme) Regulations 2015*. Further clarification is required on the following:

- Local Governments' role in vetting a development application and supporting information given applications are lodged with the Local Government but determined by the WAPC. The MRS now clarifies the WAPC is responsible for determining if the application and accompanying material are acceptable for assessment and request additional information from the applicant.
- Any updated plans or materials provided as part of the above process should also be provided to the Local Government in timely manner to ensure the Local Government can provide informed recommendations on applications. Further, WAPC should grant reasonable extension of time for Local Governments to consider applications (Clause 37 (3) in these cases.
- Clause 29 (f) (v) notes that works on reserve land in accordance with a management plan endorsed by the WAPC does not require approval. There are currently a range of different management plans and master plan documents. Guidance to developing Management Plans, potentially a manner and form document, could be developed by WAPC.

It is acknowledged the updated MRS may not increase the number of applications determined by WAPC. However, planning reforms in recent years have incrementally eroded Local Governments' role in the planning system, reducing local decision making, and diminishing community confidence and public trust in the planning system.

It is therefore critical that the WAPC processes and determines MRS applications in a transparent manner and engages appropriately with local communities and Local Governments, to ensure its decision making is efficient, effective and accountable.

#### *Other Amendments*

The head of power for a new planning instrument, regional Infrastructure plans, has been introduced. There is limited information on these plans at this stage, but they may include contributions towards infrastructure as a condition of development. It will be critical to consider how these plans interact with Development Contribution Plans (DCP) and structure plans and that they are developed, implemented and managed in an efficient, fair and financially viable manner in accordance with State Planning Policy 3.6 Infrastructure Contributions.

#### Draft Clause Notice 28

Comments on the notice are below:

- *Development abutting ports and railway reservations* - Exemptions for small scale development should apply in the same way as those listed for land abutting regional open space or regional road reserves. The City of Wanneroo notes that many single residential lots adjoin the Yanchep Railway reserve and development on these lots should not warrant approval under the MRS.
- *Non-conforming uses* - No specific State Government referral agency has been listed. Based on the GBRS it is assumed the referral agency will be the WAPC, but this should be clarified in the final version of the notice. Similar exemptions for small scale development should also apply. The City of Cockburn notes that numerous historical non-conforming grouped dwellings in Rural Zones often seek approval for minor additions (i.e. patios) and should not warrant approval under the MRS.
- Further guidance and examples should be provided on how to interpret the exemptions and delegations, to achieve consistency between Local Governments. For example, clarification on 'ancillary and incidental development' on land abutting a regional open space or regional road reservation.

#### Delegations

The draft Clause 28 Notice makes preliminary recommendations on the decision maker for each type of development on zoned land, proposing to delegate many decisions to Local Government.

In accordance with draft '*Flowchart of proposed development approval Metropolitan Region Scheme Bill*' Local Governments will also have delegations to approve development on reserve land which is the case for the Peel and GBRs. No further information on these delegations have been provided at this stage.

It is recommended that decision-making should occur at the appropriate level of Government and delegating low risk applications to Local Government will assist in the timely processing of applications.

The decision making process in Draft Clause 28 Notice reflects the existing MRS delegations ([Del 2022/03 Powers of Local Government Metropolitan Region Scheme](#)). Where Local Government is the decision maker it is required to refer applications to relevant state agencies for advice. If the Local Government does not accept the state agencies' advice, then the application is determined by the WAPC.

There have historically been issues with this process, as advice received from agencies can be vague or general in nature, not provide a recommendation in support of or against a proposal or pose an objection to the proposal that is not founded on planning grounds. This creates confusion for applicants and unnecessary delays. Local Governments should retain the ability to determine applications in these circumstances. Alternatively, the State Referral Co-ordination Unit could assist state agencies to ensure timely and relevant referral comments are provided.

Any instrument of delegation for development on reserve or zoned land should clearly identify the referral agencies and provide a detailed outline of the referral process and Local Government decision making protocols.

### Draft Flowchart of proposed development approval Metropolitan Region Scheme Bill

Comments on the draft flowchart are below:

- The flowchart will provide a useful tool to Local Government officers to determine development application requirements and processes under the MRS. If the flowchart is also intended for the public, to avoid confusion it is recommended a note be included that advises the flowchart only relates to development approval under MRS and not local planning schemes. Applications that do not require approval under the MRS may still require approval under local planning schemes and vice versa.
- Where possible references and links should be given the relevant provisions of the MRS (i.e. Clause 29 Permitted Development on reserve land) and/or WAPC resolutions and notice of delegations similar to [Public Works exemption flowcharts](#).
- Include a note or additional step/s relating to the process Local Government must follow to determine a development application including referral to state government agencies and acceptance (or not) of this advice.

### 3. Conclusion

WALGA appreciates the opportunity to provide comment on the draft Notice 28 Resolution and looks forward to further engagement with the Local Government sector to assist with the MRS implementation and decision-making protocols.

Should you wish to discuss this response, please contact Coralie Claudio, Senior Policy Advisor, Planning at [cclaudio@walga.asn.au](mailto:cclaudio@walga.asn.au) or 9213 2083.