

A guide to approvals and exemptions that apply to proposed public works and development throughout Western Australia

This fact sheet outlines and clarifies the requirements for approval for public works (particularly the exemptions under the *Planning and Development Act 2005*) that can be claimed by bodies when undertaking a public work.

It aims to guide public authorities and planners through the process for obtaining approval for public works throughout Western Australia as well as when Western Australian Planning Commission (WAPC) approval is required to undertake development under a region planning scheme or improvement scheme.

The information replaces Planning Bulletin 94.

What are 'Public works'?

Public works are works authorised by the State for the benefit of the State, including work undertaken by a State Government department, public authority or local government, which are authorised by an Act. Examples include government work on railways, roads, water supply, sewerage, public buildings, public schools and public hospitals.

A full list of public works is included in section 2 of the *Public Works Act 1902* and is expanded by section 4 of the *Planning and Development Act 2005* (the PD Act) to include development in any area to which a *region planning scheme* or *local planning scheme* applies if the development is designated as public work under the scheme.

'Development' is defined in the PD Act to mean 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;*
- (b) *the carrying out on the land of any excavation or other works;*
- (c) *in the case of a place to which a conservation order made under section 59 of the Heritage of Western Australia Act 1990:*
 - 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.*

Types of public works

Public works can include works needed for, or in connection with:

1. railways, tramways, roads, stock routes, viaducts, ferries, or canals
2. supply of water and sewerage services, public wells and water conservation
3. buildings for Parliament or public offices
4. hospitals, medical clinics, hostels and institutions
5. schools, universities, colleges, educational and research facilities
6. parks, gardens, recreation grounds, play-grounds and bathing facilities
7. public housing and residences or hostels for teachers, students, medical staff
8. fire brigade buildings
9. court-houses, gaols, lock-ups and police quarters
10. public libraries, observatory, agricultural halls, mechanics' or miners' institutes
11. public cemeteries
12. improvement of rivers, watercourses, lakes, inlets and channels and protection of foreshores and banks
13. provision of new channels and drainage
14. wharves, piers, jetties and bridges
15. harbours and ports, and associated activities
16. break-waters, leading marks, navigational aids
17. public abattoirs
18. protection and preservation of scientific or historical values; and indigenous flora and fauna
19. quarries for obtaining materials required for public works
20. land (including reclaimed land) for public works.

View full list of public works under Schedule 1 of the *Public Works Act 1902*.

Who can undertake public works?

Various legislation specifies who can carry out public works.

Section 6 of the PD Act provides that nothing in that Act interferes with the right of the Crown, Governor, public authority or local government to undertake, construct or provide any public work; and to take land for the purposes of that public work.

This provision authorises these bodies to undertake a public work or take land for the purposes of a public work without obtaining approval for the works, as is usually required by the relevant local planning scheme.

A **public authority** is defined by section 4 of the PD Act to include a State Minister, a department of the public service, State trading concern, State instrumentality or State public utility, or any other person or body authorised to administer or carry on a social service or public utility for the benefit of the State.

A Public Authority

A body that falls within the definition of 'public authority' in section 4 of the PD Act is a public authority for the purpose of section 6 of the PD Act and is deemed to be a public authority. A public authority includes:

- a corporation authorised by an Act to carry out works for a public utility for the benefit of the State (for example, Western Power); and
- a private corporation undertaking a public work as part of a joint venture, private-public sector partnership with a government department, or under a contract with a public authority.

The term public authority is used in all local planning schemes, the three region planning schemes and in **improvement schemes**. Region planning schemes and improvement schemes bind the Crown (that is, all section 6 bodies except local government); therefore, public authorities do not have the power to do public works without approval required by these schemes. (Refer to section 5(2) and 5(3) of the PD Act.)

Powers given to bodies by section 6 of the PD Act do not remove any requirement to obtain approvals under other legislation. Public authorities should not assume that an exemption from the building requirements also applies.

What approvals and exemptions apply to public works?

Local planning schemes, region schemes and improvement schemes generally require most development to be approved prior to commencement. However, some public works may be exempt from this requirement in some schemes.

Where works by a public authority are not exempt under a scheme, a development application is required, with the normal approvals process to be followed.

Approval requirements under local planning schemes

Under a local planning scheme, section 6 bodies carrying out a public work **do not need approval** to commence development. However, they must comply with the requirements of section 6(2) and (3) of the PD Act by having due regard to:

- the purpose and intent of any planning scheme that has effect in the locality where, and at the time when, the right is exercised; and*
- the orderly and proper planning, and the preservation of the amenity, of that locality at that time; and*
- any advice provided by the responsible authority in the course of the consultation required under subsection (3) in respect of the exercise of the right.*

If a section 6 body undertakes a public work without consulting the relevant responsible authority, then it has breached the requirements of the PD Act.

Where a local planning scheme applies, the responsible authority is the local government.

Approval requirements under region planning schemes / improvement schemes

Region planning schemes and improvement schemes may require all section 6 bodies except local government) to **apply for approval** to commence development, including public works, because the schemes bind the Crown. (Refer to section 5(2) and 5(3) of the PD Act)

Where a proposal is on a region scheme reserve or where an improvement scheme applies, the responsible authority is the WAPC.

When a section 6 body is required to make an application to the WAPC for development approval for a public work under a region planning scheme or improvement scheme, the WAPC expects that consultation will have occurred between the body and the local government, as required under

section 6(2) and (3) of the PD Act. Advice of this consultation can be provided, along with the comments on the proposal, when the relevant local government forwards the application to the WAPC for determination.

Some minor works may not meet the threshold for 'development' and do not require approval under the *Metropolitan Region Scheme (MRS)*. A section 6 body that is unsure if works it proposes require approval under the MRS should liaise with the WAPC to determine if development approval is required for those works.

Public works exemptions under region planning schemes

Exemption from the requirement to obtain approval to commence development for public works by a public authority varies between region planning schemes and depends on if the land is zoned or reserved by those schemes.

View Exemptions for Metropolitan Region Scheme, *Peel Region Scheme* and *Greater Bunbury Region Scheme* on the table overleaf.

Public works exemptions for local governments

Local governments are not part of the Crown and so **do not** need to obtain approval under region planning schemes and improvement schemes when undertaking public works. Sections 5(2) and 5(3) of the PD Act do not apply to local governments.

Local governments must still comply with the requirements of section 6(2) and (3) of the PD Act to:

- have due regard to the purpose and intent of the region planning scheme or improvement scheme
- have due regard to the orderly and proper planning and the preservation of the amenity of that locality
- consult the WAPC to ensure that the public work will comply with section 6(2).

Further information

Email planningenquiries@dplh.wa.gov.au or phone (08) 6551 0002 with general queries about public works.

Contact the relevant local government for queries about specific proposals.

Links

Structure of Western Australian government sector

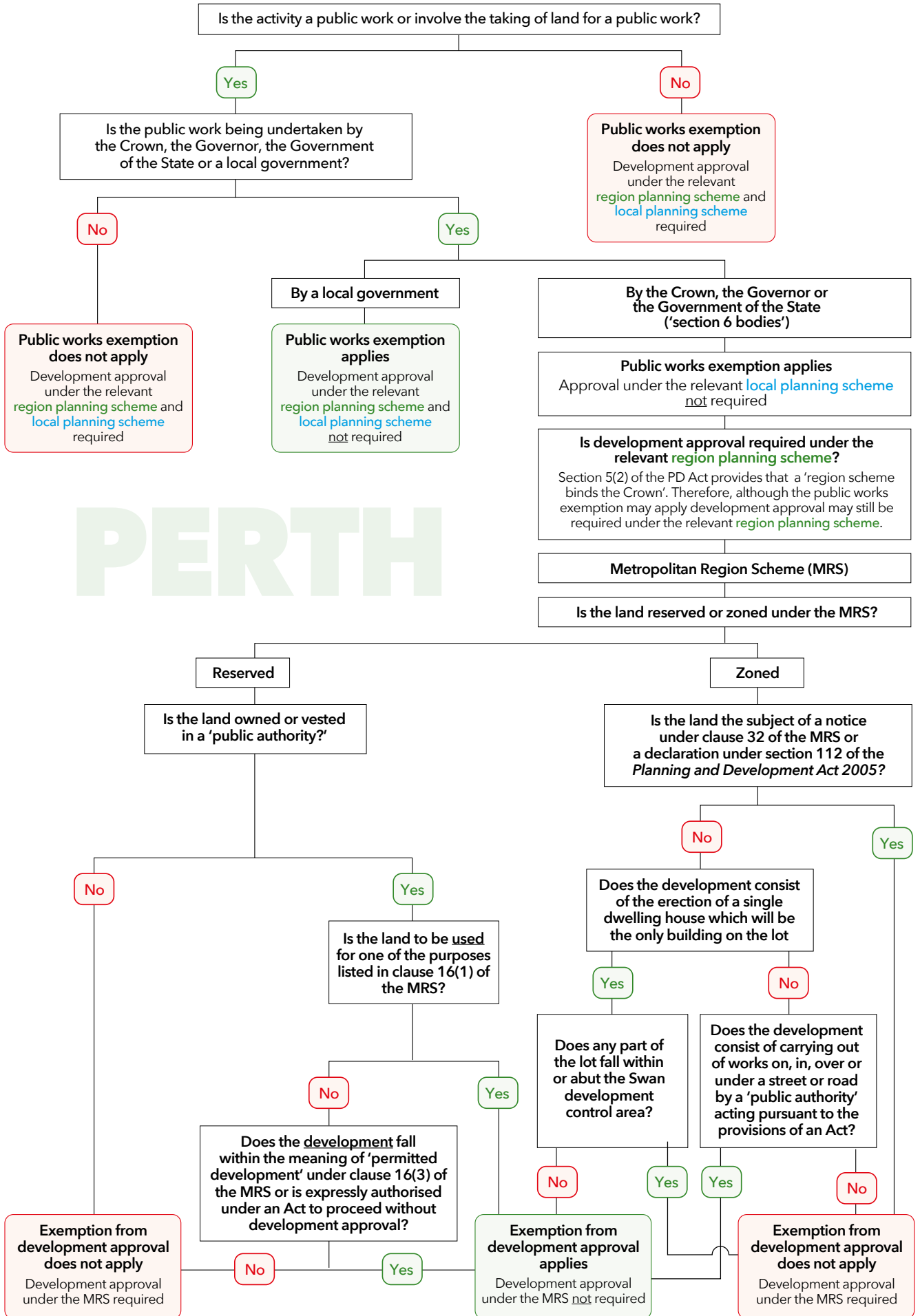
Public Works Act 1902

	Metropolitan Region Scheme (MRS)	Peel Region Scheme (PRS)	Greater Bunbury Region Scheme (GBRS)
Reserved land	<p>Approval is not required for the use of reserved land that is owned by or vested in a public authority and that public authority is proposing to use the land for:</p> <ul style="list-style-type: none"> the purpose for which it is reserved under the Scheme any purpose for which it was lawfully used before the coming into force of the Scheme any purpose for which the land may be lawfully used by the public authority. <p>Approval is not required for development undertaken by a public authority on reserved land owned by or vested in a public authority, where the development is:</p> <ul style="list-style-type: none"> permitted and does not involve the clearing of regionally significant bushland in a Bush Forever area expressly authorised under an Act to be commenced or carried out without the approval of the WAPC. <p style="text-align: center; color: green;">(refer to MRS clause 16 (1) and 16 (1a))</p> <p>In most other circumstances, approval for public works by a public authority is required from the WAPC.</p> <p>Applications for development are determined by the WAPC or the relevant local government under authority delegated from the WAPC in accordance with the relevant Instrument of Delegation.</p> <p>Instrument of Delegation - Del 2017/02 Powers of Local Governments and Department of Transport (MRS) (as amended).</p> <p>Permitted development includes:</p> <ul style="list-style-type: none"> works on land reserved for Primary Regional Roads or Other Regional Roads for the purposes of or in connection with a road within the meaning of the <i>Main Roads Act 1930</i> works on land reserved for Port Installations for the purpose of or in connection with a port 	<p>Approval is not required for the use of reserved land that is owned by or vested in a public authority and that public authority is proposing to use the land for:</p> <ul style="list-style-type: none"> the purpose for which it is reserved under the Scheme any purpose for which it was lawfully used before the coming into force of the Scheme any purpose for which the land may be lawfully used by the public authority. <p>Approval is required for development except where the land is owned by or vested in a public authority, and the development comprises:</p> <ul style="list-style-type: none"> works on land reserved for Primary Regional Roads or Other Regional Roads for the purpose of or in connection with a road within the meaning of the <i>Main Roads Act 1930</i> works for the purpose of, or in connection with, the supply of water or wastewater services, electricity or gas, or the drainage of surplus water or treatment of water, wastewater or surplus water works on land reserved for Railways, or for Primary Regional Roads or Other Regional Roads, for the purpose of or in connection with a railway, but this does not include the construction or alteration of a railway station or any related carparks, public transport interchange facilities, or associated means of pedestrian or vehicular access works on land reserved for regional open space where the works are in accordance with a management plan endorsed by the WAPC works on land reserved for Public Purposes - High School for the purpose of or incidental to a high school operational works on land reserved for State Forests for the purpose of or incidental to a State Forest 	<p>Approval is not required for the use of reserved land that is owned by or vested in a public authority and that public authority is proposing to use the land for:</p> <ul style="list-style-type: none"> the purpose for which it is reserved under the Scheme any purpose for which it was lawfully used before the coming into force of the Scheme any purpose for which the land may be lawfully used by the public authority. <p>Approval is required for development except where the land is owned by or vested in a public authority or is reserved for port installations and the works are for the purpose of or in connection with a port, and the development comprises:</p> <ul style="list-style-type: none"> works on land reserved for Primary Regional Roads or Other Regional Roads for the purpose of or in connection with a road within the meaning of the <i>Main Roads Act 1930</i> works for the purpose of, or in connection with, the supply of water or wastewater services, electricity or gas, or the drainage of surplus water or treatment of water, wastewater or surplus water works on land reserved for Railways, or for Primary Regional Roads or Other Regional Roads, for the purpose of or in connection with a railway, but this does not include the construction or alteration of a railway station or any related carparks, public transport interchange facilities, or associated means of pedestrian or vehicular access works on land reserved for regional open space where the works are in accordance with a management plan endorsed by the WAPC works on land reserved for Public Purposes - High School for the purpose of or incidental to a high school

APPROVALS AND EXEMPTIONS FOR PUBLIC WORKS

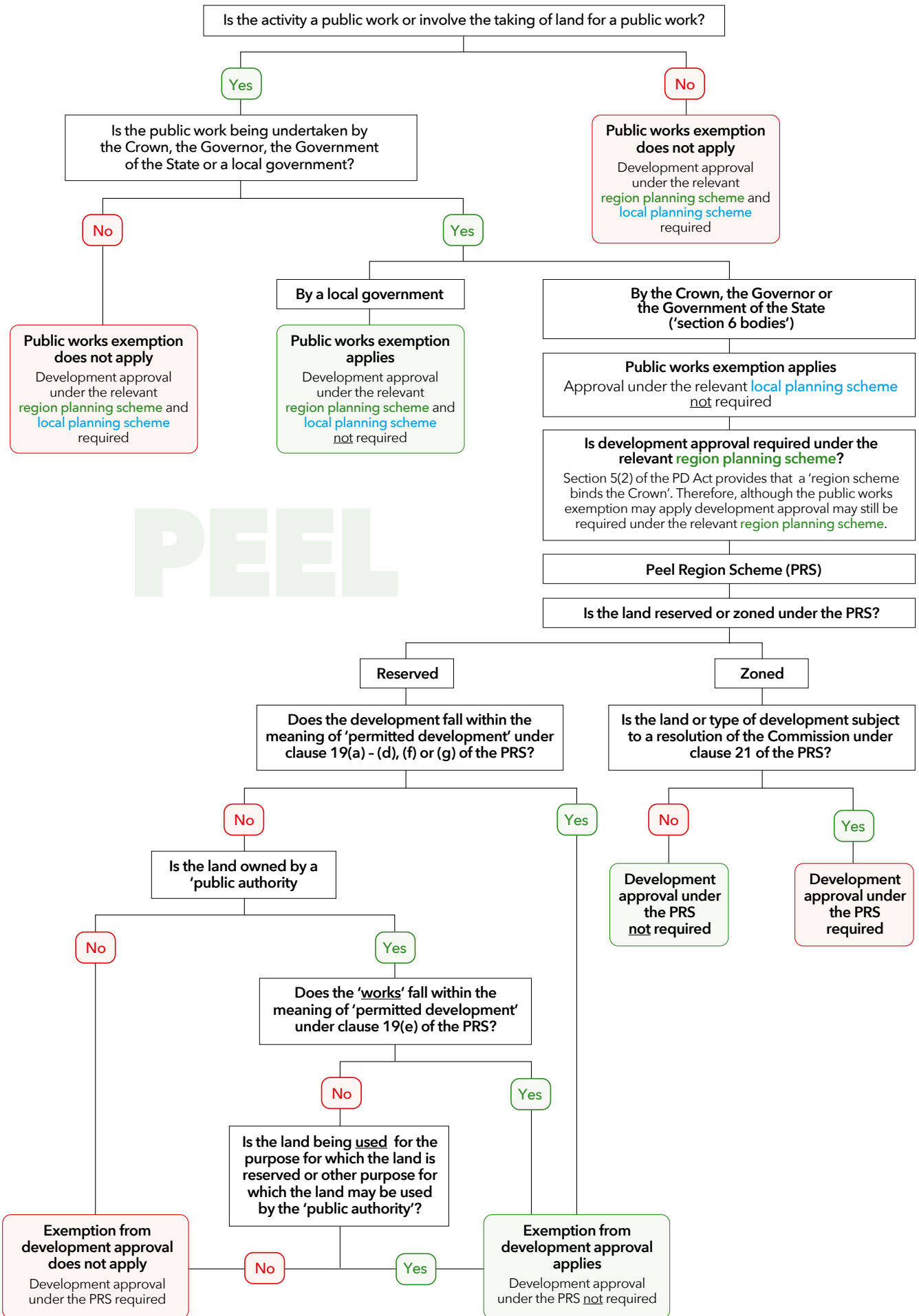
	Metropolitan Region Scheme (MRS)	Peel Region Scheme (PRS)	Greater Bunbury Region Scheme (GBRS)
Reserved land (cont.)	<ul style="list-style-type: none"> works for the purposes of or in connection with the supply of water, electricity or gas, or the drainage or treatment of waste, water or sewerage works on land reserved for Railways for the purpose of or in connection with a railway, but this does not include the construction or alteration of a railway station or any related car parks, public transport interchange facilities, or associated means of pedestrian or vehicular access works on land reserved for Parks and Recreation where the works are in accordance with a management plan endorsed by the WAPC works on land reserved for Public Purposes – High School for the purpose of or incidental to a high school operational works on land reserved for State Forests for the purpose of or incidental to a State Forest. 	<ul style="list-style-type: none"> development that a public authority is expressly authorised under an Act to commence or carry out without the approval of the WAPC. (refer to PRS clauses 19 and 20) <p>Applications for approval of public works development are determined by the WAPC, except for the following, which are determined by local government under authority delegated from the WAPC:</p> <ul style="list-style-type: none"> applications for development on land in a Regional Road reservation where the local government accepts the advice and/or recommendation of the advice agency applications for development of private jetties and associated facilities located in an artificial waterway in the waterways reservation applications for planning approval required pursuant to the resolution of the WAPC under Clause 21 of the PRS in respect of development on zoned land abutting Regional Roads reservations under the PRS. 	<ul style="list-style-type: none"> operational works on land reserved for State Forests for the purpose of or incidental to a State Forest development that a public authority is expressly authorised under an Act to commence or carry out without the approval of the WAPC. (refer to GBRS clause 26) <p>Applications for approval of public works development are determined by the WAPC except for the following, which are determined by local government under authority delegated from the WAPC:</p> <ul style="list-style-type: none"> applications for development on land in a Regional Road reservation where the local government accepts the recommendation and any advice of the advice agency applications for development of private jetties and associated facilities located in an artificial waterway in a waterways reservation applications for development on reserved land, which requires planning approval under the GBRS and which is – <ul style="list-style-type: none"> (a) ancillary and incidental development that does not conflict with the purposes of the reservation (b) development where the local government accepts the recommendation and any advice of the public authority responsible for that reserved land applications for any extension and/or change to a non-conforming use which requires planning approval under the GBRS and which is one or more of the following kinds – <ul style="list-style-type: none"> (a) development where the local government accepts the recommendation and any advice of the Department of Planning, Lands and Heritage (b) development for which the local government decides to refuse.

	Metropolitan Region Scheme (MRS)	Peel Region Scheme (PRS)	Greater Bunbury Region Scheme (GBRS)
Zoned land	<p>Approval is not required for development if:</p> <ul style="list-style-type: none"> the land is not the subject of a notice under Clause 32 of the MRS or declaration under section 112 of the PD Act <p>and</p> <ul style="list-style-type: none"> the development consists of: <ul style="list-style-type: none"> the erection of a single dwelling house that will be the only building on the lot, no part of which lot is within the Swan development control area or abuts any part of the Swan development control area the carrying out of any works on, in, over or under a street or road by a public authority acting pursuant to the provisions of any Act. <p>If these limited circumstances do not apply, then the public authority is required to make an application for approval under the MRS.</p> <p style="text-align: right;">(refer to MRS clause 24)</p> <p>Applications for public works development are determined by the WAPC. If the development is not a public work, then the application will be determined by the local authority under authority delegated by the WAPC.</p> <p>(Instrument of Delegation - Del 2017/02 Powers of Local Governments and Department of Transport MRS)</p> <p>Public works exemption flowchart</p>	<p>Approval is not required for development unless the class of development is specified in a Clause 21 resolution.</p> <p style="text-align: right;">(refer to PRS Clause 21)</p> <p>Public works exemption flowchart</p>	<p>Approval is not required for development unless the class of development proposed is specified in a clause 27 resolution.</p> <p style="text-align: right;">(refer to GBRS Clause 27)</p> <p>Applications for approval of public works development are determined by the WAPC except for the following, which are determined by local government under authority delegated from the WAPC:</p> <ul style="list-style-type: none"> applications for development on zoned land abutting a regional open space reservation, regional roads reservation, port installations, public purposes reservation, railways reservation, state forests reservation or waterways reservation applications for development on zoned land in a water catchments special control area applications for development on zoned land adjacent to or in close proximity to the strategic agricultural resource policy area applications for development on zoned land adjacent to or in close proximity to the strategic minerals and basic raw materials resource policy areas applications for development on land partly or wholly within the land subject to the floodplain management policy area applications for development in an Activity Centre applications for development on land in the rural zone, other than for animal husbandry-intensive, which may not be consistent with the purposes of the rural zone applications for development for an animal husbandry-intensive premises, or for any extension or addition in excess of 100m² to the improvements of an existing animal husbandry-intensive premises applications for any extension and/or change to a non-conforming use. <p>Public works exemption flowchart</p>



PERTH

APPENDIX 1 - PUBLIC WORKS EXEMPTION FLOWCHART
(PEEL REGION SCHEME)



APPENDIX 1 - PUBLIC WORKS EXEMPTION FLOWCHART
(GREATER BUNBURY REGION SCHEME)

