



PLANNING BULLETIN • WESTERN AUSTRALIA

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Residential leasehold estates and developments

1 Purpose

The purpose of this planning bulletin is to:

- clarify the obligations of the Western Australian Planning Commission (WAPC) in respect of determination of proposals for long term leases of land and buildings;
- to advise of relevant planning considerations in respect of residential leasehold estates and developments; and
- seek comment from the public, industry and local government concerning relevant issues and the WAPC's policies and practices.

2 Background

Recently there has been a rise in the popularity of residential leasehold estates and developments. The term "lifestyle village" has been used for such estates and developments.

While the WAPC supports choice of housing and accommodation types in order to match housing supply with needs, such proposals raise planning issues for consideration of the WAPC and local governments.

In December 2004, the WAPC arranged a forum of stakeholders including industry, local government and other interested parties to discuss these issues. At that forum, there was consensus that the WAPC should clarify the statutory framework for its consideration of long term leases and consult further in respect of relevant planning policies and practices, and this planning bulletin has been prepared for that purpose.

3 Assessment of leases

Under the *Town Planning and Development Act 1928* (the Act), the WAPC is responsible for consideration and determination of applications to subdivide land or lease land for a long-term.

Long-term leases may be tantamount to de facto subdivision. For this reason, the WAPC has regard to similar criteria to the consideration of applications for approval to lease as it applies to applications for approval to subdivide. The WAPC's Development Control Policy 1.1: Subdivision of land, sets out general principles in this regard.

Consistent with established policies and practices, an application for approval to lease a larger scale area for residential purposes may raise planning issues including:

- suitability of location, including relationship with existing and proposed land use and development in the locality;
- permeability and public access, including gazetted public roads or accessways if appropriate, for vehicles, pedestrians, management and emergency purposes;
- the provision and arrangement of private and public open space;
- provision of, or development contributions for, required infrastructure;
- service provision;
- orderly and proper planning; and
- amenity of the locality.

These issues may be particularly pertinent in applications for approval to lease for land zoned urban. On land zoned rural under a region or town planning scheme, the WAPC will not ordinarily support a proposal

for leases for residential purposes, other than in respect of an existing dwelling.

In urban release areas especially, a local structure plan is normally required to provide a context for the arrangement of land uses and development and the subdivision of land and, where necessary, rezoning amendments to local government town planning schemes. For this reason, if the scale of a leasing proposal is such that it raises planning issues, the WAPC may require preparation of a local structure plan prior to consideration or approval of the proposal.

4 Term of leases

Part III of the Act sets out the requirement for the WAPC to consider proposals for long term leases, as follows:

- land for terms exceeding 10 years; and
- buildings for terms exceeding 21 years.

Some leases proposed in the past have been expressed to be for the term of the lessee's lifetime and have defined 'lessee' to include the original tenant as well as assignees. For clarity and in order not to prejudice the long-term planning of a locality, including for redevelopment, it is desirable that the expiry date of a lease is specified at the commencement of the agreement.

Moreover, especially in proposals involving a larger number of leases, it is appropriate in order to facilitate future planning of a locality that the periods of individual leases are synchronised so that they all have the same end date.

Accordingly, except in respect of retirement village schemes under the *Retirement Villages Act 1992*, the WAPC will:

- not approve leases for which the expiry date is not clearly specified; and
- where appropriate, require terms of individual leases that are part of a larger lifestyle village development to be synchronised so that each lease shares the same end date.

For **residential leases** it is considered that a maximum period of 60 years should not be exceeded.

For **commercial leases** a longer period may be entertained, but in excess of 99 years should be avoided.

5 Development control

Approval to a lease is not a development approval, which is separately required from a local government under its operative town planning scheme. WAPC development approval under a region scheme may also be separately required.

In exercising development control under a region scheme, the WAPC and local government must consider:

- The purpose for which the land is zoned or reserved under the scheme. In particular, proposals for residential use and development should not be approved on rural zoned land (an operative clause 32 resolution under the Metropolitan Region Scheme requires local governments to forward to the WAPC for its determination any development which may not be consistent with the rural zone);
- consistency with any adopted or proposed structure planning for a locality;
- consistency with relevant WAPC policies, including those set out by planning bulletin no. 49;
- the orderly and proper planning of the locality; and

- the preservation of the amenities of the locality.

Proponents seeking development approval of major proposals prior to seeking the WAPC's approval to a lease for land or a building should consult with planning officers of the relevant area team or regional office of the Department for Planning and Infrastructure, prior to finalising a proposal, for advice on the WAPC's requirements or conditions that may be affixed to an approval to lease.

The nature of a proposal may raise particular planning issues requiring consideration by the local government or WAPC. For example, a proposal that is intended to accommodate retirees or aged persons should be accessible by public transport and should provide disabled access.

6 Related issues

Similar planning issues arise in relation to caravan parks. The WAPC's planning bulletin no. 49 provides advice on matters that should be taken into consideration in planning for the development of caravan parks with both long-term and short-term accommodation. One of its key planning objectives is:

"to encourage development of caravan parks in a manner which is compatible with existing land uses, and which does not have a detrimental impact on the environment or the amenity of the locality"

Planning bulletin no. 49 states further that:

"caravan parks which are principally designed for permanent residents should be assessed in the same way as conventional residential development"

7 Effect of WAPC's approval

Concerns have been expressed that representations are being made to potential lessees that the WAPC's approval to a class of lease provides security of tenure. The WAPC's approval to a lease for land or a building is made on the basis of planning considerations and does not of itself confer security of tenure.

The WAPC's approval also does not imply that approval to subdivide the subject land along the lines of the approved leases would necessarily be forthcoming. Importantly, as noted above, approval to a lease is not a development approval, which is separately required from a local government under its operative town planning scheme. WAPC development approval under a region scheme may also be separately required.

The WAPC does not conduct any assessment of the financial capacity of a company or person proposing a lease to carry out or operate the proposal the subject of the lease, and does not consider the contents of any agreement or contracts between operators and occupants of a proposal the subject of a lease, other than in relation to the planning aspects noted above. Prospective lessees and occupiers should conduct their own enquiries in this regard.

Lifestyle villages are not strata-titled and are not retirement village schemes under the *Retirement Villages Act 1992*. The *Residential Tenancies Act 1987* (RT Act) governs the rights and responsibilities of a lessor/operator with regard to a resident lessee. That Act also applies to sites at caravan parks licensed under the *Caravan Parks and Camping Grounds Act 1995*. As stated, as typical agreements between the operator of the lifestyle village and the resident/lessee are not for a fixed term, section 64 of the RT Act provides that "an owner may give notice of termination ... without specifying any ground".

The Government introduced legislation in November 2004 to provide greater certainty for people

who live in residential parks, caravan parks and lifestyle villages. The legislation however could not be passed before the end of the parliamentary year and will need to be re-introduced.

In December 2004 interim regulations under the existing RT Act were also modified to provide for:

- park operators being required to give 120 days notice to vacate residents (without a reason) which is increased from the previous 60 days; and
- park operators being required to give not less than 60 days notice if they are selling the property, an increase from the previous 30 days.

Further enquiries in relation to these changes should be directed to the Department of Consumer and Employment Protection. Comments and enquiries should quote file reference number 21960 and be directed to:

Policy Project Officer
Consumer Protection Policy
Department of Consumer and
Employment Protection
Locked Bag 14
Cloisters Square
PERTH WA 6850

9 Comment and further information

Comments concerning policies and practices set out in this planning bulletin are invited by 29 April 2005 and should be directed to:

A/Director
Policy and Legislation
Department for Planning and
Infrastructure
Albert Facey House
469 Wellington Street
PERTH WA 6000

referring to this planning bulletin and quoting file reference 855/1/1/2 P83.

Following consideration of comments received, the WAPC will refine and finalise its policies and practices concerning long-term leases of land and buildings and in particular in respect of residential leasehold estates and developments.

8 Review

If the WAPC refuses to approve an application for a lease, or grants approval subject to conditions, an applicant has a right of review by the State Administrative Tribunal (SAT) of the WAPC's decision, in accordance with part v of the Act. Similar rights of review arise in relation to decisions concerning development applications. Such applications for review must be lodged with the Tribunal within 28 days of the WAPC's decision and in accordance with the rules and regulations of the Tribunal. Applicants considering making such an application for review should consult the Tribunal and if necessary a legal practitioner or other appropriate professional in relation to commencement and conduct of a review.

INTERNET

As part of its continuing improvements to its service to clients and the public, the Western Australian Planning Commission has a website at the following address:

www.wapc.wa.gov.au

The site contains a range of information concerning the WAPC, including Planning Bulletins.