



SHIRE OF WILLIAMS

AMENDMENT 21

SHIRE OF WILLIAMS TOWN PLANNING SCHEME NO 2



**PLANNING AND DEVELOPMENT ACT 2005
RESOLUTION DECIDING TO AMEND A LOCAL PLANNING SCHEME**

**SHIRE OF WILLIAMS
TOWN PLANNING SCHEME NO 2**

AMENDMENT NO 21

Resolved that the local government, in pursuance of Section 75 of the *Planning and Development Act, 2005* amend the above local planning scheme by:

1. In 'Schedule 2 – Interpretations';
 - (i) deleting the definition for 'industry' and inserting the 'industry' definition from the Model Provisions;
 - (ii) inserting a definition for 'renewable energy facility' from the WAPC Position Statement on Renewable Energy Facilities as follows:

renewable energy facility means premises used to generate energy from a renewable energy source and includes any building or other structure used in, or relating to, the generation of energy by a renewable resource. It does not include renewable energy electricity generation where the energy produced principally supplies a domestic and/or business premises and any on selling to the grid is secondary;

The Amendment is basic under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reason(s):

- (i) The amendment is consistent with the Model Provisions;
- (ii) The amendment is consistent with a WAPC Position Statement.

Dated this 16th day of August 2023

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CHIEF EXECUTIVE OFFICER

PROPOSAL TO AMEND A LOCAL PLANNING SCHEME

1. **Local Authority:** Shire of Williams
 2. **Description of Scheme:** Town Planning Scheme No 2
 3. **Type of Scheme:** Local
 4. **Serial No. of Amendment:** Amendment No. 21
 5. **Proposal:**
 1. In 'Schedule 2 – Interpretations'; deleting the definition for 'industry' and inserting the 'industry' definition from the Model Provisions;
 2. Inserting a definition for 'renewable energy facility' from the WAPC Position Statement on Renewable Energy Facilities
 6. **Type of Amendment** Basic
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SCHEME AMENDMENT REPORT

1.0 INTRODUCTION / BACKGROUND

The purpose of this amendment is to replace the existing 'Industry' interpretation contained in 'Schedule 2 – Interpretations' of the Shire of Williams Town Planning Scheme No 2 ('the Scheme') with the 'Industry' definition contained in Clause 38 of the Deemed Provisions in the *Planning and Development (Local Planning Schemes) Regulations 2015*.

The amendment also seeks to introduce a definition for 'renewable energy facility' from the WAPC Position Statement on Renewable Energy Facilities.

2.0 BACKGROUND

2.1 Definitions

The Scheme has an existing Industry definition as follows -

'industry: means the carrying out of any process in the course of trade or business for gain, for and incidental to one or more of the following:

- a) the winning, processing or treatment of minerals;
- b) the making, altering, repairing, or ornamentation, painting, finishing, cleaning, packing, or canning or adapting for sale, or the breaking up or demolition of any article or part of an article;
- c) the generation of electricity or the production of gas;

- d) the manufacture of edible goods, and includes, when carried out on land upon which the process is carried out and in connection with that process, the storage of goods, any work of administration or accounting, or the wholesaling of goods resulting from the process, and the use of land for the amenity of persons engaged in the process; but does not include:
 - i) the carrying out of agriculture,
 - ii) site work on buildings, work or land,
 - iii) in the case of edible goods the preparation of food for sale from the premises,
 - iv) panel beating, spray painting or motor vehicle wrecking.
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3.0 PROPOSED AMENDMENT

3.1 Introduction

Renewable energy facilities in Western Australia are principally wind turbine and solar array systems. Over the last few years there has been an increase in renewable energy facility proposals in Western Australia.

Due to the cost of development, some development applications for renewable energy facilities go through the Development Assessment Panel (DAP) system rather than be determined by the local government.

The Western Australian Planning Commission has a Position Statement on Renewable Energy Facilities (March 2020) which outlines assessment measures to facilitate appropriate development of renewable energy facilities.

The Shire of Williams is pursuing this amendment so there is more flexibility in their Scheme to consider applications for renewable energy facilities.

3.2 Existing Issue for Renewable Energy Proposals

Part of the planning assessment for any development application involves determining which land use definition from the Scheme 'best fits' the proposal.

Table 1 in the Shires Scheme lists land uses in a table format with different symbols listed under different zones. The symbols in Table 1 outline the permissibility of land uses in different zones.

Where a land use is not defined in the Shires Scheme, and is not listed under Table 1, the Shire of Williams Council has discretion to consider the proposal as a 'use not listed'. Any 'use not listed' is considered in accordance with the objectives of the relevant zone.

Any application for a renewable energy facility (such as a wind or solar farm) in the Shire of Williams could not be processed as a 'use not listed' for the following reasons:

1. A land use can only be considered as a 'use not listed' if that land use does not reasonably fall under any land use already listed in Table 1 (and defined in the Scheme).
2. A wind or solar farm, by its very nature, generates electricity. This means that it would fall under the 'industry' definition under Schedule 1 of the Scheme. As outlined in the 'legislative requirements' of this report, the 'industry' definition specifically includes 'the generation of electricity'.

Whether a wind farm or solar farm is construed as a 'general industry' or a 'light industry' is somewhat immaterial, as both types of industries are not permitted in a Rural zone under Table 1 below;

TABLE 1 - ZONING TABLE

		RESIDENTIAL	RURAL RESIDENTIAL	COMMERCIAL	INDUSTRIAL	RURAL
15	industry - general	X	X	X	AA	X
16	industry - light	X	X	X	P	X

Under the current Scheme provisions, Council (or a Development Assessment Panel) has no discretion to consider a wind or solar farm in the Rural zone.

3.3 Change of Industry Definition

The existing 'Industry' definition in the Scheme is outdated. There is a modern definition for 'Industry' in the 'Model provisions for local planning schemes' contained in the *Planning and Development (Local Planning Schemes) Regulations 2015* as follows:

'industry' means premises used for the manufacture, dismantling, processing, assembly, treating, testing, servicing, maintenance or repairing of goods, products, articles, materials or substances and includes facilities on the premises for any of the following purposes —

- (a) the storage of goods;
- (b) the work of administration or accounting;
- (c) the selling of goods by wholesale or retail;
- (d) the provision of amenities for employees;
- (e) incidental purposes'

This amendment proposes to introduce a more current 'industry' definition, which will ensure that wind or solar farms are longer classified as an 'industry'.

3.4 New Renewable Energy Facility Definition

The Scheme does not currently contain any definition specifically tailored to renewable energy facilities.

The Western Australian Planning Commission's Position Statement on Renewable Energy Facilities (March 2020) includes the following definition:

renewable energy facility means premises used to generate energy from a renewable energy source and includes any building or other structure used in, or relating to, the generation of energy by a renewable resource. It does not include renewable energy electricity generation where the energy produced principally supplies a domestic and/or business premises and any on selling to the grid is secondary;

This amendment will introduce the above definition in the Shires Scheme. This means any proposed renewable energy facility will be able to be processed as a 'use not listed' in accordance with Clause 4.3.2 of the Scheme.

3.5 Future Guidelines for Wind Farms

The Shire has developed a Draft Fact Sheet on wind farms for the general public – Attachment 1. The Fact Sheet explains the current Scheme, makes reference to this amendment, the different determining authorities and general information on wind farms.

Separate to this amendment, the Shire is also progressing a Local Planning Policy on wind farms, to provide greater guidance on the Shire Councils position, and to encourage early engagement between wind farm proponents and the local community.

A copy of the Draft Policy is included as Attachment 1. The Policy is only in Draft form, is subject to advertising/community feedback, and may be subject to future changes.

Whilst the amendment will also give Council (or a DAP) greater discretion to consider renewable energy facilities, it should be noted that any development application would still be assessed having regard for normal planning considerations such as public comments, visual amenity, noise, buffers etc

4.0 Conclusion / Justification of Amendment

The amendment is a minor text change which effectively ensures that the 'Industry' interpretation in the Scheme is consistent with the Model Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

The amendment also introduces a definition for 'renewable energy facility' which is consistent with the Western Australian Planning Commission's Position Statement on Renewable Energy Facilities (March 2020).

ATTACHMENT 1

DRAFT FACT SHEET ON WIND FARMS



SHIRE OF WILLIAMS

FACT SHEET – WIND FARMS

1.0 INTRODUCTION

This Fact Sheet provides general information on wind farms, existing and proposed statutory controls, and the different avenues for wind farm applications.

2.0 OVERVIEW OF THE SHIRE OF WILLIAMS TOWN PLANNING SCHEME NO 2

Under the current provisions of the Shire of Williams Town Planning Scheme No.2 ('the Scheme'), it is the Shires view that Council (or a Development Assessment Panel) has no discretion to consider a wind farm in the 'Rural' zone of the Shire.

This is because the Scheme contains a definition of 'industry' which includes '*the activity of generation of electricity*'. An 'industry' activity is not permitted in the 'Rural' zone.

The Shire is pursuing an amendment to the Scheme to align the definition for 'industry' with the 'model provisions' of the *Planning and Development (Local Planning Schemes) Regulations 2015* which will allow a wind farm development to be considered as a 'use not listed'. A 'use not listed' is a use that is not listed in Table 1 of the Scheme.

4.0 OVER VIEW OF DETERMINING AUTHORITIES

4.1 Shire Role

The Shire can determine applications where the estimated cost is less than \$10 million. Where the Shire is not the determining authority, it would still be consulted about any application.

4.2 Development Assessment Panel

Where the estimated cost is more than \$10 million, it is mandatory for the application be determined by a Development Assessment Panel (DAP). Where the estimated cost is between \$2 million and is less than \$10 million, the applicant can opt to have the application determined by a DAP.

Given the cost of wind farm developments, applications for development approval will likely to be determined by a Development Assessment Panel.

A Development Assessment Panel (DAP) is an independent decision-making body comprised of technical experts and two elected local government members. These panels determine development applications made under town planning schemes, in the place of the Shire Council.

4.3 State Development Assessment Unit (SDUA)

The State Development Assessment Unit (SDAU) is a team of planners who assess significant development proposals on behalf of the Western Australian Planning Commission (WAPC).

To be considered a significant development, proposals must have an estimated value of \$20 million or more.

Applications lodged under this pathway are processed by the SDUA, advertised by the SDUA, and determined by the Western Australian Planning Commission.

5.0 COMMUNITY INVOLVEMENT

Whether an application is determined by the Shire, a DAP or the SDUA, the community is involved in the planning process through a formal public advertising process.

Members of the community can lodge submissions on wind farm proposals, which will be taken into account as part of the decision making process.

The Shire has developed a Local Planning Policy on Wind Farms which seeks to strengthen pre-lodgement community engagement by wind farm proponents.

Meetings held by the determining authority (Shire, DAP or SDUA) are all open to the public, and any person can seek approval to make a deputation at these meetings.

6.0 STATE PLANNING POSITION STATEMENT

The Department of Planning, Lands and Heritage and the Western Australian Planning Commission published a *Position Statement: Renewable Energy Facilities – March 2020*.

The Position Statement identifies issues that need to be considered such as early community consultation, environmental impact, visual impact, noise impact, public and aviation safety, heritage, construction impact and distances to sensitive land uses.

Any determining authority has to consider a wide range of planning issues for any proposed wind farm, including the issues outlined in the WAPC Position Statement.

7.0 SHIRE OF WILLIAMS LOCAL PLANNING POLICY ON WIND FARMS

It is recognised that wind farm proposals can be significant, and some applications may attract controversy. The Shire has developed a Local Planning Policy to provide additional guidance on the Shires policy position on wind farms.

ATTACHMENT 2

DRAFT LOCAL PLANNING POLICY



SHIRE OF WILLIAMS LOCAL PLANNING POLICY – WIND FARMS

1.0 PURPOSE

Under the Shire of Williams Town Planning Scheme No. 2 ('the Scheme'), planning approval is required for any proposed wind farm. The Policy sets out the Council's position on wind farms, and is particularly relevant to the Rural zone.

It should be noted that the Local Planning Policy is a guide for the exercise of discretion. The Shire of Williams Council will have significant due regard to the Policy requirements in the assessment of any new planning application.

2.0 OBJECTIVES

- To protect continued traditional agricultural, other food production activities, and tourism uses;
- To reduce the amenity impact of wind farms by ensuring a satisfactory minimum distance from sensitive land uses;
- To decrease the visual impact of wind farms to by implementing a minimum distance to neighbouring lot boundaries;
- To minimise or avoid any potential impact on the natural environment, flora and fauna;
- To achieve wind farm layouts which do not compromise the safety of the local community, aviation activities, or continuation of activities occurring on nearby and adjacent land.
- To ensure that the local community is engaged in the early stages of wind farm planning, by the proponent.
- To protect areas of visual significance, and ensure wind turbines are appropriately and sensitively sited.
- To ensure that wind farms are located so as not to have any detrimental impact on Williams Townsite, views from Williams Townsite or any other residential areas.
- To provide a clear position on wind farms for the assessment of development applications.

Under this Local Planning Policy, the following are some of the relevant planning considerations against which a wind farm development application can be assessed.

3.0 COMMUNITY CONSULTATION

The Shire requests that wind farm proponents actively engage in early community consultation, prior to lodgement of any formal application.

Early, meaningful and innovative community consultation, demonstrating an ongoing commitment to providing clear information and ensuring opportunities for genuine input, is important to delivering good planning outcomes.

Pre-lodgement consultation should be aimed at identifying and considering options for eliminating, reducing or otherwise managing impacts, not merely informing communities on the proposed layout.

The Shires expectation is that proponents will use a range of tools for community engagement. The Shire has a strong view that developers need to invest time and effort into positive community engagement, and to build a relationship with nearby and adjacent owners.

This Policy requires applications for wind farms to address community consultation in a comprehensive way and include:

- (a) Lodgement of a detailed Community Engagement Plan that outlines the outcomes of pre-lodgement community consultation, and a strategy for further consultation for the life of the development.
- (b) Community Engagement Plans should incorporate the fundamental principles, actions and frameworks outlined in the Clean Energy Council 'Community Engagement Guidelines for the Australian Wind Industry'.
- (c) An outline of how landowners issues have been considered prior to lodging any formal development application.
- (c) A written agreement or non-objection by landowners where any turbines are proposed closer than 800 metres to a neighbouring lot boundaries.

Proponents should also liaise with relevant key stakeholders early in the process, including the Shire, Main Roads WA, Western Power, CASA, Air Services Australia, local spraying contractors, and any relevant local community groups.

4.0 ENVIRONMENTAL IMPACT

Consistent with the WAPC Position Statement on Renewable Energy Facilities, this Policy requires applications to address, avoid and minimise impacts of any wind farm on the natural landscape, and environment (including flora/ fauna).

Applications should be accompanied by an environmental survey of the site by a suitable qualified environmental consultant and address:

- (a) The type, location and significance of flora and fauna;
- (b) Any rare or endangered species;
- (c) Stopover sites, local bird species, roosting or nesting sites;
- (d) Location of bat colonies;
- (e) Areas of high raptor activity;
- (f) The cumulative impact of turbines on migration routes;

- (g) Existing remnant vegetation to be retained or that is proposed to be removed (on a plan);
- (h) Distances to areas of habitat, remnant vegetation and areas of natural environment on a context plan, including conservation areas, reserves or crown land;
- (i) Maximising distances to bird conservation areas, breeding grounds of sensitive species and areas of remnant bushland that is likely bird habitat;
- (j) Methods to avoid bird collision such as increasing the visual impact of rotor blades, flashing lights, and keeping bird migration corridors free;
- (k) Decommissioning of the wind farm at the end of it's life.

5.0 VISUAL AND LANDSCAPE IMPACT

A Visual and Landscape Impact Assessment is required and shall;

- (a) Describe the appearance of changes in the landscape caused by the proposed wind farm;
- (b) Identify the view of the wind farm from any sensitive premise, views from major roads/tourist routes, heritage places; any tourist facilities and recreational reserves;
- (c) Ensure photos in the report include a view of the existing landscape and a photomontage with the turbines superimposed;
- (d) Include all images in colour with a high quality/ resolution;
- (e) Include a clear plan that shows the location of where each photo was taken, the direction it was taken, and numbering of each photo location;
- (f) Consider the safety of drivers using Highways;
- (g) Be in accordance with the WAPC 'Visual Landscape Planning in Western Australia' manual and the 'Wind Farms and Landscape Values (2005)' produced by the Australian Wind Energy Association and Australian Council of National Trust.

Wind farms are required to be designed, sited and operated to minimise their impacts and shall meet the following requirements:

- (a) A setback of at least 1.5 kilometres between any wind turbine and a sensitive land use, that is not associated with the development;
- (b) A setback of 800m between any wind turbine from a neighbouring lot boundary, unless otherwise agreed to in writing by the affected property owner at the time of lodgement of a formal development application;
- (c) Implementation of irregular spacing of wind turbines in hilly/rugged landscapes where vegetation is varied;
- (d) Regular spacing of wind turbines in open/flat landscapes where vegetation is orderly;
- (e) Blades on wind turbines to rotate in the same direction; and
- (f) Ensure that all wind turbines have uniformity in terms of colour, size, and shape;
- (g) Implementation of landscaping within the development site to mitigate visual impact.

Landscaping outside of the lots being developed for a wind farm is not accepted as being a practical mechanism for visual mitigation as conditions of planning approval cannot require works outside of the development site.

For the purpose of this Policy, the term 'sensitive land use' is as per the definition in the WAPC Position Statement on Renewable Energy Facilities as '*comprise land uses that are residential or institutional in nature, where people live or regularly spend extended periods of time. These include dwellings, short-stay accommodation, schools, hospitals and child care centres and generally exclude commercial or industrial premises.*'

The Shire will also take into account the description of types of a 'sensitive land use' as outlined in Clause 2.3 the Environmental Protection Authority 'Guidance for the Assessment of Environmental Factors'.

6.0 NOISE IMPACT

A Noise Impact Assessment shall be lodged with any wind farm proposal to demonstrate that it can meet the standards under the Environmental Protection (Noise) Regulations 2017. The South Australian Environmental Protection Authority 'Wind Farms Environmental Noise Guidelines (2009) should also be referenced.

Any Noise Impact Assessment is to be completed by a suitably qualified acoustic consultant, and should address construction noise, predicted noise levels associated with a fully operational wind farm, and predictions of low frequency noise and infrasound.

Any Noise Impact Assessment will take into account the location of any sensitive land use. Following construction, wind farm proponents take a commercial risk, as there is potential for adjacent landowners to construct new dwellings on their lots.

Any application shall address the following;

- (a) Commitment to providing a Noise Impact Mitigation Plan for post-operational noise monitoring, to demonstrate that any constructed wind farm complies with the Environmental Protection (Noise) Regulations 2017, and to manage complaints regarding noise impact during the operational phase of the development.
- (b) Potential methods to address compliance with the Environmental Protection (Noise) Regulations 2017 in the event that any future sensitive land use, particularly dwellings, are constructed in the locality. Methods may include new noise monitoring, shutting down turbines, replacement of turbines with a quieter model etc

7.0 OTHER POTENTIAL IMPACTS

The impact of wind farms on nearby property owners, road users, and the use of adjacent land should be addressed through the detailed design.

Wind farm proposals should not have negatively impact through:

- (a) shadowing, flickering, reflection, or blade glint impacts;
- (b) interference with normal agricultural or farming activities of nearby rural properties, such as aerial spraying; or
- (c) interference with existing lawful continued use of neighbouring land including intensive rural activities, and tourism uses;
- (d) proximity to established residential areas, whether the land is zoned residential, rural residential or is residential by nature (smaller lots of a typical residential size containing dwellings). The amenity of urban areas and the rural character surrounding urban areas needs to be afforded a high level of protection.

The Shire will also consider any wind farm application in accordance with Clause 5.3.5 (Public Aviation and Safety), 5.3.6 (Heritage) and 5.3.7 (Construction Impact) contained in the Western Australian Planning Commission published a *Position Statement: Renewable Energy Facilities – March 2020*.

Where there is a conflict between this Local Planning Policy and the WAPC Position Statement, this Policy shall prevail.

8.0 TRAFFIC MANAGEMENT AND THE PROTECTION OF ROADS AND OTHER PUBLIC INFRASTRUCTURE

Local roads are under the care and control of the Shire. There is a considerable amount of public infrastructure within the Shire's local government boundary.

Other roads, such as Highways, fall under the care and control of Main Roads WA.

Any wind farm proponent will be responsible for:

- (a) Preparation of a pre-development 'Road and Shire infrastructure Condition' report that identifies and records the condition of any local roads and Shire infrastructure that will be affected by any route for vehicles needed for the construction phase;
- (b) The costs associated with any damage caused to the roads or Shire infrastructure attributable to the construction phase of the development. Any damage shall be rectified by the operator/proponent to the standard identified in the Pre-Construction Road and Shire Infrastructure Condition Report;
- (c) All costs of any road upgrading required for construction transport routes and / or the development.

The Shire Council may place conditions on any development approval to ensure any costs associated with roads damage, widening or upgrading are met by the developer.

The Shire and / or Main Roads WA may require lodgement of a Traffic Impact Assessment report by a suitably qualified traffic engineer in support of any application.

DRAFT

STATUTORY PAGES

PLANNING AND DEVELOPMENT ACT 2005

SHIRE OF WILLIAMS

TOWN PLANNING SCHEME No 2

AMENDMENT No 21

The Shire of Williams Council under and by virtue of the power conferred upon it in that behalf by the *Planning and Development Act, 2005*, hereby amends the above local planning scheme by:

1. In 'Schedule 2 – Interpretations';
 - (i) deleting the definition for 'industry' and inserting the 'industry' definition from the Model Provisions;
 - (ii) inserting a definition for 'renewable energy facility' from the WAPC Position Statement on Renewable Energy Facilities as follows:

renewable energy facility means premises used to generate energy from a renewable energy source and includes any building or other structure used in, or relating to, the generation of energy by a renewable resource. It does not include renewable energy electricity generation where the energy produced principally supplies a domestic and/or business premises and any on selling to the grid is secondary;

The Amendment is basic under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reason(s):

- (i) The amendment is consistent with the Model Provisions;
- (ii) The amendment is consistent with a WAPC Position Statement.

COUNCIL ADOPTION

This Basic Amendment was adopted by resolution of the Shire of Williams at the Ordinary Meeting of the Council held on the 16th day of August 2023.

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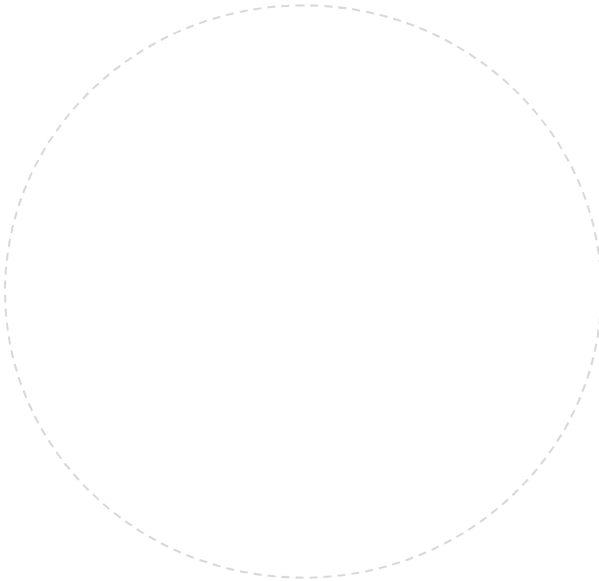
SHIRE PRESIDENT

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CHIEF EXECUTIVE OFFICER

COUNCIL RECOMMENDATION

This Basic Amendment is recommended for support by resolution of the Shire of Williams at the Ordinary Meeting of the Council held on the 16th day of August 2023 and the Common Seal of the Shire of Williams was hereunto affixed by authority of a resolution of the Council in the presence of:



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SHIRE PRESIDENT

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CHIEF EXECUTIVE OFFICER

WAPC ENDORSEMENT (r.63)

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DELEGATED UNDER S.16 OF
THE P&D ACT 2005

DATE.....

APPROVAL GRANTED

.....

MINISTER FOR PLANNING

DATE.....