Planning & Development WA | BULLETIN

PRESIDIAN LEGAL PUBLICATIONS

General Editor: Denis McLeod, Counsel, McLeods Barristers and Solicitors

LICENSING: Site licence (unlimited circulation within subscribing offices/sites).
Circulation within non-subscribing offices/sites not permitted.
For use by subscribers only.

Update 5 | *Issued*: 12 January 2015

CONTENTS

Planning and Development Act 2005 1
Town Planning Regulations 1967....2
Annotated Residential Design Codes 3
Planning Case Notes 3
Planning and Development Dictionary 9

About this bulletin

This bulletin provides a report on recent WA planning cases by setting out excerpts of key sections of new content added to the *Planning & Development WA* service in the most recent update. The new content is incorporated under relevant headings to show the provisions or topics to which it relates.

Planning and Development Act 2005

[3.16.0] 16. Delegation by Commission

[3.16.0] Operation

Tah Land Pty Ltd and City of Wanneroo [2013] WASAT 190, the applicant sought review by the Tribunal of a deemed refusal of its development application by the respondent city under the Metropolitan Regime Scheme. Under the delegation by the WAPC to local governments of decision-making in relation to development applications under the Scheme, if the development application was still before the city, and if Main Roads WA's recommendation in relation to the development application were not acceptable to the city, the city could not determine the development application and would have to refer it immediately to the WAPC for determination. The Tribunal considered whether it was subject to the same constraint as the city. The Tribunal held that it is not constrained by the terms of the delegation for the following five reasons:

(1) the delegation was a delegation by the WAPC to local governments, not to the Tribunal;

(2) the Tribunal was not the delegate of the WAPC and its jurisdiction and power was conferred not by the delegation but by the Scheme;

(3) the delegation was only concerned with first instance planning decisions (where the Tribunal has no jurisdiction or power to make decisions), not review planning decision-making;

(4) the Tribunal's jurisdiction and power was the same in reviewing a decision under the Scheme whether the original decision was made by the WAPC or by a local government; and

(5) on the proper interpretation of the delegation, it had no application to the determination of a development application by the Tribunal on review.

The Tribunal also determined that, if the city was invited by the Tribunal to reconsider its decision under s 31 of the *State Administrative Tribunal Act 2004* (WA), the city would not be subject to the constraint of the delegation.

[3.138.0] 138. Commission's functions when approving subdivision etc.

[3.138.5] Operation

The application of s 138(2) prevents a subdivision where a town planning scheme imposes a mandatory requirement for approval by the Commission of an outline development plan before its determination of a subdivision application: *Rocca v WAPC* [2007] WASAT 110 at [22] (applied in *Hill and WAPC* [2013] WASAT 195).

[3.138.15] Approval where proposal conflicts with local planning scheme (s 138(3))

Cases

General. Applicants wished to subdivide large lot into two smaller parcels for residential development – Future Urban Zone –TPS said land in zone not to be developed, used or subdivided otherwise than in accordance with approved structure plan – no structure plan existed – PD Act did not permit subdivision where to do so would conflict with TPS – applicants argued scheme clauses could be read down or otherwise interpreted so as to permit subdivision to take place – *Held:* Approval refused – applicants' arguments largely unmeritorious and speculative – language, intent and effect of scheme plain and unambiguous – subdivision could not be approved: *Hill and WAPC* [2013] WASAT 195.

[3.241.0] 241. SAT to have regard to certain matters

[3.241.5] "Due regard"

A "fine toothcomb" approach should be eschewed when considering the reasons of a tribunal member in any endeavour to discover error and the court or judicial member is not to take an "overly critical or pernickety approach" in examining the member's decision: *Thomas and Town of Cambridge* [2013] WASAT 206 at [5] (paraphrasing from *Svedas v Council of the City of Sydney* [2011] NSWLEC 215).

[3.244.0] 244. SAT review of some SAT decisions

[3.244.5] Operation

Cases

Tribunal erred in law by failing to have regard to whether front fence subject of application for review satisfied design principles in relation to street walls and fences in R Codes – error sufficiently material character that it vitiated entirety of Tribunal's determination: *Thomas and Town of Cambridge* [2013] WASAT 206.

Town Planning Regulations 1967

[6.160.0] 2. Land use definitions

[6.160.570] *recreation ...*

In relation to the meaning of the word "premises" at common law, see [21.1360].

The meaning of the term "recreation-private" was considered in *Ethelston and Shire of Augusta-Margaret River* [2013] WASAT 197. In that case, Senior Member McNab stated (at [27]-[29]):

> In my view, the key to understanding the scope of the term 'recreation-private' is in the words of limitation found in the definition itself, namely premises 'which are not usually open to the public without charge'.
>
> Elsewhere in Australia there may be found comparable land use classifications or definitions. Take, for example, the following definition (cl 1.4) referred to in *Davenport & Environs Planning Scheme 1984* [2007] TASRPDComm 1:
>
> > 'Private recreation' means the use of land for recreational grounds or facilities such as squash and tennis courts, bowls clubs, golf clubs, swimming pools, playgrounds *and similar which are not normally open to the public without charge*. (Emphasis added)

This definition more clearly, it seems to me, illustrates the conceptual scope of the definition found in ... the Model Scheme Text.

Annotated Residential Design Codes

[15.1.0] Part 1 - Preliminary

[15.1.25] Application – General Code provisions/specific planning scheme provisions

The R Codes provide scope for planning policies to augment their provisions in order to guide judgments about the merits of a proposal that does not meet the requirements of the R Codes: *Pienaar and City of Subiaco* [2013] WASAT 205 at [57].

[15.1.60] Deemed-to-comply requirements and design principles

The acceptable development criteria and deemed-to-comply requirements are not mandatory nor a finite list of the means of satisfying the design criteria. The Tribunal must consider all relevant submissions to determine whether the design criteria can be satisfied: *Brisevac and City of Vincent* [2013] WASAT 209 at [50].

[15.5.250] Clause 5.2.5 - Sight lines

[15.5.251] Operation

Cases

Application for review of refusal for demolition of 1.8 m high brick wall on front boundary and construction of lower visually permeable picket fence with sliding gate, vehicular driveway/crossover and single onsite hardstand car parking bay within front setback – proposed fence would not meet sightline provisions of R Codes at cl 5.2.5P5 – refused partly on basis car parking bay in close proximity to front lot boundary, limiting sightlines for oncoming pedestrians – *Held:* Approval granted – by positioning driveway/crossover 2.35 m away from boundary, and replacing solid brick wall with lower visually permeable fence, visibility and sightlines would be improved for driver of reversing vehicle – although not ideal, matters of sightlines for reversing vehicle could be addressed by conditions: *Pienaar and City of Subiaco* [2013] WASAT 205.

Planning Case Notes

[18.70.0] Amalgamation of land

[18.70.03] General

It is an established planning principle that a single development, such as a house and its associated garage, should not extend across lot boundaries to ensure that the development remains a single entity: *Parker and City of South Perth* [2010] WASAT 35 at [46] (cited with approval in *Hill and City of Subiaco* [2013] WASAT 203 at [19]). This principle reflects orderly and proper planning. Lots which collectively comprise the site of a proposed development should generally be amalgamated to ensure that development approved as a single entity will operate as a single entity throughout the lifetime of the development: *Hill*, above, at [20].

Cases

House constructed around 1917 straddled two adjoining lots – development approval for minor alterations and additions granted subject to condition requiring amalgamation of lots – *Held:* Assuming condition could be lawfully imposed (which it could not be as did not relate to development), amalgamation of lots not necessary to ensure development remained single entity – house had straddled two lots for almost a century – site located in area of significant cultural heritage values – development approval would be required for partial or complete demolition of house, which highly unlikely to be granted – house, garage and associated outbuildings, which comprised single residential use, likely to remain single entity without amalgamation of lots: *Hill and City of Subiaco* [2013] WASAT 203.

[18.70.15] Strategic planning

Miscellaneous. For a case where a condition of development approval for minor renovations a house straddling two lots of land requiring amalgamation of the two lots was invalid as it did not relate to the development, see *Hill and City of Subiaco* [2013] WASAT 203 (case summary at [18.300.30]).

[18.100.0] Animals

[18.100.20] Horses

In *Ethelston and Shire of Augusta-Margaret River* [2013] WASAT 197, the applicants sought retrospective approval for use of land for domestic horse riding and training activities, primarily dressage. Relevant categories of land use under the TPS were "recreation-private" and "rural pursuit". The Tribunal considered that the definition of "rural pursuit" best covered the land use as, among other things, it included reference to the "training of horses". Dressage activities were considered by the Tribunal to be such a training activity.

Cases

Horse riding/training. Review of refusal of retrospective approval – 1 hectare of land had been cleared and used for domestic horse riding and training activities, primarily dressage, without approval – conservation zone – planning framework sought low impact development and protection of remnant native vegetation, provided that all practical and lesser alternatives should be considered and only most carefully and stringently assessed proposals should go forward – land use fell within "rural pursuit" land use category under TPS, but such activity prohibited in zone – *Held:* Approval refused – Tribunal had no power to disapply, lift or vary prohibition – if Tribunal did have such power, would still have refused application – proposal was inimical to values expressed in planning framework: *Ethelston and Shire of Augusta-Margaret River* [2013] WASAT 197.

[18.140.0] Assessment – Development application

[18.140.27] Relevant considerations – Abandonment/futility of policy ("horse has bolted")

Cases

Application for review of refusal for single open hardstand car parking bay within front setback and driveway/crossover – refused partly on basis would not be compatible with established character of streetscape because, out of 21 properties within surrounding area, only 10 included vehicle parking within front setback and established character of surrounding area was therefore to have vehicle access and parking at rear of properties – *Held:* Approval granted – horse had bolted with respect to driveway/crossover at front of properties as nearly 50 per cent of lots in surrounding area had this – if percentage was 5 to 10 or even 25 per cent, stronger argument could have been made to oppose proposal: *Pienaar and City of Subiaco* [2013] WASAT 205.

[18.140.140] Relevant considerations – Precedent – Other non-complying development

In *Brisevac and City of Vincent* [2013] WASAT 209, the applicant sought review of a refusal of approval for a double carport in the front setback of a house in a residential street. Three other houses on the street had a carport in the front setback, including the site opposite. The Tribunal held that it did not consider that the carport opposite the site set a precedent for simply abandoning the planning controls. However, the Tribunal was concerned (at [58]) that other landowners in the street could see approval of a second carport, of the style proposed and in circumstances where the planning instruments provided no support for allowing the structure, as a precedent for the construction of carports in front setbacks they should be allowed to follow.

[18.300.0] Conditions

[18.300.30] Validity – Unrelated to development/unnecessary

A development application cannot be used as an occasion to impose a condition altering the terms of another existing approval relating to the subject site. In *Kellett and Town of Vincent* [2007] WASAT 155, Barker J reviewed a decision of the Tribunal imposing a condition of approval restricting the hours of operation of a beauty salon. The development application

involved an increase in the number of treatment rooms from nine to ten. Barker J held (at [21]):

> Although the condition as to hours of operation may have a planning purpose, because the beauty salon is in a predominantly residential area, it arguably does not fairly and reasonably relate to the development permitted by the Tribunal, because the existing treatment rooms are not the subject of the development application for alterations and additions and already have development approval. The applicant was entitled in the circumstances to confine his application to approval of the extension without bringing into question the fact and terms of his existing use approval. In the circumstances, the nature of the development proposed did not provide the occasion to alter the existing hours of operation of the salon.

Cases

Miscellaneous. House constructed around 1917 straddled two adjoining lots – development approval for minor alterations and additions granted subject to condition requiring amalgamation of lots – joint owner of property challenged condition on review – *Held:* Condition unlawful and deleted – did not fairly and reasonably relate to approved development because alterations and additions were minor and did not affect or alter land use or essential historic form or function of development on site: *Hill and City of Subiaco* [2013] WASAT 203.

[18.380.0] Dwelling

[18.380.130] Car parking

Cases

Front setback. Application for review of refusal for single open hardstand car parking bay within front setback and construction of front picket fence with sliding gate – site area of 324 sq m – existing 3 m wide right-of-way at rear – outbuilding located on rear boundary – four or five properties out of 28 had rear parking access from right-of-way – refused partly on basis car parking bay in close proximity to front lot boundary, limiting sightlines for oncoming pedestrians – *Held:* Approval granted – width of right-of-way important as alternative means of vehicular access – small to medium sized vehicle could be manoeuvred with some difficulty around existing outbuilding into a car parking space at rear, however, would come at considerable cost to existing onsite amenity enjoyed at rear of property: *Pienaar and City of Subiaco* [2013] WASAT 205.

Review of refusal for single carport within primary setback area – existing 3.5 m wide right-of-way at rear of lot paved and well utilised by other lots within street block – ancillary accommodation building at rear of property 1.8 m from right-of-way – considerable number of dwellings on both sides of right-of-way had carports/garage structures accessing off right-of-way – additional car parking could be accommodated at rear of subject land – *Held:* Approval refused: *Trickey and City of Subiaco* [2005] WASAT 256.

[18.480.0] Garage and carport

[18.480.13] Front setback

The R Codes 2013 guidelines repeat from R Codes 2010 the comment that carport development in the front setback would be acceptable where “no feasible alternative exists”. The guidelines of both also say that as rates of car ownership have increased, the provision of parking in the front setback of houses that were built prior to the standard provision of off street parking spaces has increased and, “with increasing affluence”, so has “the desire to provide a roof over vehicles”. However, while many car owners may consider a carport desirable, this desire does not lead to a conclusion that a carport must be approved as a matter of course, particularly in the front setback of a house. Relevant planning controls must be satisfied: *Brisevac and City of Vincent* [2013] WASAT 209 at [20]-[21].

Cases

Double garage/carport. Application for review of refusal of approval for double carport in front setback of house in residential street – carport to reflect elements of design of house – streetscape mostly free of structures in front setbacks – carport to be separated from front verandah by 300 mm – carport would cover existing car bay and proposed additional car bay – crossover to be widened to 4.8 m – gateway in front fence for vehicle access to

be widened to double width – site area 386.2 sq m – 5 m sealed right of way at rear of site – single-storey brick dwelling on site with 6 m front setback – side setbacks of 1.7 m and 0.97 m – 46 single dwellings on street, 20 had no parking or accessway in front, 2 had hardstand parking spaces at side, 15 had hardstand parking at front, 5 had carport at side, 3 had carport at front and 1 had garage at side – TPS sought conservation of amenity of locality and development consistent with orderly and proper planning – planning framework required carports not detract from streetscape – refused on basis in conflict with policy objectives of not having vehicle related structures detract from streetscape – *Held:* Approval refused – adverse impact on streetscape as would introduce a structure, and one with a significant roof component, into a front setback – location of carport not acceptable – inconsistent with design principle for carports in R Codes – not consistent with conserving amenity of locality – not consistent with orderly and proper planning: *Brisevac and City of Vincent* [2013] WASAT 209.

Precedent. Application for review of refusal of approval for double carport in front setback of house in residential street – streetscape mostly free of structures in front setbacks – three other houses on street had carport at front, including on opposite site, although two pre-dated council's policy and had less impact as were low-profile flat-roofed metal structures – planning framework required carports not detract from streetscape – *Held:* Approval refused – would establish undesirable precedent – proposal was objectionable – more than a mere possibility that there may be later undistinguishable applications as there would be no particular basis for approval other than general desire to provide roof over parked vehicles identified in R Codes – carport opposite could not be cited as precedent – presence of that carport not in itself sufficient to abandon established planning controls – same for two other carports in front setbacks, especially as they pre-dated council's policy and had less impact: *Brisevac and City of Vincent* [2013] WASAT 209.

[18.520.0] Heritage and historic sites

[18.520.144] Cottage

Cases

Front setback. Application for review of refusal for demolition of 1.8 m high brick wall on front boundary and construction of replacement picket fence, vehicular driveway/crossover and single onsite hardstand car parking bay within front setback – site area of 324 sq m – single-storey weatherboard cottage constructed in early 20th century and listed on heritage register – setback to front boundary ranging from 4 to 6 m – refused partly on basis would not enhance amenity or preserve character of locality – *Held:* Approval granted – help preserve character of original housing stock by opening up streetscape through removal of brick wall to allow access to open, unroofed car parking space and construction of permeable and lower front picket fence – would allow better viewing of residence – would eliminate risk of applicant doing nothing, thereby retaining existing brick wall and on-street car parking space to detriment of streetscape: *Pienaar and City of Subiaco* [2013] WASAT 205.

[18.640.0] Land use

[18.640.60] Non-conforming/existing use principles

In regard to cessation of a use protected by non-conforming use provisions, Johnson J stated in *La Rosa v City of Wanneroo* (2006) 154 LGERA 11 (at [98]) (quoted in *Perth Vet Emergency Pty Ltd and City of Stirling* [2013] WASAT 204 at [47]):

> … For a use of land to fall within the provisions [conferring non-conforming use rights] that use must … be a continuing use. Practically speaking, there will inevitably be periods of discontinuance in the use of any land; for example, when premises close for holiday periods, stocktakes or other purposes consistent with the continuing use of the land to conduct a business. However, any complete cessation of the use, such as the closing down of a business, or the commencement of another use, constitutes a break in the continuity of the use which, in my view, takes the use of the land outside the protections of the nonconforming use provisions.

Cases

Proposal to set up veterinary practice in industrial zone – such land use not possible in zone – applicant contended certain non-conforming use rights attached to land earmarked for development, and that was possible under TPS to convert such rights to another non-conforming use, notwithstanding effective prohibition on veterinary practice – long history of changes in land use and TPSs – first approval in 1971 was for warehouse – a 1983 approval for showroom addition taken to be approval for one integrated industrial usage operating on site – no further planning approvals given since 1983 – premises vacated in 1993 – site occupied in part by furniture showroom (since vacated) and a second hand store (still in operation) – *Held:* Applicant did not have any non-conforming use rights attaching to subject land – any existing land use rights had, for non-conforming use purposes, been relevantly extinguished by discontinuance of lawful 1983 use – not possible to use and develop land as veterinary practice: *Perth Vet Emergency Pty Ltd and City of Stirling* [2013] WASAT 204.

[18.640.68] Presumption of regularity

The presumption of regularity, which generally provides that, where it has been proved that an official act has been done, it will be presumed, until the contrary is proved, that it complied with any necessary formalities, has been applied by the Tribunal in various cases in the context of determining the existence and authorised land use of prior development approvals relating to a particular site - see, eg, *Morea Architects and Town of Vincent* [2006] WASAT 263 at [60] and *Perth Vet Emergency Pty Ltd and City of Stirling* [2013] WASAT 204 at [19]-[21].

[18.680.0] Licensed premises

[18.680.5] Amenity

The Tribunal has accepted that small bars of themselves can be considered "low risk" noise sources: see *New Frontier Pty Ltd and City of Vincent* [2013] WASAT 187 at [30].

[18.680.8] Amenity - Hours of operation

Planning approvals should not be limited to looking only to the Liquor Act and the EPA noise regulations to regulate hours of operation for licensed premises. The protection of the amenity of a locality is a planning principle embodied in all schemes, whether they be regional or local schemes: *New Frontier Pty Ltd and City of Vincent* [2013] WASAT 187 at [27]. The style of operation and the management regime of licensed premises can have a significant effect on the amenity impacts associated with such facilities: *New Frontier*, above, at [27], *Woolworths and City of Joondalup* [2007] WASAT 156; *Busen Pty Ltd and City of Subiaco* [2007] WASAT 49; *Fazio and City of Fremantle* [2006] WASAT 169.

Cases

Applicant applied review of three conditions on planning approval for small bar – condition 2 limited hours of operation as follows: Mon to Thurs, 7 am to 10 pm; Fri to Sat, 7 am to 12 am; Sun 7 am to 10 pm – condition 3 provided for same hours of operation for outdoor courtyard but for 12 month trial period – condition 4 prohibited sale/serving of alcohol between 7 am and 11 am – 4 m high screen in courtyard area – nearby residential development – noise control measures would result in compliance with noise regulations – applicant sought hours of operation that accorded with opening hours stipulated in Liquor Control Act – *Held:* Given nature of operation of existing local centre and surrounding non-residential uses, diminished level of amenity expected near zone boundary could not be observed to extend into late evening period – reasonable to impose conditions on hours of operation as amenity of residents in immediate locality would be adversely affected – condition 2 affirmed to extent it restricted hours of operation on Sundays and weeknights to 10 pm, but to be varied to include appropriate restrictions for public holidays – condition 3 deleted as compliance with noise regulations and implementation of management plan sufficient to mitigate noise impact to acceptable degree – condition 4 unreasonable and deleted: *New Frontier Pty Ltd and City of Vincent* [2013] WASAT 187.

[18.740.0] Mining/extractive industry

[18.740.7] Rural-residential amenity

Cases

Review of refusal of applications for licences for extraction of sand – proposal for five year period – rural zoned lot – landscape protection area – site area of 76.75 hectares – frontage to highway – site previously used for pine plantation – site had been cleared with limited remnant vegetation – proposed extraction of 190,000 cubic metres covering 7 hectares of site to depth of 2 to 4 m – sandpit to be set back 40 m – bund of overburden 2 to 3 m high to screen operation – use not to be operational every day – no processing of sand on site – site to be progressively rehabilitated as each stage completed – refused partly on basis of unacceptable impact on visual amenity and nuisance dust – *Held:* Approvals granted – concerns could be managed by applicant: *Redire Pty Ltd and Shire of Serpentine-Jarrahdale* [2013] WASAT 199.

[18.740.48] Dust

Dust mitigation, suppression and management measures were addressed in conditions by the Tribunal in *PMR Quarries Pty Ltd and City of Mandurah* [2010] WASAT 87, *Empire Grazing Pty Ltd and Shire of Bridgetown-Greenbushes* [2010] WASAT 102 and *Joice Investments Pty Ltd and Shire of Chittering* [2007] WASAT 119. The cases are examples of sand excavation where conditions did not require equipment based monitoring but did require the applicant to ensure that no visible particulates crossed the boundary of the site: *Redire Pty Ltd and Shire of Serpentine-Jarrahdale* [2013] WASAT 199 at [33].

Cases

Review of refusal of applications for licences for extraction of sand – proposal for sand extraction for five year period – rural zoned lot – landscape protection area – site area of 76.75 hectares – frontage to highway – proposed extraction of 190,000 cubic metres – refused partly on basis management measures for dust generation when site not occupied inadequate and negative impact dust would have on two neighbouring sensitive residences – *Held:* Approvals granted – proposed dust management plan appropriate because of rural location, relative location of sensitive premises, topography, local climate factors (particularly prevailing winds), limited area of excavation and five year lifespan of use: *Redire Pty Ltd and Shire of Serpentine-Jarrahdale* [2013] WASAT 199.

[18.863.0] Outdoor living area

[18.863.10] General

The Tribunal has expressed the view that a patio, whilst covered but open on three sides, and a swimming pool contribute to outdoor living area: *Brisevac and City of Vincent* [2013] WASAT 209 at [46].

[18.1280.0] State Administrative Tribunal

[18.1280.35] Evidence – Expert witness – Report

A report to a council provided by one of the council's planning officers is a recommendation. The report represents the considered recommendations of a professionally trained and engaged employee. It is proper for the Tribunal to consider the advice the council received from its officer and, while that recommendation is not determinative, the recommendation is to be considered: *Brisevac and City of Vincent* [2013] WASAT 209 at [43] (applying *Dalla Riva (Australia) Pty Ltd v Town of Vincent* [2004] WATPAT 4 at [35]-[36]).

[18.1700.0] Miscellaneous

[18.1700.483] Single planning unit

A single planning unit, as an established concept in planning law, was discussed and applied in *La Rosa v City of Wanneroo* (2006) 154 LGERA 11 at [74] and *Perth Vet Emergency Pty Ltd and City of Stirling* [2013] WASAT 204 at [29]. The presumption of regularity cannot fill a gap created by the absence of proper planning approvals: see *Perth Vet Emergency*, above, at [36].

Planning and Development Dictionary

Part 1 – Words

[21.625] "Dressage"

In *Ethelston and Shire of Augusta-Margaret River* [2013] WASAT 197, the Tribunal considered the meaning of "dressage". It stated (at [34]):

> The *Macquarie Dictionary* defines dressage as taken from the French, literally meaning 'training'. It defines the word in English as denoting:
>
> > [T]he art and training of a horse in obedience, deportment and responses.

[21.1360] "Premises"

The meaning of "premises" was discussed by the Tribunal in *Bush Beach Holdings Pty Ltd and City of Mandurah* [2013] WASAT 139 (applied in *Ethelston and Shire of Augusta-Margaret River* [2013] WASAT 197). The Tribunal noted (at [62]) the following entry for premises found in the *Encyclopaedic Australian Legal Dictionary*: "At common law, buildings, houses, land, shops and real property of one sort of another …" Reference was also made (at [63]) to Newnes JA's observations in *Eclipse Resources Pty Ltd v CEO, Department of Environment and Conservation* [2013] WASCA 152; (2013) 194 LGERA 199 where his Honour noted, by reference to the common law and to the relevant statutory definition (at [105]):

> It is evident that when used within the definition of 'premises', the word 'premises' bears its ordinary meaning, that is, it includes 'a tract of land; a house or building within grounds, etc, belonging to it'.

Part 2 – Phrases

[21.8300] "Training of horses"

Cases

Whether land being used for domestic horse riding and training activities, primarily dressage, constituted "rural pursuit" within meaning of TPS – term defined to include "the stabling, agistment or training of horses" – *Held:* Activities and structures planned for land clearly fell within notion of "training of horses" and therefore within "rural pursuit" land use category: *Ethelston and Shire of Augusta-Margaret River* [2013] WASAT 197.