

POS	TOWN PLANNING INFRINGEMENT NOTICES	PSPD27
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RESPONSIBLE OFFICER:	Manager Statutory Planning
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DAPPS Meeting:	31 January 2013 22 August 2013	26 February 2015 26 November 2015
OCM:	14 February 2013 12 September 2013	12 March 2015

BACKGROUND:

The Planning and Development Act 2005 Division 3- Infringement Notices provides for the issue of modified penalties for offences under the Act. The range of offences that modified penalties are suitable for are of a minor nature and the modified penalty under the Act is currently set at \$500.00.

The implementation of the Infringement Notices provisions of the Act is controlled by the Planning and Development Act Regulations 2009. In addition the Western Australian Planning Commission's Planning Bulletin No. 98 provides Local Governments a guideline for their implementation.

PURPOSE:

Planning enforcement in the City currently involves complex and costly legal processes for responding to and controlling even minor compliance matters. The implementation of planning infringement notices is the means to address the gap in effective enforcement of minor offences.

The implementation of planning infringement notices will enable the City to effectively manage minor compliance matters in a timely manner.

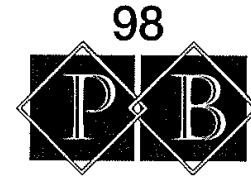
POSITION:

Planning Infringement powers are to be used in a judicious manner as a means to achieve compliance for minor offences in line with the Western Australian Planning Commission Bulletin No. 98, the Regulations and Act. Designated Officers are to use

reasonable efforts to encourage voluntary compliance prior to issue of a Town Planning Infringement Notice.



Planning Bulletin 98
Planning and Development
Regulations 2009



June 2009

1 Introduction

The Planning and Development Regulations 2009 will come into operation on 1 July 2009, along with division 3 of part 13 of the *Planning and Development Act 2005*.

The purpose of this planning bulletin is to:

- explain the provisions of the regulations which have been carried over from existing regulations;
- explain the new provisions of the regulations regarding conditions on road access; and
- explain the new provisions of the regulations regarding infringement notices, as well as provide guidance on the circumstances in which an infringement notice can be issued for a planning offence.

2 Background

The *Planning and Development Act 2005* (PD Act) and related legislation commenced operation on 9 April 2006. The PD Act consolidated and repealed the *Town Planning and Development Act 1928*, the *Metropolitan Region Scheme Act 1959* and the *Western Australian Planning Commission Act 1985*.

Several new proposals were inserted into the PD Act, including section 150 (road access conditions) and division 3 of part 13 (infringement notices). These parts did not come into effect on 9 April 2006, as supporting regulations were required to support these new provisions.

The Planning and Development Regulations 2009 (the PD Regulations) have been prepared as part of the State Government's commitment to simplifying and streamlining the planning system and legislation. It was also considered desirable to move away from the fragmented approach to planning which was evident under the repealed legislation.

The PD Regulations are primarily a consolidation of regulations made under the repealed Acts. The PD Regulations consolidate the following:

- the Metropolitan Region (Valuation Board) Regulations 1967;
- the Metropolitan Region Planning Authority (Reserved Land) Regulations;
- the Planning and Development (Local Government Planning Fees) Regulations 2000;
- the Town Planning and Development (Easement) Regulations 1983;
- the Town Planning and Development (Ministerial Determinations) Regulations 2003; and
- the Town Planning and Development (Subdivisions) Regulations 2000.

The opportunity has been taken to revise the existing regulations and update the language and processes where appropriate.

The PD Regulations also introduce new provisions to support section 150 and division 3 of part 13 of the PD Act.

3 The Planning and Development Regulations 2009

Part 2 – Activities on State land

Part 2 of the PD Regulations generally reflects the provisions in the previous Metropolitan Region Planning Authority (Reserved Land) Regulations. However, some changes have been made to these provisions to modernise the language. In addition, the penalties for conducting an unlawful activity on State land in breach of the regulations have been increased.

Part 3 – Subdivision and development control

Part 3 of the PD Regulations generally reflects the provisions in the previous Town Planning and Development (Subdivisions) Regulations 2000 and the Town Planning and Development (Easement) Regulations 1983.

Division 1 – subdivision and similar matters

Division 1 sets out the processes to be followed by applicants lodging either an application for subdivision consent under section 135 of the PD Act, or an application for endorsement under section 145 of the PD Act. It also sets out what actions the Western Australian Planning Commission (WAPC) is required to take following determination of the application.

Division 2 – Applications for approval of certain transactions

Division 2 sets out the process to be followed by an applicant lodging an application for approval of a lease or a class of lease under sections 136 and 139 of the PD Act.

Division 3 – Road access conditions

Division 3 is new. It sets out how a road access condition imposed by the WAPC in accordance with section 150 of the PD Act is to be depicted on a plan of subdivision. It also states that it is an offence to contravene a road access condition, which may attract a penalty of up to \$50 000 (depending on the seriousness of the contravention). Finally, regulation 32 sets out the process to be followed in order to discharge or modify a road access condition. An appeal to the State Administrative Tribunal is available to an applicant if the WAPC refuses a request to modify or discharge a road access condition.

Division 4 – Easements

Division 4 is based on the provisions of the Town Planning and Development (Easement)

Regulations 1983; however, amendments have been made to modernise the processes. This division sets out who can be an easement holder, how an easement is to be depicted on the plan, and the rights, powers and privileges of an easement holder.

Part 4 – Compensation and acquisition

Part 4 of the PD Regulations generally reflects the provisions in the previous Metropolitan Region (Valuation Board) Regulations 1967. It sets out how an applicant who wishes to obtain a valuation from the Board of Valuers is to give notice of the intention to sell (under section 181(1) of the PD Act) and how an application for valuation is to be made. It also sets out the process the board will follow to undertake a valuation, and how the fee for the work undertaken by the board will be determined.

Part 5 – Enforcement and legal proceedings (infringement notices)

Part 5 of the PD Regulations is new. It has been prepared to give effect to division 3 of part 13 of the PD Act. Those provisions establish a regime whereby a designated person appointed by the responsible authority under section 234 may issue an infringement notice to a person (the 'alleged offender') where the designated person has reason to believe that the person has committed a prescribed offence.

The following offences are prescribed under regulation 42 as offences for which an infringement notice can be issued by a designated person:

- failing to comply with a direction given by a responsible authority regarding unauthorised development: section 214;
- contravening a planning scheme: section 218;
- commencing, continuing or carrying out development in a planning control area without obtaining prior approval: section 220;
- contravening an interim development order: section 221;
- undertaking a prohibited activity on State land: part 2 of the regulations; and

- contravening a road access condition: regulation 31 of the regulations.

Regulation 42 also prescribes the modified penalty for each offence. These penalties are typically \$500.

Regulation 43 states that the designated person must issue an infringement notice in form 2, which is prescribed under schedule 1 of the PD Regulations. If an infringement notice is to be withdrawn under section 231 of the PD Act, the designated person must use form 3, which is also prescribed in schedule 1.

Implementation of the infringement notices regime

It is intended that infringement notices will be used in straightforward matters where it is clear that an offence has been committed.

In considering the circumstances in which an infringement notice may be issued, the following considerations are relevant:

- whether the offence committed is a minor contravention of the Act or scheme;
- whether the physical elements of the offence are clear cut;
- whether the evidence gives the designated person reason to believe that the alleged offender committed the offence;
- whether it is appropriate for an infringement notice to be issued for the offence;
- whether issuing an infringement notice would be an effective means of addressing the offence; and
- whether the use of an infringement notice and payment of a modified penalty to address the offence reduces the impression of the seriousness of that offence.

For the sake of transparency and fairness, there should be no undue delay between the commission of an offence and the issue of an infringement notice. An infringement notice must be given to the alleged offender within six months after the offence is believed to have been committed. However, to ensure that matters are dealt with promptly, it is recommended that local governments attempt to issue an infringement notice as soon as possible after the offence has been

committed. This ensures that the breach of the PD Act or regulations is addressed promptly.

The evidentiary burden that applies for a prosecution must be satisfied before an infringement notice is given to an alleged offender. From a practical perspective, if the alleged offender elects to go to court rather than pay the modified penalty, the responsible authority must have the evidence necessary to prosecute the alleged offender. As such, the responsible authority/ designated person should investigate the offence as if it was intended to prosecute the alleged offender for committing the offence.

Local governments should be mindful of these issues when developing practices to be followed by designated persons when issuing infringement notices.

Circumstances in which an infringement notice may be issued

For offences under sections 214, 218, 220 and 221 of the PD Act, the circumstances in which it would be appropriate to issue an infringement notice, following consideration of the matters set out in section 5, include:

- unauthorised erection of signs;
- unauthorised storage and wrecking of motor vehicles (for example, derelict vehicles in front yard of dwelling);
- unauthorised parking of motor vehicles (for example parking of commercial trucks in residential areas);
- operating a business or conducting an activity outside of the approved operating hours of such business or activity;
- exceeding the approved capacity limit of land or premises used for business or activity;
- failure to provide adequate car parking facilities;
- failure to provide appropriate access;
- failure to undertake and maintain landscaping (where this a condition of approval);
- unauthorised or non-conforming garden walls and/or retaining walls;
- unauthorised dumping of waste;
- unauthorised storage of materials;

- unauthorised clearing of vegetation;
- unauthorised use of land or buildings (for example, use of residential premises for commercial purposes);
- unauthorised change in the type of land use (for example, change from warehouse to showroom; or residential to consulting rooms); and
- unauthorised minor works.

Part 6 – Applications for review

Part 6 of the regulations generally reflects the provisions of the Town Planning and Development (Ministerial Determinations) Regulations 2003. The regulations set a fee payable by any person wishing to obtain a copy of the Minister's reasons for making a particular determination regarding an application called in by the Minister under section 246.

Part 7 – Local government planning charges

Part 7 of the regulations generally reflects the provisions of the Planning and Development (Local Government Planning Fees) Regulations 2000. Several minor changes have been made to the way that the fees are described. In addition, the fees have been amended to reflect the annual consumer price index increase.

Part 8 – Miscellaneous

This part deals with miscellaneous matters.

Regulation 57 generally reflects regulation 9 of the Town Planning and Development (Subdivisions) Regulations 2000. It states that it is an offence for a person to provide false or misleading information in an application to the WAPC made under these regulations. The penalty has been increased from \$1000 to a maximum fine of \$50 000.

Part 9 – Transitional matters

Part 9 provides for the continuation of existing appointments of wardens and temporary wardens, made under regulation 23 of the Metropolitan Region Planning Authority (Reserved Land) Regulations.

4 Information and comment

Copies of the legislation are available from the State Law Publisher at:

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Perth WA 6000
Phone: ~~9321 7688~~ (08) 6552 6000
Fax: 9321 7536
Email: sales@dpc.wa.gov.au
Website: www.slp.wa.gov.au

Any correspondence concerning this bulletin should be directed to:

Director
Policy Coordination and
Development
Strategic Policy and Management
Department for Planning and
Infrastructure
469 Wellington Street
Perth WA 6000

Please quote file reference 151-1-1-75P31V in all correspondence.

5 Disclaimer

This planning bulletin is intended to provide information regarding the new Planning and Development Regulations 2009. It is not intended to constitute legal advice or cover all circumstances.

Readers are advised to refer to the legislation, which is available from the State Law Publisher, and to seek professional legal advice should they have specific legal questions in relation to their particular circumstances.

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