

Introduction

The Model Subdivision Conditions Schedule is an essential tool used by the Western Australian Planning Commission (WAPC) to ensure compliance with the statutory and policy responsibilities of the WAPC in granting approval to subdivide land into freehold, survey strata and strata titles.

The Model Subdivision Conditions Schedule is to be used by referral agencies in response to WAPC subdivision referrals to assist in the timely determination of applications.

A review of the current Model Subdivision Conditions Schedule (January 2009) has been undertaken, resulting in the release of a new Schedule (2012) adopted by the WAPC.

Background

In 2009, the WAPC commenced the review of the Model Subdivision Conditions Schedule. The WAPC and Department of Planning released *'Planning Makes it Happen – A Blueprint for Planning Reform'* (September 2009), which included the review of the Model Subdivision Condition Schedule as part of the planning reforms and identified the following objectives of the review:

- Reduce the number of conditions imposed on approvals;
- Standardise and simplifying conditions to core issues;
- Ensure conditions are specific, so that proponents and clearance agencies are clear as to requirements;
- Ensure consistency with the validity rules set by the State Administrative Tribunal; and
- Avoid condition duplication.

In February 2010, the Model Subdivision Conditions Schedule Review Consultation Paper was released for public comment. The Consultation Paper included a review of the frequency of use of conditions and advice notes, and a draft set of revised

conditions. The draft set of revised conditions included a limited number of new conditions to deal with new policy measures and issues that had arisen since the last review of the Schedule in 2005.

Submissions were received during the public advertising period, and a series of internal and external workshops were undertaken that focussed on specific topics including: environment, water management, engineering, roads and transport, buildings and land use.

Most of the submissions were received from local government and Government referral agencies. Generally, the submissions were supportive of the review, though a number of key issues were raised, primarily relating to the validity test of conditions, inconsistent application of conditions, multiple clearance agencies, duplication of conditions, head of power and time delays.

A review was undertaken internally with representatives within the Department of Planning. In addition, an external peer review group comprising of planning consultants, local government, Urban Development Institute of Australia and land developers undertook a review. The peer review group was supportive of the Model Subdivision Conditions Schedule and their comments resulted in further modifications to the Schedule.

The review aimed at reducing conditions wherever possible, with the focus on core planning matters that are consistent with planning policy and best planning practice. It also included the deletion of a large number of advice notes, as the WAPC determined that they should be used sparingly, if at all, on subdivision approvals that refer to non-planning legislation and unrelated matters. New conditions requested by referral agencies have generally not been incorporated unless they are commonly used or reflect a planning policy basis.

New Model Subdivision Conditions Schedule

The 2009 Model Subdivision Conditions Schedule consisted of 178 conditions, and 86 advice notes. The revised Model Subdivision Conditions Schedule (2012) consists of 108 conditions and 25 advice notes. This is a reduction of approximately 40 per cent in the number of conditions and approximately 70 per cent in advice notes from the 2009 Schedule.

A copy of the Schedule can be found on the Planning WA website at www.planning.wa.gov.au

The Schedule includes 13 parts:

- Administration;
- Amenity;
- Buildings and Use;
- Drainage and Site Works;
- Electricity and Gas Pipelines;
- Environment;
- Fire and Emergency;
- Heritage (Indigenous, State, Local etc);
- Lot Design;
- School Sites;
- Reserves;
- Transport, Roads and Access; and
- Water and Sewer.

Assessment

The sensitive use of planning conditions can improve the quality of a proposal, enabling an application to be approved, that may otherwise have to be refused. In order to ensure public confidence in the planning system it is important that conditions are only imposed where they meet the validity test.

Model conditions do not replace thorough and careful assessment of applications and should not be used as a matter of routine. The need for

each condition should be carefully considered against the merits of the case by both the referral agency in recommending conditions and the WAPC in imposing the conditions.

Validity test

The State Administrative Tribunal (SAT) and other appeal bodies in Australia have adopted the approach taken in *Newbury DC v Secretary of State for the Environment* (1981) when considering the validity of specific conditions. That decision held that in order to be valid a condition must:

- be imposed for a planning purpose;
- fairly and reasonably relate to the development for which permission is given; and
- be reasonable, that is, be a condition which a reasonable planning authority, properly advised, might impose.

Non-Standard conditions and advice notes

In general, the WAPC will not support the use of non-standard conditions when the circumstance is adequately covered by a model condition included in the Schedule. There may, however, be site specific conditions or specific circumstances that warrant the use of a non-standard condition.

In such cases, the referral agency must provide the WAPC with adequate justification to support the recommended condition, having regard to the WAPC's planning framework, and with regard to the validity test applied by the SAT.

Where the requirement for a non-standard condition is specified within a local planning scheme, WAPC endorsed strategy, planning policy, or a district or local structure plan, such conditions should be drafted to ensure that it is clear as to:

- what the landowner/applicant needs to do and by when;
- who is the responsible clearing agency; and
- the final determination of compliance of the condition ultimately being the responsibility of the WAPC.

Advice notes can be used to provide supplementary information to inform conditions, but have no legal status and should be used sparingly. As a

general principle, it is not the role of subdivision conditions and advice notes to advise of requirements of other legislation, or requirements applying at the development approval stage.

Amendments to the Schedule

The Model Subdivision Conditions Schedule is a living document that requires regular monitoring and amendment to ensure relevance in terms of best practice. As statutory and policy requirements change, the Schedule needs to be updated to reflect those changes.

When drafting a new condition, referral agencies must provide justification for a proposed new condition and consult with the Perth and Peel Planning Division of the Department of Planning that has custodianship of the Schedule. Following an assessment of the proposed new conditions and providing agreement is given by the Perth and Peel Planning Division, the proposed new condition will be reported to the Statutory Planning Committee of the WAPC for consideration and endorsement. Once endorsement is obtained the new condition will be included within the Model Subdivision Conditions Schedule.

Following an examination of non-standard conditions, including consultation with referral agencies the WAPC will develop an addendum to the Model Subdivision Conditions Schedule to provide for conditions that arise due to local circumstances. This will be an ongoing process as part of the review.

Review of the Model Subdivision Conditions

A review of the Model Subdivision Conditions Schedule by the Department of Planning will commence 12 months after its release to ensure the conditions continue to be robust and address current planning policy and practice.

Further information

Enquiries concerning this planning bulletin should be directed to:

Principal Planner
Operational Policy Coordination
Gordon Stephenson House
140 William Street
PERTH WA 6000

Locked Bag 2506
Perth WA 6001

As part of its continuing improvements to its service to clients and the public, the WAPC has an internet site at the following address:

www.planning.wa.gov.au

This site contains a range of information concerning the WAPC, including planning bulletins.

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website: www.planning.wa.gov.au
email: corporate@planning.wa.gov.au

tel: 08 6551 9000
fax: 08 6551 9001
National Relay Service: 13 36 77
infoline: 1800 626 477

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