

1. Purpose

The Western Australian Planning Commission (WAPC) is now able to ensure that when land is being subdivided, and the land is affected by a hazard or other factor which affects the use and enjoyment of the land, the prospective owners of the land can be warned of the situation. This bulletin sets out the circumstances under which such a warning is needed, and the processes which are to be carried out to effect the warning.

2. When will a notification be required?

The WAPC will limit the use of memorials (notifications on title) to situations where:

- the hazard or other factor is relatively permanent;
- the hazard or other factor is of such significance (in terms of its effect on the use or enjoyment of the land) as to warrant notification to a landowner;
- the hazard or other factor may not be apparent on inspection of the land; and
- indication of the hazard would not normally be found in other documentation relating to the land, such as a local planning scheme.

Examples of hazards or other factors are the existence of aircraft noise (under or nearby an airport flight path), unexploded ordnance (explosive devices such as those left in a now disused artillery range) or insect infestation (in close proximity to a wetland).

Notifications are intended to be used sparingly to convey information which relates to hazards or other factors, as outlined above. They are not intended to be used as substitutes

for (or amplifications of) other land use matters such as development constraints or controls found normally in local planning schemes.

3. How is a notification established?

Under Section 165 of the *Planning and Development Act 2005* it is the WAPC's responsibility to determine the need for a notification, and to place a condition on a subdivision proposal if necessary.

Alternatively, under Section 70A of the *Transfer of Land Act 1897* a notification may be lodged to the benefit of a local government or public authority. An example is a notification as to excessive noise which affects the use and enjoyment of the land.

4. Assessment of subdivision by the WAPC

There is a need to establish the circumstances under which notifications are appropriate. These circumstances can be summarised as follows:

(i) Planning Justification

Notifications should only be contemplated following a planning assessment which concludes that a notification on title is desirable on planning grounds.

(ii) Purpose

A notification is an instrument used to advise of a hazard or other factor; it is not a means of rendering acceptable a situation which in terms of the use or enjoyment of the land is clearly not acceptable.

(iii) Relevancy

The notification must relate to the purposes referred to in either Section 165 or Section 70A, i.e. in the case of Section 165, a hazard or other factor which would 'seriously' affect the use or enjoyment of the land. Other land use matters such as development requirements or constraints, which are found in local planning schemes and other statutory documents, are not to be the subject of notifications.

(iv) Permanency

The hazard or other factor must be relatively permanent.

(v) Necessity

A notification should only be used where the prospective owner would not, under normal circumstances, otherwise be aware of the hazard or other factor. The situations referred to above - aircraft noise, unexploded ordnance, insects - would not necessarily be obvious on inspection of the land and a notification would, therefore, be appropriate.

5. Subdivision condition

Where a landowner, or an agent acting on behalf of a landowner, is aware of a hazard or other factor affecting the land, such information is to be included with the application for subdivision. The WAPC will also receive comments and advice from local authorities and government agencies to which a subdivision has been referred, regarding the existence of hazards or other factors affecting the land. On receipt of such information the WAPC will assess the justification and need for a notification, and deal with the subdivision accordingly.

Where the WAPC considers it necessary to advise owners or prospective owners of a hazard or other factor, notifications may be imposed via a condition of subdivision.

Notifications can only be lodged on lots included in the plan of subdivision or strata scheme.

Examples of notifications are included in the WAPC's Model Subdivision Conditions Schedule, 2016 (as amended).

Registration of notifications is to be in a form acceptable to the Registrar of Titles (Landgate).

6. Subdivision of land which already contains a notification

Placement of a notification on the title of a lot, and the subsequent subdivision of that lot, will result in the notification being automatically placed on the titles of resultant new lots. The consequences of this are as follows:

- (i) Provided the original lot was contained wholly within the area of influence of the hazard, it will save having to take further action in respect of placement of notifications.
- (ii) If the original lot extended beyond the area of influence of the hazard, the titles of some of the resultant new lots will be endorsed with an unnecessary and unwarranted notification, which will need to be removed.
- (iii) As the Crown will not accept a lot whose title is endorsed with a notification, it will be necessary to remove notifications from the titles of lots which are to be transferred to the Crown for drainage or recreation or the like.

7. Withdrawal or cancellation of a notification

The WAPC is also empowered under Section 165 to remove a memorial from a certificate of title. Apart from the need to remove a memorial to enable transfer of land to the Crown, there will be circumstances whereby a notification should be withdrawn - for instance where the hazard may have been permanently removed. This would most likely take place well after completion of the development of the subject area and consequently would require action quite unrelated to subdivision.

The action would probably take the form of a written request by a lot owner to the WAPC, verification by the WAPC that the notification is no longer warranted, and the WAPC making an application to Landgate to withdraw the notification from the certificate of title. There is a charge imposed for withdrawal of a memorial, payable by the landowner.

8. Application Forms

Application forms for establishing and withdrawing a notification are available from Landgate.

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