

This fact sheet outlines the circumstances, need and process, under which the Western Australian Planning Commission (WAPC) can apply for a notification to be registered on a Certificate of Title of a lot.

What is a notification on title?

Where development and subdivision of land is impacted by hazards or other factors that seriously affect the use and enjoyment of the land, the WAPC informs prospective owners of the situation through a notification placed on the Certificate of Title which is endorsed by the Registrar of Titles.

When is a notification required?

The WAPC will consider the following matters when determining whether a notification is to be placed on the Certificate of Title:

- the permanency of the hazard or other factor impacting the use and enjoyment of the land
- the significance of the hazard or other factor in terms of its effect on the use or enjoyment of the land
- whether the hazard or other factor is apparent or obvious on inspection of the land
- indication of the hazard would not normally be found in other documentation relating to the land, such as a local planning scheme.

The following hazards or other factors may be considered for notification by the WAPC when assessing a proposal:

- bushfire prone areas
- unexploded ordnance
- areas vulnerable to coastal erosion and/or inundation
- noise (aircraft, transport noise from the proximity of a transport corridor and entertainment precincts)
- mosquito impact (from proximity to mosquito breeding areas)
- emissions from industrial activities (such as dust, odour, noise, light pollution, vibration).

It is not the intention for notifications to be used in circumstances where the WAPC is of the view that the hazard or other factor is so significant that a proposal should not be approved. Notifications will not be used as substitutes for other relevant regulatory or statutory instruments or controls, such as local planning schemes.

How is a notification established?

There are two Acts used to establish notifications on titles in relation to planning applications.

Under Section 165 of the *Planning and Development Act 2005*, determining the need for a notification, and placing a condition on a subdivision proposal is the WAPC's responsibility.

Section 70A of the *Transfer of Land Act 1893* enables a notification to be lodged by a local government or public authority, for development approvals. A notification may also be lodged under this section without a subdivision application being submitted.

Planning context

Subdivision application: 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 should be included with the proposal (application for subdivision).

The WAPC refers subdivision proposals to the relevant local government and government agencies for comment and recommendations, including advice regarding the existence of hazards or other factors affecting the land. The WAPC will then assess the information received and any need for notification(s), and process the subdivision accordingly.

Where the WAPC considers it necessary to advise owners or prospective owners of a hazard or other factor, the notification may be imposed via a condition of subdivision on the diagram or plan of survey (deposited plan).

Notifications can only be lodged on lots included in the plan of subdivision or strata scheme. The WAPC's [Model Subdivision Conditions Schedule](#) provides a set of standard conditions, including conditions requiring notification on titles and sample wording of notifications.

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

Subdivision conditions: For a condition to be valid, there must be a planning purpose, it must relate to the land of the subject proposal, and it must be reasonable. In other terms, a need and nexus has been established for the condition to be imposed.

In the context of the above, a condition which provides for a notification on title should take into consideration the following:

(i) Planning justification

Notifications should only be considered following a planning assessment which concludes that a notification on title is desirable on planning grounds and is supported by a policy position.

(ii) Purpose

A notification is an instrument used to advise current and prospective owners of land 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 hazards or other factors that the WAPC has determined would seriously affect the use or enjoyment of the land.

(iv) Permanency

The hazard or other factor is permanent or likely to remain in place for an extended period of time.

(v) Necessity

Where it is established under normal circumstances a hazard or other factor would not be obvious on an inspection of the land, such as aircraft noise or unexploded ordnance.

Subdivision of land already containing a notification: Where there is a notification registered on the title of an existing lot, that notification will automatically transfer to the titles of any new lots created as the result of a subdivision of the original lot. The consequences may be as follows:

- (i) No further action required - provided the original lot was contained wholly within the area of influence of the hazard or other factor, the notification will be automatically applied to the new lots.
- (ii) Some lots will require the notifications to be removed by way of application to the Registrar of Titles - some of the titles of the new lots will be endorsed with an unnecessary and unwarranted notification where the original lot extended beyond the area of influence of the hazard or other factor.
- (iii) Removal of the notification may be necessary for circumstances involving the creation of Crown reserves for drainage, recreation or the like, for lots being ceded to the Crown. Prior to doing so, these lots will need the notifications to be removed by way of application to the Registrar of Titles. The Crown will not ordinarily accept a lot where the title is endorsed with a notification.

Withdrawal of a notification: The WAPC is also empowered under section 165 to lodge a request with the Registrar of Titles to have a notification removed from a Certificate of Title.

Apart from the need to withdraw a notification to enable transfer of land to the Crown, there may be other circumstances where a notification should be withdrawn such as if the hazard or other factor has been permanently removed or the planning considerations relating to the hazard or other factor have changed to warrant the notification to be withdrawn. This would most likely take place well after completion of the development of the subject area and consequently would require action, separate, and unrelated to the subdivision of the land.

A proposal to withdraw a section 165 notification would be undertaken by way of a formal written request by the landowner to the WAPC. The WAPC will subsequently undertake the following:

- (i) any necessary assessment to establish that the subject notification is no longer warranted
- (ii) advise the landowner of its findings and determination and
- (iii) if it is satisfied that the notification should be removed, the WAPC will lodge a request with the Registrar of Titles.

It should be noted that any associated charges for withdrawal of a notification are payable by the landowner.

Application forms: Application forms for establishing and withdrawing a notification are available from www.Landgate.wa.gov.au.