



Department of **Planning,
Lands and Heritage**



January 2018

DRAFT **DC Policy**

1.1

Subdivision of land - general principles

DRAFT Development Control Policy 1.1

Subdivision of land – general principles

[click to follow](#)

Contents

Background notes	1	4 Implementation of policy	8
1 Introduction	1	4.1 Procedures	8
2 Policy objectives	2	4.2 Appeals	8
3 Policy measures	2	4.3 Compliance with subdivision approvals	8
3.1 Consistency with long-term planning goals	2		
3.2 Context and site analysis	2		
3.3 Site responsive design	3		
3.4 Structure plans and Activity Centre plans	3		
3.5 “Superlot” subdivisions	4		
3.6 Leases	5		
3.7 Developer contributions	6		
3.8 Lawful development	7		
3.9 Public utility services	7		
3.10 Vehicular access	7		
3.11 Suitability and capability for development	8		
3.12 Other policy requirements	8		

Disclaimer

This document has been produced by the Department of Planning, Lands and Heritage on behalf of the Western Australian Planning Commission. Any representation, statement, opinion or advice expressed or implied in this publication is made in good faith and on the basis that the Government, its employees and agents are not liable for any damage or loss whatsoever which may occur as a result of action taken or not taken, as the case may be, in respect of any representation, statement, opinion or advice referred to herein. Professional advice should be obtained before applying the information contained in this document to particular circumstances.

© Western Australian Planning Commission

Published by the
Western Australian Planning Commission
Gordon Stephenson House
140 William Street
Perth WA 6000

Locked Bag 2506
Perth WA 6001

Published January 2018

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

tel: 08 6551 8002
fax: 08 6551 9001
National Relay Service: 13 36 77
infoline: 1800 626 477

This document is available in alternative formats on application to Communication Services.



Background notes

1. This policy sets out the general principles, which will be used by the Western Australian Planning Commission (WAPC) in determining applications for the subdivision of land. It also indicates the basic requirements for the creation of new lots and the procedures the WAPC will follow in processing subdivision applications.
2. The context to this policy is provided by *State Planning Policy No. 1 - State Planning Framework (Variation No. 3) (SPP No. 1)*, the *State Planning Strategy* and the principles for sustainable land use and development contained in the draft *Perth & Peel at 3.5 million* suite of sub-regional planning frameworks.
3. The policy is complemented by other policies which are concerned with the more detailed aspects of lot creation for particular land uses. The general principles should be read together with the relevant use-specific policy to give a comprehensive coverage of the WAPC's policy requirements for any particular use. It operates in conjunction with *Liveable Neighbourhoods (2009)* which applies to subdivision applications proposing the creation of 20 or more

lots. *Liveable Neighbourhoods* is currently being reviewed and following completion of the review this policy may be amended to incorporate any changes that arise.

1. Introduction

- 1.1 This policy is primarily concerned with those matters contained in Part 10, of the *Planning and Development Act 2005* and the *Planning and Development Regulations 2009*, which deal with the subdivision of land alienated from the Crown. The policy sets out the general principles which will guide the WAPC in determining applications for subdivision.

For the purpose of the policy, subdivision includes the creation of a new lot or lots, the amalgamation of existing lots, and any other dealings in land which require the approval of the WAPC. This includes the creation of freehold, vacant strata, survey strata and strata lots.

Also under the *Strata Titles Act 1985* every strata plan and every plan of re-subdivision or consolidation for a strata scheme lodged for registration is required to be accompanied by a Certificate of approval from the WAPC. The WAPC has

delegated its powers and functions to local government for the determination of most built strata's, except for those applications that:

- propose the creation of a vacant strata lot(s);
- propose vacant air strata lots in multi-tiered strata scheme developments; or
- in the opinion of the WAPC, as notified to the relevant local government in writing, relate to a type of development and/or land within an area which is of regional significance, or in respect of which the WAPC has determined is otherwise in the public interest for the WAPC to determine the application.

- 1.2 In its determination of applications the WAPC will seek to ensure that the broad objectives contained in section 2 of this policy are met. Applications that do not comply with the objectives will either not be approved or the WAPC may impose conditions on an approval to secure the objectives.



2. Policy objectives

- To control the subdivision of land within the framework of the relevant legislation and regulations.
- To ensure that the subdivision of land is consistent with *State Planning Policy No. 1 - State Planning Framework (Variation No. 3) (SPP No. 1)* and relevant WAPC policies and plans.
- To ensure that all lots created have regard to the provisions of the relevant local government planning scheme.
- To ensure a comprehensive and co-ordinated approach to the subdivision of urban expansion areas in metropolitan Perth, regional centres and country towns.
- To ensure the subdivision pattern is responsive to the characteristics of the site and the local planning context.
- To create a site-responsive design through a street and lot layout that provides local amenity, safe and efficient access and promotes a sense of place.
- To ensure that the subdivision is consistent with orderly and proper planning and the character of the area.
- To facilitate development which achieves appropriate community standards of health, safety and amenity.

- To facilitate appropriate access and movement systems for all modes of transport.
- To ensure constructed vehicle access from the gazetted public road system to each new lot.
- To create lots that are capable of lawful development and, at the same time, ensure that existing lots or the development upon them is not rendered illegal.
- To secure public utility services to each new lot appropriate for intended use of the lot.
- To make appropriate arrangements for development contributions, where necessary and relevant, for the orderly and proper planning of the locality containing the subdivision.
- To make appropriate arrangements, where necessary for planning purposes, for the ceding or transfer of land.

3. Policy measures

3.1 Consistency with long-term planning goals

- 3.1.1 SPP No. 1 sets out the general principles for planning and brings together the WAPC's State Planning Policies, regional strategies, regional and sub-regional structure plans and operational planning policies into a

single policy framework. SPP No. 1 together with any applicable region scheme and the relevant local government planning scheme, including any local planning strategy (pursuant to the Model Provisions as set out in the Planning and Development [Local Planning Scheme] Regulations 2015), provide the planning policy direction which guides the WAPC in determining subdivision applications.

3.2 Context and site analysis

- 3.2.1 Subdivision applications should be submitted with sufficient detail and information as is necessary to enable the WAPC to make a determination on the application. Sections 20 and 21 of the *Planning and Development Regulations 2009* specify the requirements for making an application for subdivision approval to the WAPC and the matters the WAPC must have regard to in considering an application for subdivision approval. The relevant matters include but are not limited to:

- (a) the size, shape and dimensions of each lot;
- (b) the services available to each lot;
- (c) drainage of the land;
- (d) access to each lot;



- (e) the amount of public open space to be provided;
- (f) any relevant planning scheme;
- (g) any relevant regulations made by the Minister for Planning under the *Planning and Development Act 2005*.
- (h) any relevant local laws relating to town planning.

An application for subdivision approval is made by lodging a Form 1A Application with the WAPC for Approval of Freehold or Survey Strata Subdivision. The Form 1A sets out the information required to accompany a subdivision and survey strata application.

- 3.2.2 For larger scale subdivisions, for example, major urban expansion areas or new industrial subdivisions, a more detailed context and site analysis may be necessary.
- 3.2.3 The purpose of a context analysis is to ensure that new subdivision and development is connected to and integrated with surrounding natural and developed areas, including planned and committed development for adjacent sites. The context analysis also identifies key opportunities and constraints presented by the site.

3.2.4 The WAPC will require sufficiently detailed assessment of the site and its immediate surrounds, in accordance with the relevant policies of the WAPC, demonstrating:

- a sustainable and environmentally site responsive design;
- the creation of a positive sense of place and identity based upon natural and cultural assets; and
- compatible integration of interfaces between the development site and neighbouring land use and development.

3.3 Site responsive design

The provision of an interconnected network of streets with development fronting the streets and open space areas helps create an environment with a sense of place and encourages housing diversity.

Climate-responsive design is recommended where topography and other site conditions allow. Avoidance of major earthworks is also supported as it reduces the demand for basic raw materials and the loss of remnant vegetation.

Lot size and subdivision layouts need to respond to the physical characteristics of an area including topography, soils, drainage, vegetation and

natural features and views. Lot layouts also need to address site constraints and optimise orientation to suit energy efficient housing where possible.

Subdivisions should be designed having regard for the existing and proposed distribution of open space in the immediate locality. Lots should be located convenient to areas of passive and active open space and all lots should be served by a suitable level of community services, schools, retail facilities and the like.

3.4 Structure plans and Activity Centre plans

- 3.4.1 Structure planning is a process of developing a framework for the integrated subdivision and development of a major residential, commercial or industrial area, or activity centre. Structure plans are particularly useful for co-ordinating subdivision and development in areas of fragmented ownership.
- 3.4.2 Preparation of district and local structure plans may be required under the provisions of a local planning scheme. Such structure plans are non-statutory plans and a decision-maker for an application for development approval or subdivision approval in an area that is covered by the structure plan is to have due regard to, but is not bound by, the structure plan when determining the application.



Where a structure plan is a requirement of a local planning scheme, it must be prepared in accordance with the scheme provisions and have regard to the provisions of any regional or sub-regional structure plan. The WAPC has adopted deemed provisions for the approval of structure plans under local planning schemes. A structure plan and activity centre plan are determined by the WAPC.

3.4.3 Structure plans may also be accompanied by cost-sharing arrangements between landowners for the provision of common infrastructure. The WAPC adopted policy on developer contributions, *State Planning Policy 3.6 Development Contributions for Infrastructure* (SPP 3.6) (draft revised version) and provides guidance on the scope of development contributions that may be acceptable. Model provisions for development contributions in local planning schemes have also been adopted.

3.4.4 The WAPC will have regard to any adopted structure plan and developer contribution arrangement when considering subdivision applications submitted within an area covered by the structure plan or developer contribution arrangement.

3.5 “Superlot” subdivisions

3.5.1 There is a presumption against “superlot” subdivision of land holdings which are identified or zoned for future urban purposes and which are already of a size suitable for that purpose (generally less than 150 hectares) where this could prejudice the orderly and proper planning of the land.

3.5.2 However, where it can be demonstrated that a superlot subdivision of a large land holding will not be contrary to the orderly and proper planning of the land, a superlot subdivision may be supported subject to:

- (1) The land being zoned “Urban”, “Industrial”, “Central City Area” or “Regional Centre” in the Metropolitan Region Scheme or regional planning scheme and appropriately zoned in the local government town planning scheme.
- (2) The original land holding being given subdivision approval for at least the first stage of development and actual development having commenced.
- (3) The preparation of a comprehensive local structure plan in liaison with the local government and to the satisfaction of the WAPC. The

structure plan shall be accompanied by a report, which clearly indicates the development contributions, capabilities and obligations of each superlot.

- (4) Development contributions, capabilities and obligations referred to in (3) being the subject of a record on title pursuant to section 70A of the *Transfer of Land Act 1993*, or a legal agreement with the WAPC and/or any other relevant public authority which shall be binding on subsequent owners and supported by caveats lodged by the WAPC to ensure that prospective purchasers are aware of the commitments.

3.5.3 Depending on the degree of need to maintain flexibility in the planning of the original land holding, the WAPC may approve the excision of only one superlot to incorporate the first stage(s) of development. The subdivision of the whole of the land holding into superlots of 20 hectares or greater may be considered where arrangements regarding the provision of infrastructure have been established in accordance with SPP 3.6.

3.5.4 Where development contributions can be conveniently made at the time of a superlot subdivision, the WAPC will require that these be ceded as conditions of subdivision, to be either transferred to the



Crown at that time, or to be the subject of a separate legal agreement which ensures the transfer of a site at some future nominated time.

3.6 Leases

3.6.1 Under Part 10 Division 2 of the *Planning and Development Act 2005*, the WAPC is responsible for consideration and determination of applications to subdivide land or lease land for a long-term.

Long-term leases may be tantamount to de facto subdivision. For this reason, the WAPC has regard to similar criteria to the consideration of applications for approval to lease as it applies to applications for approval to subdivide.

Consistent with established policies and practices, an application for approval to lease a larger scale area for residential purposes may raise planning issues including:

- suitability of location, including relationship with existing and proposed land use and development in the locality;
- permeability and public access, including gazetted public roads or accessways if appropriate, for vehicles, pedestrians, management and emergency purposes;

- the provision and arrangement of private and public open space;
- provision of, or development contributions for, required infrastructure;
- service provision;
- orderly and proper planning; and
- amenity of the locality.

These issues may be particularly pertinent in applications for approval to lease for land zoned urban. On land zoned rural under a region or town planning scheme, the WAPC will not ordinarily support a proposal for leases for residential purposes, other than in respect of an existing dwelling.

In urban release areas especially, a local structure plan is normally required to provide a context for the arrangement of land uses and development and the subdivision of land and, where necessary, rezoning amendments to local government planning schemes. For this reason, if the scale of a leasing proposal is such that it raises planning issues, the WAPC may require preparation of a local structure plan prior to consideration or approval of the proposal.

3.6.2 Section 136 of the *Planning and Development Act 2005* sets out the approval requirements for leases. For clarity and in order not to prejudice the long-term planning of a locality, including for redevelopment, it is desirable that the expiry date of a lease is specified at the commencement of the agreement.

Moreover, especially in proposals involving a larger number of leases, it is appropriate in order to facilitate future planning of a locality that the periods of individual leases are synchronised so that they all have the same end date.

Accordingly, except in respect of retirement village schemes under the *Retirement Villages Act 1992*, the WAPC will:

- not approve leases for which the expiry date is not clearly specified; and
- where appropriate, require terms of individual leases that are part of a larger lifestyle village development to be synchronised so that each lease shares the same end date.

For residential leases it is considered that a maximum period of 60 years should not be exceeded. For commercial leases a longer period may be entertained, but in excess of 99 years should be avoided.



3.6.3 Approval to a lease is not a development approval, which is separately required from a local government under its operative local planning scheme. WAPC development approval under a region scheme may also be separately required.

In exercising development control under a region scheme, the WAPC and local government must consider:

- The purpose for which the land is zoned or reserved under the scheme. In particular, proposals for residential use and development should not be approved on rural zoned land;
- consistency with any adopted or proposed structure planning for a locality;
- consistency with relevant WAPC policies;
- the orderly and proper planning of the locality; and
- the preservation of the amenities of the locality.

Proponents seeking development approval of major proposals prior to seeking the WAPC's approval to a lease for land or a building should consult with the Department for Planning, Lands and Heritage, prior to finalising a proposal,

for advice on the WAPC's requirements or conditions that may be affixed to an approval to lease.

The nature of a proposal may raise particular planning issues requiring consideration by the local government or WAPC. For example, a proposal that is intended to accommodate retirees or aged persons should be accessible by public transport, be appropriately serviced and should provide disabled access.

3.6.4 The WAPC's approval to a lease for land or a building is made on the basis of planning considerations and does not of itself confer security of tenure. The WAPC's approval also does not imply that approval to subdivide the subject land along the lines of the approved leases would necessarily be forthcoming. Importantly, as noted above, approval to a lease is not a development approval.

Lifestyle villages are not strata-titled and are not retirement village schemes under the *Retirement Villages Act 1992*. The *Residential Tenancies Act 1987* governs the rights and responsibilities of a lessor/operator with regard to a resident lessee. That Act also applies to sites at caravan parks licensed under the *Caravan Parks and Camping Grounds Act 1995* along with the *Residential Parks (Long-stay Tenants) Act 2006*. Typical agreements between the operator of the lifestyle village and the

resident/lessee are not for a fixed term and section 64 of the *Residential Tenancies Act* provides that "an owner may give notice of termination ... without specifying any ground".

3.7 Developer contributions

3.7.1 The WAPC may impose conditions requiring developer contributions (including the ceding of land) for the provision of infrastructure and services which are necessary and relevant to the subdivision.

These contributions may be in the form of:

- ceding of land for roads, public open space, primary school sites, drainage and other public works;
- construction of infrastructure works which are transferred to public authorities on completion;
- monetary contributions to acquire land or undertake works by public authorities or others.

The scope and arrangements for developer contributions are set out in WAPC State Planning Policy 3.6.



3.8 Lawful development

- 3.8.1 Local planning schemes usually incorporate standards governing the development of lots, most commonly through lot size minimal for different uses. Also relevant, however, will be minimum frontage requirements, the need to meet setback requirements, compliance with open space provisions etc. In areas not subject to an operational scheme, similar requirements may be contained in local laws made under the *Local Government Act 1995*. For residential development, State Planning Policy 3.1 Residential Design Codes provide guidance on the minimum and average lot sizes which the WAPC will have regard to.
- 3.8.2 Lots which cannot be developed in accordance with relevant statutory requirements will not be approved. The WAPC will also ensure that, by creating a new lot, it does not render an existing lot or development upon that lot illegal in terms of statutory requirements. Such matters may include lot sizes, parking, setbacks or the provision of services.

3.9 Utility services provision

- 3.9.1 The WAPC will ensure that each new lot is provided with an acceptable level of public utility services, or services provided by a licensed private service provider, appropriate for its intended use. The level

of such services will be determined by the WAPC in the light of the intended use, the size of the lot, soil conditions, the provisions of the local planning scheme and the draft Government Sewerage Policy 2016, together with the provisions of any other published policy that may be relevant.

- 3.9.2 Subdivision is often proposed for land across which there is an existing public utility easement or facility (such as high voltage electricity transmission and distribution lines, natural gas pipelines, gas distribution systems and the major water and sewerage mains). In such instances the subdivider should negotiate with the service agency concerned before lodging an application with the WAPC and, if possible, reach agreement on both:
- the surrender of the existing easements; and
 - the way in which the particular facility will be protected and/or relocated upon subdivision.

A letter from the agency confirming the arrangements should be supplied with the subdivision application. Where this is not supplied by the applicant, the WAPC will normally impose a condition requiring certification from the servicing agency concerned that both the surrender of existing easements and protection

of the facility will be undertaken to the specifications of the agency. This condition will normally be imposed unless the WAPC is satisfied that the requirement of the servicing agency is unreasonable.

3.10 Vehicular access

- 3.10.1 New freehold and survey strata title lots will be created only where each lot has, or can be, provided with direct frontage access to a constructed public road, which is connected to the road system of the locality. This is to ensure the provision of public utility and other services as well as to provide vehicular and pedestrian access to the lot.
- 3.10.2 Where new roads are needed, the subdivider will be required to dedicate, construct and drain these areas to the specifications and satisfaction of the WAPC on the advice of the local government. The WAPC may also require existing roads or rights-of-way to be widened, constructed, upgraded or dedicated to ensure compliance with this policy.



3.11 Suitability and capability for development

3.11.1 The WAPC considers that all new lots should be physically capable of development for their intended purpose. Prospective purchasers of such lots should be reasonably assured that the lot is suitable in physical terms for development.

3.11.2 To ensure that all new lots are physically capable of development, the WAPC may require various works/actions to be undertaken including the land being filled and drained, connection to an external system of drainage or construction of a driveway, before a lot is created. In some instances the provision of a geotechnical report may be required to evaluate the physical suitability of land to sustain a particular activity.

3.11.3 The WAPC obtains advice of the local government in respect of the need for a geotechnical report. Generally the circumstances in which a local government may request the WAPC to impose a subdivision condition for a geotechnical report to be provided for a subdivision includes one or more of the following:

- where a significant amount of fill is required to be placed on a subdivision site;

- where trenching for services results in the need for substantial backfilling;
- where there is a reason to doubt the ability of the land to support development (with or without treatment), from past experience in the particular area, or knowledge of the type of soil or terrain;
- where there is reason to doubt the ability of the land to safely accept on-site effluent disposal.

3.12 Other policy requirements

3.12.1 The WAPC's State Planning Policy Framework includes other policies dealing with the subdivision of land into lots for specific land uses. The policies contain the requirements of the WAPC and should be read together with this policy.

4. Implementation of policy

4.1 Procedures

4.1.1 Applications for the subdivision of land to the WAPC should be made on the appropriate form and include such information as is required, having regard to the scale and content of the proposal. As required by the relevant legislation,

the WAPC will forward a copy of each subdivision application to any government agency, local government, utility service provider or public body whose powers or functions may be affected for comments and recommendations. The responses will be considered by the WAPC in determining an application.

4.2 Appeals

4.2.1 Under the relevant legislation there is a right of review against the decision of the WAPC. An application for review can be made to the State Administrative Tribunal within the periods prescribed by the legislation.

4.3 Compliance with subdivision approvals

4.3.1 Following approval of a subdivision application, the applicant is to make arrangements in liaison with relevant government agencies, local government and utility service providers, to comply with any conditions imposed. In this regard before the WAPC will endorse the diagram or plan of survey of subdivision it must be satisfied that all conditions have been complied with or will be complied with at the time a certificate of title is issued by the Registrar of Titles.