



Western Australia

Town Planning and Development Act 1928

## **Town Planning Appeal Tribunal Rules 2003**

These rules were repealed by the *Town Planning Appeal Tribunal (Repeal) Rules 2004* r. 3 as at 1 Jan 2005 (see s. 2 and *Gazette* 30 Dec 2004 p. 7023).

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Ceased on 01 Jan 2005

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## Town Planning Appeal Tribunal Rules 2003

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## **Town Planning Appeal Tribunal Rules 2003**

### **Part 1 — Preliminary**

**1. Citation**

These rules may be cited as the *Town Planning Appeal Tribunal Rules 2003*.

**2. Interpretation**

In these rules —

“**Class 1 appeal**” means an appeal referred to in section 40(3) of the Act;

“**Class 2 appeal**” means an appeal that is not a Class 1 appeal;

“**notice of appeal**” means the notice of appeal and any attachments referred to in rule 7;

“**planning authority**” means a local government, a redevelopment authority, or the Commission;

“**redevelopment authority**” means an authority established under an Act referred to in section 6(4) of the Act;

“**statement by respondent**” means the statement by respondent and any attachments referred to in rule 9.

**3. Time for doing an act or thing under these rules**

- (1) The Tribunal may, of its own motion or on an interlocutory application by a party, extend or abridge the time specified in

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these rules for doing any act or thing, on such terms as it thinks fit.

- (2) For the purposes of subrule (1), the Tribunal may extend the time for doing the act or thing even if the time has expired.

**4. Non-compliance does not invalidate proceeding**

Proceedings are not invalid by reason only of a failure to comply with the practice and procedure provided for in, or under, these rules and the Tribunal may make orders on such terms it thinks just to remedy any defect caused by the failure to comply.

**5. Copies of documents**

- (1) Except as provided in these rules, where these rules require the filing and serving of copies of documents, the copies must be hard copies of those documents, not electronic copies.
- (2) The Registrar may, in a particular case, accept for filing an electronic copy of a document instead of a hard copy if the Registrar considers it appropriate.

## **Part 2 — Commencing and responding to an appeal**

### **6. How an appeal may be commenced**

A person may commence an appeal by —

- (a) filing with the Registrar —
  - (i) in relation to a Class 1 appeal, one original and one copy of a notice of appeal; and
  - (ii) in relation to a Class 2 appeal, one original and 3 copies of a notice of appeal;
- and
- (b) serving one copy of the notice of appeal on the respondent.

### **7. Notice of appeal**

- (1) A notice of appeal must be in the form of Schedule 1 Form 1.
- (2) The notice of appeal must have attached —
  - (a) in relation to a Class 1 appeal or a Class 2 appeal, except an appeal referred to in paragraph (b) —
    - (i) a copy of the planning application or subdivision application; and
    - (ii) except in the case of a deemed refusal, a copy of the decision appealed against;
  - and
  - (b) in relation to a Class 2 appeal that is an appeal against a direction of a planning authority, a copy of the direction.

### **8. How an appeal may be responded to**

A respondent may respond to an appeal within 14 days of being served with a notice of appeal by —

- (a) filing with the Registrar —

- (i) in relation to a Class 1 appeal, one original and one copy of a statement by respondent; and
  - (ii) in relation to a Class 2 appeal, one original and 3 copies of a statement by respondent;
- and
- (b) serving one copy of a statement by respondent on the appellant.

**9. Statement by respondent**

- (1) A statement by respondent must be in the form of Schedule 1 Form 2.
- (2) The statement by respondent must have attached —
  - (a) in relation to a Class 1 appeal, one copy of the planning scheme and any policies or planning documents upon which the respondent relies;
  - (b) in relation to a Class 2 appeal, 3 copies (or one hard copy and one electronic copy) of the planning scheme and any policies or planning documents upon which the respondent relies; and
  - (c) in relation to an appeal against a direction of a planning authority, a copy of any planning approval the contravention of which gave rise to the direction.
- (3) In subrule (2) —  
**“planning approval”** means an approval, with or without conditions, for the development or subdivision of land.

**10. Amendment of grounds of appeal and response**

- (1) An appellant or a respondent may apply to amend the grounds specified in the notice of appeal or statement by respondent, as the case may be.
- (2) The Tribunal may, at any time prior to the determination of the appeal, grant the application.



### **Part 3 — Conduct of Class 1 appeals**

#### **11. General conduct of Class 1 appeals**

A Class 1 appeal must be conducted —

- (a) with as much informality as possible having regard to the need for an expeditious determination; and
- (b) in a manner that encourages the parties to reach agreement where possible on some or all of the issues arising in the appeal.

#### **12. Hearing**

Unless the appeal is to be conducted entirely on the basis of documents pursuant to section 51(7) of the Act, the Registrar is to fix a time and day for the hearing of a Class 1 appeal as soon as practicable after receipt of the statement by respondent.

#### **13. Case management conference**

Where a statement by respondent is not received within the time prescribed in rule 8, or if the President or member hearing the appeal is of the view that the information provided is insufficient to proceed to hear the matter, the Registrar is to fix a time and day for a case management conference.

#### **14. Discovery and inspection**

The Tribunal may, to assist compliance with rule 11, order a party to give discovery of documents and allow inspection of the documents contained in the list by another party.

#### **15. Documentary evidence**

If a party intends to rely on any document, written statement or affidavit, the party must, not less than 7 days before the hearing or within such other time as the Tribunal may order —

- (a) file one original and one copy of that document with the Registrar; and

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- (b) serve a copy on any party and any person authorised to make a submission pursuant to section 62 of the Act.

**16. Contents of an affidavit**

An affidavit may contain statements of opinion or belief if the sources or grounds of that opinion or belief are set out.

## **Part 4 — Conduct of Class 2 appeals**

### **17. Mediation**

- (1) Subject to subrule (4), the Registrar is to fix a time and day for the mediation of a Class 2 appeal.
- (2) The date fixed must not be earlier than 14 days after the notice of appeal is served, but must be as soon as is practicable after that.
- (3) As soon as possible after the filing of the statement by respondent, the Registrar is to cause notice of the time and place of the mediation to be sent to the appellant and respondent.
- (4) Subrule (1) does not apply if, within 14 days of the notice of appeal being filed and served, a party to the appeal notifies the Registrar and the other parties in writing that the party does not wish to have the appeal made the subject of a mediation.

### **18. Directions hearings**

- (1) A directions hearing must be held —
  - (a) in relation to a Class 2 appeal, except an appeal referred to in paragraph (b), if —
    - (i) the appeal has not been responded to in accordance with rule 8;
    - (ii) the parties have notified that the matter is not able to be mediated; or
    - (iii) mediation has failed to resolve the appeal;and
  - (b) in relation to every Class 2 appeal that is an appeal against the direction of a planning authority.
- (2) A directions hearing may be conducted by telephone or by other electronic means where the Tribunal so directs.

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- (3) At a directions hearing each party must inform the Tribunal of —
  - (a) the number and nature of the witnesses to be called;
  - (b) the likely duration of the appeal; and
  - (c) whether the appeal can be dealt with entirely on the basis of documents, pursuant to section 51(7) of the Act.
- (4) The Registrar is then to fix a time and day for the hearing of the appeal.

**19. Discovery**

Each party to an appeal must file a list of discoverable documents with the Registrar and serve the list on any other party not less than 28 days prior to the date of the hearing.

**20. Witness statements**

- (1) Except where the Tribunal otherwise directs, a party must, in respect of each witness giving evidence on behalf of the party at the hearing —
  - (a) file one original and 3 copies of a witness statement with the Registrar; and
  - (b) serve a copy of the witness statement on any party and any person authorised to make a submission pursuant to section 62,  
  
not less than 10 days before the day fixed for hearing.
- (2) The witness statement must contain the statements of fact, opinion and belief upon which the witness relies and have attached any plans, diagrams, photographs or other documents referred to in the witness statement.

- (3) A witness statement must —
  - (a) be double spaced;
  - (b) have each paragraph numbered separately;
  - (c) have a cover sheet that indicates the number and title of the appeal, and name and title of the witness and for whom the witness is to give evidence.
- (4) At the hearing of the appeal a witness may make corrections to his or her statement.
- (5) If a witness at the hearing of an appeal adopts his or her witness statement and swears or affirms that it is true and correct to the best of the witness's knowledge and belief, the witness statement constitutes the evidence in chief of the witness.

## **Part 5 — Mediation**

### **21. Procedure at mediation**

- (1) At mediation the appellant must outline the grounds of appeal and the evidence the appellant proposes to call in support of those grounds.
- (2) The respondent must then outline the grounds for contesting the appeal and the evidence it proposes to call in support of the grounds raised.
- (3) The Tribunal is to otherwise determine the procedure at mediation.

### **22. Who may attend and participate in a mediation**

- (1) Except as provided in this rule, only the parties to an appeal and their representatives may attend and participate in the mediation of the appeal.
- (2) For the purpose of resolving a fact in dispute, the Tribunal may give leave for a witness to attend the mediation and explain the evidence that he or she proposes to give at the hearing of the appeal.
- (3) The explanation is for the information of the parties and the Tribunal in the resolution of the appeal by mediation and is not —
  - (a) required to be given under oath; or
  - (b) subject to cross examination.

### **23. Status of things said and done at a mediation**

- (1) Anything said or done during mediation is not to be used as evidence or referred to in a submission in the hearing of the appeal or in any other legal proceeding as defined in section 3 of the *Evidence Act 1906*.

- (2) Nothing in subrule (1) prevents evidence of anything said or done at mediation from being used —
- (a) as proof of the resolution of an issue; or
  - (b) on the trial of a person for an offence committed during mediation.

**24. Termination of mediation**

The member mediating an appeal may terminate the mediation if the member is of the opinion that the mediation will not resolve the appeal or that a party is not participating in good faith.

**25. Mediating member**

The member mediating an appeal cannot hear and determine the appeal.

## **Part 6 — Referrals under section 18(2a) of the Act**

**26. Tribunal to notify person and local government of referral**

As soon as practicable after the Minister makes a referral under section 18(2a) of the Act, the Tribunal is to notify the person who made the representation that is being referred and the relevant local government.

**27. Tribunal to request information**

The Tribunal is to request information from the parties as to whether the matter can be dealt with on the documents under section 51(7) of the Act.

**28. Tribunal to release draft report for comment**

After drafting a report to the Minister under section 18(2a) of the Act, but prior to making any recommendation to the Minister, the Tribunal is to release the draft report for comment to the parties.



## **Part 7 — Submissions from persons who are not parties**

**29. Persons who wish to make submissions to give notice**

A person who, under section 62 of the Act, wishes to make a submission in an appeal must, within 14 days of the filing of the notice of appeal, give written notice to the Tribunal and all parties to the appeal of the person's intention to apply to make submissions.

**30. Form of submissions**

- (1) Subject to subrule (2), a person who is permitted by the Tribunal to make submissions under section 62 of the Act may, when called upon by the Tribunal, give oral or written submissions in respect of issues or matters raised in the appeal.
- (2) If all parties to an appeal make written submissions, the Tribunal may order that a person making a submission under section 62 of the Act do so in writing.

## **Part 8 — Repeal**

**31. *Town Planning Appeal Tribunal Rules 1979 repealed***

The *Town Planning Appeal Tribunal Rules 1979* are repealed.

## Schedule 1 — Forms

[r. 7 and 9]

<i>Town Planning Appeal Tribunal Rules 2003</i> <b>Form 1 — Notice of appeal</b>	<b>Office use only</b>
	Appeal No: _____ of _____ Date Filed: _____

<b>Appellant</b>	Name: _____
	Address: _____
	Postcode: _____ Tel: _____
	Fax: _____ E-mail: _____
<b>Appellant's representative (if any)</b>	Name: _____
	Address: _____
	Postcode: _____ Tel: _____
	Fax: _____ E-mail: _____
<b>Address for service</b>	_____

<b>Respondent</b>	_____
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<b>Address of land</b>	_____
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<b>Class of appeal</b>	<input type="checkbox"/> Class 1 appeal <input type="checkbox"/> Class 2 appeal		
<b>Appeals relating to development or subdivision</b> (Attach separate sheet if necessary)	<table style="width: 100%;"> <tr> <td style="width: 60%;"> <input type="checkbox"/> Development  <input type="checkbox"/> Single house on a single lot  <input type="checkbox"/> Other (specify) .....                      Value of development: .....                 </td> <td style="width: 40%;"> <input type="checkbox"/> Subdivision                      Proposed no. of lots: .....                 </td> </tr> </table>	<input type="checkbox"/> Development <input type="checkbox"/> Single house on a single lot <input type="checkbox"/> Other (specify) ..... Value of development: .....	<input type="checkbox"/> Subdivision Proposed no. of lots: .....
<input type="checkbox"/> Development <input type="checkbox"/> Single house on a single lot <input type="checkbox"/> Other (specify) ..... Value of development: .....	<input type="checkbox"/> Subdivision Proposed no. of lots: .....		
*(except a deemed refusal)	<input type="checkbox"/> Appeal against refusal to grant application <input type="checkbox"/> Appeal against conditions (specify): ..... .....		
	Date of decision*: _____      Date of application: _____		
<b>Appeals against directions</b> (Attach separate sheet if necessary)	Date of direction: ..... Details of direction(s): ..... .....		

<b>Grounds of appeal</b> (Attach separate sheet if necessary)	..... ..... ..... ..... ..... .....
Signature: _____	Date: _____

[Reverse side of Form 1]

Please answer the following questions:	
<b>Class 1 appeals</b>	
1. Do you believe that this appeal can be conducted entirely by written submissions? <i>(if all parties agree, the Tribunal may determine the appeal without the need for a hearing)</i>	y/n
2. Do you wish to elect that no party be represented by a legal practitioner?	y/n
3. Have you enclosed the following?	
• one original, and one hard copy of this form and any attachments	y/n
• one hard copy of the planning application or subdivision application	y/n
• one hard copy of the decision, determination, matter appealed against (except in case of deemed refusal)	y/n/na
• the filing fee of \$325 <i>(document cannot be filed without payment of filing fee)</i>	y/n
<b>Class 2 appeals (except appeals against directions)</b>	
1. Do you wish this matter to be dealt with by a single ordinary member of the Tribunal? <i>(if all parties agree, in accordance with section 40(3)(b) of the Act the appeal may be dealt with as a Class 1 appeal)</i>	y/n
2. Do you believe that this appeal can be conducted entirely by written submissions? <i>(if all parties agree, the Tribunal may determine the appeal without the need for a hearing)</i>	y/n
3. Do you believe that this appeal is capable of being mediated?	y/n
4. Have you enclosed the following?	
• one original, and 3 hard copies of this form and any attachments	y/n
• one hard copy of the planning application or subdivision application	y/n
• one hard copy of the decision, determination, matter appealed against (except in case of deemed refusal)	y/n/na
• the filing fee of \$600 <i>(document cannot be filed without payment of filing fee)</i>	y/n
<b>Class 2 appeals against directions</b>	
1. Do you believe that this appeal can be conducted entirely by written submissions? <i>(if all parties agree, the Tribunal may determine the appeal without the need for a hearing)</i>	y/n
2. Do you want the Tribunal to stay the operation of the direction under section 10(2) of the Act?	y/n
3. Have you enclosed the following?	
• one original, and 3 hard copies of this form and any attachments	y/n
• one hard copy of the direction	y/n
• the filing fee of \$325 <i>(document cannot be filed without payment of filing fee)</i>	y/n

<b>Class 1 appeals and Class 2 appeals</b>	
The following are <b>Class 1 appeals</b> as set out in section 40(3)(a) of the Act:	
(i) an appeal against the determination of, or conditions imposed in respect of, <b>a planning application to commence a development of a value less than \$250,000;</b>	
(ii) an appeal against the determination of, or conditions imposed in respect of, <b>a planning application to commence a development of a single house on a single lot of a value that is less than \$500,000</b> , or any development ancillary to that development; or	
(iii) the determination of, or conditions imposed in respect of, <b>an application for approval to subdivide a lot into not more than 3 lots.</b>	
All other appeals from decisions in relation to planning and subdivision applications are <b>Class 2 appeals</b> , unless, as set out in section 40(3)(b), the Appellant, at the time of filing the appeal, elects to have the appeal determined by a single ordinary member of the Tribunal; and the other parties to the appeal agree to that election.	

Town Planning Appeal Tribunal Rules 2003 <b>Form 2 — Statement by respondent</b>	<b>Office use only</b>	
	Appeal No:	of
	Date Filed:	

<b>Respondent</b>	Name:	
	Address:	
	Postcode:	Tel:
	Fax:	E-mail:
<b>Respondent's representative (if any)</b>	Name:	
	Address:	
	Postcode:	Tel:
	Fax:	E-mail:
<b>Address for service</b>		

<b>Appellant</b>	
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<b>Appeal responded to</b>	Appeal No:	of
<b>Date served with notice of appeal</b>		

<b>Grounds of response</b> (Attach separate sheet if necessary)	.....
	.....
	.....
	.....
	.....
	.....
	.....
	.....
	.....
	.....
	.....
	.....

Signature:	Date:
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[Reverse side of Form 2]

**Please answer the following questions:**

**Class 1 appeals**

- |   |     |
|---|-----|
| 1. Do you believe that this appeal can be conducted entirely by written submissions?<br><i>(if all parties agree, the Tribunal may determine the appeal without the need for a hearing)</i> | y/n |
| 2. Do you wish to elect that no party be represented by a legal practitioner?   | y/n |
| 3. Have you enclosed the following?   |     |
| • one original, and one hard copy of this form and any attachments  | y/n |
| • one hard copy of any planning document relied upon  | y/n |

**Class 2 appeals (except appeals against directions)**

- |  |     |
|--|-----|
| 1. Do you wish this matter to be dealt with by a single ordinary member of the Tribunal?<br><i>(if all parties agree, in accordance with section 40(3)(b) of the Act the appeal may be dealt with as a Class 1 appeal)</i> | y/n |
| 2. Do you believe that this appeal can be conducted entirely by written submissions?<br><i>(if all parties agree, the Tribunal may determine the appeal without the need for a hearing)</i>                                | y/n |
| 3. Do you believe that this appeal is capable of being mediated?   | y/n |
| 4. Have you enclosed the following?  |     |
| • one original, and 3 hard copies of this form and any attachments   | y/n |
| • 3 hard copies (or one hard copy and one electronic copy) of any planning document relied upon  | y/n |

**Class 2 appeals against directions**

- |   |     |
|---|-----|
| 1. Do you believe that this appeal can be conducted entirely by written submissions?<br><i>(if all parties agree, the Tribunal may determine the appeal without the need for a hearing)</i> | y/n |
| 2. Do you want the Tribunal to stay the operation of the direction under section 10(2) of the Act?  | y/n |
| 3. Have you enclosed the following?   |     |
| • one original, and 3 hard copies of this form and any attachments  | y/n |
| • one hard copy of the planning approval the subject of the direction   | y/n |
| • 3 hard copies (or one hard copy and one electronic copy) of any planning document relied upon   | y/n |

**Class 1 appeals and Class 2 appeals**

The following are **Class 1 appeals** as set out in section 40(3)(a) of the Act:

- (i) an appeal against the determination of, or conditions imposed in respect of, a **planning application to commence a development of a value less than \$250,000**;
- (ii) an appeal against the determination of, or conditions imposed in respect of, a **planning application to commence a development of a single house on a single lot of a value that is less than \$500,000**, or any development ancillary to that development; or
- (iii) the determination of, or conditions imposed in respect of, an **application for approval to subdivide a lot into not more than 3 lots**.

All other appeals from decisions in relation to planning and subdivision applications are Class 2 appeals, unless, as set out in section 40(3)(b), the Appellant, at the time of filing the appeal, elects to have the appeal determined by a single ordinary member of the Tribunal; **and** the other parties to the appeal agree to that election.

**Notes**

- <sup>1</sup> This is a compilation of the *Town Planning Appeal Tribunal Rules 2003*. The following table contains information about the rules.

**Compilation table**

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<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Town Planning Appeal Tribunal Rules 2003</i>	16 May 2003 p. 1759-80	16 May 2003
<b>These rules were repealed by the <i>Town Planning Appeal Tribunal (Repeal) Rules 2004 r. 3</i> as at 1 Jan 2005 (see s. 2 and <i>Gazette 30 Dec 2004 p. 7023</i>)</b>		

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**Defined terms**

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
Class 1 appeal .....	2
Class 2 appeal .....	2
notice of appeal .....	2
planning approval .....	9(3)
planning authority .....	2
redevelopment authority .....	2
statement by respondent.....	2