



Western Australia

Planning and Development Act 2005

Planning and Development (Planning Codes) Regulations 2024

Planning and Development (Planning Codes) Regulations 2024

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Planning and Development (Planning Codes) Regulations 2024

Made by the Governor in Executive Council.

Part 1 — Preliminary

1. Citation

These regulations are the *Planning and Development (Planning Codes) Regulations 2024*.

2. Commencement

These regulations come into operation on 1 March 2024.

3. Overview

- (1) These regulations provide for matters relating to the preparation, advertising, approval, amendment and repeal of a planning code.
- (2) If the Commission prepares a proposed planning code under section 32A(1) of the Act, in order to be effective, the proposed planning code must —
 - (a) be advertised, for public inspection and public submissions, in accordance with Part 2 Division 2; and
 - (b) be approved by the Minister, and come into operation, in accordance with Part 2 Division 3.
- (3) The Commission may prepare a proposed amendment to a planning code under Part 2 Division 1.

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- (4) If the Commission prepares a proposed amendment, in order to be effective, the amendment must —
 - (a) if required — be advertised, for public inspection and public submissions, in accordance with Part 2 Division 2; and
 - (b) be approved by the Minister, and come into operation, in accordance with Part 2 Division 3.
- (5) A planning code may be repealed in accordance with Part 3.

4. Terms used

In these regulations —

administrative amendment means a standard amendment to a planning code if —

- (a) the amendment is any of the following —
 - (i) an amendment to correct an administrative or minor error;
 - (ii) an amendment to correct an error that is in, or that otherwise relates to, a map, plan or diagram included in the planning code;
 - (iii) an amendment to ensure consistency between the planning code and a public planning document, subsidiary legislation or a policy document of a government agency;
 - (iv) an amendment that is otherwise administrative or minor in nature;

and

- (b) it is highly likely that the amendment will have no adverse effect in respect of —
 - (i) any land; or
 - (ii) any owner or occupier of any land;

advertising period —

- (a) for a proposed planning code or proposed amendment that is required to be advertised under regulation 7 — means the advertising period that applies under regulation 8; or
- (b) for an instrument of repeal — means the advertising period that applies under regulation 20;

approved amendment means an amendment to a planning code approved by the Minister under regulation 14(3)(a);

approved planning code means a planning code approved by the Minister under regulation 14(3)(a);

approved planning code or amendment means a planning code, or an amendment to a planning code, approved by the Minister under regulation 14(3)(a);

Commission's website means a website maintained by, or on behalf of, the Commission;

government agency means —

- (a) a department of the Public Service; or
- (b) a body, whether incorporated or not, or the holder of an office, post or position, being a body, office, post or position established or continued under a written law for a public purpose;

instrument of repeal has the meaning given in regulation 18(1)(b);

proposed administrative amendment means a proposed amendment that is an administrative amendment;

proposed amendment means a proposed amendment to a planning code prepared by the Commission under regulation 5(1);

proposed planning code means a proposed planning code prepared by the Commission under section 32A(1) of the Act;

proposed standard amendment means a proposed amendment that is a standard amendment;

proposed substantial amendment means a proposed amendment that is a substantial amendment;

public planning document means —

- (a) a State planning policy; or
- (b) a planning code; or
- (c) a document (however named or described) prepared by the Commission under section 14(b) or (c) of the Act —
 - (i) that is available to the public; and
 - (ii) the preparation of which involved a public consultation;

standard amendment means an amendment to a planning code that the Commission considers does not constitute a substantial alteration to the code;

submission period —

- (a) for a proposed planning code or proposed amendment — has the meaning given in regulation 11(c); or
- (b) for an instrument of repeal — has the meaning given in regulation 22(c);

substantial amendment means an amendment to a planning code that is not a standard amendment.

Part 2 — Planning codes and amendments to planning codes

Division 1 — Preparation of amendments to planning codes

5. Preparation of amendment to planning code

- (1) The Commission may, with the agreement or on the direction of the Minister, prepare a proposed amendment to a planning code.
- (2) Despite subregulation (1), the agreement or direction of the Minister is not required if the proposed amendment is a standard amendment.

6. Matters to be taken into account when preparing proposed planning code or proposed amendment

- (1) When preparing a proposed planning code or proposed amendment, the Commission must take into account the factors listed in subregulation (2) in relation to —
 - (a) the State; or
 - (b) the portion or portions of the State to which the proposed planning code or proposed amendment is to apply.
- (2) The factors are as follows —
 - (a) demographic, social and economic factors and influences;
 - (b) conservation of natural or cultural resources for social, economic, environmental, ecological and scientific purposes;
 - (c) characteristics of land;
 - (d) characteristics and disposition of land use;
 - (e) amenity, design and environment;
 - (f) communications;
 - (g) developmental requirements of public authorities;

- (h) risks associated with natural hazards and other hazards.

Division 2 — Advertising planning codes and amendments that are not administrative amendments

7. Requirement to advertise

- (1) The Commission must advertise the following, for public inspection and public submissions —
 - (a) a proposed planning code;
 - (b) a proposed substantial amendment;
 - (c) a proposed standard amendment (other than a proposed administrative amendment).
- (2) For the purposes of subregulation (1), the proposed planning code or proposed amendment must be advertised by publishing the following on the Commission’s website for the whole of the advertising period —
 - (a) the advertisement prepared under regulation 10;
 - (b) a copy of the proposed planning code or proposed amendment;
 - (c) any other document that the Commission considers it is appropriate to publish.

8. Advertising period

- (1) The advertising period for a proposed planning code or proposed amendment required to be advertised under regulation 7 is —
 - (a) for a proposed planning code or a proposed substantial amendment —
 - (i) 90 days; or
 - (ii) a longer period that the Commission considers appropriate;
- or

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- (b) for a proposed standard amendment (other than a proposed administrative amendment) — 60 days.
- (2) Despite subregulation (1)(b), the Commission may decide on a longer advertising period for a proposed standard amendment (other than a proposed administrative amendment) if the Commission considers that it is appropriate to do so in order to enable the proposed amendment to be advertised concurrently with any other document that is required to be advertised under the Act.

9. Ministerial approval to advertise

- (1) The Commission must, before advertising a proposed planning code or proposed substantial amendment under regulation 7 —
 - (a) submit the proposed planning code or proposed amendment to the Minister; and
 - (b) obtain the Minister’s approval to advertise the proposed planning code or proposed amendment.
- (2) If a proposed planning code or proposed substantial amendment is submitted under subregulation (1)(a) or (5), the Minister may —
 - (a) approve the proposed planning code or proposed amendment for advertising; or
 - (b) require the Commission to modify the proposed planning code or proposed amendment; or
 - (c) refuse approval for the proposed planning code or proposed amendment to be advertised under regulation 7.
- (3) The Minister must give the Commission written notice of a decision under subregulation (2).

Planning and Development (Planning Codes) Regulations 2024

Part 2 Planning codes and amendments to planning codes

Division 2 Advertising planning codes and amendments that are not administrative amendments

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- (4) If the Minister requires the proposed planning code or proposed substantial amendment to be modified under subregulation (2)(b), the notice must describe the modification required.
- (5) If given a notice referred to in subregulation (4), the Commission must modify the proposed planning code or proposed substantial amendment as required and submit the modified proposed planning code or proposed substantial amendment to the Minister.

10. Information to be advertised

For the purposes of regulation 7, the Commission must prepare an advertisement, which must —

- (a) contain a statement of the purpose of the proposed planning code or proposed amendment; and
- (b) if the advertisement relates to —
 - (i) a proposed planning code — specify if the proposed planning code repeals another planning code; or
 - (ii) a proposed standard amendment (other than a proposed administrative amendment) — contain a statement explaining why the Commission considers that the amendment is a standard amendment;

and

- (c) list the documents related to the proposed planning code or proposed amendment published on the Commission's website under regulation 7(2)(b) and (c); and
- (d) invite public submissions on the proposed planning code or proposed amendment in accordance with regulation 11; and

- (e) contain any other information that the Commission considers appropriate.

11. Public submissions

For the purposes of regulation 10(d), the invitation must —

- (a) provide that a submission may be made either electronically or in hard copy form; and
- (b) set out the way in which an electronic submission must be made and the way in which a hard copy submission must be made; and
- (c) set out the period (the *submission period*) during which a submission must be made, which must be the same period as the advertising period; and
- (d) set out any other requirements that the Commission considers appropriate and with which a submission must comply.

12. Notice of proposal

The Commission must, as early as practicable during the advertising period for a proposed planning code or proposed amendment advertised under regulation 7, give written notice of the advertisement prepared under regulation 10 to the following —

- (a) any local government the district of which the Commission considers is likely to be affected by the proposed planning code or proposed amendment;
- (b) any government agency, representative group or person that the Commission considers has an interest in the proposed planning code or proposed amendment.

13. Consideration of submissions

The Commission, in relation to a proposed planning code or proposed amendment that has been advertised under regulation 7 —

- (a) must consider all submissions that are made in response to the invitation under regulation 10(d) —
 - (i) during the submission period; and
 - (ii) in accordance with the requirements referred to in regulation 11(b) and (d); and
 - (iii) if the submissions relate to a proposed standard amendment — that are directed to the proposed amendment;

and

- (b) may, if the Commission considers it appropriate to do so, consider a submission —
 - (i) that is made in response to the invitation under regulation 10(d); but
 - (ii) that the Commission is not required to consider under paragraph (a).

Division 3 — Approval and publication of planning code or amendment

14. Minister’s approval of proposed planning code or proposed amendment

- (1) After the Commission has completed its consideration of submissions under regulation 13 in relation to a proposed planning code, a proposed substantial amendment or a proposed standard amendment (other than a proposed administrative amendment), the Commission must —
 - (a) make the modifications, if any, it considers appropriate to make to the proposed planning code or proposed

- amendment, including as a result of those submissions;
and
- (b) submit the proposed planning code or proposed amendment to the Minister.
- (2) After preparing a proposed administrative amendment, the Commission must submit the proposed amendment to the Minister.
- (3) If a proposed planning code or proposed amendment is submitted to the Minister under subregulation (1)(b), (2), (6)(b)(iii) or (7)(c) the Minister may —
- (a) approve the proposed planning code or proposed amendment; or
- (b) require the Commission to modify the proposed planning code or proposed amendment; or
- (c) decide not to approve the proposed planning code or proposed amendment.
- (4) The Minister must give the Commission written notice of a decision under subregulation (3).
- (5) If the Minister requires a proposed planning code or proposed amendment to be modified under subregulation (3)(b), the notice under subregulation (4) —
- (a) must describe the modification required; and
- (b) in the case of a proposed planning code, a proposed substantial amendment or a proposed standard amendment that is not an administrative amendment — may include a requirement that the Commission advertise the modified proposed planning code or proposed amendment in the manner specified in the notice.

- (6) If given a notice referred to in subregulation (5), the Commission must —
- (a) modify the proposed planning code or proposed amendment as required; and
 - (b) do whichever of the following is applicable —
 - (i) if required to do so by the Minister under the notice — advertise the modified proposed planning code or proposed amendment in the manner required;
 - (ii) in the case of a proposed planning code, a proposed substantial amendment or a proposed standard amendment that is not an administrative amendment, if subparagraph (i) does not apply but the Commission considers that the modified proposed planning code or proposed amendment should be advertised — advertise the modified proposed planning code or proposed amendment in a manner that the Commission considers appropriate;
 - (iii) if subparagraphs (i) and (ii) do not apply — submit the modified proposed planning code or proposed amendment to the Minister.
- (7) If the modified proposed planning code or proposed amendment is advertised by the Commission under subregulation (6)(b)(i) or (ii), the Commission must —
- (a) consider any public submissions made on the modified proposed planning code or proposed amendment; and
 - (b) make the further modifications, if any, it considers appropriate to make to the modified proposed planning code or proposed amendment, including as a result of those submissions; and
 - (c) submit the modified proposed planning code or proposed amendment to the Minister.

15. Documents to be published on Commission’s website following approval of planning code or amendment

As soon as practicable after an approved planning code or amendment is published in accordance with the *Interpretation Act 1984* section 41(1)(a), the Commission must publish the following on the Commission’s website —

- (a) a notice that states when the approved planning code or amendment came or will come into operation in accordance with the *Interpretation Act 1984* section 41(1)(b);
- (b) as the case requires —
 - (i) a copy of the approved planning code; or
 - (ii) a copy of the planning code that is the subject of the approved amendment, updated to take account of the approved amendment;
- (c) any other information that the Commission considers appropriate.

16. Notice of approved planning code or amendment

- (1) As soon as practicable after an approved planning code or amendment is published in accordance with the *Interpretation Act 1984* section 41(1)(a), the Commission must cause notice of the approved planning code or amendment to be provided to the following —
 - (a) any body or person who was notified under regulation 12;
 - (b) any body or person who made a submission that was considered by the Commission under regulation 13.
- (2) A notice under subregulation (1) must state the following —
 - (a) when the approved planning code or amendment came or will come into operation in accordance with the *Interpretation Act 1984* section 41(1)(b);

- (b) that the following is published on the Commission's website, as the case requires —
 - (i) a copy of the approved planning code;
 - (ii) a copy of the planning code that is the subject of the approved amendment, updated to take account of the approved amendment.

17. Publication of planning codes

The Commission must ensure that a consolidated copy of each planning code that is in operation is published on the Commission's website.

Part 3 — Repeal of planning codes

Division 1 — Preliminary

18. Repeal of planning code

- (1) A planning code may be repealed by —
- (a) a new planning code that —
 - (i) comes into operation in accordance with the *Interpretation Act 1984* section 41(1)(b); and
 - (ii) expressly repeals the planning code;
 - or
 - (b) an instrument (*instrument of repeal*) that —
 - (i) is prepared by the Commission with the agreement or on the direction of the Minister; and
 - (ii) is advertised in accordance with regulation 19; and
 - (iii) is approved by the Minister under regulation 25(2); and
 - (iv) comes into operation in accordance with the *Interpretation Act 1984* section 41(1)(b).
- (2) The repeal of a planning code takes effect —
- (a) if the code is being repealed by a new planning code — on the day on which the provision of the new planning code that repeals the planning code comes into operation in accordance with the *Interpretation Act 1984* section 41(1)(b); or
 - (b) if the code is being repealed by an instrument of repeal — on the day on which the instrument of repeal comes into operation in accordance with the *Interpretation Act 1984* section 41(1)(b).

Division 2 — Advertising instrument of repeal

19. Requirement to advertise instrument of repeal

- (1) The Commission must advertise, for public inspection and public submissions, an instrument of repeal prepared under regulation 18(1)(b)(i).
- (2) For the purposes of subregulation (1), an instrument of repeal must be advertised by publishing the following on the Commission's website for the whole of the advertising period —
 - (a) the advertisement prepared under regulation 21;
 - (b) a copy of the instrument of repeal;
 - (c) a copy of the planning code proposed to be repealed;
 - (d) any other document that the Commission considers it is appropriate to publish.

20. Advertising period

- (1) The advertising period for an instrument of repeal is 30 days.
- (2) Despite subregulation (1), the Commission may decide on a longer advertising period for an instrument of repeal if —
 - (a) the instrument of repeal is consequential on or connected with a proposed amendment; and
 - (b) the advertising period that applies to the proposed amendment is longer than 30 days; and
 - (c) the Commission considers that it is appropriate for the instrument of repeal and the proposed amendment to be advertised concurrently.

21. Information to be advertised

For the purposes of regulation 19, the Commission must prepare an advertisement, which must —

- (a) contain a statement as to why it is proposed to repeal the planning code identified in the instrument of repeal; and
- (b) list the documents related to the proposal to repeal the planning code published on the Commission’s website under regulation 19(2)(b) to (d); and
- (c) invite public submissions on the proposal to repeal the planning code in accordance with regulation 22; and
- (d) contain any other information that the Commission considers appropriate.

22. Public submissions

For the purposes of regulation 21(c), the invitation must —

- (a) provide that a submission may be made either electronically or in hard copy form; and
- (b) set out the way in which an electronic submission must be made and the way in which a hard copy submission must be made; and
- (c) set out the period (the *submission period*) during which a submission must be made, which must be the same period as the advertising period; and
- (d) set out any other requirements that the Commission considers appropriate and with which a submission must comply.

23. Notice of proposed repeal of planning code

The Commission must, as early as practicable during the advertising period for an instrument of repeal, give written

notice of the advertisement prepared under regulation 21 to the following —

- (a) any local government the district of which the Commission considers is likely to be affected by the repeal of the planning code;
- (b) any government agency, representative group or person that the Commission considers has an interest in the repeal of the planning code.

24. Consideration of submissions

The Commission, in relation to an instrument of repeal —

- (a) must consider all submissions that are made in response to the invitation under regulation 21(c) —
 - (i) during the submission period; and
 - (ii) in accordance with the requirements referred to in regulation 22(b) and (d);and
- (b) may, if the Commission considers it appropriate to do so, consider a submission —
 - (i) that is made in response to the invitation under regulation 21(c); but
 - (ii) that the Commission is not required to consider under paragraph (a).

Division 3 — Approval and publication of instrument of repeal

25. Minister's approval of instrument of repeal

- (1) After the Commission has completed its consideration of submissions under regulation 24, the Commission must —
 - (a) submit the instrument of repeal to the Minister; and
 - (b) make a recommendation to the Minister as to whether or not the planning code should be repealed.

- (2) The Minister may approve an instrument of repeal submitted under subregulation (1)(a), whether or not the Commission has recommended the repeal.
- (3) The Minister must give the Commission written notice of a decision under subregulation (2).

26. Documents to be published on Commission’s website following approval of instrument of repeal

As soon as practicable after an approved instrument of repeal is published in accordance with the *Interpretation Act 1984* section 41(1)(a), the Commission must publish the following on the Commission’s website —

- (a) a notice that states the day on which the instrument of repeal came or will come into operation in accordance with the *Interpretation Act 1984* section 41(1)(b); and
- (b) a copy of the instrument of repeal.

27. Notice of approved instrument of repeal

- (1) As soon as practicable after an instrument of repeal is published in accordance with the *Interpretation Act 1984* section 41(1)(a), the Commission must cause notice of the instrument of repeal to be provided to the following —
 - (a) any body or person who was notified under regulation 23;
 - (b) any body or person who made a submission that was considered by the Commission under regulation 24.
- (2) A notice under subregulation (1) must include the following information —
 - (a) when the instrument of repeal came or will come into operation in accordance with the *Interpretation Act 1984* section 41(1)(b);
 - (b) that a copy of the instrument of repeal is published on the Commission’s website.

Part 4 — Transitional provisions

28. Terms used

In this Part —

consultation and public notice process —

- (a) means the process required under section 28 of the former Act for consultation, public inspection, notice and making details public, in relation to a proposed amendment to a State planning policy; and
- (b) includes the consideration of submissions referred to in section 28(5) of the former Act in relation to the proposed amendment to a State planning policy;

former Act means the Act as in force immediately before 1 March 2024;

proposed R-Codes amendment means a proposed amendment to the R-Codes;

R-Codes means the Residential Design Codes prepared as a State planning policy under section 26(1) of the former Act.

29. Consultation and public notice process commenced but not completed before 1 March 2024

- (1) This regulation applies if —
 - (a) a proposed R-Codes amendment was prepared as a proposed amendment to a State planning policy under section 31(1) of the former Act before 1 March 2024; and
 - (b) the consultation and public notice process in relation to the proposed R-Codes amendment commenced, but was not completed, before 1 March 2024.
- (2) The consultation and public notice process may be completed in accordance with the requirements of section 28 of the former Act, rather than these regulations, as if on and after

1 March 2024 the R-Codes continued to be a State planning policy rather than planning codes.

Note for this regulation:

Under section 291 of the Act, the R-Codes are taken to be planning codes on and after 1 March 2024.

30. R-Codes amendment subject to consultation and public notice process under former Act

- (1) This regulation applies if —
 - (a) the consultation and public notice process for a proposed R-Codes amendment commences before 1 March 2024 and is completed under regulation 29; or
 - (b) the consultation and public notice process for a proposed R-Codes amendment is completed before 1 March 2024, but the proposed R-Codes amendment is not approved by the Governor under section 29(1) of the former Act before 1 March 2024.
- (2) For the purposes of the application of these regulations to the proposed R-Codes amendment as a proposed amendment to a planning code —
 - (a) the Commission is taken to have complied with the applicable requirements of Part 2 Division 2 in relation to advertising, and considering submissions on, the proposed R-Codes amendment; and
 - (b) these regulations apply with any necessary changes.

N. HAGLEY, Clerk of the Executive Council

Defined terms

Defined terms

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

Defined term	Provision(s)
administrative amendment	4
advertising period	4
approved amendment	4
approved planning code	4
approved planning code or amendment	4
Commission’s website	4
consultation and public notice process.....	28
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