

Western Australia

Planning and Development Act 2005

## **Planning and Development Regulations 2009**

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## Planning and Development Regulations 2009

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### CONTENTS

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#### **Part 1 — Preliminary matters**

1.	Citation	2
2.	Commencement	2
3.	Terms used	2
4.	Utility services prescribed (Act s. 4(1))	2

#### **Part 2 — Activities on certain State land**

##### **Division 1 — Preliminary matters**

5.	Terms used	3
6.	Application of this Part	3

##### **Division 2 — Wardens**

7.	Appointment	4
8.	Functions	4

##### **Division 3 — General matters**

9.	Defences to charges of offences against this Part	5
10.	Signs and wardens' directions or orders to be obeyed	5
11.	Camping etc. and fires prohibited	5
12.	Public events prohibited	5
13.	Animals on identified State land	6
14.	Vehicles on identified State land	6
15.	Protection of nature	6
16.	Rubbish and signs prohibited	7
17.	Firearms, weapons and explosives prohibited	7
18.	Unauthorised removal of material	8

### **Part 3 — Subdivision and development control**

#### **Division 1 — Subdivisions and similar matters**

19.	Term used: section 135 application	9
20.	How to apply for approval under Act s. 135	9
21.	Matters to be considered on application for subdivision	9
22.	Notice of Commission's decision under Act s. 143	10
23.	How to apply for approval of diagram or plan of survey (Act s. 145)	10
24.	Commission's duties on application under Act s. 145	10

#### **Division 2 — Applications for approval of certain transactions**

25.	How to apply for approval under Act s. 136	10
26.	How to apply for approval under Act s. 139	11
27.	Commission's duties on applications under Act s. 136 and 139	11

#### **Division 3 — Road access conditions**

28.	Terms used	12
29.	Commission's power to impose conditions not limited	12
30.	Imposing road access conditions	12
31.	Offences	13
32.	Modifying and discharging covenants	13

#### **Division 4 — Easements**

33.	Terms used	14
34.	Other Acts' operation not affected by this Division	15
35.	How easements to be depicted on plans	16
36.	Easements, rights, powers and privileges under easements (Act s. 167(2))	16

### **Part 4 — Compensation and acquisition**

37.	Term used: Board	18
38.	Notice of intention to sell (Act s. 181(11))	18
39.	Application for valuation (Act s. 183(1))	18
40.	Board of Valuers, procedure for	18

41.	Fees for valuation	19
	<b>Part 5 — Enforcement and legal proceedings</b>	
42.	Prescribed offences and their modified penalties (Act s. 227)	20
43.	Prescribed forms (Act s. 229 & 231)	21
	<b>Part 6 — Applications for review</b>	
44.	Submissions considered by Minister (Act s. 246(7))	22
45.	Fee for Minister's reasons (Act s. 247(4))	22
	<b>Part 7 — Local government planning charges</b>	
	<b>Division 1 — Preliminary matters</b>	
46.	Terms used	23
	<b>Division 2 — Fees and other charges</b>	
47.	Fees for certain planning services (Sch. 2)	23
48A.	Fees for DAP applications	24
48.	Fees for scheme amendments and structure plans (Sch. 3 & 4)	24
49.	Additional costs and expenses payable by applicants	26
50.	Itemised account to be provided on request	27
51.	Dispute as to amount payable	27
52.	Local government may waive or refund fee	27
53.	Exemption	28
	<b>Division 3 — Fees Arbitration Panels</b>	
54.	Fees Arbitration Panels	28
55.	Panel meetings	29
56.	Decisions of a Panel	29
	<b>Part 8 — Miscellaneous matters</b>	
57.	False or misleading information	30
58.	Repeals	30
	<b>Part 9 — Transitional matters</b>	
59.	Term used: commencement	31

Contents

---

60.	Wardens' appointments continued	31
	<b>Schedule 1 — Forms</b>	
1.	Infringement notice (r. 43(1))	32
2.	Withdrawal of infringement notice (r. 43(2))	35
	<b>Schedule 2 — Maximum fees for certain planning services</b>	
	<b>Schedule 3 — Form of estimate of fees for services for local planning scheme amendments</b>	
	<b>Schedule 4 — Form of estimate of fees for services for structure plans</b>	
	<b>Notes</b>	
	Compilation table	45
	Provisions that have not come into operation	45
	<b>Defined Terms</b>	

Western Australia

Planning and Development Act 2005

## **Planning and Development Regulations 2009**

## **Part 1 — Preliminary matters**

### **1. Citation**

These regulations are the *Planning and Development Regulations 2009*<sup>1</sup>.

### **2. Commencement**

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of these regulations — when section 150 and Part 13 Division 3 of the Act come into operation.

### **3. Terms used**

In these regulations, unless the contrary intention appears —

*Act* means the *Planning and Development Act 2005*;

*Registrar of Titles* means the person designated under the *Transfer of Land Act 1893* to be the Registrar of Titles;

*section* means a section of the Act.

### **4. Utility services prescribed (Act s. 4(1))**

These services are prescribed for the purposes of the definition of *utility services* in section 4(1) —

- (a) gas supply services;
- (b) telecommunications supply services.



## Part 2 — Activities on certain State land

### Division 1 — Preliminary matters

#### 5. Terms used

In this Part —

**identified State land** means any land that is unallocated Crown land (within the meaning given by the *Land Administration Act 1997*), or that is vested in or owned by the Crown, the State or the Commission, and —

- (a) is reserved under a planning scheme for a public purpose; or
- (b) is subject to an improvement plan in force under section 119;

**road vehicle** means any thing on wheels or tracks that is capable of transporting people or things by road, other than any such thing —

- (a) that is propelled solely by human power; or
- (b) that has 3 or more wheels, is self-propelled and is designed to transport a single person with a physical disability at a pedestrian speed;

**warden** means a person appointed under regulation 7 as a warden.

#### 6. Application of this Part

- (1) This Part does not apply to a warden acting in the course of duty.
- (2) If any identified State land is leased by the State or the Commission to a person, this Part —
  - (a) does not prevent the lessee, or a person acting with the lessee's authority, from doing any act on that land that is authorised by the lease; and

- (b) does not authorise the lessee or any other person to do any act on that land that is prohibited by the lease.

### **Division 2 — Wardens**

#### **7. Appointment**

- (1) Any act done by the Commission under this regulation must be in writing.
- (2) The Commission may appoint any person to be a warden.
- (3) A warden may be appointed on an honorary basis.
- (4) The Commission may cancel a warden's appointment.
- (5) The Commission must give each warden a certificate of his or her appointment signed by the chairperson.
- (6) A person whose appointment as a warden is cancelled must return his or her certificate of appointment to the Commission within 21 days after the date on which he or she is notified of the cancellation.  
Penalty: a fine of \$500.

#### **8. Functions**

- (1) A warden's functions are those set out in this Part and in any other written law and include the enforcement of this Part.
- (2) A warden may give a person on identified State land any direction that is reasonably necessary —
  - (a) for the proper control and management of the land; or
  - (b) to enable the public to peacefully use and enjoy the land.
- (3) A warden who reasonably believes a person on identified State land has committed or is committing an offence against this Part may order the person to leave the land, or a part of it specified by the warden.

- (4) If, while performing any of a warden's functions, a warden is asked to do so by any person, the warden must produce his or her certificate of appointment for inspection by the person.

### **Division 3 — General matters**

#### **9. Defences to charges of offences against this Part**

It is a defence to a charge of an offence against this Part to prove the accused was acting —

- (a) under an authority conferred under a written law; or
- (b) with the written permission of the Commission.

#### **10. Signs and wardens' directions or orders to be obeyed**

- (1) A person who is given a direction or order by a warden under regulation 8 must obey it.
- (2) A person must obey any sign that is erected on or near identified State land by or on behalf of the Commission.

Penalty: a fine of \$5 000.

#### **11. Camping etc. and fires prohibited**

- (1) A person must not place or use a temporary dwelling (such as a tent or caravan) on identified State land.
- (2) A person must not light or attempt to light a fire on identified State land.

Penalty: a fine of \$2 000.

#### **12. Public events prohibited**

A person must not arrange, advertise or take part in an event on identified State land to which the public is invited.

Penalty: a fine of \$2 000.

**13. Animals on identified State land**

- (1) A person must not bring or allow an animal on identified State land.
- (2) A person who brings an animal on identified State land must keep it under control by means of a rein or leash.
- (3) A person must not ride an animal on identified State land.
- (4) A person who rides an animal on identified State land without due care and attention commits an offence.  
Penalty: a fine of \$2 000.

**14. Vehicles on identified State land**

A person must not bring or use a road vehicle on identified State land.  
Penalty: a fine of \$2 000.

**15. Protection of nature**

- (1) In this regulation —  
*fauna* means any living thing or the eggs of any living thing, but not a human being or flora;  
*flora* means any form of, or any part of, plant life or a fungus;  
*take* —
  - (a) in relation to fauna, includes to catch, kill, remove, snare and trap;
  - (b) in relation to flora, includes to cut, pull up, dig up, pick and remove.
- (2) A person must not chase, injure, interfere with, take or attempt to take any fauna on identified State land.
- (3) A person must not interfere with or destroy any nest or habitat of fauna on identified State land.

- (4) A person must not damage, destroy or take any flora, living or dead, on identified State land.
- (5) A person must not disturb or remove any soil or rock on identified State land.
- (6) A person must not take any water from, or interfere with the flow of any water on, identified State land.  
Penalty: a fine of \$5 000.

**16. Rubbish and signs prohibited**

- (1) In this regulation —  
*place* a sign, includes to draw, erect, paint, post, stick, stencil and otherwise affix the sign;  
*rubbish* in a person's possession, means any solid or liquid matter in the person's possession that the person has no use for, no longer wants or has rejected;  
*sign* includes graffiti and an advertisement, bill, notice, placard and poster.
- (2) A person must not deposit, discharge, leave or allow to escape on identified State land any rubbish in the person's possession.
- (3) Subregulation (2) does not apply to the deposit of solid rubbish in a receptacle provided for the deposit of rubbish.
- (4) A person must not place a sign on identified State land.  
Penalty: a fine of \$5 000.

**17. Firearms, weapons and explosives prohibited**

- (1) A person must not carry or use a firearm (as defined in the *Firearms Act 1973*) on identified State land.
- (2) A person must not carry or use a dangerous or offensive weapon or instrument on identified State land.
- (3) A person must not carry or use an explosive on identified State land.

Penalty: a fine of \$5 000.

**18. Unauthorised removal of material**

A person must not interfere with or take from identified State land any thing on State land that the person does not own or is not entitled to possess.

Penalty: a fine of \$10 000.

## **Part 3 — Subdivision and development control**

### **Division 1 — Subdivisions and similar matters**

**19. Term used: section 135 application**

In this Division —

*section 135 application* means an application for the approval of the Commission under section 135.

**20. How to apply for approval under Act s. 135**

To make a section 135 application, a person must give the Commission the following —

- (a) an application in a form approved by the Commission;
- (b) 8 copies (or such other number as the Commission requires) of a plan, in a form approved by the Commission, that —
  - (i) clearly illustrates the proposed subdivision, amalgamation or road, as the case may be; and
  - (ii) contains any other information the Commission requires;
- (c) any fee set under section 20.

**21. Matters to be considered on application for subdivision**

When considering a section 135 application, the Commission must have regard to all relevant matters including but not limited to these —

- (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 under the Act;
- (h) any relevant local laws relating to town planning.

**22. Notice of Commission's decision under Act s. 143**

- (1) The Commission must give the applicant written notice of any decision it makes on a section 135 application.
- (2) If the Commission refuses to approve a section 135 application, the written notice must set out the reasons for the refusal.

**23. How to apply for approval of diagram or plan of survey (Act s. 145)**

A person who, under section 145, submits to the Commission a diagram or plan of survey of a plan of subdivision that has been approved, must also submit a request in a form approved by the Commission.

**24. Commission's duties on application under Act s. 145**

- (1) If the Commission, under section 145, endorses its approval on a diagram or plan of survey it must —
  - (a) give the diagram or plan to the Registrar of Titles; and
  - (b) give a copy of the diagram or plan to the local government of the district where the land is situated.
- (2) If under section 145 the Commission refuses to endorse its approval on a diagram or plan of survey, it must give the person who made the request under section 145 written notice of and reasons for its decision.

**Division 2 — Applications for approval of certain transactions**

**25. How to apply for approval under Act s. 136**

To apply for the Commission's approval, under section 136, of a transaction referred to in section 136(1), a person must give the Commission the following —



- (a) an application in a form approved by the Commission;
- (b) a copy of the transaction;
- (c) 8 copies (or such other number as the Commission requires) of a sketch showing the land to which the transaction relates;
- (d) any other information the Commission requires;
- (e) any fee set under section 20.

**26. How to apply for approval under Act s. 139**

To apply for the Commission's approval, under section 139, of a class of lease or licence in respect of a person, the person must give the Commission the following —

- (a) an application in a form approved by the Commission;
- (b) an example of a lease or licence of the class concerned;
- (c) any other information the Commission requires;
- (d) any fee set under section 20.

**27. Commission's duties on applications under Act s. 136 and 139**

- (1) The Commission must give the applicant written notice of any decision it makes on an application for its approval under section 136 or 139.
- (2) If the Commission refuses to give the approval requested, the written notice must set out the reasons for the refusal.
- (3) If the Commission grants an approval under section 136, it must give a copy of the approval and the sketch of the land concerned to the local government of the district where the land is situated.

### **Division 3 — Road access conditions**

#### **28. Terms used**

In this Division —

**plan** includes a deposited plan, a diagram, a plan of survey of a subdivision, and a plan lodged for registration under the *Strata Titles Act 1985*;

**road access condition** means a condition imposed under section 143 and in accordance with section 150.

#### **29. Commission's power to impose conditions not limited**

This Division does not affect the Commission's power under section 143 to impose any condition it thinks fit to ensure that a road access condition it imposes in respect of land is obeyed, including but not limited to a condition requiring the erection of a barrier or other means to physically prevent the access that the condition prohibits.

#### **30. Imposing road access conditions**

- (1) A road access condition imposed in respect of land must specify the following —
  - (a) by annotations on an approved plan that shows the land, the portion or portions of the boundary between the land and a road across which access to or from the land is restricted or prohibited;
  - (b) details of the restriction or prohibition and to whom or what it applies and when and in what circumstances;
  - (c) as the covenantee, either or both of these persons —
    - (i) the Commission;
    - (ii) the road control authority,and no other person.
- (2) If a road access condition specifies the road control authority as the covenantee (whether or not the Commission is also

specified), the reference in the condition to the road control authority is to be taken as a reference to whichever of the following from time to time has the control and management of the portion of the road to which the condition relates —

- (a) the Commissioner of Main Roads established under the *Main Roads Act 1930*;
- (b) the Minister administering the *Public Works Act 1902*;
- (c) the local government of the district in which the portion is situated.

**31. Offences**

- (1) The owner of land subject to a road access condition must not contravene or permit another person to contravene the condition.
- (2) The owner of land subject to a road access condition must not damage, destroy or remove any barrier or other structure erected on the land in compliance with a condition imposed under section 143 to ensure the road access condition is obeyed.

Penalty: a fine of \$50 000.

**32. Modifying and discharging covenants**

- (1) If land is subject to a covenant referred to in section 150 because of a road access condition, the owner of the land may apply to the Commission for its consent to modifying or discharging the covenant.
- (2) The application must —
  - (a) be made in a form approved by the Commission; and
  - (b) be accompanied by any fee set under section 20.
- (3) The Commission may consent to modifying or discharging the covenant if it is satisfied —
  - (a) that the circumstances that justified imposing the road access condition have materially changed since the condition was imposed; and

- (b) that the current circumstances justify modifying or discharging the covenant.
- (4) If the Commission consents to modifying or discharging the covenant, the Commission must give the applicant a written notice that specifies either —
  - (a) the modification to which the Commission consents; or
  - (b) that the Commission consents to the discharge of the covenant.
- (5) If the owner of the land —
  - (a) applies to the Registrar of Titles to have the covenant modified or discharged (as the case may be); and
  - (b) gives the Registrar the Commission's written notice given under subregulation (4) in relation to the covenant,the Registrar may, by order, modify or discharge the covenant accordingly and may make any entries or endorsements that may be necessary or proper to evidence the modification or discharge.
- (6) If the Commission refuses its consent on an application made under this regulation, it must give the applicant a written notice of its decision that includes its reasons for refusing.
- (7) A person who is dissatisfied with the Commission's decision made on an application by the person under this regulation may apply to the State Administrative Tribunal for a review, in accordance with Part 14 of the Act, of the decision.

#### **Division 4 — Easements**

### **33. Terms used**

In this Division —

***affected land***, in relation to an easement, means that part of any land comprised in a plan that the plan shows is subject to the easement;

***easement*** means an easement created under section 167;

***easement holder*** means —

- (a) a local government in whose favour an easement exists for the purposes of sewerage or drainage or access to sewerage or drainage works;
- (b) a licensee as defined in the *Water Services Licensing Act 1995* in whose favour an easement exists for the purpose of water supply, sewerage, irrigation or drainage works or access to water supply, sewerage, irrigation or drainage works;
- (c) the holder of a licence under the *Electricity Industry Act 2004* in whose favour an easement exists for the purpose of the supply of electricity or access to electricity supply works;
- (d) the holder of a distribution licence under the *Energy Coordination Act 1994* in whose favour an easement exists for the purpose of the supply of gas, or access to gas supply works, under the authority of that licence;
- (e) the holder of a licence under a written law in whose favour an easement exists for the purpose of the supply of a utility service or access to a utility service under the authority of that licence;

***plan*** includes a deposited plan, a diagram, a plan of survey of a subdivision, and a plan lodged for registration under the *Strata Titles Act 1985*.

#### **34. Other Acts' operation not affected by this Division**

This Division does not affect —

- (a) any right, power or authority conferred by any other Act on an easement holder; or
- (b) the operation of any Act that applies to land that is subject to an easement.

**35. How easements to be depicted on plans**

An easement must be depicted on a plan in such a manner as to identify the easement holder.

**36. Easements, rights, powers and privileges under easements (Act s. 167(2))**

- (1) An easement holder may at any time, for the purpose for which the easement exists, do any or all of the following —
  - (a) enter the affected land with or without vehicles and other equipment;
  - (b) survey the affected land and conduct tests of soil or other materials on it;
  - (c) subject to the *Environmental Protection Act 1986*, clear and remove any vegetation or other material or any thing on the affected land (including any thing the owner or occupier of the land has placed or permitted on the land) that, in the opinion of the easement holder, hinders —
    - (i) the carrying out of any work needed for the purpose for which the easement exists; or
    - (ii) the exercise of any powers in this regulation;
  - (d) disturb and excavate the affected land;
  - (e) use any material cleared or excavated from the affected land;
  - (f) construct, install, reconstruct, replace, reinstate and extend over, on or under the affected land any thing needed for the purpose for which the easement exists;
  - (g) alter, maintain, repair, inspect and service any such thing.
- (2) An easement holder may use any thing constructed or installed over, on or under the affected land under this regulation for the purpose for which the easement exists.

- (3) An easement holder does not have to fence off the affected land or any part of it but may install any gate that the holder needs in any fence that crosses the affected land.
- (4) Any thing constructed or installed on or under the affected land by an easement holder remains the property of the easement holder even if it is fixed to the land.

## **Part 4 — Compensation and acquisition**

### **37. Term used: Board**

In this Part —

**Board** means the Board of Valuers established under section 182.

### **38. Notice of intention to sell (Act s. 181(11))**

For the purposes of section 181(11), a written notice given by an owner of land to the responsible authority must state —

- (a) whether the owner intends to subdivide the land; and
- (b) whether the owner intends to sell the land.

### **39. Application for valuation (Act s. 183(1))**

- (1) For the purposes of section 183(1) an application by an owner of land for a valuation of the land must be made by posting or delivering a written application to the Board at the office of the Commission.
- (2) The application must —
  - (a) describe the land to which it relates; and
  - (b) state whether the owner wants to be heard by the Board on the making of the valuation.

### **40. Board of Valuers, procedure for**

- (1) On receiving an application made under section 183(1) the Board's chairperson must —
  - (a) appoint a member of the Board (other than the chairperson) to —
    - (i) inspect the land concerned; and
    - (ii) prepare and summarise the data necessary for the making of a valuation; and
    - (iii) give the Board a preliminary report,



- before the day fixed for the making of the valuation; and
- (b) give the applicant written notice of the day and time fixed for the making of the valuation.
- (2) Any evidence presented to the Board by an applicant must be in the form of a statutory declaration.
  - (3) An applicant is entitled to be heard by the Board, either in person or by counsel.
  - (4) The Board may adjourn its proceedings from time to time and from place to place.
  - (5) Proceedings of the Board shall not be impugned for want of formality.

**41. Fees for valuation**

- (1) A person who applies under section 183(1) for a valuation is liable to reimburse the State the fees it pays to the Board under Schedule 9 clause 5 of the Act in relation to determining the application.
- (2) The Board must give a person written notice of the amount payable to the State under subregulation (1) as soon as practicable after determining the person's application.
- (3) The State may recover an amount payable under subregulation (1) in a court of competent jurisdiction as debt due and payable.

## **Part 5 — Enforcement and legal proceedings**

### **42. Prescribed offences and their modified penalties (Act s. 227)**

- (1) For the purposes of section 227 —
- (a) each offence against a provision of the Act listed in column 1 of the Table is prescribed to be an offence for which an infringement notice may be issued under Part 13 Division 3 of the Act; and
  - (b) the amount opposite the provision in column 2 of the Table is prescribed as the modified penalty for the offence.

**Table**

<b>Provision of the Act</b>	<b>Modified penalty</b>
s. 214	\$500
s. 218	\$500
s. 220	\$500
s. 221	\$500

- (2) For the purposes of section 227 —
- (a) each offence against a provision of these regulations listed in column 1 of the Table is prescribed to be an offence for which an infringement notice may be issued under Part 13 Division 3 of the Act; and
  - (b) the amount opposite the provision in column 2 of the Table is prescribed as the modified penalty for the offence.

**Table**

<b>Provision of these regulations</b>	<b>Modified penalty</b>
Part 2	10% of the maximum penalty provided for the offence
r. 31	\$500

**43. Prescribed forms (Act s. 229 & 231)**

- (1) For the purposes of section 229, Schedule 1 Form 1 is the prescribed form of an infringement notice.
- (2) For the purposes of section 231, Schedule 1 Form 2 is the prescribed form of the withdrawal of an infringement notice.

## **Part 6 — Applications for review**

### **44. Submissions considered by Minister (Act s. 246(7))**

For the purposes of section 246(7)(b), a copy or transcript of a submission must be published by making it available to the public during office hours at the Commission's office.

### **45. Fee for Minister's reasons (Act s. 247(4))**

- (1) For the purposes of section 247(4)(c), the fee for a copy of reasons is \$45.00.
- (2) The fee for the supply of a copy is payable before the copy is supplied.
- (3) Despite subregulations (1) and (2), the Minister or the executive officer of the State Administrative Tribunal may, in a particular case for special reasons, direct that —
  - (a) a fee be waived or reduced; or
  - (b) the whole or part of a fee be refunded; or
  - (c) that the payment of the whole or part of a fee be deferred until such time, and upon such conditions, if any, as the Minister or executive officer thinks fit.

## **Part 7 — Local government planning charges**

### **Division 1 — Preliminary matters**

#### **46. Terms used**

In this Part —

*applicant* includes a person making a request;

*DAP application* has the meaning given in the *Planning and Development (Development Assessment Panels) Regulations 2011* regulation 3(1);

*fee* includes charge;

*Panel* means a Fees Arbitration Panel appointed under regulation 54;

*structure plan* means a plan, however described in a local planning scheme, for the coordination of subdivision and development.

*[Regulation 46 amended in Gazette 24 Mar 2011 p. 1037.]*

### **Division 2 — Fees and other charges**

#### **47. Fees for certain planning services (Sch. 2)**

- (1) A local government may impose a fee for a service listed in Schedule 2 provided by the local government.
- (2) The fee imposed by a local government for a service listed in Schedule 2 must be decided by the local government but must not exceed the fee specified in that Schedule for the service unless the local government is exempted under regulation 53.
- (3) Any fee imposed for a service listed in Schedule 2 must be paid by the applicant when applying for or requesting the service.

**48A. Fees for DAP applications**

- (1) A local government may impose a fee for services in respect of a DAP application made to it notwithstanding that it will not itself determine the application.
- (2) The fee must be decided by the local government but must not exceed the maximum fee specified in Schedule 2 in relation to a development application in respect of the same kind of development.
- (3) Any fee imposed under subregulation (1) must be paid to the local government by the applicant when making the DAP application.

*[Regulation 48A inserted in Gazette 24 Mar 2011 p. 1038.]*

**48. Fees for scheme amendments and structure plans (Sch. 3 & 4)**

- (1) A local government may impose a fee for a service provided by the local government pursuant to a request for —
  - (a) a local planning scheme amendment; or
  - (b) the adoption of a structure plan provided by the applicant.
- (2) No fee can be imposed for a service provided pursuant to a request for a local planning scheme amendment if the sole purpose of the amendment requested is to amend the local planning scheme to make it consistent with a region planning scheme.
- (3) A local government that receives a request for a local planning scheme amendment must give the applicant an estimate, in the form in Schedule 3, of —
  - (a) the hours that the local government's staff will spend dealing with the request; and

- (b) the total fee, calculated in accordance with that form, that the local government will impose for dealing with the request.
- (4) A local government that receives a request to adopt a structure plan provided by the applicant must give the applicant an estimate, in the form in Schedule 4, of —
  - (a) the hours that the local government's staff will spend dealing with the request; and
  - (b) the total fee, calculated in accordance with that form, that the local government will impose for dealing with the request.
- (5) In an estimate given under subregulation (3) or (4), the hourly rates for the local government's staff must be decided by the local government but must not exceed —
  - (a) for the person in charge of planning at the local government, \$80.60 per hour;
  - (b) for a senior planner or manager, \$61.20 per hour;
  - (c) for a planning officer, environmental health officer or other officer with qualifications relevant to the request, \$33.70 per hour;
  - (d) for a secretary or administrative officer, \$27.60 per hour,unless the local government is exempted under regulation 53.
- (6) A local government may reduce the estimated total fee specified in an estimate given under subregulation (3) or (4).
- (7) A local government may refuse to deal with a request referred to in subregulation (3) or (4) until —
  - (a) the estimated total fee specified in the estimate given in accordance with the subregulation is paid; or
  - (b) if that fee is reduced under subregulation (6), the reduced fee is paid.
- (8) If the local government —

- (a) decides not to initiate the local planning scheme amendment or the adoption of a structure plan; or
- (b) decides to discontinue the preparation or adoption of a local planning scheme amendment or the adoption of a structure plan,

moneys paid by the applicant to the local government for the planning service and not expended by the local government on the provision of that service must be refunded to the applicant.

*[Regulation 48 amended in Gazette 14 May 2010 p. 2009-10.]*

**49. Additional costs and expenses payable by applicants**

- (1) The following costs and expenses, if incurred by a local government in providing a service listed in Schedule 2 items 1 to 12 or referred to in regulation 48A(1) or 48, are payable by the applicant in addition to the fee for the provision of the service —
  - (a) costs and expenses of advertising the application and advertising matters related to the application;
  - (b) costs and expenses of any specific assessment, such as an environmental assessment, required in relation to the application;
  - (c) costs and expenses of consultation procedures required in relation to the application;
  - (d) costs and expenses of technical resources and equipment, such as computer modelling, required in relation to the application;
  - (e) costs and expenses of specialist advice, such as advice in relation to heritage matters, required in relation to the application.
- (2) A local government, in a bill given to the applicant, may —
  - (a) require the applicant to pay the costs and expenses referred to in subregulation (1) that the local government estimates it will incur; or



- (b) require the applicant to pay the actual costs and expenses referred to in subregulation (1) after they are incurred.
- (3) Any moneys paid in advance by an applicant to a local government for estimated costs or expenses referred to in subregulation (1) that are not incurred by the local government must be refunded to the applicant on the completion of the service.

*[Regulation 49 amended in Gazette 24 Mar 2011 p. 1038.]*

**50. Itemised account to be provided on request**

If an applicant so requests, a local government must give the applicant an itemised account of any fee the local government has imposed on the applicant under regulation 48 or 49.

**51. Dispute as to amount payable**

- (1) If a dispute arises as to an amount payable for or in relation to services to be provided pursuant to a request for —
  - (a) a local planning scheme amendment; or
  - (b) adoption of a structure plan provided by the applicant,the dispute may be referred in writing by the relevant local government or applicant to a Panel for its decision.
- (2) The referral of a dispute to a Panel does not affect the provision of the service in respect of which the fee is paid or the requirement to pay that fee, but the Panel may order the local government to refund any part of the fee paid.
- (3) A Panel's decision on a dispute is final.

**52. Local government may waive or refund fee**

A local government may waive or refund, in whole or in part, payment of a fee for a planning service.

**53. Exemption**

- (1) Any act by the Minister under this regulation must be done in a written notice that is given to the local government concerned.
- (2) The Minister may exempt a local government from the requirement to impose fees in accordance with regulations 47 and 48.
- (3) The exemption may include any condition the Minister decides.
- (4) Regulations 47 to 52 do not apply to a local government while an exemption given to it under subregulation (2) is in force and the local government complies with any condition in the exemption.
- (5) The Minister may amend or cancel an exemption given under subregulation (2).

**Division 3 — Fees Arbitration Panels**

**54. Fees Arbitration Panels**

- (1) A Fees Arbitration Panel consists of the following members appointed by the Minister —
  - (a) a person nominated by WALGA;
  - (b) a person nominated by the Commission;
  - (c) a planning consultant nominated by the Royal Australian Planning Institute;
  - (d) a person selected by the Minister from a panel of names submitted by industry planning groups under subregulation (2).
- (2) When it is necessary to appoint a person under subregulation (1)(d) the Minister must request the following to each nominate a person for appointment —
  - (a) the Housing Industry Association;
  - (b) the Urban Development Institute of Australia;

- (c) the Property Council of Australia;
  - (d) the Building Designers Association;
  - (e) the Real Estate Institute of Western Australia.
- (3) The Minister must appoint one of the members as chairperson of the Panel.
- (4) The function of a Panel is to determine a dispute referred to it under regulation 51.

**55. Panel meetings**

- (1) A Panel may hold a meeting to decide a dispute referred to the Panel.
- (2) A Panel may invite a person to be present at a meeting of the Panel to advise or inform, or make a submission to, the Panel.
- (3) The applicant, or a representative of the applicant, and a representative of the local government are entitled to be present whenever a person invited under subregulation (2) is present at a meeting of the Panel.

**56. Decisions of a Panel**

- (1) A Panel member, including the chairperson, has a single vote on a decision to be made by the Panel and, in the case of an equality of votes, the chairperson also has a casting vote.
- (2) A matter that is to be decided by a Panel must be decided by a majority of votes.
- (3) A decision is a valid decision of the Panel even though it is not made at a meeting of the Panel, if each member of the Panel agrees in writing to the proposed decision.

## **Part 8 — Miscellaneous matters**

### **57. False or misleading information**

- (1) A person must not give any false or misleading information in, or in relation to, an application or request made under these regulations.
- (2) A person making an application or request made under these regulations must not withhold information that is or may be material to the application or request.

Penalty: a fine of \$50 000.

### **58. Repeals**

These regulations are repealed —

- (a) the *Metropolitan Region (Valuation Board) Regulations 1967*;
- (b) the *Planning and Development (Local Government Planning Fees) Regulations 2000*;
- (c) the *Town Planning and Development (Easement) Regulations 1983*;
- (d) the *Town Planning and Development (Ministerial Determinations) Regulations 2003*;
- (e) the *Town Planning and Development (Subdivisions) Regulations 2000*.

## **Part 9 — Transitional matters**

**59. Term used: commencement**

In this Division —

*commencement* means the day on which these regulations commence.

**60. Wardens' appointments continued**

If immediately before commencement a person holds an appointment as a warden or honorary warden made under the *Metropolitan Region Planning Authority (Reserved Land Regulations)*, then on commencement the person is to be taken to be appointed as a warden under regulation 7 on the same basis as he or she was appointed immediately before commencement.

**Form 1**

**Schedule 1 — Forms**

**1.      Infringement notice (r. 43(1))**

<i>Planning and Development Act 2005 s. 229</i> <i>Planning and Development Regulations 2009</i>		<b>Infringement notice</b> Number:	
Alleged offender	Family name		
	Given names		
	Address		
	Date of birth		Male/Female
	Driver's licence	No.:                      State/Country: Type: Class(es):                      Expiry date:	
Description of alleged offence	Date		Time
	Place		
	Details <sup>1</sup>		
	Law contravened	<i>Planning and Development Act 2005 s.</i>	
	Relevant planning document <sup>2</sup>  [Tick one box and insert other details]	Planning scheme Planning control area declaration Interim development order Name of scheme/details of declaration or order, and number of any provision contravened —	
Modified penalty	The modified penalty for the alleged offence is \$		
Vehicle details <sup>3</sup>	Plate No.		State
	Licence expiry date		Vin/Chassis No.
	Make		Colour
	Body type		
Date of notice			

Service details [Tick one box]	This notice was served — in person by post	Date	
Officer issuing notice	Name		
	Office		
	Responsible authority		
	Signature		
Notice to alleged offender	<p>It is alleged that you have committed the above offence. If you want the alleged offence dealt with in court, tick the box below, post this notice to the address below, and do not pay the modified penalty above. If you do not wish to be prosecuted for the alleged offence in court, pay the modified penalty above within 28 days after the date on which you receive this notice. To pay, tick the relevant box below and post this notice and any cheque or credit card details for the modified penalty to the address below. If you want an extension of time to pay the modified penalty, contact the officer named below at the address below. <b>Paying the modified penalty will not be taken to be an admission for the purposes of any civil or criminal court case.</b> If you do not pay the modified penalty, you may be prosecuted in court for the alleged offence and, if convicted, you will be liable to a penalty and costs.</p>		
Alleged offender's response [Tick one box]	<p>To —<sup>4</sup></p> <p>I want this alleged offence dealt with by a court. I want to pay the modified penalty. A cheque for the modified penalty enclosed. I want to pay the modified penalty by using a credit card. The credit card's details are —</p>		

Notes to Form 1 —

1. The details should say what the alleged offender has done that is a contravention of the law.
2. Complete this if an offence against s. 218, 220 or 221 of the Act is alleged.
3. Include vehicle details if alleged offence relates to a vehicle or to a person driving a vehicle.

**Form 1**

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4.    Insert the name and address of the responsible authority and the officer responsible for dealing with infringement notices.



**2. Withdrawal of infringement notice (r. 43(2))**

<i>Planning and Development Act 2005 s. 231</i> <i>Planning and Development Regulations 2009</i>		<b>Withdrawal of infringement notice</b>	
Alleged offender	Family name		
	Given names		
	Address		
Infringement notice	Number		
	Date issued		
Description of alleged offence	Date		Time
	Place		
	Details		
	Law contravened	<i>Planning and Development Act 2005 s.</i>	
Date of this notice			
Officer issuing this notice	Name		
	Office		
	Responsible authority		
	Signature		
Notice to alleged offender	<p>The above infringement notice, which was issued for the above alleged offence, has been withdrawn.                      If you have already paid the modified penalty in accordance with the infringement notice, you are entitled to a refund of the money.                      To obtain a refund post this notice to —<sup>1</sup></p>		

Notes to Form 2 —

1. Insert the name and address of the responsible authority and the officer responsible for dealing with application for refunds.

## **Schedule 2 — Maximum fees for certain planning services**

[r. 47]

*[Heading inserted in Gazette 14 May 2010 p. 2010.]*

<b>Item</b>	<b>Planning service</b>	<b>Maximum fee</b>
1.	Determining a development application (other than for an extractive industry) where the development has not commenced or been carried out and the estimated cost of the development is —	
	(a) not more than \$50 000	\$135
	(b) more than \$50 000 but not more than \$500 000	0.31% of the estimated cost of development
	(c) more than \$500 000 but not more than \$2.5 million	\$1 550 + 0.25% for every \$1 in excess of \$500 000
	(d) more than \$2.5 million but not more than \$5 million	\$6 550 + 0.20% for every \$1 in excess of \$2.5 million
	(e) more than \$5 million but not more than \$21.5 million	\$11 550 + 0.12% for every \$1 in excess of \$5 million
	(f) more than \$21.5 million	\$31 350
2.	Determining a development application (other than for an extractive industry) where the development has commenced or been carried out	The fee in item 1 plus, by way of penalty, twice that fee
3.	Determining a development application for an extractive industry where the development has not commenced or been carried out	\$676
4.	Determining a development application for an extractive industry where the development has commenced or been	The fee in item 3 plus, by way of penalty, twice that fee

<b>Item</b>	<b>Planning service</b> carried out	<b>Maximum fee</b>
5.	Providing a subdivision clearance for —	
	(a) not more than 5 lots	\$67 per lot
	(b) more than 5 lots but not more than 195 lots	\$67 per lot for the first 5 lots and then \$34 per lot
	(c) more than 195 lots	\$6 756
6.	Determining an initial application for approval of a home occupation where the home occupation has not commenced	\$203
7.	Determining an initial application for approval of a home occupation where the home occupation has commenced	The fee in item 6 plus, by way of penalty, twice that fee
8.	Determining an application for the renewal of an approval of a home occupation where the application is made before the approval expires	\$67
9.	Determining an application for the renewal of an approval of home occupation where the application is made after the approval has expired	The fee in item 8 plus, by way of penalty, twice that fee
10.	Determining an application for a change of use or for an alteration or extension or change of a non-conforming use to which item 1 does not apply, where the change or the alteration, extension or change has not commenced or been carried out	\$270
11.	Determining an application for a change of use or for an alteration or extension or change of a non-conforming use to which item 2 does not apply, where the change or the alteration, extension or change has commenced or been carried out	The fee in item 10 plus, by way of penalty, twice that fee

<b>Item</b>	<b>Planning service</b>	<b>Maximum fee</b>
12.	Providing a zoning certificate	\$67
13.	Replying to a property settlement questionnaire	\$67
14.	Providing written planning advice	\$67

*[Schedule 2 inserted in Gazette 14 May 2010 p. 2010-12.]*

**Schedule 3 — Form of estimate of fees for services for local planning scheme amendments**

[r. 48(3)]

Task	Estimated hours <sup>1</sup>				
	Head of planning	Senior Planner	Planning Officer	Other staff e.g. environmental health officer	Secretary/administrative officer
<b>1. Preliminaries:</b>					
Preliminary discussions and registration of application					
<b>2. Decision to initiate:</b>					
(a) Information and site visit					
(b) Applicant discussion					
(c) Development Control Unit (DCU) meeting					
(d) Action DCU recommendation					
(e) Assessment report and agenda preparation MINOR MAJOR					
<b>3. Approval to advertise:</b>					
(a) Action local government recommendation					
(b) Refer to Commission for approval					
(c) Advertising, notifications, referrals					

**Planning and Development Regulations 2009**

**Schedule 3** Form of estimate of fees for services for local planning scheme amendments

(d) Deal with enquiries					
(e) Assess submissions					
(f) Liaise with external agencies					
(g) Applicant discussion and liaison					
<b>4. Decision to adopt:</b>					
(a) Finalise amendment, plan, report and agenda preparation					
(b) Applicant discussion					
(c) Action local government recommendation					
<b>5. Amendment/plan approved:</b>					
(a) Report on Minister's approval					
(b) Notify submissions					
(c) Update text and maps					
Total hours					
Hourly rate (r. 48(5))	\$	\$	\$	\$	\$
Total hours x rate = \$	\$	\$	\$	\$	\$
+ 33.3% (To recover operating overhead costs)	\$	\$	\$	\$	\$
= Total salary costs	\$	\$	\$	\$	\$
Total salary costs b/f (sum of amounts in previous row)			\$		
+ Direct costs			\$		
+ Special costs			\$		

**Planning and Development Regulations 2009**

Form of estimate of fees for services for local planning scheme amendments **Schedule 3**

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+ Scheme map and text preparation costs	\$
= Estimated total fee	\$

Notes to Form —

1. If readvertising of substantial modifications is required, the hours needed to arrange the readvertising and review the submissions and the direct costs incurred in readvertising the amendment are to be included in items 3, 4 and 5.

**Schedule 4 — Form of estimate of fees for services for structure plans**

[r. 48(4)]

Task <sup>1</sup>	Estimated hours <sup>2</sup>				
	Head of planning	Senior Planner	Planning Officer	Other staff e.g. environmental health officer	Secretary/administrative officer
<b>1. Preliminaries:</b>					
Preliminary discussions and registration of application					
<b>2. Decision to advertise:</b>					
(a) Information and site visit					
(b) Proponent discussion					
(c) Development Control Unit (DCU) meeting					
(d) Action DCU recommendation					
(e) Assessment report and agenda preparation					
<b>3. Approval to advertise:</b>					
(a) Action local government recommendation					
(b) Advertising, notifications, referrals					
(c) Deal with enquiries					
(d) Assess submissions					



(e) Liaise with external agencies					
(f) Proponent discussion and liaison					
<b>4. Decision to adopt:</b>					
(a) Finalise report and agenda preparation					
(b) Proponent discussion					
(c) Action local government recommendation					
<b>5. Plan adopted:</b>					
(a) Refer to Commission for endorsement					
(b) Notification and deposit of plan					
Total hours					
Hourly rate (r. 48(5))	\$	\$	\$	\$	\$
Total hours x rate =	\$	\$	\$	\$	\$
+ 33.3% (To recover operating overhead costs)	\$	\$	\$	\$	\$
= Total salary costs	\$	\$	\$	\$	\$
Total salary costs b/f (sum of amounts in previous row)		\$			
+ Direct costs		\$			
+ Special costs		\$			
= Estimated total fee		\$			

Notes to Form —

1. This form is based on the Western Australian Planning Commission's draft model text provisions for structure plans. If the structure plan provisions in a local planning scheme of a local government are not consistent with the

draft model text provisions, the fees should be calculated by that local government in accordance with the structure plan provisions of the scheme.

2. If readvertising of a proposed structure plan is required, the hours needed to arrange the readvertising and review the submissions and the direct costs incurred in readvertising the plan are to be included in items 3, 4 and 5.

## Notes

- <sup>1</sup> This is a compilation of the *Planning and Development Regulations 2009* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>.

### Compilation table

Citation	Gazettal	Commencement
<i>Planning and Development Regulations 2009</i>	19 Jun 2009 p. 2271-318	r. 1 and 2: 19 Jun 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2009 (see r. 2(b) and <i>Gazette</i> 19 Jun 2009 p. 2225)
<i>Planning and Development Amendment Regulations 2010</i>	14 May 2010 p. 2007-12	r. 1 and 2: 14 May 2010 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2010 (see r. 2(b))
<i>Planning and Development Amendment Regulations 2011</i>	24 Mar 2011 p. 1037-8	r. 1 and 2: 24 Mar 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 25 Mar 2011 (see r. 2(b) and <i>Gazette</i> 24 Mar 2011 p. 1035)

- <sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Citation	Gazettal	Commencement
<i>Planning and Development Amendment Regulations (No. 4) 2011</i> r. 3-5 <sup>2</sup>	6 May 2011 p. 1617-19	1 Jul 2011 (see r. 2(b))

- <sup>2</sup> On the date as at which this compilation was prepared, the *Planning and Development Amendment Regulations (No. 4) 2011* r. 3-5 had not come into operation. They read as follows:

#### 3. Regulations amended

These regulations amend the *Planning and Development Regulations 2009*.

**4. Regulation 48 amended**

In regulation 48(5) amend the provisions listed in the Table as set out in the Table.

**Table**

<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
r. 48(5)(a)	\$80.60	\$83.00
r. 48(5)(b)	\$61.20	\$63.00
r. 48(5)(c)	\$33.70	\$34.70
r. 48(5)(d)	\$27.60	\$28.40

**5. Schedule 2 replaced**

Delete Schedule 2 and insert:

**Schedule 2 — Maximum fees for certain planning services**

[r. 47]

<b>Item</b>	<b>Planning service</b>	<b>Maximum fee</b>
1.	Determining a development application (other than for an extractive industry) where the development has not commenced or been carried out and the estimated cost of the development is —	
(a)	not more than \$50 000	\$139
(b)	more than \$50 000 but not more than \$500 000	0.32% of the estimated cost of development
(c)	more than \$500 000 but not more than \$2.5 million	\$1 600 + 0.257% for every \$1 in excess of \$500 000
(d)	more than \$2.5 million but not more than \$5 million	\$6 740 + 0.206% for every \$1 in excess of \$2.5 million

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<b>Item</b>	<b>Planning service</b>	<b>Maximum fee</b>
	(e) more than \$5 million but not more than \$21.5 million	\$11 890 + 0.123% for every \$1 in excess of \$5 million
	(f) more than \$21.5 million	\$32 185
2.	Determining a development application (other than for an extractive industry) where the development has commenced or been carried out	The fee in item 1 plus, by way of penalty, twice that fee
3.	Determining a development application for an extractive industry where the development has not commenced or been carried out	\$696
4.	Determining a development application for an extractive industry where the development has commenced or been carried out	The fee in item 3 plus, by way of penalty, twice that fee
5.	Providing a subdivision clearance for —	
	(a) not more than 5 lots	\$69 per lot
	(b) more than 5 lots but not more than 195 lots	\$69 per lot for the first 5 lots and then \$35 per lot
	(c) more than 195 lots	\$6 959
6.	Determining an initial application for approval of a home occupation where the home occupation has not commenced	\$209
7.	Determining an initial application for approval of a home occupation where the home occupation has commenced	The fee in item 6 plus, by way of penalty, twice that fee
8.	Determining an application for the renewal of an approval of a home occupation where the application is made before the approval expires	\$69

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<b>Item</b>	<b>Planning service</b>	<b>Maximum fee</b>
9.	Determining an application for the renewal of an approval of home occupation where the application is made after the approval has expired	The fee in item 8 plus, by way of penalty, twice that fee
10.	Determining an application for a change of use or for an alteration or extension or change of a non-conforming use to which item 1 does not apply, where the change or the alteration, extension or change has not commenced or been carried out	\$278
11.	Determining an application for a change of use or for an alteration or extension or change of a non-conforming use to which item 2 does not apply, where the change or the alteration, extension or change has commenced or been carried out	The fee in item 10 plus, by way of penalty, twice that fee
12.	Providing a zoning certificate	\$69
13.	Replying to a property settlement questionnaire	\$69
14.	Providing written planning advice	\$69

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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>
Act.....	3
affected land.....	33
applicant.....	46
Board.....	37
commencement.....	59
DAP application.....	46
easement.....	33
easement holder.....	33
fauna.....	15(1)
fee.....	46
flora.....	15(1)
identified State land.....	5
Panel.....	46
place.....	16(1)
plan.....	28, 33
Registrar of Titles.....	3
road access condition.....	28
road vehicle.....	5
rubbish.....	16(1)
section.....	3
section 135 application.....	19
sign.....	16(1)
structure plan.....	46
take.....	15(1)
warden.....	5