



Minister for Planning; Culture & the Arts
Government of Western Australia

Our ref: 33-02418

Mr Paul Grant
Clerk Assistant (Committees)
Legislative Council of WA
Parliament House
PERTH WA 6000

Dear Mr Grant

COMMITTEE REPORTS ORDER 337

Thank you for your letter of 3 April 2009 regarding the report on 'Local laws regulating signs and advertising devices' prepared by the Joint Standing Committee on Delegated Legislation.

I note that the Committee has made several recommendations in this report regarding matters in my portfolio. I would like to provide the following comments on the actions the Government is taking to implement these recommendations.

Recommendation 1: Gazettal of Regulations

The Committee's first recommendation was:

"That the Minister for Planning gazette regulations giving practical effect to section 227 of the Planning and Development Act 2005 as a matter of some urgency."

I am pleased to advise that the Department for Planning and Infrastructure has completed preparation of the new *Planning and Development Regulations 2009*. These regulations include provisions supporting Division 3 of Part 13, including section 227 and, as such, a proclamation instrument has also been prepared to give effect to section 150 and Division 3 of Part 13 of the *Planning and Development Act 2005* (PD Act).

The regulations will be gazetted before the end of June. Following gazettal, local governments will be able to issue infringement notices for a breach of a local planning scheme.

It may be that the new *Planning and Development Regulations 2009* will address some of the issues canvassed in the Committee's report, as the provisions allowing the issuing of infringement notices for the breach of a local planning scheme (and specific provisions of the PD Act) will presumably dissuade local governments from drafting local laws to achieve this purpose.

Recommendation 3: Legislative Amendment

The Committee's third recommendation was:

"That the matters concerning signs and advertising devices that fall within the exclusive ambit of the Planning and Development Act 2005 and the matters that may be regulated under the general local law-making power conferred by section 3.5.1 of the Local Government Act 2005 be clarified by legislative provision."

In the Committee's report, it was stated that the PD Act contemplates that local governments will regulate advertisements that fall within the definition of 'development' under section 4 through provisions in their local planning schemes. I agree that the PD Act does not authorise or contemplate that other types of advertisements (those that are outside the definition of 'development') will be regulated through the provisions of a local planning scheme. I believe that this position is clear and, as such, no legislative amendment to the PD Act is necessary.

Schedule 7 of the PD Act expressly provides for provisions regarding advertising to be incorporated into a local planning scheme. Therefore, if a local government replicates the provisions of the Model Scheme Text (MST) regarding advertising devices into its scheme, then it is able to use those provisions to regulate the use of such signs on private and public property, as an express requirement for planning approval for such a land use is provided for by clause 9.1.1(l) of the MST.

A review of the *Town Planning Regulations 1967* and the MST is currently being undertaken by the Department for Planning and Infrastructure. A discussion paper on the review was released on 18 May 2009 for public consultation. In that discussion paper, the Department for Planning and Infrastructure has proposed that certain provisions from the MST should be removed and inserted into new regulations made under the PD Act. The effect of this approach will be to make the provisions inserted in regulations applicable to all local government planning schemes across the State. Local governments will no longer be required to insert these clauses into their schemes in order for them to have effect.

It is intended that clause 9.1 of the current MST shall be inserted into these new regulations. As such, all local governments will require development approval to be obtained for "the erection, placement or display of an advertisement", and will have the power to issue infringement notices under the *Planning and Development Regulations 2009* for failing to comply with this requirement.

I note the Committee's comments that the definition of advertisement in Schedule 1 of the MST may be "broader than that contemplated by the *Planning and Development Act 2005*". The wording of clause 7(e) of Schedule 1 of the now repealed *Town Planning and Development Act 1928* was wider than that of the equivalent provision in the PD Act (clause 8 of Schedule 7). The Committee has suggested that the definition of advertisement may need to be re-examined in light of the new provisions of the PD Act. I agree with the Committee's suggestion, and will instruct the Department for Planning and Infrastructure to investigate this issue as part of the review of the *Town Planning Regulations 1967* and MST that is currently underway.

Yours sincerely

A handwritten signature in cursive script, appearing to read "John Day".

**JOHN DAY
MINISTER FOR PLANNING;
CULTURE AND THE ARTS**

24 JUN 2009

