

**University of Western Australia - Planning And Governance Course**  
**EART4413**  
**DISCUSSION TOPIC 3**

**General Scope of Topic**

Development Control Issues; R-Codes; Building and Other Controls; Land Resumption and Compensation; Administrative Law

**Topic**

1. Explain by reference to the Development Control provisions in the Model Scheme Text, the means by which local governments seek to ensure through their planning schemes that development is not commenced or carried out without planning approval.
2. If development is commenced or carried out without prior planning approval, explain by reference to the provisions the Model Scheme Text and the provisions of the Planning and Development Act 2005:
  - (a) What remedies would be available to the local government to enforce compliance with its Scheme?
  - (b) What steps you would need to take in order to compel compliance with the Scheme, assuming that the developer fails to comply with any written notice or direction issued by the local government?
  - (c) Assuming you have forced compliance with the Scheme and terminated the unlawful development, and assuming that the development is half completed, what course is open to the landowner and developer at that time to obtain planning approval and make the development lawful?

- 3A. Explain the means adopted to give force and effect to the R-Codes in relation to residential development under local government planning schemes.

Explain the provisions in the P&D Act 2005, the R-Codes State Planning Policy (SPP 3.1), and the Model Scheme Text.

OR

- 3B. Assuming you act for a landowner who wishes to commence development of a building as soon as possible.
  - (a) Is it possible to apply for a building licence before planning approval has been given and if you believe it is, explain your reasoning for that conclusion?
  - (b) Can a building licence be obtained once a building has been erected without a building licence first having been issued? Explain your reasoning.
  - (c) If a landowner manages to obtain a building licence and carries out the building in accordance with the building licence, but does not have a planning approval required under the relevant local government scheme, does the issuing of the building licence make the development lawful for all purposes including planning purposes? Explain the reasoning behind your answer.

4. Do you consider the provisions of s.187 of the P&D Act allowing a responsible authority to elect to purchase land in lieu of paying compensation for injurious affection are fair and reasonable in all cases? Explain the reasons for your answer.

You might wish to refer to the recent High Court decision in the *Temwood* case and compare it with the decision in the Full Court of the WA Supreme Court.

5A. ADMINISTRATIVE LAW

- (a) Give a definition for each of the following terms:
- (i) Prerogative Writ;
  - (ii) Writ of Prohibition;
  - (iii) Writ of Mandamus
  - (iv) Writ of Certiorari;
  - (v) Principles of Natural Justice;
  - (vi) Ultra vires;
  - (vii) Locus standi.
- (b) Explain as accurately as possible but with as few words as possible in what circumstances a person might seek:
- (i) A declaratory judgment; and
  - (ii) An injunction -  
  
against the Minister acting purportedly in the exercise of his powers on appeal from a decision of either the Town Planning Board or a local authority exercising a discretion on a planning application.

OR

- 5B. Referring to any case decided by the Supreme Court in the last ten years involving planning issues, and in which case the plaintiff sought either a prerogative writ, or alternatively, declaratory or injunctive relief, explain the circumstances in which the action arose, what action was taken by the plaintiff, the relief sought, and the reasons the Court gave for either granting or refusing the relief sought.

You might rely on either the decision of the Full Court in *Carcione Nominees Pty Ltd v Minister for Planning and the City of South Perth & Ors* [2005] WASCA 56, or the CCAC decision of McLure, J or the Full Court decision in that case.

**References:**

- Allars                    "*Australian Administrative Law Cases & Materials*" - Butterworths 1997
- Brett and Hogg       "*Cases and Materials on Administrative Law*" - Butterworths.
- Allars                    "*Introduction to Australian Administrative Law Cases & Materials*" - Butterworths 1990
- Flick, G.A.            "*Natural Justice*" - Butterworths
- Young, P.W.          "*Declaratory Orders*" - Butterworths
- Spry, I.C.F.            "*The Principles of Equitable Remedies*" - Law Book Co.
- Hotop                    "*Cases on Review of Administrative Action*" Law Book 1995.