

## **PROCEDURE FOR THE REMOVAL OF NOTIFICATIONS ON TITLE (OVER 55's ACCOMMODATION / ANCILLARY DWELLINGS)**

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### **Development Approval and Additional Use under TPS 2**

Pursuant to Town Planning Scheme No. 2 (TPS 2), a number of single residential properties were granted additional land use rights to build two Aged and Dependent Persons Dwellings (as classified in accordance with clause 5.5.2 of the Residential Design Codes Volume 1) in place of a single house on a single lot. The additional land use rights are applied as a condition of development approval and/or a notification on the Certificate of Title. They restrict occupation to people aged 55 years and over and persons with a recognised form of disability requiring special accommodation for independent living or special care.

Under TPS 2, a number of single residential properties were granted Development Approval to build an ancillary dwelling on the site, with occupation of this dwelling restricted to members of the property owners' family via a condition of Development Approval and/or a notification on the Certificate of Title.

### **Forms of restrictions**

There are several ways a restriction may have been placed on a property's Certificate of Title to ensure the dwellings were occupied as per the requirements of their development approval. The most common mechanisms are:

- Section 70A notification on the certificate of title;
- Restrictive covenant on the certificate of title; and
- Restriction on the strata plan under the Strata Titles Act.

### **Occupancy restrictions under Local Planning Scheme No. 3**

With the gazettal of Local Planning Scheme No. 3 (LPS 3) Council resolved to remove the occupancy restrictions on all Aged and Dependant Persons (over 55's dwellings) and ancillary accommodation. While the additional uses on these properties are no longer in effect, the properties will still have restrictions on occupancy under the mechanism chosen as per the original development approval granted.

### **How do I remove the restrictions from my property?**

Generally, there will be three mechanisms in place to restrict occupancy for Aged and Dependent Persons accommodation:

- a) TPS2 Additional Use;
- b) Planning Approval issued by the Local Government for a specific land use (i.e. Aged and Dependent Persons dwellings) and related conditions of approval; and



- c) Notification placed on the title and/or strata plan.

Ancillary Dwellings will generally have two mechanisms in place to restrict occupancy:

- a) Planning Approval issued by the Local Government for a specific land use (i.e. Ancillary Dwelling) and related conditions of approval; and
- b) Notification placed on the title and/or strata plan.

### TPS 2 Additional Use

With the gazettal of LPS 3, the TPS 2 Additional Use was automatically removed and the standard zone and land use permissibility in LPS 3 will apply.

### Development Approval

A new development approval will need to be applied for and granted to remove or amend any conditions restricting the dwellings use as per Schedule 2 Clause 77 of the Planning and Development (Local Planning Schemes) Regulations 2015

*Aged and Dependent Persons (Over 55's) accommodation* owners will need to submit a Development (Planning) Application for a Change of Use for the dwelling/s to be 'Residential land use' without occupancy restriction conditions. To receive development approval, the dwellings will need to comply with the site area per dwelling requirements for a single house, grouped dwelling or multiple dwelling in the R-Codes and the parking requirements of the R-Codes or any Local Planning Policy that pertains to the lot.

*Ancillary Dwelling* owners will need to apply for an amendment to their conditions of approval, removing the condition requiring the occupants of the ancillary dwelling to be family members of the landowners.

### Removal of Notification on Certificate of Title

After the above process is complete, the Notification will then need to be removed from the Certificate of Title through Landgate. This process will require landowners to liaise with the Local Government and Landgate.

The process to be followed is dependent upon the type of notification on the Certificate of Title:

#### *Section 70A Notification*

- a) The owner is to print, complete and sign Landgate's "*Removal or Modification of Notification under Section 70A*" form.



- b) The completed form is to be sent or delivered to the City of Nedlands for the CEO's signature and for completion of the Local Government/Public Authority Attestation. Please allow at least 5 business days for this section to be completed.
- c) The owner then collects the completed *Form Removal or Modification of Notification under Section 70A* from the City of Nedlands and posts or delivers the form to Landgate. Landgate will then liaise with the owner as required to complete the removal of the Section 70A from the Certificate of Title.

#### *Caveat*

- a) The owner is to print, complete and sign Landgate *Form W1: Withdrawal of Caveat*.
- b) The completed form is to be sent or delivered to the City of Nedlands for the CEO's signature and for completion of the Local Government/Public Authority Attestation. Please allow at least 5 business days for this section to be completed.
- c) The owner then collects the completed *Form W1: Withdrawal of Caveat* from the City of Nedlands and posts or delivers the Form to Landgate. Landgate will then liaise with the owner as required to complete the removal of the caveat from the Certificate of Title.

Landgate forms can be found here: <https://www0.landgate.wa.gov.au/for-individuals/forms-and-fees/land-titling-forms>

#### *Restriction on the strata plan under the Strata Titles Act*

The removal of a restriction on a strata plan requires a resolution from the Strata Company under the Strata Titles Act 1985 (as amended) and it will take effect from the date of registration of the resolution at Landgate.

Registration is achieved through the following process:

The owner must print and complete a Landgate *Application Form* that is accompanied by:

- a certificate from the Strata Company in the manner of Form 19 from the Strata Titles General Regulations (with a sketch attached, if necessary, to define the portion of the parcel affected by the addition or variation of a restriction as to use);
- the written consent of the Local Government to the resolution (not required for survey-strata plans);
- the written consent of the Western Australian Planning Commission to the resolution.

#### **Need guidance on how to complete and lodge Landgate forms?**

Landgate is the government body responsible for removing notifications from Certificates of Title and Strata Plans. All forms can be downloaded from their website, [www.landgate.wa.gov.au](http://www.landgate.wa.gov.au) and all fees must be paid directly to Landgate.



For further information, please contact Landgate:

T: (08) 9273 7373

E: [customerservice@landgate.wa.gov.au](mailto:customerservice@landgate.wa.gov.au)

Or visit their office at 1 Midland Square, Midland

***Please note that the property owner must lodge the original copy of Landgate documents, signed by themselves and the Local Government, at Landgate. The Local Government is not permitted to do this on behalf of the property owner.***

All forms can be lodged in person at:

Midland Head Office  
1 Midland Square  
MIDLAND WA 6056

or

Perth Business Office  
200 St Georges Terrace  
PERTH WA 6000

or

via post to:  
Landgate – Document Lodgement  
P.O Box 2222  
MIDLAND WA 6936