
AUTHORISATION DRAFT

REVIEW DRAFT

Part 1

POLICY OPERATION

Purpose and Application

The purpose of this Policy is to:

1. Facilitate the assessment of applications for subdivision and bulk earthworks;
2. Provide for planning and/or engineering design approval, which have the potential to cause sand drift; and/or dust nuisance; and
3. Set a basis for imposing conditions on planning, subdivision and/or engineering design approvals.

Objectives

The objectives of this Policy are:

1. To minimise the adverse impact of sand drift and dust nuisance on any inhabitants, traffic or persons caused by bulk earthworks associated with subdivision and development;
2. To establish a procedure for the assessment and conditioning of applications for subdivision and development;
3. To provide for the enforcement of sand drift and dust nuisance conditions associated with subdivision and development;
4. Set a broad procedure for dealing with sand drift compliance issues.

Terminology

“Sand” means any granular material consisting of small eroded fragments of rock finer than gravel whether or not forming part of a beach, desert or bed of any river and includes dust and organic matter.

“Dust” means solid particles generated and dispersed in the air by processes such as handling, crushing and grinding of organic or inorganic materials such as rock, ore, metal, coal, wood or grain and stockpiling of materials and windblown dust.

“DER Guideline” means the Department of Environment and Conservation – “*A guideline for managing the impacts of dust and associated contaminants from land development sites, contaminated sites, remediation and other related activities,*” dated March 2011.

“Bulk earthworks” means the re-contouring, filling, draining and stabilising of land as part of the works associated with the creation of subdivided allotments.

Part 2

INTRODUCTION

General

This Policy has been prepared in accordance with clause 3 of Schedule 2 of the Planning and Development Regulations 2015 (the Regulations). The Policy applies to earthworks associated with subdivision.

It is the responsibility of the landowner/applicant to ensure compliance with any conditional subdivision approval issued by the Western Australian Planning Commission (WAPC) and the Council's planning or engineering design approvals issued for earthworks. The Council is responsible for the enforcement of the conditions of subdivision, for which it is the nominated local government clearance authority. It is also responsible for ensuring compliance with the conditions of planning approval in accordance with clauses 6.10 and 8.10 of District Planning Scheme No. 2 (the Scheme), where an application for planning approval is made to undertake earthworks prior to the issue of subdivision approval by the WAPC.

Where a developer does not comply with requests from the Council to control sand drift and dust nuisance caused by earthworks, the Council may take action against the landowner or occupier of the land under the Scheme, local law and/or request the Department for Environmental Regulation (DER) to investigate the breach. If appropriate the Department of Environmental Regulation (DER) can issue a Pollution Abatement Notice to the landowner or occupier.

Background

The Department of Environment and Conservation (now the DER) published, in March 2005, "A guideline for managing the impacts of dust and associated contaminants from land development sites, contaminated sites, remediation and other related activities". The Guideline was updated in March 2011.

The DER Guideline is to assist proponents, consultants and regulators in the development and implementation of dust management programs to manage dust generated from diffuse sources. This Guideline is the recognised reference when assessing an application for planning approval or subdivision.

Until such time as a local law is prepared and adopted by the Council to specifically control sand drift and dust nuisance caused by bulk earthworks, clause 8.2.2 of the Scheme applies which states:-

"No land, building or appliance shall be used in such a manner as to permit the escape therefrom of smoke, dust, fumes, odour, noise, glare, vibration or waste products in such quantity or extent or in such a manner as will create or be a nuisance to any inhabitant, or to traffic or persons using any land or road in the vicinity."

Part 3

APPLICATION

Council's expectation is that developers will minimise sand and dust nuisance to adjoining and nearby properties.

Dust Management Plan

The landowner or an agent of the landowner shall prepare a Dust Management Plan (DMP) for the site, the subject of bulk earthworks associated with an approved subdivision or a planning approval.

The DMP shall be prepared having due regard for the DER Guidelines.

A DMP is required to be submitted to the Council before undertaking bulk earthworks associated with subdivision, except for land with an area of 1 hectare or less.

For land more than 1 hectare in area, where the assessment of the site is determined to be Classification 1, based on Appendix 1 – Sheet 1 of the DER Guideline "*Site risk assessment/classification for activities generating uncontaminated dust*", only PART A of the DMP is required to be completed and submitted to the Council with the engineering design drawings for approval.

For sites Classified as 2, 3 or 4, a DMP is required to be prepared having regard for the DER Guideline and submitted to the Council for its consideration and approval prior to commencing any on-site works.

The DMP is to be signed and certified by the land owner, or an authorised agent of the landowner as having prepared the DMP in accordance with the DER Guideline applying to the land.

The DMP will be structured in accordance with the following format:-

PART A - Background and Assessment

1. Dust Management Plan for.....(Name of site/estate)
2. Purpose and Scope.....(Introduction and Background to the project)
3. Project Structure.....(Roles/ Responsibilities/Contact details – Refer DER Guideline Appendix 1 – Sheet 2) and (Appendix 6 for sites classified as 2,3 and 4)
4. Site Classification.....(Refer DER Guideline Appendix 1 – Sheets 1 and 3
(NOTE: Where the Site is assessed as Classification 1, no further details are required))

PART B - Operations and Monitoring

5. Works and Operations...(Works Schedule/Activity/Time frame/Approvals)
6. Site Context..... (Description of nearby/surrounding land use and development)
7. Water Source.....(Water supply/Capacity/Rate/Use/DoW licence)
8. Sand Drift and Dust Prevention (Refer DER Guideline Appendix 1 – Sheet 4)

9. Dust suppression.....(Refer DER Guideline Appendix 1 – Sheet 4 and Appendix 2 and 3)
10. Dust Monitoring.....(Refer DER Guideline Appendix 4)
11. Weather Forecasting... ..(Patterns/Triggers/Action levels/Recording/Communication)
12. Notification.....(Refer DER Guideline Appendix 1 – Sheet 5)
13. Complaints.....(Recording and Handling Process. Refer to DER Guideline- Appendix 5)

The Council requires the following information to be included as part of the DMP under sections, 4, 5 6 and 7, namely:

- 4. **Site Classification**- A general description about the soil types and their respective erosion and dust nuisance potential.
- 5. **Works and Operations** - An earthworks plan showing the location of work areas, batters, stockpiles, trenching, and cuts, as applicable, the location of traffic routes, site access points, haul roads, loading and unloading areas, and soil processing plants.
- 6. **Context** - Property boundaries, existing and final contours and topographic features, including existing water courses, wetlands and vegetation.
- 7. **Water Source** - Wash down facilities, water bore locations and tanker filling locations.

The Council will require an application for planning approval for bulk earthworks submitted to the Council before the WAPC has issued subdivision approval for the land, to attach to the planning application, a copy of the application for subdivision approval to the WAPC, together with a copy of the Commission's letter of receipt. The Council will not consider an application for bulk earthworks for land associated with subdivision, unless the landowner has applied for subdivision approval.

The site supervisor and/or contactor, is accountable for the management and control of potential off-site impacts of sand drift and dust nuisance in accordance with the approved DMP.

The role of the Council is to ensure that the site supervisor and/or contractor is implementing the DMP as approved and managing the works to minimise any potential off-site impacts.

The Council will undertake site inspections as required, to be satisfied that the requirements of and the commitments made in the DMP are being complied with.

APPROVAL

Where an application to undertake bulk earthworks associated with a subdivision is submitted, the Council will impose conditions to manage potential sand drift and dust nuisance.

Subdivision Application

An application for subdivision involving the clearing of land in excess of 1 hectare, which has been referred to the Council by the WAPC and the Council has no objection to the proposed subdivision, the Council will recommend a condition be included stating that:

“ Prior to the commencement of any works on the land, a Dust Management Plan is to be prepared and approved by the local government, to manage and control potential sand drift and dust nuisance associated with the earthworks to re-contour, fill, drain and stabilise the land.”

Where the WAPC does not include a dust management condition as recommended, the Council will rely on the WAPC’s standard subdivision conditions imposed under Part 4 – “*Drainage and Site Works Conditions*”, as prescribed in the WAPC Model Subdivision Conditions and Advice, to require the preparation and submission of a DMP to the Council by the applicant.

Engineering design drawings - subdivision

Upon receipt of the engineering design drawings for subdivision works approval, the Council will require the following condition:

“The contractor shall be responsible for the management of sand drift and dust control during construction and maintenance period of the subdivision so as not to cause a nuisance and is to be undertaken in accordance with the Dust Management Plan approved by the Council.

The contractor is required to submit the DMP to the Council with the engineering drawings, for assessment and approval, prior to commencing any site works.

Application for approval to commence development prior to subdivision

An application for planning approval which proposes to clear in excess of 1 hectare of land, the following condition will apply:

“Prior to the commencement of earthworks, a Dust Management Plan is to be prepared and approved by the Council, to manage and control potential sand drift and dust nuisance associated the re-contouring, filling, draining and stabilisation of the land.”

The applicant is required to submit the DMP to the Council for approval, prior to commencing any site works.

Engineering design drawings – development approval prior to subdivision

An application for engineering design drawing approval which proposes to clear in excess of 1 hectare of land, prior to the issue of a subdivisional approval by the WAPC, the following condition will apply:

“The contractor shall be responsible for the management of sand drift and dust nuisance during the construction of the development in accordance with the terms and conditions of

the Dust Management Plan approved by the Council and related conditions of planning approval.”

Compliance

Where the landowner or an authorised agent of the landowner has completed and submitted a DMP in accordance with the Policy as a requirement of a planning or subdivision approval to the Council for approval, the Council will be responsible for ensuring that the landowner or the authorised agent of the landowner complies with the commitments and obligations made under the DMP.

Compliance procedure

To ensure that the bulk earthworks are being undertaken in accordance with the requirements and commitments made by the landowner or the landowner’s agent under the DMP, the following procedure will be followed:

1. The Council will undertake regular site inspections and arrange on-site meetings as required with the site supervisor or contractor in relation to the management of the bulk earthworks on the land;
2. Where it is found that the bulk earthworks are non-compliant with the DMP, and/or dust/sand is permitted to escape from the land in such quantities as to be a nuisance to any inhabitant, or to traffic or persons using any land or roads in the vicinity, the Council will request the site supervisor or contractor remedy the non-compliance;
3. Should the site supervisor or the contractor not comply with the request by the Council, the Council will issue a notice to the landowner and the site supervisor or contractor under clause 8.2.3 of the Scheme to make the site compliant within a specified timeframe, and advise in the notice that the Council may initiate enforcement proceedings for a breach of the Scheme.
4. In the case of continued non-compliance or creation of nuisance, the Council may serve notice requiring cessation of earthworks on site for a specified time period, either during particular high risk times of the year or until certain management procedures are implemented to manage dust / sand nuisance; and
5. Should the non-compliance of the DMP be deemed by the Council to be a serious breach, the Council may refer the matter to the DER for investigation.

Legal action