

This fact sheet outlines the Western Australian Planning Commission's (WAPC) definition and interpretation of **active - in force, draft - public consultation, draft - not intended for decision making, deferred implementation and inactive - rescinded policies**, and how each impacts decision-making.

All WAPC policy documents on the Department of Planning, Lands and Heritage (DPLH) website will have one of the below labels on the front cover:

- active - in force
- draft - public consultation
- draft - public consultation - not intended for decision making
- deferred implementation
- inactive - rescinded.

These labels included on policy documents assist readers to quickly identify the status of a policy.

What is an "active - in force" policy?

An **active - in force** document is a policy that has been endorsed and published by the WAPC, and in some cases approved by the Minister and Governor for publishing in the Gazette (as required). In most instances, it is the current version of the policy that should be applied by decision-makers.

What is a "draft - public consultation" policy?

A **draft - public consultation** policy is a draft document that has been approved by the WAPC for public advertising and where required by the Minister. Within planning, there is a concept that weight can be given to a draft planning instrument once it has been publicly released. We often refer to these documents being "seriously entertained". This is referred to as the 'Coty' principle from the NSW case of *Coty (England) Pty Ltd v Sydney City Council* (1957) 2 LGRA 117.

In other words, weight can be given to a policy before it is formally approved, provided it is sufficiently advanced towards being formalised. The level of weight afforded to the policy by the decision maker is dependent on how certain the draft is and how imminent it is to finalisation. The determination of whether a draft WAPC policy constitutes a relevant planning consideration as being a seriously entertained planning document requires the decision maker to analyse the source, nature and content of the document in question, and the stage it has reached in its development: *Moore River Company Pty Ltd and Western Australian Planning Commission* [No 2] WASAT 98 at [169].

What documents can be "seriously entertained"?

An array of planning instruments can be considered "seriously entertained" by a decision maker and may include:

- State Planning Policy
- Operational Policy/Development Control Policy
- Position Statement

- Planning Codes
- Guidelines and manuals

These labels will not be applied to documents progressed under the *Planning and Development (Local Planning Schemes) Regulations 2015* such as a scheme amendment or structure plan.

What is a "draft - public consultation - not intended for decision making" policy?

A **draft - public consultation - not intended for decision making** is a draft policy that is not considered to be sufficiently advanced to be given weight in planning decision making.

A **draft - public consultation - not intended for decision making** policy may have been approved by the WAPC (and the Minister where required) for public advertising but is not yet intended to be used in planning decision making.

A **draft - public consultation - not intended for decision making** policy is generally released for comment to garner feedback, help refine policy elements, and to determine if there is a consensus or support for concepts introduced in the draft policy. It provides an opportunity to test those concepts without being implemented in the decision-making process. There may be instances where proposed provisions contradict existing statutory requirements and as such, should not be used for decision making. An example being the advertising of the Medium Density Codes, which set different lot requirements to that of the Residential Design Codes. The draft

Medium Density Codes are not intended to be used in decision making until they are finalised, and current provisions are formally rescinded.

A **draft - public consultation - not intended for decision making** policy will likely require more significant refining post-public consultation. Its release is not imminent and in some instances, it may require readvertising at a later stage. For clarity and transparency, these documents will specifically state that they are not intended by the WAPC to be considered in decision making.

What is a “deferred implementation” policy?

A **deferred implementation** label is a temporary label to be used in very limited scenarios whereby a policy is subject to postponed operation but has been approved and published. Such policies are likely to be highly prescriptive, for example, *State Planning Policy 3.7 Residential Design Codes*. The reason for publishing the document is to allow for a period of preparation for when the policy becomes operational. To provide clarity with respect to the weight to be given to a policy which has been approved and gazetted but implementation deferred to a specific date, the WAPC will place this label onto policies. The label will be applied when the WAPC intends to provide public awareness of the new policy content in order to inform preplanning activities ahead of its implementation.

The **deferred implementation** label will always include a date underneath stating ‘Until: XX/XX/XXXX’ which is the date on which it becomes active. This label will be removed and replaced with an **active - in force** label once the operational date has passed.

What is an “inactive - rescinded” policy?

An **inactive - rescinded** policy is a document that is no longer being implemented. It may have been rescinded or repealed as it has been superseded or replaced by another policy, or is no longer relevant. Documents labelled as **inactive - rescinded** have been formally rescinded or repealed by either the WAPC with the approval or on direction of the Minister or approved by the Minister.

Why do we need to know when a policy was rescinded?

It is useful to know when a policy was replaced, or its content retracted. Since policies impact decision making, someone may be interested in a historic decision and what the policy basis was for that decision at the time. It is also useful to know when a policy was rescinded as the policy content may have been replaced and it is important to know where that content has moved to and when that policy became “active”.

Publication dates

To further assist with clarity all policy documents published under any of the four scenarios above will clearly articulate their publication and operational date on the inside cover. Traditionally these documents have generally been dated according to the month they were published. Going forward documents will contain an exact publication, operational and, where appropriate, gazettal date DD/MM/YYYY.