**Briefly discuss the law pertaining to planning conditions and planning refusals.**

Development is a complex and evolving concept which largely reflects the historical response to prevailing environmental, economic and socio-cultural challenges. Therefore, development can be a sensitive process which needs to reflect the framework of the relevant legislation and regulations. Any land which is appropriately zoned in accordance to their region planning scheme or local planning scheme is able to be subdivided and developed provided that it is done in accordance with the relevant legislation. Once a proposal is logged with the WAPC or relevant local planning authority they have the power to impose conditions or refuse a proposal. In order to successfully understand the law pertaining to these powers this essay will first outline the law regarding condition setting followed by the right of refusal.

**Conditions**

When a proposal is logged to the relevant local planning authority they have the power to impose conditions on the approval of development. This affords them the opportunity to modify the form of the physical development applied for and to maintain control of any operations of the development. In *Phillips and the Shire of Mundaring* [2009] WASAT 193 it was held that planning conditions run with the land and not with any applicant. However, any conditions of planning approval must be valid.[[1]](#footnote-1)The test of validity was endorsed by the High Court of Australia which held for conditions to be valid, four lambs needed to be satisfied including it has a planning purpose; it is fairly and reasonably relates to the development; it is not unreasonable to have been imposed and the condition is certain and final.[[2]](#footnote-2)These limbs are vital in establishing whether a certain condition may be imposed. Therefore they are explained in more detail below.

A planning condition imposed must be for a planning purpose which is generally characterised. For example as a general rule, conditions requiring a notification on the certificate of title that advises the need of compliance with a particular condition of development or subdivision approvals generally are not considered for a planning purpose. However, this can be justified in certain circumstances. In *Antonas v Town of Vincent* [2006] WASAT 303 the tribunal noted that in circumstances where the condition of a development approval is imposing a continuing obligation on the occupier that effects the use or enjoyment of the land and is found unusual.[[3]](#footnote-3) It would be appropriate to impose a condition which requires the proponent to provide compliance in accordance with relevant legislation.

Furthermore, it needs to be clear from the body of case law set down by the courts and tribunals over the years that conditions imposed are required to comply with a spate and distinct statutory regime which are not imposed for planning purposes.[[4]](#footnote-4)

The second lamb requires that a condition must relate to the proposed development, although it may not be an impediment which benefits other land or the public at large.[[5]](#footnote-5) It should be used to contain significantly the design of the development or the operational use.[[6]](#footnote-6)

The third lamb is concerned with the requirement that the condition is not to be unreasonable if it were to be assessed objectively, it would not have been imposed by any reasonable planning authority lawfully. In determining whether a condition is unreasonable, the establishment of whether the condition imposes something proportional to what was applied for is required. An example is whereby someone has applied for the subdivision of 4 lots which gives rise to upgrading of the road it would be unreasonable to impose a condition to construct a 4-lane highway.[[7]](#footnote-7)

Last, the fourth lamb is that a condition cannot lack finality, if it leaves open the requirement for obtain further approval it is not valid. In cases whereby a condition of development approval relies upon the technical expertise of another agency it may be difficult to avoid lack of finality.[[8]](#footnote-8) However, while the advice is sought the condition would be ultimately cleared. For example, Kingsway Street to be upgraded in accordance with the requirements by Water Corporation of Western Australia, to the satisfaction of the WAPC. If condition is uncertain with no reasonable or sensible meaning it would not be found valid.

If these four lambs are satisfied the relevant planning authority may impose conditions in accordance to part 10 division 3 of the PD Act.

**Refusal**

In certain circumstances applications cannot be approved as proposed and cannot have conditions imposed to make them acceptable. The relevant planning authority must provide reasons for refusal which must relate to a failure to comply with relevant planning consideration. The decision-maker has an obligation to exercise their statutory responsibilities properly. Furthermore, when refusing an application all reasons must be clearly stated otherwise on may make the assumption that anything that was not specified are satisfied.

**Conclusion**

It can be concluded that the relevant planning authority may impose conditions on a development application to make it satisfactory for approval, or, they may refuse an application if it cannot be approved as proposed. However, decision-makers have an obligation to exercise their statutory responsibilities properly which must be reflected in any conditions or refusals. In particular, when imposing conditions they must be satisfy the four limbs in order to establish that a condition is valid and able to be imposed. This has been clearly demonstrated in the High Court in *Western Australian Planning Commission v Temwood Holdings Pty Ltd*  (2004) 221 CLR 30 at [57], which supports that conditions run with the land and not any applicant. Furthermore, it has been demonstrated above in regards to effectively providing reasons for refusal which need to be clearly stated and related to a failure to comply with relevant planning consideration. Overall, if a party is not satisfied with either their conditions imposed or refusal there is further action a party can seek but is not within the scope of this paper.

1. *Newbury District Council v Secretary of State for the Environment* [1981] AC 578. [↑](#footnote-ref-1)
2. *Western Australian Planning Commission v Temwood Holdings Pty Ltd*  (2004) 221 CLR 30 at [57]. [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)
4. See *Hansan v Moreland City Council* [2005] WCAT 1931 and *Mann and City of Rockingham* [2006] WASAT 115 [↑](#footnote-ref-4)
5. Perrmead Investments Pty Ltd v Western Australian Planning Commission (1996) 16 SR (WA) 181. [↑](#footnote-ref-5)
6. Land Alliance Pty Ltd and City of Belmont [2005] WASAT 100. [↑](#footnote-ref-6)
7. See Western Australian Planning Commission v Erujin Pty Ltd (2001) 115 LGERA 24. [↑](#footnote-ref-7)
8. See Hill v State Planning Commission [↑](#footnote-ref-8)